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Part II

Regulatory Information Service Center

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

REGULATORY INFORMATION SERVICE CENTER

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

AGENCY: Regulatory Information Service Center.

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

SUMMARY: The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Executive Order 12866 ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735), as amended, and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry. Section 4 of Executive Order 12866 also directs that each agency prepare, as part of its submission to the fall edition of the Unified Agenda, a regulatory plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. **The Regulatory Plan** (Plan) and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** (Unified Agenda) help agencies fulfill these requirements.

Editions of the Unified Agenda prior to fall 2007 were printed in their entirety in the **Federal Register**. Beginning with the fall 2007 edition, the Internet is the basic means for conveying Regulatory Agenda information to the maximum extent legally permissible. The complete Unified Agenda for fall 2008, including **The Regulatory Plan**, is available to the public at **http://reginfo.gov**.

The fall 2008 Unified Agenda publication appearing in the **Federal Register** consists of **The Regulatory Plan** and agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules which are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

The complete fall 2008 Unified Agenda contains the plans of 28 Federal agencies and the regulatory agendas for these and 33 other Federal agencies.

ADDRESSES: Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405.

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

To provide comment on or to obtain further information about this publication, contact: John C. Thomas, Executive Director, Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405, (202) 482-7340. You may also send comments to us by e-mail at:

RISC@gsa.gov

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

INTRODUCTION TO THE REGULATORY PLAN AND THE UNIFIED AGENDA OF FEDERAL REGULATORY AND DEREGULATORY ACTIONS

I. What Are The Regulatory Plan and the Unified Agenda?

The Regulatory Plan serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. The Plan is part of the fall edition of the Unified Agenda. Each participating agency's regulatory plan contains: (1) A narrative statement of the agency's regulatory priorities and, for most agencies, (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 28 agencies.

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. In order to further the Administration's commitment to use modern technology to deliver better service to the American people for lower cost, beginning with the fall 2007 edition, the Internet is the basic means for conveying Regulatory Agenda information to the maximum extent legally permissible. The complete Unified Agenda, including **The Regulatory Plan**, is available to the public at **http://reginfo.gov**. The online Unified Agenda offers flexible search tools and will soon offer access to the entire historic Unified Agenda database.

The fall 2008 Unified Agenda publication appearing in the **Federal Register** consists of **The Regulatory Plan** and agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules which are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at **http://reginfo.gov**.

These publication formats meet the publication mandates of the Regulatory Flexibility Act and Executive Order 12866, as amended, as well as move the Agenda process toward the Administration's goal of e-Government, while providing a substantial reduction in printing costs compared with prior editions. The current format does not reduce the amount of information available to the public, but it does limit most of the content of the Agenda to online access. The complete online edition of the Unified Agenda includes regulatory agendas from 61 Federal agencies. Agencies of the United States Congress are not included.

The following agencies have no entries identified for inclusion in the printed regulatory flexibility agenda. An asterisk (*) indicates agencies that appear in the Regulatory Plan. The regulatory agendas of these agencies are available to the public at **http://reginfo.gov**.

Department of Defense *

Department of Education *

Department of Energy *

Department of the Interior *

Department of State

Department of the Treasury *

Department of Veterans Affairs *

Agency for International Development

Architectural and Transportation Barriers Compliance Board

Commission on Civil Rights

Commodity Futures Trading Commission

Committee for Purchase From People Who Are Blind or Severely Disabled

Consumer Product Safety Commission *

Corporation for National and Community Service

Court Services and Offender Supervision Agency for the District of Columbia

Equal Employment Opportunity Commission *

Farm Credit Administration

Farm Credit System Insurance Corporation

Federal Council on the Arts and the Humanities

Federal Deposit Insurance Corporation

Federal Energy Regulatory Commission

Federal Housing Finance Agency

Federal Housing Finance Board

Federal Maritime Commission *

Federal Mediation and Conciliation Service

Federal Trade Commission *

National Aeronautics and Space Administration *

National Archives and Records Administration *

National Endowment for the Humanities

National Indian Gaming Commission *

National Science Foundation

Office of Federal Housing Enterprise Oversight

Office of Government Ethics

Office of Management and Budget

Peace Corps

Pension Benefit Guaranty Corporation *

Postal Regulatory Commission *

Railroad Retirement Board

Selective Service System

Social Security Administration *

Surface Transportation Board

The Regulatory Information Service Center (the Center) compiles the Plan and the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office

of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

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

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. **The Regulatory Plan** and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

II. Why Are The Regulatory Plan and the Unified Agenda Published?

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

Regulatory Flexibility Act

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272 entitled ''Proper Consideration of Small Entities in Agency Rulemaking,'' signed August 13, 2002 (67 FR 53461) provides additional guidance on compliance with the Act.

Executive Order 12866

Executive Order 12866 entitled ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735) requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their ''most important significant regulatory actions,'' which appears as part of the fall Unified Agenda. The requirements for regulatory plans were amended by Executive Order 13422 entitled ''Further Amendment to Executive Order 12866 on Regulatory Planning and Review,'' signed January 18, 2007 (72 FR 2763).

Executive Order 13132

Executive Order 13132 entitled ''Federalism,'' signed August 4, 1999 (64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications'' as defined in the Order. Under the Order, an agency that is proposing regulations with federalism implications, which either preempt State law or impose nonstatutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such regulations, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13211

Executive Order 13211 entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355) directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for ''those matters identified as significant energy actions.'' As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

Small Business Regulatory Enforcement Fairness Act

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

III. How Are The Regulatory Plan and the Unified Agenda Organized?

The Regulatory Plan appears in part II of a daily edition of the **Federal Register**. The Plan is a single document beginning with an introduction, followed by a table of contents, followed by each agency's section of the Plan.

Following the Plan in the **Federal Register**, as separate parts, are the regulatory flexibility agendas for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority (Agenda only); and independent regulatory agencies. Agencies may in turn be divided into subagencies. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

Each agency's section of the Plan contains a narrative statement of regulatory priorities and, for most agencies, a description of the agency's most important significant regulatory and deregulatory actions. Each agency's part of the Agenda contains a preamble providing information specific to that agency plus descriptions of the agency's regulatory and deregulatory actions.

The online, complete Unified Agenda contains the preambles of all participating agencies. Unlike the printed edition, the online Agenda has no fixed ordering. In the online Agenda, users can select the particular agencies whose agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

Each entry in the Agenda is associated with one of five rulemaking stages. In the Plan, only the first three stages are applicable. Some agencies use subheadings to identify regulations that are grouped according to particular topics. The rulemaking stages are:

1. *Prerule Stage* — actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.
2. *Proposed Rule Stage* — actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.
3. *Final Rule Stage* — actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.
4. *Long-Term Actions* — items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.
5. *Completed Actions* — actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

In the printed edition, all entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. This sequence number is used as the reference in the printed table of contents. Sequence numbers are not used in the online Unified Agenda because the unique Regulation Identifier Number (RIN) is able to provide this cross-reference capability.

Editions of the Unified Agenda prior to fall 2007 contained several indexes, which identified entries with various characteristics. These included regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis, actions selected for periodic review under section 610(c) of the Regulatory Flexibility Act, and actions that may have federalism implications as defined in Executive Order 13132 or other effects on levels of government. These indexes are no longer compiled, because users of the online Unified Agenda have the flexibility to search for entries with any combination of desired characteristics. The online edition retains the Unified Agenda's subject index based on the **Federal Register Thesaurus of Indexing Terms**. In addition, online users have the option of searching Agenda text fields for words or phrases.

IV. What Information Appears for Each Entry?

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

Title of the Regulation — a brief description of the subject of the regulation. In the printed edition, the notation ''Section 610 Review'' following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews. In the online edition, these notations appear as separate fields.

Priority — an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

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

(2) Other Significant

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

(3) Substantive, Nonsignificant

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

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal

Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

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

Major — whether the rule is ''major'' under 5 U.S.C. 801 (Pub. L. 104-121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

Unfunded Mandates — whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

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

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

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

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

Timetable — the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date printed in the form 08/00/09 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is ''To Be Determined.'' ''Next Action Undetermined'' indicates the agency does not know what action it will take next.

Regulatory Flexibility Analysis Required — whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

Small Entities Affected — the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

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

International Impacts — whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation's international trading partners (new data element, added in fall 2008).

Federalism — whether the action has ''federalism implications'' as defined in Executive Order 13132. This term refers to actions ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Independent regulatory agencies are not required to supply this information.

Agency Contact — the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

RIN Information URL — the Internet address of a site that provides more information about the entry.

Public Comment URL — the Internet address of a site that will accept public comments on the entry. Alternatively, timely public comments may be submitted at the governmentwide e-rulemaking site, **http://www.regulations.gov**.

Additional Information — any information an agency wishes to include that does not have a specific corresponding data element.

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

Affected Sectors — the industrial sectors that the action may most affect, either directly or indirectly. Affected Sectors are identified by North American Industry Classification System (NAICS) codes.

Energy Effects — an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355).

Related RINs — one or more past or current RINs associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Entries appearing in **The Regulatory Plan** include some or all of the following additional data elements, but will, at a minimum, include information in Statement of Need and in Anticipated Costs and Benefits:

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

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

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

Anticipated Costs and Benefits — a description of preliminary estimates of the anticipated costs and benefits of the action.

Risks — a description of the magnitude of the risk the action addresses, the amount by which the agency expects

the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

V. Abbreviations

The following abbreviations appear throughout this publication:

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

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

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

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

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

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

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

PL (or Pub. L.) — A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 110-4 is the fourth public law of the 110th Congress.

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

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

Seq. No. — The sequence number identifies the location of an entry in the printed edition of the Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of **The Regulatory Plan** and the Agenda. Sequence numbers are not used in the online Unified Agenda.

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

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

Copies of the **Federal Register** issue containing the printed edition of **The Regulatory Plan** and the Unified Agenda (agency regulatory flexibility agendas) are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. Telephone: (202) 512-1800 or 1-866-512-1800 (toll-free).

Copies of individual agency materials may be available directly from the agency or may be found on the agency's website. Please contact the particular agency for further information.

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since fall 1995 are available in electronic form at **http://reginfo.gov**. This site currently offers flexible search tools for recent editions. By early 2009, searchable access to the entire historic Unified Agenda database back to 1983 will be added to the site.

In accordance with regulations for the **Federal Register**, the Government Printing Office's GPO Access website contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register**. These documents are available at:

http://www.gpoaccess.gov/ua/index.html

Dated: November 12, 2008.

John C. Thomas,

Executive Director.

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The Regulatory Plan

INTRODUCTION TO THE FALL 2008 REGULATORY PLAN

Federal regulation is a fundamental instrument of national policy. It is one of the three major tools — in addition to spending and taxing — used to implement policy. It is used to advance numerous public objectives, including homeland security, transportation safety, environmental protection, educational quality, food safety, health care quality, equal employment opportunity, energy security, immigration control, and consumer protection. The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is responsible for overseeing and coordinating the Federal Government's regulatory policies.

The Regulatory Plan is published as part of the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions, and serves as a statement of the Administration's regulatory and deregulatory policies and priorities. The purpose of the Plan is to make the regulatory process more accessible to the public and to ensure that the planning and coordination necessary for a well-functioning regulatory process occurs. The Plan identifies regulatory priorities and contains information about the most significant regulatory actions agencies expect to undertake in the coming year. An accessible regulatory process enables citizen centered service.

Federal Regulatory Policy

Federal regulations should be sensible and based on sound science, economics, and the law. Accordingly, the Bush Administration strove for a regulatory process that adopted new rules when markets failed to serve the public interest, simplified and modified existing rules to make them more effective, less costly or less intrusive, and rescinded outmoded rules whose benefits did not justify their costs. In pursuing this agenda, OMB has adopted an approach based on the principles of regulatory analysis and policy espoused in Executive Order 12866, signed by President Clinton in 1993.

Effective regulatory policy is not uniformly pro-regulation or anti-regulation. It originates with the authority granted under the law. Within the discretion available to the regulating agency through its statutory authority, agencies apply a number of principles articulated in Executive Order 12866, as well as other applicable Executive Orders, in order to design regulations that achieve their desired ends in the most efficient way. This involves bringing to bear on the policy problem sound economic principles, the highest quality information, and the best possible science. This is not always an easy task, and designing regulations does not involve the rote application of quantified data to reach policy decisions. In making regulatory decisions, we expect agencies to consider not only benefits and costs that can be quantified and expressed in monetary units, but also other attributes and factors that cannot be integrated readily in a benefit-cost framework, such as privacy and fairness. Effective regulation is the result of the careful use of all available high-quality data, and the application of broad principles established by the President.

The Administration's e-rulemaking program is designed to increase transparency and improve the public's ability to become involved in the rulemaking process. Visitors to the website, www.regulations.gov, can view and

comment electronically on regulations proposed by Federal departments and agencies. Current and prior editions of the Regulatory Plan and Unified Agenda are available electronically in searchable database format on both www.regulations.gov and www.reginfo.gov.

For new rulemakings and programs, OIRA has enhanced the transparency of OMB's regulatory review process. OIRA's website allows the public to identify which rules are formally under review at OMB and which rules have recently completed review or have been returned to agencies for reconsideration. OIRA has increased the amount of information available on its website. In addition to information on meetings and correspondence, OIRA makes available communications from the OIRA Administrator to agencies, including ''prompt letters,'' ''return letters,'' and ''post review letters.''

For existing rulemakings, OMB initiated a series of calls for reform nominations in 2001, 2002, and 2004. In the 2004 draft Report to Congress on the Costs and Benefits of Federal Regulation, OMB requested public nominations of promising regulatory reforms relevant to the manufacturing sector. Commenters were asked to suggest specific reforms to rules, guidance documents, or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty, and increasing flexibility. In response to the solicitation, OMB received 189 distinct reform nominations from 41 commenters. Of these, Federal agencies and OMB have determined that 76 nominations have potential merit and justify further action. According to the 2008 draft OMB Report to Congress on the Costs and Benefits of Federal Regulation, agencies have completed 60 of the 76 priority reforms. For further information, all of these Reports are available on OIRA's website at http://www.whitehouse.gov/omb/inforeg/regpol.html.

The Administration's 2008 Regulatory Priorities

With regard to Federal regulation, the Administration's objective is quality, not quantity. Those rules that are finalized promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater resilience. OMB seeks to ensure that the public is provided with the information needed to understand and comment on the Federal regulatory agenda. Accordingly, the 2008 Regulatory Plan highlights the following themes:

- Regulations that are particularly good examples of the Administration's ''smart'' regulation agenda to streamline regulations and reporting requirements, which is a key part of the President's economic plan.

- Regulations of particular concern to small businesses.

- Regulations addressing the 2004 nominations for promising regulatory reforms in the manufacturing sector.

In addition, the 2008 Regulatory Plan includes for the first time an identification of regulations that may have international trade and investment effects. The Plan now includes an ''international flag'' for such regulations, which the public can use to search for a list of entries with international impacts or interest. This enhanced capability grew out of a recommendation developed through OMB's ongoing work with the Secretariat General of the European Commission through the U.S.-EU High Level Regulatory Forum. Specifically, the Forum recognized the value of timely announcement of planned regulations that may have international trade and investment effects, and recommended that both the U.S. and the EU develop a mechanism to provide the public with such information.

Conclusion

Smarter regulatory policies, created through public participation, transparency, and cooperation across Federal agencies, are key Executive Branch objectives. The following department and agency plans provide further information on regulatory priorities. All agencies' plans are a reflection of the Administration's Federal Regulatory Policy objectives, which aim at implementing an effective and results-oriented regulatory system. As the eighth and final Regulatory Plan of the Administration, this plan reflects our efforts to have a regulatory system that protects and improves Americans' health, safety and environment, secures their rights, and ensures a fair and competitive economic system, while respecting their prerogative to make their own decisions and not imposing unnecessary costs. One of the opportunities for the new Administration, in addition to maintaining and furthering these efforts, will be to continue enhancing the transparency and accountability of the regulatory process to the public. The following department and agency plans provide additional information on their individual regulatory priorities.

DEPARTMENT OF AGRICULTURE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
1	Animal Welfare; Regulations and Standards for Birds	0579–AC02	Proposed Rule Stage
2	Importation of Plants for Planting; Establishing a New Category of Plants for Planting Not Authorized for Importation Pending Risk Assessment	0579–AC03	Proposed Rule Stage
3	Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products	0579–AC68	Proposed Rule Stage
4	Introduction of Organisms and Products Altered or Produced Through Genetic Engineering	0579–AC31	Final Rule Stage
5	Child and Adult Care Food Program: Improving Management and Program Integrity	0584–AC24	Final Rule Stage
6	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002	0584–AD30	Final Rule Stage
7	Quality Control Provisions	0584–AD31	Final Rule Stage
8	Direct Certification of Children in Food Stamp Households and Certification of Homeless, Migrant, and Runaway Children for Free Meals in the NSLP, SBP, and SMP	0584–AD60	Final Rule Stage
9	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): WIC Vendor Cost Containment	0584–AD71	Final Rule Stage
10	Changes to Regulatory Jurisdiction Over Certain Food Products Containing Meat and Poultry	0583–AD28	Proposed Rule Stage
11	New Poultry Slaughter Inspection	0583–AD32	Proposed Rule Stage
12	Notification, Documentation and Recordkeeping Requirements for Inspected Establishments	0583–AD34	Proposed Rule Stage
13	Mandatory Inspection of Catfish and Catfish Products	0583–AD36	Proposed Rule Stage
14	Federal-State Interstate Shipment Cooperative Inspection Program	0583–AD37	Proposed Rule Stage
15	Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Products	0583–AC46	Final Rule Stage
16	Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection	0583–AD35	Final Rule Stage
17	Mandatory Country Of Origin Labeling Of Covered Commodities Including Muscle Cuts Of Beef (Including Veal), Lamb, Chicken, Goat, and Pork; Ground Beef, Gr. Lamb, Gr. Chicken, Gr. Goat, and Gr. Pork	0583–AD38	Final Rule Stage
18	Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses	0596–AC42	Final Rule Stage
19	Special Areas; State-Specific Inventoried Roadless Area Management: Colorado	0596–AC74	Final Rule Stage

DEPARTMENT OF COMMERCE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
20	Amendment to Coastal Migratory Pelagics FMP, Red Drum FMP, Reef Fish FMP, Spiny Lobster FMP, and Stone Crab FMP To Provide for Regulation of Marine Aquaculture	0648–AS65	Proposed Rule Stage
21	Certification of Nations Whose Fishing Vessels Are Engaged in IUU Fishing or Bycatch of Protected Living Marine Resources	0648–AV51	Proposed Rule Stage
22	Magnuson-Stevens Fishery Conservation and Management Act Provisions and Interjurisdictional Fisheries Act Disaster Assistance Programs	0648–AW38	Proposed Rule Stage
23	Provide Guidance for the Limited Access Privilege Program Provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006	0648–AX13	Proposed Rule Stage
24	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) Environmental Review Procedure	0648–AV53	Final Rule Stage
25	Guidance for Annual Catch Limits and Accountability Measures to End Overfishing	0648–AV60	Final Rule Stage
26	Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex	0648–AW86	Final Rule Stage

DEPARTMENT OF COMMERCE (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
27	Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)	0648–AW90	Final Rule Stage
28	Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex (SOCAL)	0648–AW91	Final Rule Stage

DEPARTMENT OF DEFENSE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
29	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Pharmacy Benefits Program	0720–AB27	Proposed Rule Stage
30	TRICARE: Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage	0720–AB17	Final Rule Stage
31	TRICARE: Outpatient Hospital Prospective Payment System (OPPS)	0720–AB19	Final Rule Stage
32	CHAMPUS/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals	0720–AB22	Final Rule Stage

DEPARTMENT OF EDUCATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
33	Title IV and Title II of the Higher Education Act of 1965, as Amended	1840–AC95	Proposed Rule Stage

DEPARTMENT OF ENERGY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
34	Energy Efficiency Standards for Fluorescent and Incandescent Reflector Lamps	1904–AA92	Proposed Rule Stage
35	Energy Conservation Standards for Residential Electric and Gas Ranges and Ovens and Microwave Ovens, and Commercial Clothes Washers	1904–AB49	Final Rule Stage
36	Energy Efficiency Standards for Commercial Refrigeration Equipment	1904–AB59	Final Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
37	Control of Communicable Diseases Foreign Quarantine	0920–AA12	Final Rule Stage
38	Medical Device Reporting; Electronic Submission Requirements	0910–AF86	Proposed Rule Stage
39	Electronic Registration and Listing for Devices	0910–AF88	Proposed Rule Stage
40	Prevention of Salmonella Enteritidis in Shell Eggs	0910–AC14	Final Rule Stage
41	Expanded Access to Investigational Drugs for Treatment Use	0910–AF14	Final Rule Stage
42	Changes to the Hospital Inpatient Prospective Payment System for FY 2010 (CMS-1406-P)	0938–AP39	Proposed Rule Stage
43	Revisions to Payment Policies under the Physician Fee Schedule for CY 2010 (CMS-1413-P)	0938–AP40	Proposed Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
44	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2010 (CMS-1414-P)	0938–AP41	Proposed Rule Stage

DEPARTMENT OF HOMELAND SECURITY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
45	Collection of Alien Biometric Data Upon Exit from the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT)	1601–AA34	Final Rule Stage
46	United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT), Enrollment of Additional Aliens in US-VISIT	1601–AA35	Final Rule Stage
47	Documents and Receipts Acceptable for Employment Eligibility Verification	1615–AB72	Proposed Rule Stage
48	Commonwealth of the Northern Mariana Islands Transitional Nonimmigrant Investor Classification	1615–AB75	Proposed Rule Stage
49	Commonwealth of the Northern Mariana Islands Transitional Workers Classification	1615–AB76	Proposed Rule Stage
50	Changes to Requirements Affecting H-2A Nonimmigrants	1615–AB65	Final Rule Stage
51	Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers	1615–AB67	Final Rule Stage
52	Transportation Worker Identification Credential (TWIC); Card Reader Requirements (USCG-2007-28915)	1625–AB21	Prerule Stage
53	Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978 (USCG-2004-17914)	1625–AA16	Proposed Rule Stage
54	Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG-2001-10486)	1625–AA32	Proposed Rule Stage
55	Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System (USCG-2005-21869)	1625–AA99	Proposed Rule Stage
56	Passenger and Inspected Vessel Stability Requirements (USCG-2007-0030)	1625–AB20	Proposed Rule Stage
57	Advance Information on Private Aircraft Arriving and Departing the United States	1651–AA41	Final Rule Stage
58	Importer Security Filing and Additional Carrier Requirements	1651–AA70	Final Rule Stage
59	Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program	1651–AA72	Final Rule Stage
60	Implementation of the Guam-CNMI Visa Waiver Program	1651–AA77	Final Rule Stage
61	Aircraft Repair Station Security	1652–AA38	Proposed Rule Stage
62	Large Aircraft Security Program, Other Aircraft Operator Security Programs, and Airport Operator Security Program	1652–AA53	Proposed Rule Stage
63	Public Transportation—Security Training of Employees	1652–AA55	Proposed Rule Stage
64	Public Transportation—Security Plan	1652–AA56	Proposed Rule Stage
65	Railroads—Security Training of Employees	1652–AA57	Proposed Rule Stage
66	Railroads—Vulnerability Assessment and Security Plan	1652–AA58	Proposed Rule Stage
67	Over-the-Road Buses—Security Training of Employees	1652–AA59	Proposed Rule Stage
68	Over-the-Road Buses—Vulnerability Assessment and Security Plan	1652–AA60	Proposed Rule Stage
69	Secure Flight Program	1652–AA45	Final Rule Stage
70	Rail Transportation Security	1652–AA51	Final Rule Stage

DEPARTMENT OF HOMELAND SECURITY (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
71	Air Cargo Screening	1652–AA64	Final Rule Stage
72	Amendment of Flight Training Regulations for F and M Nonimmigrants and to Transition J Flight Training Programs of the Department of State to M Flight Programs with the Department of Homeland Security	1653–AA43	Proposed Rule Stage
73	Clarification of Criteria for Certification, Oversight, and Recertification of Schools by the Student and Exchange Visitor Program (SEVP) To Enroll F or M Nonimmigrant Students	1653–AA44	Proposed Rule Stage
74	Special Community Disaster Loans Program	1660–AA44	Proposed Rule Stage
75	Update of FEMA's Public Assistance Regulations	1660–AA51	Proposed Rule Stage
76	Disaster Assistance; Federal Assistance to Individuals and Households	1660–AA18	Final Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
77	Refinement of Income and Rent Determinations in Public and Assisted Housing Programs (FR-4998)	2501–AD16	Final Rule Stage
78	Real Estate Settlement Procedures Act (RESPA): Simplification and Improvement of the Process of Obtaining Home Mortgages and Reducing Consumer Costs (FR-5180)	2502–AI61	Final Rule Stage

DEPARTMENT OF THE INTERIOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
79	Placement of Excess Spoil	1029–AC04	Final Rule Stage
80	Oil Shale Leasing and Operations	1004–AD90	Final Rule Stage

DEPARTMENT OF JUSTICE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
81	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities	1190–AA44	Final Rule Stage
82	Nondiscrimination on the Basis of Disability in State and Local Government Services	1190–AA46	Final Rule Stage

DEPARTMENT OF LABOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
83	Senior Community Service Employment Program	1205–AB48	Proposed Rule Stage
84	Senior Community Service Employment Program; Performance Accountability	1205–AB47	Final Rule Stage
85	Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans	1210–AB07	Final Rule Stage
86	Prohibited Transaction Exemption for Provision of Investment Advice to Participants in Individual Account Plans	1210–AB13	Final Rule Stage
87	Occupational Exposure to Crystalline Silica	1218–AB70	Prerule Stage
88	Cranes and Derricks	1218–AC01	Proposed Rule Stage
89	Hazard Communication	1218–AC20	Proposed Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
90	Enhancing Airline Passenger Protections	2105–AD72	Proposed Rule Stage
91	Automatic Dependent Surveillance—Broadcast (ADS-B) Equipage Mandate To Support Air Traffic Control Service	2120–AI92	Proposed Rule Stage
92	National Registry of Certified Medical Examiners	2126–AA97	Proposed Rule Stage
93	Carrier Safety Fitness Determination	2126–AB11	Proposed Rule Stage
94	Commercial Driver's License Testing and Commercial Learner's Permit Standards	2126–AB02	Final Rule Stage
95	Ejection Mitigation	2127–AK23	Proposed Rule Stage
96	Pipeline Safety: Distribution Integrity Management	2137–AE15	Final Rule Stage

DEPARTMENT OF THE TREASURY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
97	Basel II Standardized Approach	1557–AD07	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
98	Review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide	2060–AO19	Prerule Stage
99	Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur	2060–AO72	Prerule Stage
100	Formaldehyde Emissions from Pressed Wood Products	2070–AJ44	Prerule Stage
101	Definition of Solid Waste for Non-Hazardous Materials	2050–AG44	Prerule Stage
102	Greenhouse Gas Mandatory Reporting Rule	2060–AO79	Proposed Rule Stage
103	Renewable Fuels Standard Program	2060–AO81	Proposed Rule Stage
104	Risk and Technology Review Phase II Group 2A	2060–AO91	Proposed Rule Stage
105	Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category	2040–AE91	Proposed Rule Stage
106	Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units	2060–AN28	Final Rule Stage
107	Hazardous Waste Manifest Revisions — Standards and Procedures for Electronic Manifests	2050–AG20	Final Rule Stage
108	CERCLA—Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms	2050–AG37	Final Rule Stage

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
109	Genetic Information Nondiscrimination Act	3046–AA84	Proposed Rule Stage
110	Disparate Impact Under the Age Discrimination in Employment Act	3046–AA76	Final Rule Stage

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
111	Federal Records Management	3095–AB16	Final Rule Stage

SMALL BUSINESS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
112	Lender Oversight Program	3245–AE14	Final Rule Stage

SOCIAL SECURITY ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
113	Revised Medical Criteria for Evaluating Respiratory System Disorders (859P)	0960–AF58	Proposed Rule Stage
114	Revised Medical Criteria for Evaluating Mental Disorders (886P)	0960–AF69	Proposed Rule Stage
115	Revised Medical Criteria for Evaluating Hematological Disorders (974P)	0960–AF88	Proposed Rule Stage
116	Additional Insured Status Requirements for Certain Alien Workers (2882P)	0960–AG22	Proposed Rule Stage
117	Revisions to Rules on Representation of Parties (3396F)	0960–AG56	Proposed Rule Stage
118	Setting the Time and Place for a Hearing before an Administrative Law Judge (3481P)	0960–AG61	Proposed Rule Stage
119	Revised Medical Criteria for Evaluating Immune (HIV) System Disorders (3466P)	0960–AG71	Proposed Rule Stage
120	Amendments to Application Filing Date Requirements for Certain Military Members of the Uniformed Service (3474P)	0960–AG73	Proposed Rule Stage
121	Reestablishing Appeals Council Level Provisions in the Boston Region (3502P)	0960–AG80	Proposed Rule Stage
122	Disability Determinations by State Agency Disability Examiners (3510P)	0960–AG87	Proposed Rule Stage
123	Amendments to Rules on Fee Payments and Sanctions (3513P)	0960–AG90	Proposed Rule Stage
124	Revised Medical Criteria for Evaluating Hearing Loss (2862F)	0960–AG20	Final Rule Stage
125	Revised Medical Criteria for Malignant Neoplastic Diseases (3429F)	0960–AG57	Final Rule Stage
126	Authorization of Representative Fees (3508F)	0960–AG82	Final Rule Stage

CONSUMER PRODUCT SAFETY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
127	Flammability Standard for Upholstered Furniture	3041–AB35	Final Rule Stage

NATIONAL INDIAN GAMING COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
128	Technical Standards for Gaming Machines and Gaming Systems	3141–AA29	Final Rule Stage

POSTAL REGULATORY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
129	Accounting Practices and Principles	3211–AA04	Final Rule Stage

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DEPARTMENT OF AGRICULTURE (USDA)

Statement of Regulatory Priorities

USDA's regulatory efforts in 2009 will focus on implementing the Food, Conservation, and Energy Act of 2008 (''2008 Farm Bill'') covering major farm, trade, conservation, rural development, nutrition assistance and other programs. In addition to work implementing the 2008 Farm Bill, USDA's regulatory activities in 2009 will cover a broad range of issues. Within the rulemaking process is the department-wide effort to reduce burden on participants and program administrators alike by focusing on improving program outcomes, and particularly on achieving the performance measures specified in the USDA and agency Strategic Plans. Important areas of activity include the following:

- USDA will continue regulatory work to protect the health and value of U.S. agricultural and natural resources while facilitating trade flows. This includes amending regulations related to the importation of fruits and vegetables, nursery products, animals and animal products, and continuing work related to regulation of plant and animal biotechnologies. In addition, USDA will propose specific standards for the humane handling, care, treatment, and transportation of birds under the Animal Welfare Act.
- In the area of food safety, USDA will continue to develop science-based regulations that improve the safety of meat, poultry, and egg products in the least burdensome and most cost-effective manner. Regulations will be revised to address emerging food safety challenges, streamlined to remove excessively prescriptive regulations, and updated to be made consistent with hazard analysis and critical control point principles. As required by the 2008 Farm Bill, USDA will also develop science-based regulations that improve the safety of catfish in the least burdensome and most cost-effective manner. To assist small entities to comply with food safety requirements, the Food Safety and Inspection Service will continue to collaborate with other USDA agencies and State partners in the enhanced small business outreach program.
- As changes are made for the nutrition assistance programs, USDA will work to foster actions that will help improve diets, and particularly to prevent and reduce overweight and obesity. In 2009, FNS will continue to promote nutritional knowledge and education while minimizing participant and vendor fraud. USDA has priority projects in the Rural Development mission area to strengthen the regulations for its broadband access program to better focus on areas without such access, to consolidate and streamline its regulations relating to the delivery of its guaranteed loan programs, and to promulgate new regulations that promote the development and production of advanced biofuels.
- USDA has priority projects in the Rural Development mission area to strengthen the regulations for its broadband access program to better focus on areas without access. Rural Development will publish new regulations that will consolidate and streamline the delivery of its guaranteed loan programs. Rural Development is anticipating the publication of both interim final rules by the end of the year. Finally, pursuant to the 2008 Farm Bill, Rural Development will promulgate new regulations that promote the development and production of advanced biofuels.
- USDA will continue to promote economic opportunities for agriculture and rural communities through its BioPreferred Program (formerly the Federal Biobased Product Preferred Procurement Program). USDA will continue to designate groups of biobased products to receive procurement preference from Federal agencies and contractors. In addition, USDA will publish rules establishing the Voluntary Labeling Program for biobased products.

Reducing Paperwork Burden on Customers

USDA has made substantial progress in implementing the goal of the Paperwork Reduction Act of 1995 to reduce the burden of information collection on the public. To meet the requirements of the Government Paperwork Elimination Act (GPEA) and the E-Government Act, agencies across USDA are providing electronic alternatives to their traditionally paper-based customer transactions. As a result, producers increasingly have the option to electronically file forms and all other documentation online. To facilitate the expansion of electronic government, USDA implemented an electronic authentication capability that allows customers to ''sign-on'' once and conduct business with all USDA agencies. Supporting these efforts are ongoing analyses to identify and eliminate redundant data collections and streamline collection instructions. The end result of implementing these initiatives is better service to our customers enabling them to choose when and where to conduct business with USDA.

The Role of Regulations

The programs of USDA are diverse and far reaching, as are the regulations that attend their delivery. Regulations codify how USDA will conduct its business, including the specifics of access to, and eligibility for, USDA programs. Regulations also specify the responsibilities of State and local governments, private industry, businesses, and individuals that are necessary to comply with their provisions.

The diversity in purpose and outreach of USDA programs contributes significantly to USDA being 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 emergency producer assistance as a result of natural disasters, to regulations protecting American agribusiness (a major 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 USDA programs has accompanying regulatory needs, often with a significant impact resulting in the modification, addition, or deletion of many programs. In 2009, USDA will implement the 2008 Farm Bill through regulations on major programs covering domestic commodity support, crop insurance, conservation, export and foreign food assistance, bioenergy, rural development, agricultural research, and food and nutrition programs.

Major Regulatory Priorities

This document represents summary information on prospective significant regulations as called for in Executive Order 12866. The following agencies are represented in this regulatory plan, along with a summary of their mission and key regulatory priorities for 2009:

Farm Service Agency

Mission: The Farm Service Agency's (FSA) mission is to stabilize farm income; to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources; to provide credit to new or existing farmers and ranchers who are temporarily unable to obtain credit from commercial sources; and to help farm operations recover from the effects of disaster, as prescribed by various statutes.

Priorities: FSA's priority for 2009 will be to fully implement the 2008 Farm Bill, the Food, Conservation, and Energy Act of 2008. The 2008 Farm Bill, which was enacted on June 18, 2008, governs Federal farm programs through 2012. Among its major provisions are to provide income support for wheat, feed grains, upland cotton, rice, oilseeds, and other commodities through three programs: Direct payments, counter-cyclical payments, and marketing loans. It also provides a new alternative income support program, the average crop revenue election program. In addition, the 2008 Farm Bill provides a set of standing disaster assistance programs, including a new revenue based program for supplemental agricultural disaster assistance. These entirely new programs require completely new regulations and revision of the existing program regulations. In addition, significant revisions in existing regulations will be required to address new reforms in criteria for program eligibility and limitations on payments to participants. It also requires changes to farm operating loans, down payment loans, and emergency loans, including expanding to include socially disadvantaged farmers, increasing loan limits, loan size, funding targets, interest rates, and graduating borrowers to commercial credit. In addition, it establishes a new direct and guaranteed loan program to assist farmers in implementing conservation practices. FSA will develop and issue the regulations and make program funds available to eligible clientele in as timely a manner as possible. As these and future changes required by Administration initiatives and new legislation are made, the Agency's focus will be to implement the changes in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants. Opportunities will be taken to clarify, simplify, and reduce confusion whenever possible. The Agency's ability to promote new policy initiatives when implementing these regulations is limited due to the need to adhere to legislative intent. Therefore, due to their combined economic magnitude, 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 that appears below (the regulations are all included in the Unified Agenda).

Food and Nutrition Service

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

Priorities: In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS's 2008 regulatory plan supports USDA's Strategic Goal 5, ''Improve the Nation's Nutrition and Health,'' and its three related objectives:

- *Improve Access to Nutritious Food.* This objective represents FNS's efforts to improve nutrition by providing access to program benefits (Food Stamps, WIC food vouchers and nutrition services, school meals, commodities) and distributing State administrative funds to support program operations. To advance this objective, FNS plans to finalize rules implementing provisions of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171) to simplify program administration, support work, and improve access to benefits in the Food Stamp Program (FSP). The Agency will also issue rules implementing provisions of the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) to establish automatic eligibility for homeless children for school meals.
- *Promote Healthier Eating Habits and Lifestyles.* This objective represents FNS's efforts to improve nutrition knowledge and behavior through nutrition education and breastfeeding promotion, and to ensure that program benefits meet the appropriate nutrition standards to effectively improve nutrition for program participants. In support of this objective, FNS plans to finalize a rule revising requirements that allow schools to substitute nutritionally-equivalent non-dairy beverages for fluid milk at the request of a recipient's parent in addition to medical care providers.
- *Improve Nutrition Assistance Program Management and Customer Service.* This objective represents FNS's ongoing commitment to maximize the accuracy of benefits issued, maximize the efficiency and effectiveness of program operations, and minimize participant and vendor fraud. In support of this objective, FNS plans to finalize rules in the Child and Adult Care Food Program (CACFP) and the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC) to improve program management and prevent vendor fraud, as well as finalize rules in the FSP to improve the Quality Control process.

Food Safety and Inspection Service

Mission: The Food Safety and Inspection Service (FSIS) is responsible for ensuring that meat, poultry, egg, and catfish products in interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

Priorities: FSIS' 2008 Regulatory Plan helps implement USDA's Strategic Goal 4, ''Enhance Protection and Safety of the Nation's Agriculture and Food Supply,'' particularly the objective to reduce the incidence of foodborne illnesses related to meat, poultry, egg products, and, once a program is implemented, catfish in the U.S. FSIS is working toward a more scientific inspection system with a more risk-based approach to ensuring that meat, poultry, egg products, and catfish are wholesome and not adulterated or misbranded.

FSIS is committed to developing and issuing science-based regulations intended to ensure that meat, poultry, egg, and catfish products are wholesome and not adulterated or misbranded. FSIS continues to review its existing authorities and regulations to streamline excessively prescriptive regulations, to revise or remove regulations that are inconsistent with the Agency's hazard analysis and critical control point regulations, and to ensure that it can address emerging food safety challenges. FSIS is also working with the Food and Drug Administration (FDA) to better delineate the two agencies' jurisdictions over various food products.

Following are some of the Agency's recent and planned initiatives:

In July 2008, FSIS published a final rule on the Availability of Retail Consignee During Meat and Poultry Product recalls. This final rule should enhance the public health by helping consumers to determine whether they have recalled product in their refrigerator freezer or pantry.

FSIS is proposing to require that all cattle that become non-ambulatory disabled at any time before slaughter, including those that become non-ambulatory disabled after passing ante-mortem inspection, must be condemned and properly disposed of. Under the current regulations, FSIS inspection personnel determine, on case by-case basis, the disposition of cattle that become nonambulatory disabled after they have passed ante-mortem inspection. FSIS is proposing to remove the provision for case-by-case determination by FSIS inspection personnel.

2008 Farm Bill-related Rulemakings:

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), known as the 2008 Farm Bill, made several amendments to statutes administered by FSIS and gave the Agency other instructions. As a result, FSIS is developing new regulations to implement: mandatory inspection for catfish; a program for interstate shipment of State-inspected meat and poultry products; and recall procedure and process control reassessment requirements for inspected establishments. FSIS is also developing regulations on country-of-origin labeling (COOL) for certain meat and poultry commodities to conform to final regulations promulgated by USDA's Agricultural Marketing Service.

Catfish Inspection:

FSIS is developing regulations to implement Farm Bill amendments of the FMIA (in Pub. L. 110-246, Sec. 11016) to make catfish amenable to the FMIA. The regulations will define ''catfish'' and the scope of coverage of the regulations to apply to establishments that process catfish and catfish products. The regulations, to be implemented no later than 18 months from the date of enactment of the 2008 Farm Bill, will take into account the conditions under which the catfish are raised and transported to a processing establishment.

Interstate shipment of State-inspected meat and poultry products:

FSIS is proposing regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the FMIA and the PPIA. These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State inspection personnel would bear a Federal mark of inspection. Section 11015 of the 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry product from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment.

Food safety improvement:

FSIS is proposing regulations that will implement Sec. 11017 of the 2008 Farm Bill on notification, documentation, and recordkeeping requirements for inspected establishments. This section amends the FMIA and PPIA to require establishments that are subject to inspection under these Acts to promptly notify the Agency that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment has reason to believe that this has happened. Section 11017 also requires establishments subject to inspection under the FMIA and PPIA to: (1) prepare and maintain current procedures for the recall of all products produced and shipped by the establishment; (2) document each reassessment of the process control plans of the establishment; and (3) upon request, make the procedures and reassessed control plans available to FSIS inspection personnel for review and copying.

In June 2003, FSIS published an interim final rule requiring establishments to prevent L. monocytogenes contamination of RTE products. The Agency is evaluating the effectiveness of this interim final rule, which in 2004 was the subject of a regulatory reform nomination to OMB. FSIS has carefully reviewed its economic analysis of the interim final rule in response to this recommendation and is planning to adjust provisions of the rule to reduce the information collection burden on small businesses. FSIS is also planning further action with respect to other elements of the 2001 proposal, based on quantitative risk assessments of target pathogens in processed products.

FSIS plans to propose to amend the poultry products inspection regulations to put in place a system in which the establishment sorts the carcasses for defects, and the Agency verifies that the system is under control and producing safe and wholesome product. The Agency would propose to adopt performance standards, designed to ensure that the establishments are carrying out slaughter, dressing, and chilling operations in a manner that ensures no significant growth of pathogens, as demonstrated by control of the pathogens or indicator organisms. The Agency would also verify that vulnerable points in the process are under control.

Small business implications:

The great majority of businesses regulated by FSIS are small businesses. With the exception of the non-ambulatory disabled cattle rulemaking, the regulations listed above substantially affect small businesses. Some rulemakings can benefit small businesses. For example, the rule on interstate shipment of State-inspected products will open interstate markets to some small State-inspected establishments that previously could only sell their products within State boundaries.

FSIS recognizes the difficulties faced by many small and very small establishments in complying with necessary, science-based food-safety or other consumer protection requirements and in assuming the associated technical and financial burdens. FSIS attempts to reduce the burdens of its regulations on small business by providing alternative dates of compliance, furnishing detailed compliance guidance material, and conducting outreach programs to small and very small establishments.

FSIS conducts a small business outreach program that provides critical training, access to food safety experts, and information resources (such as compliance guidance and questions and answers on various topics) in forms that are uniform, easily comprehended, and consistent. The Agency collaborates in this effort with other USDA agencies and cooperating State partners. For

example, FSIS makes plant owners and operators aware of loan programs, available through USDA's Rural Business and Cooperative programs, to help them in upgrading their facilities. FSIS employees meet proactively with small and very small plant operators to learn more about their specific needs and provide joint training sessions for small and very small plants and FSIS employees.

International trade or investment effects:

To be eligible for the importation of meat, poultry, or egg products into the United States, foreign inspection systems and establishments must meet regulatory standards that are equivalent to those that FSIS administers. For most of the regulatory initiatives described above, foreign inspection systems will have to ensure that they are maintaining equivalent standards. For example, in order to be able to continue to ship catfish-type products to the United States, foreign countries will have to have inspection systems for catfish and catfish products that impose requirements that are equivalent to those that FSIS will establish in the rulemaking described above.

Animal and Plant Health Inspection Service

Mission: A major part of the mission of the Animal and Plant Health Inspection Service (APHIS) is to protect the health and value of American agricultural and natural resources. APHIS conducts programs to prevent the introduction of exotic pests and diseases into the United States and conducts surveillance, monitoring, control, and eradication programs for pests and diseases in this country. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health. APHIS also conducts programs to ensure the humane handling, care, treatment, and transportation of animals under the Animal Welfare Act.

Priorities: APHIS is continuing work to revise its biotechnology regulations to reflect new consolidated authorities under the Plant Protection Act and to address advances in technology. APHIS also plans to revise its regulations for importing nursery stock to better address plant health risks associated with propagative material. With respect to animal health, the Agency intends to revise its regulations concerning bovine spongiform encephalopathy (BSE) to provide a more comprehensive framework for the importation of certain animals and products. The revision of the regulations regarding BSE will likely be of most interest to those countries that currently export large volumes of live bovines or bovine-derived products to the United States, as well as to those countries from which such commodities are currently prohibited, but that may wish to export live bovines or bovine products to the United States in the future. APHIS also plans to propose standards for the humane handling, care, treatment, and transportation of birds covered under the Animal Welfare Act.

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

Agricultural Marketing Service

Mission: The Agricultural Marketing Service (AMS) provides marketing services to producers, manufacturers, distributors, importers, exporters, and consumers of food products. The AMS also manages the government's food purchases, supervises food quality grading, maintains food quality standards, and supervises the Federal research and promotion programs.

Priorities: AMS priority items for the next year include several rulemakings as a result of passage of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). These include the following:

Country of Origin Labeling:

On August 1, 2008, AMS published an interim final rule implementing the Mandatory Country of Origin and Labeling (COOL) of Beef, Pork, Lamb, Chicken, Goat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts as directed by the 2002 Farm Bill. The rule requires retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. Because the 2008 Farm Bill contained a number of provisions that amends the regulations, AMS published an interim final rule with request for comments to allow newly affected industries the opportunity to comment prior to issuance of a final rule. The COOL interim final rule for wild and farm-raised fish and shellfish was published On October 5, 2004.

Dairy Promotion and Research Program:

The Dairy Production Stabilization Act of 1983 (Dairy Act) authorized USDA to create a national producer program for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products. Dairy farmers fund this self-help program through a mandatory assessment on all milk produced in the contiguous 48 States and marketed commercially. Dairy farmers administer the national program through the National Dairy Promotion and Research Board (Dairy Board).

The 2008 Farm Bill extended the program to include producers in Alaska, Hawaii, and Puerto Rico who will pay an assessment of $0.15 per hundredweight of milk production. Imported dairy products will be assessed at $0.075 per hundredweight of fluid milk equivalent. An interim final rule will implement these new provisions.

Dairy Forward Pricing:

The 2008 Farm Bill re-established the Dairy Forward Pricing Program, which allows dairy farmers to voluntarily enter into forward contracts with milk handlers. The original Dairy Forward Pricing Program operated on a pilot basis from 1999 through 2004. A forward contract is an agreement to sell a stated quantity of milk, for a stated period, at a stated priced. This voluntary risk management tool will allow producers and handlers to ''lock in'' prices, reducing risks associated with changes in price and income and enhancing the ability to obtain financing. AMS intends to issue an interim final rule to implement the program as provided for in the 2008 Farm Bill.

Establish Procedures for Farmers' Market Promotion Program:

The Agricultural Marketing Service (AMS) will establish regulations for the operation of the Farmers' Market Promotion Program (FMPP) incorporating new amendments enacted in the 2008 Farm Bill. The purpose of the FMPP is to make grants available to eligible entities for projects to ''establish, expand, and promote farmers' markets and to promote direct producer-to-consumer marketing''; increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of domestic farm ers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-

consumer market opportunities; and develop, or aid in the development of, new farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities.

Other important rulemakings the Agency will undertake include two proposed rules amending the National Organic Program regulations. The 1990 Organic Foods Production Act, established the National Organic Program (NOP) within the Agricultural Marketing Service (AMS). It also established the National Organic Standards Board (NOSB), as an advisory body to the NOP. The program was established to create organic standards and to require and oversee mandatory certification or organic production. The NOP regulations were implemented in 2002.

Access to Pasture:

Since implementation of the NOP, some members of the public have advocated for a more explicit regulatory standard on the relationship between livestock, particularly dairy animals, and grazing land. They have asserted the current regulatory language on access to pasture for ruminants and temporary confinement based on an animal's stage of production, when applied together, do not provide a uniform requirement for the pasturing of ruminant animals that meet the principles underlying an organic management system for livestock and livestock products that consumers expect.

Dairy Replacement:

The Agricultural Marketing Service (AMS) is proposing to amend the National Organic Program (NOP) regulations to clarify the regulations with respect to the sourcing of dairy replacement animals. AMS expects to publish a proposed rule with request for comment in spring 2009 requesting input on existing origin of livestock provisions.

AMS Program Rulemaking Pages: All of AMS' rules published in the Federal Register are available on the Internet at http://www.regulations.gov. This site also includes commenting instructions and addresses, links to news releases and background material, and comments received on various rules.

Forest Service

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

Priorities: Roadless Rules - On January 12, 2001, the Department of Agriculture promulgated the Roadless Area Conservation Rule (RACR) to provide for the conservation and management of approximately 58.5 million acres of inventoried roadless areas within the National Forest System under the principles of the Multiple-Use Sustained-Yield Act of 1960. On July 14, 2003, the U.S. District Court for the District of Wyoming found the 2001 roadless rule to be unlawful and ordered that the rule be permanently enjoined. The final rule for Inventoried Roadless Area Management for the State of Idaho was published October 16, 2008. The State of Colorado has petitioned the Secretary pursuant to 5 U.S.C. §553(e) and 7 C.F.R. §1.28 for state specific rules to replace this national rule.

The 2008 Farm Bill identifies 3 rule-making actions specific to the Forest Service. These proposals are priority for the agency for fall 2008.

- Community Forest And Open Space Conservation Program - This program will provide federal matching grants to help local government, tribes, or non-profit organizations acquire private forests that are threatened by conversion to non-forest uses.
- Pest And Disease Revolving Loan Fund - The Pest and Disease Revolving Loan Fund authorizes low interest loans to local governments for equipment & contracts to aid in combating invasive species outbreaks in community trees and forests.
- Forest Products For Traditional And Cultural Purposes - The Forest Products for Traditional and Cultural Purposes provision authorizes Indian Tribes free use of forest products from National Forest System lands for traditional and cultural purposes.

Rural Development

Mission: Rural Development's mission is to support increased economic opportunities and improved quality of life in rural America. This support is provided through loan guarantees, grants and technical assistance for rural housing, community facilities, business and industry, and electric, telecommunication and water and waste disposal facilities.

Priorities: USDA has priority projects in Rural Development to strengthen the regulations for its broadband access program to better focus on areas without such access. Rural Development will publish new regulations that will consolidate and streamline the delivery of its guaranteed loan programs. Rural Development is anticipating the publication of both interim final rules by the end of the year. Finally, pursuant to the 2008 Farm Bill, Rural Development will promulgate new regulations that promote the development and production of advanced biofuels.

Departmental Administration

Mission: Departmental Administration's mission is to provide management leadership to ensure that USDA administrative programs, policies, advice and counsel meet the needs of USDA program organizations, consistent with laws and mandates; and provide safe and efficient facilities and services to customers.

Priorities: The regulatory priority for Departmental Administration is to continue implementing the BioPreferred Program (formerly the Federal Biobased Product Preferred Procurement Program) authorized by the 2008 Farm Bill (Public Law 110-246). Included in this priority are proposed and final regulations designating items for preferred Federal procurement. These regulations will assist in the expansion of market opportunities for manufacturers of biobased products, resulting in economic opportunities for American agricultural producers and rural communities. These efforts support USDA's strategic goal ''To enhance the competitiveness and sustainability of rural and farm economies.'' In addition, Departmental Administration will look to begin implementation of the BioPreferred labeling program. Once implemented, this program will allow biobased manufacturers to receive a label to be used in the commercial market to distinguish their products as biobased.

Aggregate Costs and Benefits

Per E.O. 13422, USDA is required to provide its best estimate of the combined aggregate costs and benefits of final regulations included in the Regulatory Plan. For calendar year 2009, USDA's priority will be to fully implement the 2008 Farm Bill, the Food, Conservation, and Energy Act of 2008. The 2008 Farm Bill governs

Federal farm programs through 2012. Provisions will require completely new regulations and revision of existing program regulations. The Department's focus on Farm Bill and other regulations will be to implement the changes in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants.

USDA—Animal and Plant Health Inspection Service (APHIS)

PROPOSED RULE STAGE

1. ANIMAL WELFARE; REGULATIONS AND STANDARDS FOR BIRDS

Priority:

Other Significant

Legal Authority:

7 USC 2131 to 2159

CFR Citation:

9 CFR 1 to 3

Legal Deadline:

None

Abstract:

APHIS intends to establish standards for the humane handling, care, treatment, and transportation of birds other than birds bred for use in research.

Statement of Need:

The Farm Security and Rural Investment Act of 2002 amended the definition of animal in the Animal Welfare Act (AWA) by specifically excluding birds, rats of the genus Rattus, and mice of the genus Mus, bred for use in research. While the definition of animal in the regulations contained in 9 CFR part 1 has excluded rats of the genus Rattus and mice of the genus Mus bred for use in research, that definition has also excluded all birds (i.e., not just those birds bred for use in research). In line with this change to the definition of animal in the AWA, APHIS intends to establish standards in 9 CFR part 3 for the humane handling, care, treatment, and transportation of birds other than those birds bred for use in research.

Summary of Legal Basis:

The Animal Welfare Act (AWA) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and immediate handlers. Animals covered by the AWA include birds that are not bred for use in research.

Alternatives:

To be identified.

Anticipated Cost and Benefits:

To be determined.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	02/00/09	
NPRM Comment Period End	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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USDA—APHIS

2. IMPORTATION OF PLANTS FOR PLANTING; ESTABLISHING A NEW CATEGORY OF PLANTS FOR PLANTING NOT AUTHORIZED FOR IMPORTATION PENDING RISK ASSESSMENT (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

CFR Citation:

7 CFR 319

Legal Deadline:

None

Abstract:

This action would establish a new category in the regulations governing the importation of nursery stock, also known as plants for planting. This category would list taxa of plants for planting whose importation is not authorized pending risk assessment. We would allow foreign governments to request that a pest risk assessment be conducted for a taxon whose importation is not authorized pending risk evaluation. After the pest risk assessment was completed, we would conduct rulemaking to remove the taxon from the proposed category if determined appropriate by the risk assessment. We are also proposing to expand the scope of the plants regulated in the plants for planting regulations to include non-vascular plants. These changes would allow us to react more quickly to evidence that a taxon of plants for planting may pose a pest risk while ensuring that our actions are based on scientific evidence.

Statement of Need:

APHIS typically relies on inspection at a Federal plant inspection station or port of entry to mitigate the risks of pest introduction associated with the importation of plants for planting. Importation of plants for planting is further restricted or prohibited only if there is specific evidence that such importation could introduce a quarantine pest into the United States. Most of the taxa of plants for planting currently being imported have not been thoroughly studied to determine whether their importation presents a risk of introducing a quarantine pest into the United States. The volume and the number of types of plants for planting have increased dramatically in recent years, and there are several problems associated with gathering data on what plants for planting are being imported and on the risks such importation presents. In addition, quarantine pests that enter the United States via the importation of plants for planting pose a particularly high risk of becoming established within the United States. The current regulations need to be amended to better address these risks.

Summary of Legal Basis:

The Secretary of Agriculture may prohibit or restrict the importation or entry of any plant if the Secretary determines that the prohibition or

restriction is necessary to prevent the introduction into the United States of a plant pest or noxious weed (7 U.S.C. 7712).

Alternatives:

APHIS has identified one alternative to the approach we are considering. We could prohibit the importation of all nursery stock pending risk evaluation, approval, and notice-and-comment rulemaking, similar to APHIS's approach to regulating imported fruits and vegetables. This approach would lead to a major interruption in international trade and would have significant economic effects on both U.S. importers and U.S. consumers of plants for planting.

Anticipated Cost and Benefits:

Undetermined.

Risks:

In the absence of some action to revise the nursery stock regulations to allow us to better address pest risks, increased introductions of plant pests via imported nursery stock are likely, causing extensive damage to both agricultural and natural plant resources.

Timetable:

Action	Date	FR Cite
NPRM	02/00/09	
NPRM Comment Period End	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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USDA—APHIS

3. BOVINE SPONGIFORM ENCEPHALOPATHY; IMPORTATION OF BOVINES AND BOVINE PRODUCTS

Priority:

Other Significant

Legal Authority:

7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

CFR Citation:

9 CFR 92 to 96; 9 CFR 98

Legal Deadline:

None

Abstract:

This rulemaking would amend the regulations regarding the importation of bovines and bovine products. Under this rulemaking, countries would be classified as either negligible risk, controlled risk, or undetermined risk for bovine spongiform encephalopathy (BSE). Some commodities would be allowed importation into the United States regardless of the BSE classification of the country of export. Other commodities would be subject to importation restrictions or prohibitions based on the type of commodity and the BSE classification of the country. The criteria for country classification and commodity import would be closely aligned with those of the World Organization for Animal Health.

Statement of Need:

We are proposing to amend the regulations after conducting a thorough review of relevant scientific literature and a comprehensive evaluation of the issues and concluding that the proposed changes would continue to guard against the introduction of BSE into the United States, while allowing the importation of additional animals and animal products into this country.

Summary of Legal Basis:

Under the Animal Health Protection Act of 2002 (7 U.S.C. 8301 et seq.), the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction into the United States or dissemination of any pest or disease of livestock.

Alternatives:

We could leave the bovine regulations unchanged. The current regulations are not consistent with the latest scientific information, however, and, as a result, are more restrictive than necessary. Another alternative—modifying the BSE regulations related to the importation of bovines and bovine-derived products to precisely match the OIE guidelines without allowing for modification deemed necessary by APHIS—would not allow APHIS to independently interpret the scientific literature or reflect current USDA regulations and policies. Making no changes to the current regulations that govern the importation of cervids and camelids would perpetuate an unnecessary constraint on trade in those commodities, because cervids and camelids pose an extremely low BSE risk.

Anticipated Cost and Benefits:

Undetermined.

Risks:

APHIS has concluded that the proposed changes would continue to guard against the introduction of BSE into the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/00/09	
NPRM Comment Period End	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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USDA—APHIS

FINAL RULE STAGE

4. INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING

Priority:

Other Significant

Legal Authority:

7 USC 7701 to 7772; 7 USC 7781 to 7786; 31 USC 9701

CFR Citation:

7 CFR 340

Legal Deadline:

None

Abstract:

This rulemaking would revise the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms in order to bring the regulations into alignment with provisions of the Plant Protection Act. The revisions would also update the regulations in response to advances in genetic science and technology and our accumulated experience in implementing the current regulations. This is the first comprehensive review and revision of the regulations since they were established in 1987. This rule would affect persons involved in the importation, interstate movement, or release into the environment of genetically engineered plants and certain other genetically engineered organisms.

Statement of Need:

APHIS currently regulates the introduction (movement into the United States or interstate, or release into the environment) of genetically engineered organisms that may present a plant pest risk under 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests.'' APHIS is evaluating its regulatory program to determine if there is a need to revise its regulations in light of our current knowledge and experience and advances in science and technology.

Summary of Legal Basis:

The primary authority is provided by the Plant Protection Act, which authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, and movement in interstate commerce any plant, plant product, biological control organism, noxious weed, or other article if necessary to prevent the introduction into or dissemination within the United States of any plant pest or noxious weed. Such articles may include genetically engineered products.

Alternatives:

A draft environmental impact statement (DEIS) prepared for this action evaluates all of the regulatory alternatives under consideration by the Agency. Some key alternatives considered include whether APHIS should broaden the scope of the regulations to reflect its authority over noxious weeds and biological control organisms; whether and how to revise the regulations to make the Agency's use of risk-based categories—where genetically engineered organisms are classified according to risk and familiarity so that oversight and confinement vary by category—more refined, more explicit and more transparent to the industry and the public and what criteria should be used to establish risk-based categories; how to manage genetically engineered organisms that present only minor unresolved risks that can be mitigated effectively, and what factors should be considered in establishing appropriate mitigations; whether new or additional regulatory mechanisms are needed to ensure that genetically engineered organisms producing pharmaceutical or industrial compounds are subject to requirements and oversight commensurate with the potential risks; for organisms that might be commercialized but that do not meet the criteria for deregulation, whether a new type of permitting system would be more appropriate in terms of efficiency and effectiveness than the current system; whether APHIS should establish a new regulatory approach to address incidents of low-level presence of genetically engineered plant material; whether APHIS should establish a new regulatory mechanism to allow for imports of commodities for nonpropagative use, that is, for food, feed, or processing, in cases where these commodities might not have been deregulated in the United States; and whether to expand its current exemption from interstate movement restrictions additional well-studied, low-risk, genetically engineered research organisms.

Anticipated Cost and Benefits:

To be determined.

Risks:

While APHIS has always used a risk-based approach in regulating genetically engineered organisms, there is a trend toward more highly varied organisms. For example, genetic engineering technology has advanced to the point where organisms can be developed that produce novel proteins and other substances with biological activity or industrial utility. We have initiated this rulemaking because APHIS recognizes that the regulatory process may need greater flexibility and rigor to more appropriately regulate the increasing variety of organisms.

Timetable:

Action	Date	FR Cite
Notice of Intent to Prepare an Environmental Impact Statement	01/23/04	69 FR 3271
Comment Period End	03/23/04	
Notice of Availability of Draft Environmental Impact Statement	07/17/07	72 FR 39021
Comment Period End	09/11/07	
NPRM	10/09/08	73 FR 60007
NPRM Comment Period End	11/24/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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USDA—Food and Nutrition Service (FNS)

FINAL RULE STAGE

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

Priority:

Other Significant

Legal Authority:

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

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 revises: State agency criteria for approving and renewing institution applications; program training and other operating requirements for child care institutions and facilities; and State and institution-level monitoring requirements. This rule also includes changes that are required by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 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 miscategorized 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:

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

Operating under interim rules puts State agencies and institutions at risk of implementing Program provisions subject to change in a final rule.

Timetable:

Action	Date	FR Cite
NPRM	09/12/00	65 FR 55103
NPRM Comment Period End	12/11/00	
Interim Final Rule	06/27/02	67 FR 43448
Interim Final Rule Effective	07/29/02	
Interim Final Rule Comment Period End	12/24/02	
Interim Final Rule	09/01/04	69 FR 53502
Interim Final Rule Effective	10/01/04	
Interim Final Rule Comment Period End	09/01/05	
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

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Related RIN: Merged with 0584–AC94

RIN: 0584–AC24

USDA—FNS

6. FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 107–171, secs 4101 to 4109, 4114, 4115, and 4401

CFR Citation:

7 CFR 273

Legal Deadline:

None

Abstract:

This rulemaking will amend Food Stamp Program regulations to implement 11 provisions of the Farm Security and Rural Investment Act of 2002 that establish new eligibility and certification requirements for the receipt of food stamps. (02-007)

Statement of Need:

The rule is needed to implement the food stamp certification and eligibility provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Alternatives:

This final rule deals with changes required by Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The Department has limited discretion in implementing provisions of that law. Most of the provisions in this rule were effective October 1, 2002, and must be implemented by State agencies prior to publication of this rule.

Anticipated Cost and Benefits:

The provisions of this rule simplify State administration of the Food Stamp Program, increase eligibility for the program among certain groups, increase access to the program among low-income families and individuals, and increase benefit levels. The provisions of Public Law 107-171 implemented by this rule have a 5-year cost of approximately $1.9 billion.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide—working families, eligible non-citizens, and elderly and disabled individuals. Many low-income families don't earn enough money and many elderly and disabled individuals don't receive enough in retirement or disability benefits to meet all of their expenses and purchase healthy and nutritious meals. The FSP serves a vital role in helping these families and individuals achieve and maintain self-sufficiency and purchase a nutritious diet. This rule implements the certification and eligibility provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002. It simplifies State administration of the Food Stamp Program, increases eligibility for the program among certain groups, increases access to the program among low-income families and individuals, and increases benefit levels. The provisions of this rule increase benefits by approximately $1.95 billion over 5 years. When fully effective in FY 2006, the provisions of this rule will add approximately 415,000 new participants.

Timetable:

Action	Date	FR Cite
NPRM	04/16/04	69 FR 20724
NPRM Comment Period End	06/15/04	
Final Action	01/00/09	
Final Action Effective	03/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

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RIN: 0584–AD30

USDA—FNS

7. QUALITY CONTROL PROVISIONS

Priority:

Other Significant

Legal Authority:

7 USC 2011 to 2032; PL 107–171

CFR Citation:

7 CFR 273; 7 CFR 275

Legal Deadline:

None

Abstract:

This rule finalizes the interim rule ''Non-Discretionary Quality Control Provisions of Title IV of Public Law 107-171'' (published October 16, 2003 at 68 FR 59519) and the proposed rule ''Discretionary Quality Control Provisions of Title IV of Public Law 107-171'' (published September 23, 2005 at 70 FR 55776).

The following quality control (QC) provisions required by sections 4118 and 4119 of the Farm Security and Rural Investment Act of 2002 (title IV of Pub. L. 107-171) and contained in the interim rule are implemented by this final rule:

1) Timeframes for completing quality control reviews;

2) Timeframes for completing the arbitration process;

3) Timeframes for determining final error rates;

4) The threshold for potential sanctions and time period for sanctions;

5) The calculation of State error rates;

6) The formula for determining States' liability amounts;

7) Sanction notification and method of payment; and

8) Corrective action plans.

The following provisions required by sections 4118 and 4119 and additional policy and technical changes, and contained in the proposed rule, are implemented by this final rule:

Legislative changes based on or required by sections 4118 and 4119:

1) Eliminate enhanced funding;

2) Establish timeframes for completing individual quality control reviews; and

3) Establish procedures for adjusting liability determinations following appeal decisions.

Policy and technical changes:

1) Require State agency QC reviewers to attempt to complete review when a household refuses to cooperate;

2) Mandate FNS validation of negative sample for purposes of high performance bonuses;

3) Revise procedures for conducting negative case reviews;

4) Revise time frames for household penalties for refusal to cooperate with State and Federal QC reviews;

5) Revise procedures for QC reviews of demonstration and SSA processed cases;

6) Eliminate requirement to report variances resulting from Federal information exchange systems (FIX) errors;

7) Eliminate references to integrated QC; and

8) Update definitions section to remove out-dated definitions. (02-014)

Statement of Need:

The rule is needed to implement the food stamp quality control provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Alternatives:

This rule deals with changes required by Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The Department has no discretion in implementing the time frames for completing quality control reviews, the arbitration process, and determining the final error rates; the threshold for potential sanctions and the time period for the sanctions; the calculation for State error rates; the formula for determining liability amounts; the sanction notification; method of payment for liabilities; corrective action planning, and the elimination of enhanced funding. These provisions were effective for the fiscal year 2003 quality control review period and must have been implemented by FNS and State agencies during fiscal year 2003. This rule also deals in part with discretionary changes to the quality control system resulting from Public Law 107-171. The provision addressing results of appeals is required to be regulated by Public Law 107-171. The remaining changes amend existing regulations and are required to make technical changes resulting from these changes or to update policy consistent with current requirements.

Anticipated Cost and Benefits:

The provisions of this rule are not anticipated to have any impact on benefit levels or administrative costs.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide. The quality control system measures the accuracy of States providing food stamp benefits to the program recipients. This rule is intended to implement the quality control provisions of Public Law 107-701, the Farm Security and Rural Investment Act of 2002. It will significantly revise the system for determining State agency liabilities and sanctions for high payment error rates.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/16/03	68 FR 59519
Interim Final Rule Effective	12/15/03	
Interim Final Rule Comment Period End	01/14/04	
NPRM	02/23/05	70 FR 55776
NPRM Comment Period End	12/22/05	
Final Action	06/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State

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Related RIN: Merged with 0584–AD37

RIN: 0584–AD31

USDA—FNS

8. DIRECT CERTIFICATION OF CHILDREN IN FOOD STAMP HOUSEHOLDS AND CERTIFICATION OF HOMELESS, MIGRANT, AND RUNAWAY CHILDREN FOR FREE MEALS IN THE NSLP, SBP, AND SMP

Priority:

Other Significant

Legal Authority:

PL 108–265, sec 104

CFR Citation:

7 CFR 210; 7 CFR 215; 7 CFR 220; 7 CFR 245

Legal Deadline:

None

Abstract:

In response to Public Law 108-265, which amended the Richard B. Russell National School Lunch Act, 7 CFR 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, will be amended to establish categorical (automatic) eligibility for free meals and free milk upon documentation that a child is (1) homeless as defined by the McKinney-Vento Homeless Assistance Act; (2) a runaway served by grant programs under the Runaway and Homeless Youth Act; or (3) migratory as defined in section 1309(2) of the Elementary and Secondary Education Act. The rule also requires phase-in of mandatory direct certification for children who are members of households receiving food stamps and continues discretionary direct certification for other categorically eligible children. (04-018)

Statement of Need:

The changes made to the Richard B. Russell National School Lunch Act concerning direct certification are intended to improve program access, reduce paperwork, and improve the accuracy of the delivery of free meal benefits. This regulation will implement the statutory changes and provide State agencies and local educational agencies with the policies and procedures to conduct mandatory and discretionary direct certification.

Summary of Legal Basis:

These changes are being made in response to provisions in Public Law 108-265.

Alternatives:

FNS will be working closely with State agencies to implement the changes made by this regulation and will be

developing extensive guidance materials in conjunction with our cooperators.

Anticipated Cost and Benefits:

This regulation will reduce paperwork, target benefits more precisely, and will improve program access of eligible school children.

Risks:

This regulation may require adjustments to existing computer systems to more readily share information between schools, food stamp offices, and other agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/09	
Interim Final Rule Comment Period End	11/00/09	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

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Related RIN: Merged with 0584–AD62

RIN: 0584–AD60

USDA—FNS

9. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): WIC VENDOR COST CONTAINMENT

Priority:

Other Significant

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

Final, Statutory, June 30, 2006.

Abstract:

This final rule amends the WIC regulations to strengthen vendor cost containment. The rule incorporates into program regulations new legislative requirements that affect the selection, authorization, and reimbursement of retail vendors. These requirements are contained in the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265), which was enacted on June 30, 2004. The rule reflects the statutory provisions that require WIC State agencies to implement a vendor peer group system, competitive price selection criteria, and allowable reimbursement levels in a manner that ensures that the WIC Program pays authorized vendors competitive prices for supplemental foods. It also requires State agencies to ensure that vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments do not result in higher food costs to the program than do other vendors. The intent of these provisions is to maximize the number of women, infants, and children served with available Federal funding. (04-029)

Statement of Need:

This action is needed to implement the vendor cost containment provisions of the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108-265. The rule requires WIC State agencies to operate vendor management systems that effectively contain food costs by ensuring that prices paid for supplemental foods are competitive. The rule also responds to data which indicate that WIC food expenditures increasingly include payments to a type of vendor whose prices are not governed by the market forces that affect most retail grocers. As a result, the prices charged by these vendors tend to be higher than those of other retail grocery stores participating in the program. To ensure that the program pays competitive prices, this rule codifies the new statutory requirements for State agencies to use in evaluating vendor applicants' prices during the vendor selection process and when paying vendors for supplemental foods following authorization.

Summary of Legal Basis:

Section 203(e)(10) of Public Law 108-265, Child Nutrition and WIC Reauthorization Act of 2004.

Alternatives:

This rule implements the vendor peer group provisions of the Child Nutrition and WIC Reauthorization Act of 2004, which FNS believes is an effective means of controlling WIC food costs. While this Act mandates that States establish peer groups, competitive price criteria, and allowable reimbursement levels, and states that these requirements must result in the outcome of paying above-50-percent vendors no more than regular vendors, the rule does not specify particular criteria for peer groups or acceptable methods of setting competitive price criteria and allowable reimbursement levels. FNS considered mandating specific means of developing peer groups, competitive price criteria, and allowable reimbursement levels in order to ensure that the outcome of this legislation was achieved.

However, given States' responsibility to manage WIC as a discretionary grant program and the varying market conditions in each State, FNS believes that States need flexibility to develop their own peer groups, competitive price criteria, and allowable reimbursement levels. At the October 2004 meeting the FNS convened to gain input for this rule, States indicated that they needed the ability to design cost containment practices that would be effective in their own markets and would ensure participant access. In addition, there is little information about the effectiveness of particular cost containment practices in the variety of markets represented by the 89 WIC State agencies. Mandating more specific means of developing peer groups, competitive price criteria, and allowable reimbursement levels could have unintended negative consequences for participant access, food costs and administrative burden.

As States gain experience and the results of their vendor cost containment practices become apparent, FNS may develop further regulations and guidance to improve vendor cost containment. In the interim, FNS believes that the current rule will substantially accomplish the goal of the Act of containing food costs and ensuring that above-50-percent vendors do not result in higher costs to the WIC Program than regular vendors.

Anticipated Cost and Benefits:

Costs: This rule places new requirements on State agencies; therefore, the cost implications of this rule relate primarily to administrative burden for WIC State agencies. These cost implications are partially dependent on the current practices of State agencies relative to the requirements of the rule. Detailed

information regarding the cost implications of this rule is contained in the Regulatory Impact Analysis developed by FNS to accompany this rulemaking.

Benefits: The WIC Program will benefit from the provisions of this rule by reducing unnecessary food expenditures, thus increasing the potential to serve more eligible women, infants, and children for the same cost. This rule should have the effect of ensuring that payments to vendors, particularly vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, reflect competitive prices for WIC foods. The Regulatory Impact Analysis prepared by FNS to accompany this rulemaking projects an estimated monthly cost savings of over $6.25 million. (Details of this projection can be found in the complete Regulatory Impact Analysis.)

Risks:

Because the vendor peer group provisions in the Child Nutrition and WIC Reauthorization Act of 2004 and this rule provide for some flexibility in implementation, and because there is a wide degree of variation in food prices and current vendor cost containment practices across State agencies, the impact of many of the provisions of this rule is uncertain. Uncertainties include the administrative burden State agencies will incur and the savings that can be realized nationally or in any State agency. The major uncertainties for both administrative burden and program savings are discussed in greater detail in the Regulatory Impact Analysis.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/29/05	70 FR 71708
Interim Final Rule Comment Period End	11/29/06	
Interim Final Rule Effective	12/29/05	
Final Action	04/00/09	
Final Action Effective	05/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State, Tribal

URL For More Information:

www.fns.usda.gov/wic

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RIN: 0584–AD71

USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

10. CHANGES TO REGULATORY JURISDICTION OVER CERTAIN FOOD PRODUCTS CONTAINING MEAT AND POULTRY

Priority:

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

Legal Authority:

21 USC 601(j); 21 USC 454(f)

CFR Citation:

9 CFR 303.1; 9 CFR 381.15

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) have concluded that a clearer approach to determining jurisdiction over meat and poultry products is possible. This approach involves considering the contribution of the meat or poultry ingredients to the identity of the food. FSIS is proposing to amend the Federal meat and poultry products inspection regulations to provide consistency and predictability in the regulatory jurisdiction over nine products or product categories. Historically there has been confusion about whether these products fall within the jurisdiction of FSIS or FDA. These proposed changes would exempt cheese and cheese products prepared with less than 50 percent meat or poultry; breads, rolls and buns prepared with less than 50 percent meat or poultry; dried poultry soup mixes; flavor bases and flavors; pizza with meat or poultry; and salad dressings prepared with less than 50 percent meat or poultry from the requirements of the Federal Meat Inspection Act and the Poultry Product Inspection Act and would clarify that bagel dogs, natural casings, and close faced-sandwiches are subject to the requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

Statement of Need:

Over the years, FSIS has made decisions about the jurisdiction under which food products containing meat or poultry ingredients are produced based on the amount of meat or poultry in the product; whether the product is represented as a meat or poultry product (that is, whether a term that refers to meat or poultry is used on labeling); whether the product is perceived by consumers as a product of the meat or poultry industries; and whether the product contains poultry or meat from an accepted source. With regard to the consumer perception factor, FSIS made decisions on a case-by-case basis, mostly in response to situations involving determinations for compliance and enforcement. Although this case-by-case approach resulted in decisions that made sense at the time that they were made, a review in 2004 to 2005 by a working group of FSIS and FDA representatives showed that some of the decisions do not appear to be fully consistent with other product decisions and that the reasoning behind various determinations was not fully articulated or supported.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 to 695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 to 470), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1032), and the regulations that implement these Acts, FSIS has authority over all meat food and poultry products and processed egg products. Under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the regulations that implement it, FDA has authority over all foods not under FSIS' jurisdiction, including dairy, bread and other grain products, vegetables and other produce, and other products, such as seafood.

According to the provisions of the FMIA and PPIA, the Secretary has the authority to exempt certain human food products from the definition of a meat food product (21 U.S.C. 601(j)) or a poultry product (20 U.S.C. 454(f)) based on either of two factors: (1) The product contains only a relatively small

proportion of livestock ingredients or poultry ingredients, or (2) the product historically has not been considered by consumers as a product of the meat food or poultry industry, and under such conditions as he or she may prescribe to ensure that the livestock or poultry ingredients are not adulterated and that the products are not represented as meat food or poultry products.

Alternatives:

FSIS has considered over the years a number of variations to clarify the confusion regarding jurisdiction for these various products.

Alternative 1: Maintain the status quo. Although FSIS has considered taking no action at this time, the Agency does not recommend this option because of the continued confusion that exists among industry and consumers as to jurisdictional coverage for nine categories of products.

Alternative 2: Reassess the statutory factors for making jurisdiction decision and recommend an amendment. The amendment of the statute would be from the historical perception factor because that is the factor, of the two statutory factors, that the working group identified as leading to the state of confusion about the jurisdiction of certain products containing meat or poultry.

Alternative 3: Adopt some of the FDA/FSIS working group's suggested approach to making clear and transparent jurisdiction decisions by proposing changes to regulations to codify the current policies on exempted products.

Anticipated Cost and Benefits:

FSIS estimates that the initial and recurring costs of the rule to industry would be approximately $5 million and $7 million, respectively. These costs would be attributable to new Sanitation SOP and HACCP plan development, as well as to labeling changes and training. FSIS would incur $7 million in annual recurring costs (salaries and benefits). Establishments coming under FSIS jurisdiction also would incur costs for recordkeeping, monitoring, testing, and annual HACCP plan reassessment.

Benefits to industry would accrue from reduced confusion over Agency jurisdiction, which may affect labeling and recordkeeping costs. There may be spill-over benefits accruing from changes in consumer behavior. Also, there would be improvement in efficiency in use of FDA and FSIS resources.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	09/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0583–AD28

USDA—FSIS

11. NEW POULTRY SLAUGHTER INSPECTION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 451 et seq

CFR Citation:

9 CFR 381.66; 9 CFR 381.67; 9 CFR 381.76; 9 CFR 381.83; 9 CFR 381.91; 9 CFR 381.94

Legal Deadline:

None

Abstract:

FSIS is proposing a new inspection system for young poultry slaughter establishments that would facilitate public health-based inspection. This new system would be available initially only to young chicken slaughter establishments. Establishments that slaughter broilers, fryers, roasters, and Cornish game hens (as defined in 9 CFR 381.170) would be considered as ''young chicken establishments.'' FSIS is also proposing to revoke the provisions that allow young chicken slaughter establishments to operate under the current Streamlined Inspection System (SIS) or the New Line Speed (NELS) Inspection System. The proposed rule would establish new performance standards to reduce pathogens. FSIS anticipates that this proposed rule would provide the framework for action to provide public health-based inspection in all establishments that slaughter amenable poultry species.

Under the proposed new system, young chicken slaughter establishments would be required to sort chicken carcasses and to conduct other activities to ensure that carcasses are not adulterated before they enter the chilling tank.

Statement of Need:

Because of the risk to the public health associated with pathogens on young chicken carcasses, FSIS is proposing a new inspection system that would allow for more effective inspection of young chicken carcasses, would allow the Agency to more effectively allocate its resources, would encourage industry to more readily use new technology, and would include new performance standards to reduce pathogens.

This proposed rule is an example of regulatory reform because it would facilitate technological innovation in young chicken slaughter establishments. It would likely result in more cost-effective dressing of young chickens that are ready to cook or ready for further processing. Similarly, it would likely result in more efficient and effective use of Agency resources.

Summary of Legal Basis:

The Secretary of Agriculture is charged by the Poultry Products Inspection Act (PPIA—21 U.S.C. 451 et seq.) with carrying out a mandatory poultry products inspection program. The Act requires post-mortem inspection of all carcasses of slaughtered poultry subject to the Act and such reinspection as deemed necessary (21 U.S.C. 455(b)). The Secretary is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of the Act (21 U.S.C. 463(b)). The Agency has tentatively determined that this rule would facilitate FSIS post-mortem inspection of young chicken carcasses. The proposed new system would likely result in more efficient and effective use of Agency resources and in industry innovations.

Alternatives:

FSIS considered the following options in developing this proposal:

1) No action.

2) Propose to implement HACCP-Based Inspection Models Pilot in regulations.

3) Propose to establish a mandatory, rather than a voluntary, new inspection system for young chicken slaughter establishments.

4) Propose standards of identity regulations for young chickens that include trim and processing defect criteria and that take into account the intended use of the product.

5) Propose a voluntary new inspection system for young chicken slaughter establishments and propose standards of identity for whole chickens, regardless of the products' intended use.

Anticipated Cost and Benefits:

The proposed performance standards and the implementation of public health-based inspection would likely improve the public health. FSIS is conducting a risk assessment for this proposed rule to assess the likely public health benefits that the implementation of this rule may achieve.

Establishments that volunteer for this proposed new inspection system alternative would likely need to make capital investments in facilities and equipment. They may also need to add labor (trained employees). However, one of the beneficial effects of these investments would likely be the lowering of the average cost per pound to dress poultry properly. Cost savings would likely result because of increased line speeds, increased productivity, and increased flexibility to industry. The expected lower average unit cost for dressing poultry would likely give a marketing advantage to establishments under the new system. Consumers would likely benefit from lower retail prices for high quality poultry products. The rule would also likely provide opportunities for the industry to innovate because of the increased flexibility it would allow poultry slaughter establishments. In addition, in the public sector, benefits would accrue to FSIS from the more effective deployment of FSIS inspection program personnel to verify process control based on risk factors at each establishment.

Risks:

Salmonella and other pathogens are present on a substantial portion of poultry carcasses inspected by FSIS. Foodborne salmonella cause a large number of human illnesses that at times lead to hospitalization and even death. There is an apparent relationship between human illness and prevalence levels for salmonella in young chicken carcasses. FSIS believes that through better allocation of inspection resources and the use of performance standards, it would be able to reduce the prevalence of salmonella and other pathogens in young chickens.

Timetable:

Action	Date	FR Cite
NPRM	09/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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RIN: 0583–AD32

USDA—FSIS

12. ● NOTIFICATION, DOCUMENTATION AND RECORDKEEPING REQUIREMENTS FOR INSPECTED ESTABLISHMENTS

Priority:

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

Legal Authority:

21 U.S.C. 612 and 613; 21 U.S.C. 459

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to require establishments subject to inspection under the Federal Meat Inspection Act and the Poultry Products Inspection Act to promptly notify the Secretary of Agriculture that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment believes or has reason to believe that this has happened. FSIS is also proposing to require these establishments to: (1) prepare and maintain current procedures for the recall of all products produced and shipped by the establishment; (2) document each reassessment of the process control plans of the establishment; and (3) upon request, make the procedures and reassessed control plans available to inspectors appointed by the Secretary for review and copying.

Statement of Need:

The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, Sec. 11017), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to require establishments subject to inspection under these Acts to promptly notify the Secretary that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment believes or has reason to believe that this has happened. Section 11017 also requires establishments subject to inspection under the FMIA and PPIA to: (1) prepare and maintain current procedures for the recall of all products produced and shipped by the establishment; and (2) document each reassessment of the process control plans of the establishment.

Summary of Legal Basis:

21 U.S.C. 612 and 613; 21 U.S.C. 459, and Public Law 110-246, Sec. 11017.

Alternatives:

The option of no rulemaking is unavailable. The Agency will consider alternative methods of implementation, and the effects on foreign and domestic commerce and on small business associated with the alternatives.

Anticipated Cost and Benefits:

FSIS will conduct an analysis to determine the costs and benefits associated with this rulemaking. FSIS has made an initial determination that this rule will not have a significant economic impact on a substantial number of small entities.

Risks:

In preparing regulations on the shipment of adulterated meat and poultry products by meat and poultry establishments, the preparation and maintenance of procedures for recalled products produced and shipped by establishments, and the documentation of each reassessment of the process control plans by the establishment, the

Agency will consider any risks to public health or other pertinent risks associated with these actions.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0583–AD34

USDA—FSIS

13. ● MANDATORY INSPECTION OF CATFISH AND CATFISH PRODUCTS

Priority:

Other Significant

Legal Authority:

21 U.S.C. 601 et seq. Pub L. 110–249, Sec. 11016

CFR Citation:

9 CFR Chapter III, Subchapter F (new)

Legal Deadline:

Final, Statutory, December 2009, Final regulations NLT 18 months after enactment of Pub. L. 110–246.

Abstract:

The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, Sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. The regulations will define ''catfish'' and the scope of coverage of the regulations to apply to establishments that process farm-raised species of catfish and to catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.

Statement of Need:

The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, Sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. The Farm Bill directs the Department to issue final regulations implementing the FMIA amendments not later than 18 months after the enactment date (June 18, 2008) of the legislation.

Summary of Legal Basis:

21 U.S.C. 601-695 and Public Law 110-246, Sec. 11016

Alternatives:

The option of no rulemaking is unavailable. The Agency will consider alternative methods of implementation and levels of stringency, and the effects on foreign and domestic commerce and on small business associated with the alternatives.

Anticipated Cost and Benefits:

FSIS anticipates benefits from uniform standards and the more extensive and intensive inspection service that FSIS provides (compared with current voluntary inspection programs). FSIS would apply requirements for imported catfish that would be equivalent to those applying to catfish raised and processed in the United States.

Risks:

In preparing regulations on catfish and catfish products, the Agency will consider any risks to public health or other pertinent risks associated with the production, processing, and distribution of the products. FSIS will determine, through scientific risk assessment procedures, the magnitude of the risks associated with catfish and how they compare with those associated with other foods in FSIS's jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	03/00/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

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USDA—FSIS

14. ● FEDERAL–STATE INTERSTATE SHIPMENT COOPERATIVE INSPECTION PROGRAM

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 110–246 (section 11015)

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, December 18, 2009.

Abstract:

FSIS is proposing regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State-inspection personnel would bear a Federal mark of inspection. FSIS is proposing these regulations in response to the Food, Conservation, and Energy Act, enacted on June 18, 2008 (the 2008 Farm Bill). Section 11015 of 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry

product from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment

Statement of Need:

This action is needed to implement a new Federal-State cooperative program that will permit certain State-inspected establishments to ship meat and poultry products in interstate commerce. Inspection services for establishments selected to participate in the program will be provided by state inspection personnel that have been trained and certified in the administration and enforcement of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.) Meat and poultry products produced by establishments selected to participate in the program will bear a Federal mark of inspection.

Summary of Legal Basis:

This action is authorized under section 11015 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (PL-110-246). Section 11015 amends the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.) to establish an optional Federal-State cooperative program under which State-inspected establishments would be permitted to ship meat and poultry products in interstate commerce. The law requires that FSIS promulgate implementing regulations no later than 18 months after the date of enactment.

Alternatives:

1. No action: FSIS did not consider the alternative of no action because section 11015 of the 2008 Farm Bill requires that it promulgate regulations to implement the new Federal-State cooperative program. The Agency did consider alternatives on how to implement the new program.

2. Limit participation in the program to state-inspected establishments with 25 or fewer employees on average: Under the law, state-inspected establishments that have 25 or fewer employees on average are permitted to participate in the program. The law also provides that FSIS may select establishments that employ more than 25 but fewer than 35 employees on average as of June 18, 2008 (the date of enactment) to participate in the program. Under the law, if these establishments employ more than 25 employees on average 3 years after FSIS promulgates implementing regulations, they are required to transition to a Federal establishment. FSIS rejected the option of limiting the program to establishment that employ 25 or fewer employees on average to give additional small establishments the opportunity to participate in the program and ship their meat of poultry products in interstate commerce.

3. Permit establishments with 25 to 35 employees on average as of June 18, 2008, to participate in the program. FSIS chose the option of permitting these establishments to be selected to participate in the program to give additional small establishments the opportunity to ship their meat and poultry products in interstate commerce. Under this option, FSIS will develop a procedure to transition any establishment that employs more than 25 people on average to a Federal establishment. Establishments that employee 24 to 35 employees on average as of June 18, 2008, would be subject to the transition procedure beginning on the date three years after the Agency promulgates implementing regulations.

Anticipated Cost and Benefits:

FSIS is analyzing the costs of this proposed rule to industry, FSIS, State and local governments, small entities, and foreign countries. Participation in the new Federal-State cooperative program will be optional. Thus, the costs and benefits associated with the proposed rule will depend on the number of States and establishments that chose to participate. Very small and certain small establishments State-inspected establishments that are selected to participate in the program are likely to benefit from the program because they will be permitted sell their products to consumers in other States and foreign countries.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/09	
Final Action	01/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Federalism:

Undetermined

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USDA—FSIS

FINAL RULE STAGE

15. PERFORMANCE STANDARDS FOR THE PRODUCTION OF PROCESSED MEAT AND POULTRY PRODUCTS; CONTROL OF LISTERIA MONOCYTOGENES IN READY–TO–EAT MEAT AND POULTRY PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 301; 9 CFR 303; 9 CFR 317; 9 CFR 318; 9 CFR 319; 9 CFR 320; 9 CFR 325; 9 CFR 331; 9 CFR 381; 9 CFR 417; 9 CFR 430; 9 CFR 431

Legal Deadline:

None

Abstract:

FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat (RTE) and partially heat-treated meat and poultry products, and measures, including testing, to control Listeria monocytogenes in RTE products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. With HACCP, food safety performance standards give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be

verified by Agency inspectional oversight. This set of performance standards will include and be consistent with standards already in place for certain ready-to-eat meat and poultry products.

Statement of Need:

Although FSIS routinely samples and tests some ready-to-eat products for the presence of pathogens prior to distribution, there are no specific regulatory pathogen reduction requirements for most of these products. The proposed performance standards are necessary to help ensure the safety of these products; give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls; and provide objective, measurable standards that can be verified by Agency oversight.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Product Inspection Act (21 U.S.C. 451 to 470), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in commerce. The regulations, along with FSIS inspection programs, are designed to ensure that meat and poultry products are safe, not adulterated, and properly marked, labeled, and packaged.

Alternatives:

As an alternative to all of the proposed requirements, FSIS considered taking no action. As alternatives to the proposed performance standard requirements, FSIS considered end-product testing and requiring ''use-by'' date labeling on ready-to-eat products.

Anticipated Cost and Benefits:

Benefits are expected to result from fewer contaminated products entering commercial food distribution channels as a result of improved sanitation and process controls and in-plant verification. FSIS believes that the benefits of the rule would exceed the total costs of implementing its provisions. FSIS currently estimates net benefits from the 2003 interim final rule at $470 to $575 million, with annual recurring costs at $150.4 million, if FSIS discounts the capital cost at 7%. FSIS is continuing to analyze the potential impact of the other provisions of the proposal.

The other main provisions of the proposed rule are: Lethality performance standards for Salmonella and E. coli O157:H7 and stabilization performance standards for C. perfringens that firms must meet when producing RTE meat and poultry products. Most of the costs of these requirements would be associated with one-time process performance validation in the first year of implementation of the rule and with revision of HACCP plans. Benefits are expected to result from the entry into commercial food distribution channels of product with lower levels of contamination resulting from improved in-plant process verification and sanitation. Consequently, there will be fewer cases of foodborne illness.

Risks:

Before FSIS published the proposed rule, FDA and FSIS had estimated that each year L. monocytogenes caused 2,540 cases of foodborne illness, including 500 fatalities. The Agencies estimated that about 65.3 percent of these cases, or 1660 cases and 322 deaths per year, were attributable to RTE meat and poultry products. The analysis of the interim final rule on control of L. monocytogenes conservatively estimated that implementation of the rule would lead to an annual reduction of 27.3 deaths and 136.7 illnesses at the median. FSIS is continuing to analyze data on production volume and Listeria controls in the RTE meat and poultry products industry and is using the FSIS risk assessment model for L. monocytogenes to determine the likely risk reduction effects of the rule. Preliminary results indicate that the risk reductions being achieved are substantially greater than those estimated in the analysis of the interim rule.

FSIS is also analyzing the potential risk reductions that might be achieved by implementing the lethality and stabilization performance standards for products that would be subject to the proposed rule. The risk reductions to be achieved by the proposed rule and that are being achieved by the interim rule are intended to contribute to the Agency's public health protection effort.

Timetable:

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12590
NPRM Comment Period End	05/29/01	
NPRM Comment Period Extended	07/03/01	66 FR 35112
NPRM Comment Period End	09/10/01	
Interim Final Rule	06/06/03	68 FR 34208
Interim Final Rule Effective	10/06/03	
Interim Final Rule Comment Period End	01/31/05	
NPRM Comment Period Reopened	03/24/05	70 FR 15017
NPRM Comment Period End	05/09/05	
Affirmation of Interim Final Rule	09/00/09	
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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USDA—FSIS

16. ● REQUIREMENTS FOR THE DISPOSITION OF CATTLE THAT BECOME NON–AMBULATORY DISABLED FOLLOWING ANTE–MORTEM INSPECTION

Priority:

Other Significant

Legal Authority:

21 U.S.C. 621; 21 U.S.C. 603(a); 21 U.S.C. 603(b)

CFR Citation:

9 CFR 309.3

Legal Deadline:

None

Abstract:

FSIS is proposing to remove the provision in 309.3(e) that allows FSIS inspection personnel to determine the disposition of cattle that become non-ambulatory disabled after they have passed ante-mortem inspection on a case-by-case basis. If FSIS finalizes this proposed rule, cattle that become non-ambulatory disabled from an acute

injury after ante-mortem inspection will no longer be eligible to proceed to slaughter as ''U.S. Suspects.'' Instead, FSIS inspectors will tag these cattle as ''U.S. condemned'' and prohibit these animals from proceeding to slaughter.

Statement of Need:

This rule is necessary to better ensure effective implementation of ante-mortem inspection pursuant to 21 USC 603(a) and of humane handling requirements pursuant to 21 USC 603(b).

This rule is also necessary to make clear that establishments have an affirmative obligation to make FSIS personnel aware when an animal goes down. This regulatory requirement will preclude establishments from attempting to force such animals to rise.

Summary of Legal Basis:

FSIS is proposing this rule under 21 U.S.C 621, which gives FSIS the authority to adopt regulations for the efficient administration of the FMIA. The amendment in this proposal would better ensure effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of humane handling requirements established pursuant to 21 U.S.C 603(b).

Alternatives:

This proposed rule is likely to have only minimum economic effects on the beef industry and consumers. Based on the Agency's 2007 survey data, out of the approximately 33.7 million cattle slaughtered in 2007, FSIS estimates that about 1,300 cattle — about 600 cull cattle (i.e., mostly cows and bulls) and 700 steers and heifers — were in this category. Data from the Agricultural Marketing Service (AMS) indicate that the market value for a cull cattle carcass and parts is between $500 and $1,000, and the market value for a steer or heifer carcass and parts is between $900 and $1,100. Therefore, the estimated total market value of the carcasses and parts from cattle that would be condemned under this proposed rule would be in the range of $930,000 to $1,370,000 per year.

If adopted as a final rule, the proposed amendment would benefit both consumers and the beef industry by enhancing public confidence in the U.S. beef supply. This proposed rule would enhance public confidence by eliminating any controversy surrounding the condemnation of cattle that become non-ambulatory disabled after ante-mortem inspection and by preventing the slaughter of cattle that may be unfit for human food. It would also reduce the potential for inhumane handling of non-ambulatory disabled cattle at slaughter operations.

This proposed rule would also assist the United States in international trade relations and negotiations by providing greater confidence to those countries that continue to raise questions about American beef. The proposed amendment would increase consumer confidence and U.S. access to overseas markets. Thus, the proposed rule will generally benefit the industry because it would likely lead to higher sales and revenue.

Anticipated Cost and Benefits:

Not applicable.

Risks:

Not Applicable.

Timetable:

Action	Date	FR Cite
NPRM	08/29/08	73 FR 50889
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State

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RIN: 0583–AD35

USDA—FSIS

17. ● MANDATORY COUNTRY OF ORIGIN LABELING OF COVERED COMMODITIES INCLUDING MUSCLE CUTS OF BEEF (INCLUDING VEAL), LAMB, CHICKEN, GOAT, AND PORK; GROUND BEEF, GR. LAMB, GR. CHICKEN, GR. GOAT, AND GR. PORK

Priority:

Other Significant

Legal Authority:

Public Law 110–234 (2008 Farm Bill)

CFR Citation:

9 CFR 317; 9 CFR 381

Legal Deadline:

Final, Statutory, September 30, 2008, Statutory implementation deadline per the 2008 Bill.

Abstract:

FSIS is amending its regulations through an interim final rule to make clear that country of origin labeling of covered commodities that complies with the Food, Conservation and Energy Act of 2008 and the Agricultural Marketing Service (AMS) interim regulations will be generically approved under 9 CFR 317.5 and 9 CFR 381.133

Statement of Need:

Mandatory Country of Origin Labeling of Covered Commodities including Muscle Cuts of Beef (including Veal), Lamb, Chicken, Goat, and Pork; Ground Beef, Ground Lamb, Ground Chicken, Ground Goat, and Ground Pork — Interim final rule. (This rule makes minor changes to FSIS regulations based on mandatory country of origin labeling requirements.)

Summary of Legal Basis:

FSIS is amending its regulations based on mandatory country of origin labeling for meat and poultry covered commodities based on the Food, Conservation and Energy Act of 2008. Meat covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork. This rule will provide consumers with additional information on which to base their purchasing decisions.

Alternatives:

Not applicable.

Anticipated Cost and Benefits:

None. All costs for this interim final rule are covered under the USDA/AMS COOL rule published on August 1, 2008 (73 FR 45106).

Risks:

There are no risks associated with this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/28/08	73 FR 50701
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—Forest Service (FS)

FINAL RULE STAGE

18. RESOURCE AGENCY PROCEDURES FOR CONDITIONS AND PRESCRIPTIONS IN HYDROPOWER LICENSES

Priority:

Other Significant

Legal Authority:

PL 109–58

CFR Citation:

7 CFR 1

Legal Deadline:

Final, Statutory, November 7, 2005.

Public Law 109-58 charges agencies requiring mandatory conditions and prescriptions with the promulgation of new regulations by November 7, 2005, to provide the regulatory framework to implement a trial-type hearing process.

Abstract:

The Energy Policy Act of 2005 (Pub. L. 109-58) contains provisions requiring a trial-type hearing to resolve disputed issues of material fact related to mandatory conditions and prescriptions required under the issuance of a Federal hydropower license. The law also mandates that the Agency consider alternatives to proposed mandatory conditions and prescriptions. This law charges agencies requiring mandatory conditions and prescriptions with the promulgation of new regulations by November 7, 2005, to provide the regulatory framework to implement the trial-type hearing process. The U.S. Department of Agriculture, acting through the Forest Service, is one of the agencies required under the Act to provide a trial-type hearing and issue an implementing regulation. To meet the statutory deadline, the U.S. Department of Agriculture, along with the U.S. Departments of the Interior and Commerce, issued a joint interim final rule. The Department of the Interior is the lead agency in this effort.

The Forest Service adopted an interim final rule at 7 CFR part 1 establishing a trial-type hearing procedure to resolve disputed issues of material fact related to mandatory conditions and prescriptions required under the issuance of a Federal hydropower license. The interim final rule also provides a process for the filing of proposed alternative conditions and prescriptions.

Statement of Need:

The Departments of Agriculture, the Interior, and Commerce are jointly revising the procedures they established for expedited trial-type hearings. The three Departments are also revising the procedures they established for the consideration of alternative conditions and prescriptions submitted by any party to a Federal Energy Regulatory (FERC) hydroelectric licensing proceeding. Three substantially similar rules are being promulgated - one for each agency - with a joint preamble. The rules and preamble reflect changes to each Department's interim final rules, in response to public comments and the Departments' experience in implementing their interim final rules.

Summary of Legal Basis:

On November 17, 2005, the Departments of Agriculture, the Interior, and Commerce jointly published interim final rules implementing section 241 of the Energy Policy Act of 2005 (EPAct), Pub. L. 109-58. 70 FR 69804-51. In their joint preamble, the Departments stated that, based upon comments received and experience gained with their interim final rules, they would consider revising the rules.

Alternatives:

There was some discussion among the Departmental/Agency representatives over the interpretation of the scope of work and trigger for conducting an alternative condition analysis. DOI proposed that the group conduct an alternative condition analysis on ALL mandatory conditions. The DOI position was agreed to with some clarification that this approach was selected as it is not explicit in the language of Section 241 of the Energy Policy Act of 2005.

Anticipated Cost and Benefits:

The Final rule addresses the uncertainty by commenters about the ''Interim Final'' rule from 2005 and it incorporates some of the lessons learned of some of the Trial Type and Alternative Condition processes conducted since promulgation of the Interim Final Rule.

The most notable costs are staff time to conduct an Alternative Condition Analysis for all mandatory terms and conditions submitted to FERC and potential litigation challenging the Alternative Condition Analysis due to limited expertise in some of the legislated considerations when conducting an Alternative Condition Analysis.

Risks:

No risks have been identified at this time.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/17/05	70 FR 69804
Interim Final Rule Comment Period End	01/17/06	
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—FS

19. SPECIAL AREAS; STATE–SPECIFIC INVENTORIED ROADLESS AREA MANAGEMENT: COLORADO

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Not Yet Determined

CFR Citation:

36 CFR 294

Legal Deadline:

None

Abstract:

On April 11, 2007, Governor of Colorado Ritter submitted a petition under the provisions of the Administrative Procedure Act (5 U.S.C. 553(e)) and Agriculture Department regulation (7 CFR 1.28) to promulgate regulations, in cooperation with the State, for the management of inventoried roadless areas within the State of Colorado. After review and recommendation by the Roadless Area Conservation National Advisory Committee, the Secretary accepted the Governor's petition and initiated a proposed rulemaking for inventoried roadless areas in Colorado. The proposed rulemaking would manage Colorado's inventoried roadless areas by prohibiting road building and tree cutting, with some exceptions, on 4.1 million acres of inventoried roadless areas in Colorado. The 4.1 million acres reflect the most updated IRA boundaries for Colorado, which incorporate planning rule revisions since 2001 on several Colorado national forests. Inventoried roadless areas that are allocated to ski area special uses (approximately 10,000 acres) would also be removed from roadless designation. Road construction and reconstruction plus timber harvesting would be prohibited in inventoried roadless areas, with some exceptions, on the Arapaho-Roosevelt, Grand Mesa-Uncompahgre, Gunnison, Manti-La Sal, Pike-San Isabel, Rio Grande, Routt, San Juan, and White River National Forests in Colorado. Exceptions to the prohibitions would be allowed for certain health, safety, valid existing rights, resource protection, and ecological management needs.

Web site: http://roadless.fs.fed.us

Statement of Need:

The Department of Agriculture is committed to conserving and managing roadless values and considers inventoried roadless areas an important component of the National Forest System. The roadless rule has been the subject of 10 lawsuits in Federal district courts in Idaho, Utah, North Dakota, Wyoming, Alaska, and the District of Columbia. On July 14, 2003, the U.S. District Court for the District of Wyoming found the 2001 roadless rule to be unlawful and ordered that the rule be permanently enjoined. On May 13, 2005, the Forest Service promulgated the State Petitions Rule. The State Petitions Rule allowed Governors to voluntarily seek establishment of or adjustment of management requirements for National Forest System inventoried roadless areas within their States. If a petition was not received within 18 months, inventoried roadless areas would be guided by individual land management plans. It also established the Roadless Area Conservation National Advisory Committee (RACNAC) to make recommendations on State-petitions to the Secretary. With the promulgation of the State Petitions Rule, the Tenth Circuit, which was reviewing an appeal by intervenors of the Wyoming court's decision, dismissed the case as moot. Under the guidance of the State Petitions Rule the States of California, Idaho, New Mexico, North Carolina, South Carolina, and Virginia filed a petition with the Secretary. The Secretary instructed the Forest Service to enter into rulemaking for North Carolina, South Carolina, and Virginia. Two lawsuits were filed against the State Petitions Rule in the Federal district court for the Northern District of California.

One suit was filed by the States of California, New Mexico, Oregon, and Washington with the State of Montana being amicus curiae in support of plaintiffs; and the States of Alaska and Idaho are amici curiae to USDA. The other lawsuit was filed by a coalition of environmental groups. On September 20, 2006, the Federal district court enjoined the State Petitions Rule and reinstated the roadless rule. In an effort to again re-enjoin the roadless rule, the State of Wyoming filed a second lawsuit in the Federal district court for Wyoming on January 12, 2007. Oral hearing for this lawsuit was held October 19 and decision is pending. With the reinstatement of roadless rule, the Under Secretary announced that interested States could still petition the Secretary pursuant to 5 U.S.C. section 553(e) and 7 CFR section 1.28. On November 13, 2006, Colorado Governor Bill Owens submitted his petition under these authorities. On April 11, 2007, Colorado Governor Bill Ritter resubmitted the petition with amendments. The RACNAC reviewed the petition and made recommendations to the Secretary on August 2, 2007.

Collaboratively working on the establishment of a State-specific roadless rule for the petitioning State will allow the State the level of management of inventoried roadless areas it seeks to best meet its needs in balance with the Department's and Forest Service's goals for the conserving and managing roadless values nationally. In addition, it will allow for the management of these lands in that State without being affected by other legal actions concerning the roadless rule or State Petitions Rule.

Summary of Legal Basis:

On January 12, 2001, the Department of Agriculture promulgated the Roadless Area Conservation Rule to provide for the conservation and management of approximately 58.5 million acres of inventoried roadless areas within the National Forest System under the principles of the Multiple-Use Sustained-Yield Act of 1960. The State of Colorado has petitioned the Secretary pursuant to 5 U.S.C. section 553(e) and 7 CFR section 1.28 for state-specific rules to replace this national rule.

Alternatives:

The Forest Service is preparing environmental impact statements in support of the rulemaking effort. Besides the proposed rule, two alternatives are being considered: (1) Continuation of the RACR for management of these inventoried roadless areas, and (2) using existing forest plans and future forest plan revisions to determine the management of these areas.

Anticipated Cost and Benefits:

The proposed rule is an economically significant rule, and will have an annual effect of more than $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule is not expected to interfere with an action taken or planned by another Agency nor raise new legal or policy issues. This proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Furthermore, the proposed rule is programmatic in nature, consisting of direction for road construction, road reconstruction, timber harvesting, special uses including ski resorts, and discretionary mineral activities, which would be applied to future management activities

on inventoried roadless areas in Colorado.

Risks:

The rule is programmatic in nature and would constrain certain activities that would reduce roadless area characteristics. Reducing or controlling the development of these lands will reduce the risk of environmental effects associated with development activities like road construction, timber harvesting, and mineral extraction. Therefore soil, water, and air quality; sources of drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species dependent on large, undisturbed areas of land; scenic quality; traditional cultural properties and sacred sites; and other locally unique characteristics would be maintained.

Timetable:

Action	Date	FR Cite
NPRM	07/25/08	73 FR 43544
NPRM Comment Period End	10/23/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Tribal

URL For More Information:

www.roadless.fs.fed.us.

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BILLING CODE 3410–90–S

DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

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

- Build for the future and promote U.S. economic 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 DOC mission statement, containing our three strategic themes, provides the vehicle for understanding the Department's aims, how they interlock, and how they are to be implemented through our programs. This statement was developed 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.

We work 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 these 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. The President's priorities for the Department range from issues concerning the economy to the environment. For example, the President directs the Department to promote electronic commerce activities; encourage open and free trade; represent American business interests abroad; and assist small businesses to expand and create jobs. We are able to address these priorities effectively by functioning in accordance with the legislation that supports our programs and by working closely with the President and the committees in Congress that have programmatic and financial oversight for our programs.

The DOC also 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.

The DOC encourages development in every community, clearing the way for private-sector growth by building and 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, the DOC 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.

The DOC'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 the Department's economic and demographic statistics, businesses can undertake new ventures, investments, and expansions that make our economy grow.

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 Regulatory Plan tracks the most important regulations that implement these policy and program priorities, several of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only the National Oceanic and Atmospheric Administration (NOAA) will be planning actions that are considered the ''most important'' significant preregulatory or regulatory actions for fiscal year 2009. During the next year, NOAA plans to publish nine rulemaking actions that are designated as Regulatory Plan actions. Further information on these actions is provided below.

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. 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 Department has a long-standing policy to prohibit the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written so as to be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in departmental rulemakings, even where public participation is not required by law.

National Oceanic and Atmospheric Administration

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 Department, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on ''sustainable fisheries'' is designed to boost long-term economic growth in a vital sector of the U.S. economy while minimizing any economic dislocation necessary to ensure long-term economic growth. The Department is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a ''win-win'' situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Services (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects threatened and endangered marine and anadromous species and marine mammals, and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the 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 guided by a comprehensive understanding of the environment. The Department, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with environmental issues. NOAA has the primary federal responsibility for providing sound scientific observations, assessments, and forecasts of environmental phenomena on which resource management and other societal decisions can be made.

In the environmental stewardship area, NOAA's goals include: rebuilding and maintaining strong U.S. fisheries by using market-based ecosystem approaches to management; increasing the populations of depleted, threatened, or endangered species and marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: 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 Fishery Conservation and Management Act

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3-200 nautical miles). Among the several hundred rulemakings that NOAA plans to issue in fiscal year 2009, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. NOAA issues regulations to implement FMPs and FMP amendments. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NOAA by which it must exercise its rulemaking responsibilities. FMPs and FMP amendments for Atlantic highly migratory species, such as bluefin tuna, swordfish, and sharks, are developed directly by NOAA, not by FMCs.

FMPs address a variety of issues including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by market-based systems such as

individual transferable quotas, which permit quota-holders to harvest a quantity of fish and which can be traded on the open market. Harvest limits based on the best available scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds, and establishing seasonal and area closures to protect fishery stocks.

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

The Magnuson-Stevens Act contains ten national standards against which fishery management measures are evaluated. NMFS has supplemented the standards with guidelines interpreting each standard, and has updated and added 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 Executive Order.

On January 12, 2007, the President signed into law the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). This important new law was identified by the President as one of his priority actions in the U.S. Ocean Plan. The enactment of the law reaffirms the importance of the goals of the Magnuson-Stevens Act, but more importantly, it implements important groundbreaking provisions that could enhance fisheries management. The new measures implemented by this law would work to end overfishing; promote market-based management approaches; improve science by providing a stronger role for peer review and for the Councils' Science and Statistical Committees (SSC) in decision-making, and improving the collection of accurate and precise fishing data; and enhance international cooperation by addressing illegal, unreported and unregulated (IUU) fishing and bycatch of protected living marine resources. NMFS will be initiating several rulemakings in the coming year to implement these important provisions.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA) provides the authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the take of marine mammals. Exceptions include the collection of wild animals for scientific research or public display or to enhance the survival of a species or stock. NMFS initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. The Act also established the Marine Mammal Commission, which makes recommendations to the Secretaries of the Departments of Commerce and the Interior and other federal officials on protecting and conserving marine mammals. The Act underwent significant changes in 1994 to allow for takings incidental to commercial fishing operations, to provide certain exemptions for subsistence and scientific uses, and to require the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction.

Endangered Species Act

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be ''endangered'' or ''threatened,'' and the conservation of the ecosystems on which these species depend. The ESA authorizes both NMFS and the Fish and Wildlife Service (FWS) to jointly administer the provisions of the Act. NMFS manages marine and ''anadromous'' species and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. Of the 1,310 listed species found in part or entirely in the United States and its waters, NMFS has jurisdiction over approximately 60 species. NMFS' rulemaking actions are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing, and revising critical habitat for any listed species. In addition, under the ESA's procedural framework, federal agencies consult with NMFS on any proposed action authorized, funded, or carried out by that agency that may affect one of the listed species or designated critical habitat, or is likely to jeopardize proposed species or adversely modify proposed critical habitat that is under NMFS' jurisdiction.

NOAA's Regulatory Plan Actions

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in the Department's Regulatory Plan, NMFS is undertaking nine actions that rise to the level of ''most important'' of the Departments significant regulatory actions, and thus are included in this year's Regulatory Plan. Three actions implement the Marine Mammal Protection Act. Six actions implement provisions of the Magnuson-Stevens Reauthorization Act (MSRA). One regulation that may be of particular interest to international trading partners concerns the Certification of Nations Whose Fishing Vessels are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources, as described below.

''Certification of Nations Whose Fishing Vessels Are Engaged in IUU Fishing or Bycatch of Protected Living Marine Resources'' - In this action, NMFS would establish a process of identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing or bycatch of protected living marine resources would be identified in a biennial report to Congress. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels, as required under Section 403 of MSRA. Negative certification of a

nation may result in the imposition of trade measures.

''Provide Guidance for the Limited Access Privilege Program Provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006'' - This action would provide national guidance on the use of Limited Access Privilege Programs (LAPP) as fishery management tools. The guidance is intended to assist the fishery management councils and NMFS headquarters and regional offices in developing and implementing LAPPs.

''Guidance for Annual Catch Limits and Accountability Measures to End Overfishing'' - In this action, NMFS would implement provisions that require fishery management plans to establish a mechanism for specifying annual catch limits (ACLs) in the plans implementing regulations or annual specifications, at a level such that overfishing does not occur in a fishery. In addition, this action would implement measures to ensure accountability.

''Disaster Assistance Programs'' - This action would govern requests for determinations of fishery resource disasters as a basis for acquiring potential disaster assistance. The regulations would establish definitions and characteristics of commercial fishery failures, fishery resource disasters, serious disruptions affecting future production, and harm incurred by fishermen. The intended result is to clarify and interpret the fishery disaster assistance provisions of the Magnuson-Stevens Act and the Interjurisdictional Fisheries Act and thereby ensure consistency and facilitate the processing of requests.

''Magnuson-Stevens Fishery Conservation and Management Reauthorization Act Environmental Review Procedure'' - This final rule would revise and update NMFS procedures for complying with the National Environmental Policy Act (NEPA) in the context of fishery management actions developed pursuant to the Magnuson Stevens Fishery Conservation and Management Act. These regulations are modeled on the Council of Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA, and are designed to conform to the timelines for review and approval of fishery management plans and plan amendments.

''Amendment to Coastal Migratory Pelagics FMP, Red Drum FMP, Reef Fish FMP, Spiny Lobster FMP, and Stone Crab FMP to Provide for Regulation of Marine Aquaculture'' - The Gulf of Mexico Fishery Management Council is developing an Aquaculture Fishery Management Plan, which if approved, would establish a regional permitting process for regulating and promoting environmentally sound and economically sustainable aquaculture in the Gulf of Mexico exclusive economic zone.

''Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)'' - NMFS has received a request from the U.S. Navy for authorization to take marine mammals incidental to training activities conducted off the U.S. Atlantic Coast and in the Gulf of Mexico for the period of January 2009 through January 2014. These training activities are classified as military readiness activities. The final regulations would authorize these activities and govern the take of marine mammals.

''Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex'' - NMFS has received a request from the U.S. Navy for authorization to take marine mammals incidental to training activities conducted in the Southern California Range Complex , which extends south and southwest off the southern California coast, for the period of January 2009 through January 2014. These training activities are classified as military readiness activities. The final regulations would authorize these activities and govern the take of marine mammals.

''Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex'' - NMFS has received a request from the U.S. Navy for authorization to take marine mammals incidental to training activities conducted within the Hawaii Range Complex (HRC) for the period of December 2008 through December 2013. These training activities are classified as military readiness activities. The final regulations would authorize these activities and govern the take of marine mammals.

NOAA's nine Regulatory Plan actions support several of the President's priorities as stated in the U.S. Ocean Action Plan. Specifically, NMFS' regulatory actions implement the President's ongoing effort to combat international illegal, unregulated and unreported fishing activities through its proposed identification and certification process and support the goal to use market-based systems for fisheries management.

At this time, NOAA is unable to determine the aggregate cost of the identified Regulatory Plan actions as several of these actions are currently under development.

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) promotes U.S. national and economic security and foreign policy interests by managing and enforcing the Department's security-related trade and competitiveness programs. BIS 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. BIS 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 BIS.

BIS 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 subsectors is critical to our national security.
- Helping Ukraine, Kazakhstan, 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.

DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

20. AMENDMENT TO COASTAL MIGRATORY PELAGICS FMP, RED DRUM FMP, REEF FISH FMP, SPINY LOBSTER FMP, AND STONE CRAB FMP TO PROVIDE FOR REGULATION OF MARINE AQUACULTURE

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq

CFR Citation:

50 CFR 622

Legal Deadline:

None

Abstract:

The purpose of the amendment is to develop a regulatory permitting process for regulating and promoting environmentally sound and economically sustainable aquaculture in the Gulf Exclusive Economic Zone. Possible management actions include: (1) Types of aquaculture permits required; (2) duration aquaculture permits are effective; (3) conditions for permit issuance; (4) species allowed for aquaculture; (5) allowable aquaculture systems; (6) designation of sites or areas for conducting aquaculture; (7) buffer zones for aquaculture facilities; (8) recordkeeping and reporting requirements; and (9) regulations to aid in the enforcement of marine aquaculture facilities.

Statement of Need:

Demand for protein is increasing in the United States and commercial wild-capture fisheries will not likely be adequate to meet this growing demand. Aquaculture is one method to meet current and future demands for seafood. Supplementing the harvest of domestic fisheries with cultured product will help the U.S. meet consumers' growing demand for seafood and may reduce the nation's dependence on seafood imports. Currently, the U.S. imports over 80 percent of the seafood consumed in the country, and the annual U.S. seafood trade deficit is at an all time high of over $9 billion.

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Alternatives:

The Council's Aquaculture FMP includes 10 actions, each with an associated range of alternatives. These actions and alternatives are collectively intended to establish a regional permitting process for offshore aquaculture. Management actions in the FMP include: 1) Aquaculture permit requirements, eligibility, and transferability; 2) duration aquaculture permits are effective; 3) aquaculture application requirements, operational requirements, and restrictions; 4) species allowed for aquaculture; 5) allowable aquaculture systems; 6) marine aquaculture siting requirements and conditions; 7) restricted access zones for aquaculture facilities; 8) recordkeeping and reporting requirements; 9) biological reference points and status determination criteria; and 10) framework procedures for modifying biological reference points and regulatory measures.

Anticipated Cost and Benefits:

Environmental and social/economic costs and benefits are described in detail in the Council's Aquaculture FMP. Potential benefits include: establishing a rigorous review process for reviewing and approving/denying aquaculture permits, increasing optimum yield by supplementing the harvest of wild domestic fisheries with cultured products, and reducing the nation's dependence on imported seafood. Anticipated costs include: increased administration and oversight of an aquaculture permitting process and potential negative environmental impacts to wild marine resources. Approval of an aquaculture permitting system may also benefit fishing communities by creating new jobs or impact fishing communities if cultured products economically displace domestic seafood.

Risks:

National offshore aquaculture legislation has also been previously proposed by the Administration. This action may reduce the need for uniform national legislation and allow aquaculture regulations to vary by region.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	
NPRM Comment Period End	12/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOC—NOAA

21. CERTIFICATION OF NATIONS WHOSE FISHING VESSELS ARE ENGAGED IN IUU FISHING OR BYCATCH OF PROTECTED LIVING MARINE RESOURCES

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq; 16 USC 1826d to 1826k

CFR Citation:

50 CFR 300

Legal Deadline:

None

Abstract:

The National Marine Fisheries Service is establishing a process of

identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing or bycatch of protected living marine resources would be identified in a biennial report to Congress, as required under Section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels, as required under Section 403 of MSRA.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) proposes regulations to set forth identification and certification procedures for nations whose vessels engage in illegal, unregulated, and unreported (IUU) fishing activities or bycatch of protected living marine resources pursuant to the High Seas Fishing Moratorium Protection Act (Moratorium Protection Act). Specifically, the Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those foreign nations whose vessels are engaged in IUU fishing or fishing that results in bycatch of protected living marine resources. The Moratorium Protection Act also requires the establishment of procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address IUU fishing or bycatch of protected living marine resources by fishing vessels of that nation. Based upon the outcome of the certification procedures developed in this rulemaking, nations could be subject to import prohibitions on certain fisheries products and other measures under the authority provided in the High Seas Driftnet Fisheries Enforcement Act if they are not positively certified by the Secretary of Commerce.

Summary of Legal Basis:

NOAA is proposing these regulations pursuant to its rulemaking authority under sections 609 and 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j to 1826k), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

Alternatives:

NMFS is currently in the process of developing alternatives, and will provide this information at a later date.

Anticipated Cost and Benefits:

Because this rule is under development, NMFS does not currently have estimates of the amount of product that is imported into the United States from other nations whose vessels are engaged in illegal, unreported, and unregulated (IUU) fishing or bycatch of protected living marine resources. Therefore, quantification of the economic impacts of this rulemaking is not possible at this time. This rulemaking does not meet the $100 million annual economic impact threshold and thus has not been determined to be economically significant under EO 12866.

Risks:

The risks associated with not pursuing the proposed rulemaking include allowing IUU fishing activities and/or bycatch of protected living marine resources by foreign vessels to continue without an effective tool to aid in combating such activities.

Timetable:

Action	Date	FR Cite
ANPRM	06/11/07	72 FR 32052
ANPRM Comment Period End	07/26/07	
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOC—NOAA

22. MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT PROVISIONS AND INTERJURISDICTIONAL FISHERIES ACT DISASTER ASSISTANCE PROGRAMS

Priority:

Other Significant

Legal Authority:

16 USC 1861; 16 USC 4107

CFR Citation:

50 CFR 600

Legal Deadline:

None

Abstract:

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, and the Interjurisdicational Fisheries Act (IFA), the National Marine Fisheries Service (NMFS) proposes regulations to govern the application for and determination of commercial fishery failures as a basis for acquiring potential disaster assistance. The regulations would establish definitions, characteristics of commercial fishery failures and fishery resource disasters, requirements for initiating a review by NMFS, and the administrative process it will follow in processing such applications. The intended effect of these procedures and requirements is to clarify the fishery disaster assistance provisions of the MSA and the IFA through rulemaking and thereby facilitate the processing of requests.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) intends to propose this rule to govern the requests for determinations of fishery resource disasters as a basis for acquiring potential disaster assistance. The regulations would establish definitions, and characteristics of commercial fishery failures, fishery resource disasters, serious disruptions affecting future production, and harm incurred by fishermen, as well as requirements for initiating a review by NMFS, and the administrative process it will follow in processing such applications. The intended result of these procedures and requirements is to clarify and interpret the fishery disaster assistance provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Interjurisdictional

Fisheries Act (IFA) through rulemaking and thereby ensure consistency and facilitate the processing of requests.

Summary of Legal Basis:

NMFS is proposing these regulations pursuant to its rulemaking authority under sections 312(a) or 315 of the MSA (16 U.S.C. 1861, 1864), as amended, and sections 308(b) or 308(d) of the IFA (16 U.S.C. 4107).

Alternatives:

Because this rule is presently in the beginning stages of development, no alternatives have been formulated or analyzed at this time.

Anticipated Cost and Benefits:

Because this rule is presently in the beginning stages of development, no analysis has been completed at this time to assess the amount that would be saved or imposed as a result of this rule. However, this rule does not meet the $100 million annual economic impact threshold and thus has not been determined to be economically significant under EO 12866.

Risks:

Without this rulemaking, there is a risk that disaster determinations can be made on an ad hoc basis, without regard to any standardized guidelines or procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	
NPRM Comment Period	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State, Tribal

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DOC—NOAA

23. ● PROVIDE GUIDANCE FOR THE LIMITED ACCESS PRIVILEGE PROGRAM PROVISIONS OF THE MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT OF 2006

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq

CFR Citation:

50 CFR 600

Legal Deadline:

None

Abstract:

This rule will provide regions with interpretive guidance on the use of Limited Access Privilege Programs as fishery management tools. The guidance is intended to assist the fishery management councils and the National Marine Fisheries Service regional offices in developing and implementing LAPPs.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) intends to propose this rulemaking to create national guidance for the new Limited Access Privilege Program (LAPP) provisions found in section 303(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). The LAPP provisions provide new incentive-based options for fisheries management. NMFS has received numerous requests from constituent groups, Regional Fishery Management Councils (Councils), and Congress to develop such guidance. This guidance will assist Councils in developing LAPPs with full consideration of national perspectives and concerns.

Summary of Legal Basis:

NMFS is proposing these regulations pursuant to its rulemaking authority under the MSA. 5 U.S.C. 561, 16 U.S.C. 773, et seq., and 16 U.S.C. 1801 et seq.

Alternatives:

Because this rule is presently in the beginning stages of development, no alternatives have been formulated or analyzed at this time.

Anticipated Cost and Benefits:

Because this rule is presently in the beginning stages of development, no analysis has been completed at this time to asses the amount that would be saved or imposed as a result of this rule. However, this rule does not meet the $100 million annual economic impact threshold and thus has not been determined to be economically significant under EO 12866.

Risks:

Without this rulemaking, there is a risk that new LAPPs will be developed that do not meet the requirements of section 303(A), and therefore may detrimentally impact the fish stocks that they are designed to manage, the fisheries, or the human environment. Properly designed LAPPs mitigate environmental risk, ensure fair and equitable initial allocations, prevent excessive shares, protect the basic cultural and social framework of the fisheries and fishing communities, and contribute to public safety and economic prosperity.

Timetable:

Action	Date	FR Cite
NPRM	04/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DOC—NOAA

FINAL RULE STAGE

24. MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT (MSRA) ENVIRONMENTAL REVIEW PROCEDURE

Priority:

Other Significant

Legal Authority:

16 USC 1801

CFR Citation:

50 CFR 700

Legal Deadline:

NPRM, Statutory, July 11, 2007.

Final, Statutory, January 11, 2008.

Abstract:

Section 107 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) (Pub. L. 109-479) requires NOAA Fisheries to revise and update agency procedures for complying with the National Environmental Policy Act (NEPA) in context of fishery management actions. It further requires that NOAA Fisheries consult with the Council on Environmental Quality (CEQ) and the Regional Fishery Management Councils (Councils), and involve the public in the development of the revised procedures. The MSRA provides that the resulting procedures will be the sole environmental impact assessment procedure for fishery management actions, and that they must conform to the time lines for review and approval of fishery management plans and plan amendments; and integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

NOAA Fisheries is currently consulting with the councils, the Public and CEQ to develop a proposed procedure.

Statement of Need:

In December 2006, the U.S. Congress amended the Magnuson-Stevens Act, which was signed into law by the President on January 12, 2007 (Public Law 109-479). Section 107 requires NMFS to better integrate and more closely align applicable environmental analytical procedures with the Magnuson Stevens Act's fishery management process.

Congress directed the Secretary, acting through NMFS, and in consultation with the regional fishery management councils (Councils) and CEQ, to revise and update agency procedures to comply with NEPA. Congress stated that the procedures shall:

(A) conform to the [Magnuson-Stevens Act's] time lines for review and approval of fishery management plans and amendments under this section; and (B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork and effectively involving the public. 16 U.S.C. 1854(i)(1)(A) and (B).

Moreover, Congress stated that the revised and updated procedures are to be the sole environmental impact assessment procedure for fishery management actions (e.g., FMPs, FMP amendments, or other actions taken or approved pursuant to the Magnuson Stevens Act) used by the Councils or NMFS. 16 U.S.C. 1854(i)(2). Finally, Congress authorized and directed NMFS, in cooperation with CEQ and the Councils, to involve the affected public in the development of the revised procedures.

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Alternatives:

In the process of developing the proposed rule NMFS identified alternatives for possible fisheries-specific improvements in several general categories: form of NEPA documentation; roles and responsibilities of Councils and NMFS in the NEPA process; timing and flow of process; and other elements (experimental fishing, emergencies, page limits, and the range of alternatives to be analyzed). The NMFS preferred alternative as expressed in the proposed rule was developed after serious consideration of input received through extensive internal and external outreach. NMFS also considered the ''No Action'' alternative. Under the ''no action'' alternative, NMFS would not issue a final rule and the environmental review process for Magnuson-Stevens Act actions would proceed under the status quo.

Anticipated Cost and Benefits:

The modifications to the NEPA procedures for fishery management actions are intended to allow for more efficient response to fishery management needs while ensuring continued compliance with NEPA requirements. Because these provisions would create a new approach to NEPA compliance, litigation challenges would be likely as implementation progressed. Additional costs may also be incurred, for example, where the conflict of interest provisions require use of a more expensive contractor. However, it is impossible to predict such additional costs, if any.

Risks:

The risk of not taking action would be that NMFS would not meet its statutory mandate under the Magnuson-Stevens Act.

Timetable:

Action	Date	FR Cite
NPRM	05/14/08	73 FR 27997
NPRM Comment Period End	06/13/08	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

None

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DOC—NOAA

25. GUIDANCE FOR ANNUAL CATCH LIMITS AND ACCOUNTABILITY MEASURES TO END OVERFISHING

Priority:

Other Significant

Legal Authority:

16 USC 1853

CFR Citation:

50 CFR 600.310

Legal Deadline:

None

Abstract:

Section 104(b) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), requires that in fishing year 2010, for fisheries determined by the Secretary to be subject to overfishing, and in fishing year 2011, for all other fisheries, that fishery management plans establish annual catch limits (ACLs), including regulations and annual specifications, at a level such that overfishing does not occur in a fishery, including measures to ensure accountability.

The National Marine Fisheries Service intends to prepare guidance on how to establish adequate ACLs and AMs by revising its National Standard 1 (NS1) guidelines at 50 CFR 600.310. This is because NS1 of the Magnuson-Stevens Act states that ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.''

Statement of Need:

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) (Pub. L. 109-479), requires that ''any fishery management plan which is prepared by any [Fishery Management] Council, or by the Secretary [of Commerce], with respect to any fishery, shall-establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability'' (see MSA section 303(a)(15)). NMFS, on behalf of the Secretary, has decided to revise the National Standard 1 (NS1) guidelines to include guidance about how to use annual catch limits (ACLs) and accountability measures (AMs) to end and prevent overfishing. NMFS believes that revisions to the NS1 guidelines will assist the Councils and the Secretary in addressing new MSA requirements, ensure greater consistency in approaches to ending overfishing and rebuilding stocks, increase efficiency in reviewing actions and tracking annual management performance, and improve communication between NMFS and the Councils.

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Alternatives:

No Action. Do not revise the current NS1 guidelines to include guidance for ACLs and AMs. Councils are statutorily required to implement ACLs and AMs. Without guidelines, Councils may develop and submit fishery management plan (FMP) amendments that the Secretary may determine to be inadequate. Secretarial disapproval of an FMP amendment would be followed by a request that the Council modify and resubmit their amendment, making it unlikely that the ACLs and AMs can be implemented by the first statutory deadline of 2010, for stocks undergoing overfishing, and 2011, for all other stocks.

Preferred Action. Revise the current NS1 guidelines to include guidance for ACLs and AMs. Councils and the Secretary are more likely to prepare adequate ACLs and AMs for ending and preventing overfishing, if NMFS provides guidance through the NS1 guidelines, than by relying on statutory language alone. Secretarial approval of FMP amendments that contain adequate ACLs and AMs for ending overfishing is more likely if NMFS provides new guidance on NS1, ACLs and AMs. Also, if NMFS provides such guidance, it is more likely that FMPs will have ACLs and AMs in place for stocks undergoing overfishing by the first statutory deadline of 2010, and the second statutory deadline of 2011, for all other stocks.

Anticipated Cost and Benefits:

There are no economic, social or environmental impacts of the proposed guideline revisions themselves. When the Councils and/or the Secretary revise FMPs per the guidelines, they will develop specific management actions and evaluate the economic, social, and environmental impacts of those measures at that time.

Risks:

The National Marine Fisheries Service intends to revise the NS1 guidelines to combine requirements for ACLs and AMs, and new rebuilding plan provisions with current NS1 guidelines that cover topics such as maximum sustainable yield, optimum yield, and status determination criteria for overfishing and overfished definitions. NMFS believes that by combining new guidance about how to use ACLs and AMs to end or prevent overfishing, along with the various principles already contained in the MSA such as overfishing, rebuilding overfished stocks, and achieving optimum yield, the Councils and stakeholders of fisheries would experience less confusion than they would in the absence of new guidelines.

Timetable:

Action	Date	FR Cite
NPRM	06/09/08	73 FR 32526
Notice	06/26/08	73 FR 36300
Comment Period End	08/13/08	73 FR 47125
NPRM Comment Period End	09/08/08	
Comment Period Extended	09/22/08	
Final Action	03/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOC—NOAA

26. ● TAKING AND IMPORTING MARINE MAMMALS; U.S. NAVY TRAINING IN THE HAWAII RANGE COMPLEX

Priority:

Other Significant

Legal Authority:

16 USC 1361 et seq

CFR Citation:

50 CFR 216

Legal Deadline:

None

Abstract:

The National Marine Fisheries Service (NMFS) is proposing the issuance of regulations and subsequent Letters of Authorization (LOAs) for the Navy to take individuals of 24 species of marine mammals incidental to upcoming Navy training activities to be conducted within the Hawaii Range Complex, which covers 235,000 nm2 around the Main Hawaiian Islands, over the course of 5 years. These training activities are classified as military readiness activities. These training activities may incidentally take (by Level B Harassment) marine mammals present within the HRC by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or to underwater detonations at levels that NMFS associates with the take of marine mammals. Further, though we do not expect it to occur, NMFS proposes to authorize the Navy to take, by injury or mortality, up to 10 individuals each of 10 species over the course of the 5-year period (bottlenose dolphin, Kogia spp., melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, and Cuvier's, Longman's, and Blainville's beaked whale). Because of the public interest and likelihood of litigation, this application and proposal is considered controversial.

Statement of Need:

NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted within the Hawaii Range Complex (HRC) for the period of December 2008 through December 2013. These training activities are classified as military readiness activities. The Navy states that these training activities may incidentally take marine mammals present within the HRC by exposing them to sound from mid-frequency or high frequency active sonar or to underwater detonations at levels that NMFS associates with the take of marine mammals. The final regulations would authorize these activities and govern the take of marine mammals.

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Title 10, U.S. Code (U.S.C.) section 5062 directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas and airspace where they can develop and maintain skills for wartime missions and conduct research, development, test, and evaluation of naval weapons systems. The HRC, where the Navy has, for more than 40 years, routinely conducted training and major exercises in the waters around the Hawaiian Islands, is a critical part of the Navy's mission, especially as it relates to training. Centrally located in the Pacific Ocean between the west coast of the United States and the naval stations in the western Pacific, and surrounding the most isolated islands in the world, the HRC has the infrastructure (i.e., extensive existing range assets and training capabilities) to support a large number of forces in a location both remote and under U.S. control. The range surrounds the major homeport of Naval Station Pearl Harbor, enabling re-supply and repairs to submarines and surface ships alike. The isolation of the range offers an invaluable facility on which to conduct missile testing and training. Able to link with the U.S. Army's Pohakuloa Training Area, as well as U.S. Air Force and U.S. Marine Corps bases where aircraft basing and amphibious training may occur, the HRC provides a superior joint training environment for all the U.S. armed services and advanced missile testing capability.

Summary of Legal Basis:

Marine Mammal Protection Act, 16 U.S.C. 1371(a)(5)(A).

Alternatives:

A number of alternatives were analyzed in the Draft Environmental Impact Statement prepared for this action, published in April 2007, and available at http://www.nmfs.noaa.gov/pr/permits/incidental.htm

Anticipated Cost and Benefits:

Because the Navy is the only entity that will be directly affected by this rulemaking, NMFS did not perform an analysis of the anticipated costs and benefits.

Risks:

This rule addresses the risk of take incidental to Navy training activities. The rule analyzes the risk of such take.

Timetable:

Action	Date	FR Cite
NPRM	06/23/08	73 FR 35510
NPRM Comment Period End	07/23/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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DOC—NOAA

27. ● TAKING AND IMPORTING MARINE MAMMALS; U.S. NAVY'S ATLANTIC FLEET ACTIVE SONAR TRAINING (AFAST)

Priority:

Other Significant

Legal Authority:

16 USC 1361

CFR Citation:

50 CFR 216

Legal Deadline:

None

Abstract:

In February 2008, the National Marine Fisheries Service (NMFS) received an application from the Navy for MMPA Letters of Authorization (LOAs) to take individuals of 39 species of marine mammals incidental to Navy Atlantic Fleet Active Sonar Training (AFAST) to be conducted off the Atlantic Coast of the U.S. and in the Gulf of Mexico over the course of 5 years. These military readiness training activities may incidentally take marine mammals

present in the area by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or to underwater explosive detonations that may take marine mammals. Further, though we do not anticipate it to occur, the Navy requests authorization to take, by injury or mortality, up to 10 total beaked whales over the course of 5 years (any combination of six species).

NMFS participated as a cooperating agency on the Environmental Impact Statement (EIS) analyzing the effects on the environment from the Navy's proposed activity. Take of marine mammals will be minimized through: (1) Powerdown and shutdown of sonar when marine mammals are detected within ranges where the received sound level is likely to result in temporary threshold shift (TTS) or injury, (2) the use of exclusion zones that avoid exposing marine mammals to explosives likely to result in injury or death of marine mammals, and (3) the implementation of a Stranding Response Plan for the HRC, which includes a shutdown provision in and requires NMFS and the Navy develop an MOA to allow the Navy to assist NMFS in stranding response/investigation through in-kind services. NMFS is still working with the Navy to determine if additional protective measures are appropriate. Additionally, NMFS and the Navy have worked to develop a robust monitoring plan to help further determine the effects that MFAS/HFAS have on marine mammals.

Statement of Need:

NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted off the U.S. Atlantic Coast and in the Gulf of Mexico for the period of January 2009 through January 2014. The final regulations would authorize these activities and govern the take of marine mammals.

These training activities are classified as military readiness activities. The Navy states, and NMFS concurs, that these training activities may incidentally take marine mammals present within the AFAST Study Area by exposing them to sound from mid-frequency or high frequency active sonar or to employment of the improved extended echo ranging (IEER) system. The IEER consists of an explosive source sonobuoy (AN/SSQ-110A) and an air deployable active receiver (ADAR) sonobuoy (AN/SSQ-101).

The purpose of the Navy's proposed action is to provide mid- and high-frequency active sonar and IEER system training for U.S. Navy Atlantic Fleet ship, submarine, and aircraft crews, as well as to conduct research, development, testing, and evaluation (RDT&E) activities to support the requirements of the Fleet Readiness Training Plan (FRTP) and stay proficient in anti-submarine warfare and mine warfare skills. The FRTP is the Navy's training cycle that requires naval forces to build up in preparation for operational deployment and to maintain a high level of proficiency and readiness while deployed. All phases of the FRTP training cycle are needed to meet Title 10 requirements. Specifically, the Navy's need for training and RDT&E is found in Title 10 of the United States Code (U.S.C.), Section 5062 (10 U.S.C. 5062). Title 10 U.S.C. 5062 requires the Navy to be ''organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea.''

Summary of Legal Basis:

Marine Mammal Protection Act, 16 U.S.C. 1371(a)(5)(A).

Alternatives:

A number of alternatives were analyzed in the Draft Environmental Impact Statement prepared for this action, published on February 15, 2008, and available at http://www.nmfs.noaa.gov/pr/permits/incidental.htm

Anticipated Cost and Benefits:

Because the Navy is the only entity that will be directly affected by this rulemaking, NMFS did not perform an analysis of the anticipated costs and benefits.

Risks:

This rule addresses the risk of take incidental to Navy training activities. The rule analyzes the risk of such take.

Timetable:

Action	Date	FR Cite
NPRM	10/14/08	73 FR 60754
NPRM Comment Period End	11/13/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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DOC—NOAA

28. ● TAKING AND IMPORTING MARINE MAMMALS; U.S. NAVY TRAINING IN THE SOUTHERN CALIFORNIA RANGE COMPLEX (SOCAL)

Priority:

Other Significant

Legal Authority:

16 USC 1361

CFR Citation:

50 CFR 216

Legal Deadline:

None

Abstract:

On April 1, 2008, NMFS received an application from the Navy requesting authorization for the take of individuals of 37 species of marine mammals incidental to upcoming Navy training activities, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Southern California Range Complex, which extends southwest approximately 600 nm in the general shape of a 200-nm wide rectangle (see the Navy's application), over the course of 5 years. These training activities are classified as military readiness activities. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within SOCAL by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or underwater detonations. The Navy requests authorization to take individuals of 37 species of marine mammals by Level B Harassment. Further, though they do not anticipate it to occur, the Navy requests authorization to take, by injury or mortality, up to 10 beaked whales over the course of the 5-yr regulations.

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' NMFS reviewed the proposed SOCAL activities and the proposed SOCAL mitigation measures presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals. NMFS determined that further discussion was necessary regarding the potential relationship between the operation of MFAS/HFAS and marine mammal strandings. NMFS worked with the Navy to identify additional practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the activity.

Statement of Need:

NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted in the Southern California Range Complex (SOCAL), which extends south and southwest off the southern California coast, for the period of January 2009 through January 2014. The final regulations would authorize these activities and govern the take of marine mammals.

These training activities are classified as military readiness activities. The Navy states, and NMFS concurs, that these military readiness activities may incidentally take marine mammals present within SOCAL by exposing them to sound from mid-frequency or high frequency active sonar or underwater detonations.

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Title 10, U.S. Code (U.S.C.) 5062 directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas and airspace where they can develop and maintain skills for wartime missions and conduct research, development, testing, and evaluation (RDT&E) of naval weapons systems.

The Navy proposes to implement actions within the SOCAL Range Complex to: Increase training and RDT&E operations from current levels as necessary to support the Navy-wide training plan, known as the Fleet Readiness Training Plan (FRTP); accommodate mission requirements associated with force structure changes and introduction of new weapons and systems to the Fleet; and implement enhanced range complex capabilities.

Summary of Legal Basis:

Marine Mammal Protection Act, 16 U.S.C. 1371(a)(5)(A).

Alternatives:

A number of alternatives were analyzed in the Draft Environmental Impact Statement prepared for this action, published in April 2008, and available at http://www.nmfs.noaa.gov/pr/permits/incidental.htm

Anticipated Cost and Benefits:

Because the Navy is the only entity that will be directly affected by this rulemaking, NMFS did not perform an analysis of the anticipated costs and benefits.

Risks:

This rule addresses the risk of take incidental to Navy training activities. The rule analyzes the risk of such take.

Timetable:

Action	Date	FR Cite
NPRM	10/14/08	73 FR 60836
NPRM Comment Period End	11/13/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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BILLING CODE 3510–BW–S

DEPARTMENT OF DEFENSE (DOD)

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal Department consisting of three Military Departments (Army, Navy, and Air Force), nine Unified Combatant Commands, eighteen Defense Agencies, and twelve DoD Field Activities. It has 1,385,122 military personnel and 692,176 civilians assigned as of June 30, 2008, and over 200 large and medium installations in the continental United States, U. S. territories, and foreign countries. The overall size, composition, and dispersion of DoD, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order 12866 ''Regulatory Planning and Review'' of September 30, 1993.

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

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

Overall Priorities

The Department needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done in DoD while reacting to the contradictory pressures of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866.

Administration Priorities:

1. Rulemakings that Support the Administration's Regulation Agenda to Streamline Regulations and Reporting Requirements

The Department plans to:

- Simplify Defense Federal Acquisition Regulation Supplement (DFARS) policy relating to acquisition of Government property, consistent with the recent significant revisions to the Federal Acquisition Regulation (FAR) part 45.
- Implement in the FAR and DFARS the waiver of certain statutory requirements when acquiring commercially available off-the-shelf items.
- Simplify and clarify the DFARS coverage of multiyear acquisitions.
- Simplify and clarify the DFARS coverage of patents, data, and copyrights, dramatically reducing the amount of regulatory text and the number of required clauses.
- Improve the contract closeout process.

2. Regulations of Particular Interest to Small Business

Of interest to Small Businesses are regulations to:

- Revise the FAR to clarify the relationship among small business programs.
- Revise the FAR to implement changes in the HUBZone Program, in accordance with Small Business Administration regulations.
- Add a procurement goal for Native Hawaiian-serving institutions and Alaska Native-serving institutions.

3. Regulations with International Effects or Interest

Of international effect or interest are regulations to:

- Provide authority to limit competition in the acquisition of products or services, other than small arms, acquired in support of operations in Iraq or Afghanistan.
- Revise the DFARS to implement the pending Defense Procurement Trade Cooperation Treaties with the United Kingdom and Australia, upon ratification.
- Remove from the FAR the prohibition of imports from North Korea.
- Revise the FAR and DFARS list of least developed countries that are designated countries under the Trade Agreements Act to add Liberia and remove Cape Verde.

4. Suggestions From the Public for Reform-Status of DoD Items

Rulemaking Actions in Response to Public Nominations

The Army Corps of Engineers has not undertaken any rulemaking actions in response to the public nominations submitted to the Office of Management and Budget in 2001, 2002, or 2004. Those nominations were discussed in:

- *Making Sense of Regulation: 2001 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities.*
- *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities.*
- *Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.*

Specific DoD Priorities:

For this Regulatory Plan, there are four specific DoD priorities, all of which reflect the established regulatory principles. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulations that incorporate the provisions of the President's priorities and objectives under the Executive Order.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning civil functions of the U.S. Army Corps of Engineers, acquisition, health affairs, and the National Security Personnel System.

1. Regulatory Program of the U.S. Army Corps of Engineers

Army Regulatory Program's Compliance with the National Historic Preservation Act

In 1990, the Army Corps of Engineers published as appendix C of 33 CFR part 325, a rule that governs compliance with the National Historic Preservation Act (NHPA) for the Army's Regulatory Program. Over the years, there have been substantial changes in policy, and the NHPA was amended in 1992, leading to the publication in December 2000 of new implementing regulations at 36 CFR part 800, issued by the Advisory Council on Historic Preservation (ACHP). Those regulations were amended on July 6, 2004. The ACHP's regulations allow Federal agencies to utilize alternate procedures in lieu of the regulations at 36 CFR part 800. In 2005 and 2007, the Corps Headquarters issued supplemental guidance on compliance with the NHPA while efforts were underway to revise or replace Appendix C. To solicit public comment on the appropriate mechanism for revising the Army Regulatory Program's process for considering effects to historic properties resulting from activities authorized by DA permits, the Army Corps of Engineers published an Advance Notice of Proposed Rulemaking (ANPRM) to obtain the views of interested parties. After reviewing the comments received in response to the ANPRM, the Army Corps of Engineers held facilitated stakeholder meetings to determine the best course of action for revising its procedures to comply with the requirements of Section 106 of the National Historic Preservation Act. The Corps also held additional focus group meetings facilitated by our eight division offices to gather input from federally recognized tribes on their recommendations concerning how government-to-government consultation could occur. After reviewing those recommendations, the Corps developed a consultation plan, and is currently in the process of conducting government-to-government consultation with federally recognized tribes. Also, our division offices have solicited information on topics that any new alternative procedure should address.

2. Defense Procurement and Acquisition Policy

The Department of Defense continuously reviews the DFARS and continues to lead Government efforts to:

- Establish a new restriction on acquisition of specialty metals under 10 U.S.C. 2533b, as amended by the FY08 National Defense Authorization Act. Provides exemption from domestic source requirements for all electronics; commercially available off-the-shelf items, except high performance magnets and fasteners; for fasteners and commercial derivative military articles when using market basket approach; minimal amounts of specialty metals; and, national security requirements.
- Revise the FAR and the DFARS to require contractor personnel who are authorized to accompany the U.S. Armed Forces deployed outside the United States or are performing outside the United States in a theater of operations during contingency or certain other operations, or at a diplomatic or consular mission to report human rights violations, as well as kidnapping and sexual assault violations. Implement the DoD Law of War Program, requiring contractors to be trained in the Law of War and to report violations.
- Revise the FAR to make requirements for Government contractor internal control systems more similar of U.S. Sentencing Guidelines; mandate timely disclosure of civil or criminal wrongdoing related to the award, performance, or closeout of a Government contract or subcontract thereunder; mandate full cooperation with Government investigators; make failure to timely disclose significant overpayments or violations of civil or criminal wrongdoing a cause for suspension/debarment.
- Revise the FAR to address service contractor employee personal conflicts of interest and organizational conflicts of interest and limit contractor access to information.
- Revise the FAR to require contractors to verify, through the use of the E-Verify System, that certain of their employees are eligible to work in the United States.
- Enhance competition by:

— Limiting the length of contracts awarded non-competitively under ''unusual and compelling urgency'' circumstances to the minimum contract period necessary to meet requirements, not to exceed one year, unless approved by the head of the contracting activity.

— Requiring publication of notices on FedBizOpps of all sole source task or delivery orders in excess of the simplified acquisition thresholds that are placed against multiple award contracts or multiple award blanket purchase agreements.

— Requiring post-award debriefings be provided, as requested, to disappointed offerors on task and delivery orders in excess of $5 million (including options).

— Requiring public disclosure of justification and approval documents for noncompetitive contracts.

- Providing enhanced competition for task and delivery order contracts and additional market research before awarding a task or delivery order in excess of the simplified acquisition threshold.

3. Health Affairs, Department of Defense

The Department of Defense is able to meet its dual mission of wartime readiness and peacetime health care by operating an extensive network of medical treatment facilities. This network includes DoD's own military treatment facilities supplemented by civilian health care providers, facilities, and services under contract to DoD through the TRICARE program. TRICARE is a major health care program designed to improve the management and integration of DoD's health care delivery system. The program's goal is to increase access to health care services, improve health care quality, and control health care costs.

The TRICARE Management Activity plans to submit the following rules:

- Final rule on CHAMPUS/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals. This rule implements changes directed by the enactment of National Defense Authorization Act for Fiscal Year 2008 (NDAA-08), Pub. L. 110-181, to the extent necessary to ensure pharmaceuticals, paid for by the DoD that are provided by pharmacies under the TRICARE Retail Pharmacy Program (TRRx) to eligible beneficiaries, are subject to the pricing standards under section 8126 of title 38 United States Code. This is an economically significant rule. The proposed rule was published July 25, 2008 (73 FR 43394). The comment period ends September 23, 2008.
- Proposed rule on CHAMPUS/TRICARE: Pharmacy Benefits Program. This rule implements several changes enacted by the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA-07), Pub. L. 109-364, and accompanying recommendations of the Conference Committee, set forth in H. Conf. Rept. 109-702.

Specifically, this rule recommends changes to adopt state-of-the-art pharmacy benefit management practices to encourage greater use of the TRICARE Mail Order Pharmacy (TMOP) Program, generic drugs, formulary drugs, and over-the-counter (OTC) drugs. This rule will not affect retail pharmacy copayment amounts (currently under a statutory cap). The proposed rule should publish before the end of 2008.

- Final rule on TRICARE: Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage. This rule implements section 1097c of title 10, United States Code. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible so long as the plan treats all employees the same and does not illegally take TRICARE eligibility into account. This is an economically significant rule. The proposed rule was published March 28, 2008 (73 FR 16612). The comment period ended May 27, 2008.
- Final rule on TRICARE: Outpatient Prospective Payment System (OPPS). The rule implements a prospective payment system for hospital outpatient services similar to that furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. The rule also recognizes applicable statutory requirements and changes arising from Medicare's continuing experience with its system, including certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. While TRICARE intends to remain as true as possible to Medicare's basic OPPS methodology (i.e., adoption and updating of the Medicare data elements used in calculating the prospective payment amounts), there will be some significant deviations required to accommodate the uniqueness of the TRICARE program. These deviations have been designed to accommodate existing TRICARE benefit structure and claims processing procedures implemented under the TRICARE Next Generation Contracts (T-NEX) while at the same time eliminating any undue financial burden to TRICARE Prime, Extra and Standard beneficiary populations. The proposed rule was published April 1, 2008 (73 FR 17271). The comment period ended June 2, 2008.

4. National Security Personnel System, Department of Defense

On November 1, 2005 (70 FR 66115-66164), the Department of Defense and the Office of Personnel Management (OPM) issued final regulations to establish the National Security Personnel System (NSPS), a human resources management system, within DoD, as authorized by the National Defense Authorization Act (Pub. L. 108-136, November 24, 2003). These regulations govern basic pay, staffing, classification, performance management, labor relations, adverse actions, and employee appeals. These regulations are designed to ensure that the DoD's human resources management and labor relations systems align with its critical mission requirements and protect the civil service rights of its employees.

Subsequent legislation in the National Defense Authorization Act (Pub. L. 110-181, January 28, 2008) require revision of the NSPS regulation. DoD and OPM published a proposed rule on May 22, 2008 (73 FR 29882-29927). The period for public comment ended on June 23, 2008. The final rule should be published by the end of 2008.

DOD—Office of Assistant Secretary for Health Affairs (DODOASHA)

PROPOSED RULE STAGE

29. ● CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); TRICARE PHARMACY BENEFITS PROGRAM

Priority:

Other Significant

Legal Authority:

5 USC 301; 10 USC ch 55

CFR Citation:

32 CFR 199

Legal Deadline:

None

Abstract:

This rule implements several changes enacted by the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA-07), Pub. L. 109-364, and accompanying recommendations of the Conference Committee, set forth in H. Conf. Rept. 109-702. Specifically, this rule recommends changes to adopt state-of-the-art pharmacy benefit management practices to encourage greater use of the TRICARE Mail Order Pharmacy (TMOP) Program, generic drugs, formulary drugs, and over-the-counter (OTC) drugs. The rule would not affect retail pharmacy copayment amounts (currently under a statutory cap).

Statement of Need:

This rule implements congressionally directed changes to adopt state-of-the art pharmacy benefit management practices to encourage greater use of the TRICARE Mail Order Pharmacy Program (TMOP), generic drugs, formulary drugs, and over-the-counter drugs.

Summary of Legal Basis:

This rule implements several changes enacted by the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364, and accompanying recommendations of the Conference Committee, set forth in H. Conf. Rept. 109-702. Legal authority includes 10 U.S.C. § 1074g.

Alternatives:

The Department is initiating the changes consistent with Congressional direction and the recommendations from the Task Force on the Future of Military Health Care. Current statutory restrictions, including a cap on retail pharmacy co-payments, limit available alternatives.

Anticipated Cost and Benefits:

The rule is part of an overall strategy to encourage the use of value-based pharmaceutical agents and cost-effective dispensing venues. Allowing beneficiaries to receive non-formulary pharmaceutical agents through only the TMOP allows the Department to reinforce the encouragement to use more cost-effective pharmaceutical agents. The overall effect of the rule is expected to be a degree of moderation in the rapid growth of the TRICARE Pharmacy Benefits Program.

Risks:

The primary risk this rule seeks to address is what the GAO recently called ''the fiscal sustainability of'' DoD's pharmacy benefits program. Pharmacy benefits, particularly retail pharmacy benefits, represent the segment of the TRICARE program that has experienced the most uncontrolled increase in costs. The GAO said retail pharmacy costs from FY-2000 to FY-

2006 rose ''almost ninefold from $455 million to $3.9 billion.'' The rule will address this problem, to an extent, by encouraging greater use of more cost-effective drugs, particularly formulary drugs, generic drugs, and, when appropriate, over-the-counter drugs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

The TRICARE Retail Pharmacy rule is now being reported as RIN 0720-AB22.

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Related RIN: Previously reported as 0720–AB22

RIN: 0720–AB27

DOD—DODOASHA

FINAL RULE STAGE

30. TRICARE: RELATIONSHIP BETWEEN THE TRICARE PROGRAM AND EMPLOYER–SPONSORED GROUP HEALTH COVERAGE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 10 USC ch 55

CFR Citation:

32 CFR 199

Legal Deadline:

Other, Statutory, January 8, 2008.

John Warner National Defense Authorization Act for Fiscal Year 2007 directed the Secretary of Defense to report to the House and Senate Armed Services committees on the treatment of cafeteria plans and non-TRICARE exclusive employer-provided incentives under the Department's implementation of section 707 of the Act regarding employer-sponsored group health care plans.

Abstract:

This rule implements section 1097c of title 10, United States Code. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible so long as the plan treats all employees the same and does not illegally take TRICARE eligibility into account.

Statement of Need:

Section 707 of the 2007 National Defense Authorization Act, directed the Department of Defense to establish section 1097c for addition to Chapter 55 of title 10, Untied States Code. Section 1097c will act to prohibit employers from offering incentives to TRICARE-eligible employees not to enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP). Many employers, including state and local governments, have begun to offer their employees who are TRICARE eligible a TRICARE Supplement as an incentive not to enroll in the employer's primary GHP. These actions shift thousands of dollars of annual health costs per employee to the Defense Department, draining resources from higher national security priorities. This is what 10 U.S.C. 1097c is designed to stop.

Summary of Legal Basis:

The National Defense Authorization Act (NDAA) for Fiscal Year 2007, directed the Secretary of Defense to report to the House and Senate Armed Services committees on the treatment of cafeteria plans and non-TRICARE exclusive employer-provided incentives under the Department's implementation of section 707 of the Act regarding employer sponsored group health care plans. As enacted, section 707 added to title 10, United States Code, section 1097c, which extends to TRICARE the same prohibition on offering financial or other incentives not to enroll in a Group Health Plan (GHP) that currently applies to Medicare under section 1862(b)(3)(C) of the Social Security Act (42 U.S.C. 1395y(b)(3)(C)).

Alternatives:

This rule complies with a Congressional mandate. No other alternatives were developed.

Anticipated Cost and Benefits:

There are no additional or anticipated Government cost associated with prohibiting employers from offering incentives to TRICARE-eligible employees not to enroll in an employer-offered GHP. There are no additional or anticipated cost for current beneficiaries enrolled in TRICARE. Any additional cost associated with this rule will be borne entirely by the employers who are currently offering such incentives and placing their current health cost on the Defense Department.

Risks:

There is no anticipated risk accompanying this action.

Timetable:

Action	Date	FR Cite
NPRM	03/28/08	73 FR 16612
NPRM Comment Period End	05/27/08	
Final Action	10/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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RIN: 0720–AB17

DOD—DODOASHA

31. TRICARE: OUTPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM (OPPS)

Priority:

Other Significant

Legal Authority:

5 USC 301; 10 USC ch 55

CFR Citation:

32 CFR 199

Legal Deadline:

None

Abstract:

This rule implements a prospective payment system for hospital outpatient services similar to that furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. The rule also recognizes applicable statutory requirements and changes arising from Medicare's continuing experience with this system including certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Statement of Need:

This final rule implements the TRICARE Hospital Outpatient Prospective Payment System (OPPS) as mandated under section 707 of the National Defense Authorization Act of Fiscal Year 2002 (NDAA-02), Pub. L. 107-107 (December 28, 2001), changing the statutory authorization in 10 U.S.C. 1079(j)(2) to provide that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules used by Medicare. Under the above Congressional mandate, TRICARE will be paying for hospital outpatient services in accordance with the provisions outlined in section 1833(t) of the Social Security Act and its implementing Medicare regulation (42 CFR § 419).

Summary of Legal Basis:

There is a statutory basis for this final rule: Section 707 of the National Defense Authorization Act of Fiscal Year 2002 (NDAA-02), Pub. L. 107-107.

Alternatives:

This is a statutory change; consequently, no alternatives were considered.

Anticipated Cost and Benefits:

Anticipated costs of implementation are $20 million. Anticipated cost-savings for first full year of implementation are $80 - $90 million.

Risks:

Failure to publish this final rule would result in noncompliance with a statutory provision—the NDAA-02/Public Law 107-107.

Timetable:

Action	Date	FR Cite
NPRM	04/01/08	73 FR 17271
NPRM Comment Period End	06/02/08	
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 0720–AB19

DOD—DODOASHA

32. CHAMPUS/TRICARE: INCLUSION OF TRICARE RETAIL PHARMACY PROGRAM IN FEDERAL PROCUREMENT OF PHARMACEUTICALS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 10 USC ch 55

CFR Citation:

32 CFR 199

Legal Deadline:

None

Abstract:

Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA-08) (Public Law 110-181) states with respect to any prescription filled on or after the date of enactment of the NDAA, the TRICARE retail pharmacy program (TRRx) shall be treated as an element of the DoD for purposes of procurement of drugs by Federal agencies under section 8126 of title 38, United States Code (U.S.C.), to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by network retail pharmacies under the program to eligible covered beneficiaries are subject to the pricing standards in such section 8126. NDAA-08 was enacted on January 28, 2008. The statute requires implementing regulations. This proposed rule is to implement section 703.

Statement of Need:

This proposed rule implements changes as directed by the enactment of NDAA for FY08 (January 28, 2008) to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by pharmacies under the TRICARE Retail Pharmacy Program (TRRx) to eligible beneficiaries are subject to the pricing standards under section 8126 of title 38 United States Code.

Summary of Legal Basis:

This proposed rule implements Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA-08) (Public Law 110-181).

Alternatives:

The Department is initiating the proposed changes consistent with clear congressional direction.

Anticipated Cost and Benefits:

This regulation will extend federal ceiling prices (FCP) to eligible prescriptions dispensed through the TRICARE retail pharmacy network. This change represents hundreds of millions of dollars annually in government savings while remaining transparent to beneficiaries and the retail pharmacy network. The cost to administer this program is very small compared to the cost savings it will generate.

Risks:

This regulation helps to mitigate the long term financial risks associated with sustaining the TRICARE pharmacy benefit. By obtaining consistent and favorable pricing at the retail, mail, and MTF points of service, the overall growth in program costs should slow. Price normalization among military treatment facilities, TRICARE Mail Order Pharmacy (TMOP), and the TRRx is possible; maintaining a competitive Uniform Formulary process mitigates this risk. We believe there is sufficient competition among pharmaceutical manufacturers to keep acquisition costs low for all points of service available through the TRICARE Pharmacy Benefits Program.

Timetable:

Action	Date	FR Cite
NPRM	07/25/08	73 FR 43394
NPRM Comment Period End	09/23/08	
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 0720–AB22

BILLING CODE 5001–06–S

DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory and Deregulatory Priorities

General

We support States, local communities, institutions of higher education, and others in improving education Nationwide and in helping to ensure that all Americans receive a quality education. Our roles include providing leadership and financial assistance for education to agencies, institutions, and individuals in situations in which there is a national interest, such as in helping all students to reach grade-level standards in reading/language arts and mathematics; assisting students in their pursuit of postsecondary education; monitoring and enforcing the implementation of Federal civil rights laws in programs and activities that receive Federal financial assistance; and supporting research, evaluation, and dissemination of findings to improve the quality of education.

We administer programs that affect nearly every American during his or her life. For the 2008-2009 school year, we project that about 50 million students will attend some 97,000 elementary and secondary schools in approximately 14,000 public school districts, and that about 18.3 million students will enroll in degree-granting postsecondary schools.

We have worked effectively with a broad range of interested parties and the general public to develop regulations, guidance, technical assistance, and approaches to compliance. In developing and implementing regulations, we are committed to working closely with affected persons and groups, including parents, students, and educators; State, local, and tribal governments; and neighborhood groups, schools, colleges, rehabilitation service providers, professional associations, advocacy organizations, businesses, and labor organizations.

In particular, we continue to seek greater and more useful public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. If we determine that the development of regulations is necessary, we seek public participation at all key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the Internet or by regular mail.

To facilitate the public's involvement, we participate in the Federal Docketing Management System (FDMS), a new, electronic single Governmentwide access point (www.regulations.gov) that enables the public to search, read, download, and submit comments on different types of Federal regulatory documents. In the case of our Department, this system provides the public with the opportunity to file a comment electronically on any notice of proposed rulemaking or interim final regulations open for comment, as well as read and print any supporting regulatory documents. In addition, FDMS enables the public to read comments filed by other members of the public during the public comment period and to respond to those comments.

We are continuing our efforts to streamline information collections, reduce the burden on information providers involved in our programs, and make information maintained by us easily accessible to the public.

No Child Left Behind

We look forward to congressional reauthorization of the Elementary and Secondary Education Act of 1965, and to building on the results of its most recent reauthorization through the No Child Left Behind Act of 2001. No Child Left Behind has increased accountability for States, school districts, and schools; provided greater choice for parents and students, particularly those students attending low-performing schools; provided more flexibility for States and local educational agencies in the use of Federal education dollars; and placed a stronger emphasis on using scientifically based research to guide instruction, especially in reading for our youngest children.

As necessary, we intend to amend current regulations to reflect the reauthorization of this statute.

Higher Education

The Higher Education Opportunity Act (P.L. 110-135), signed by the President on August 14, 2008, amends and extends the Higher Education Act of 1965 (HEA). This major piece of legislation made a wide variety of changes to the student financial aid and institutional aid programs under the HEA, including—

- Extensive new reporting requirements and consumer disclosures, particularly regarding student loan terms and conditions;
- A new ''Adjunct Teacher Corps'' that would draw on the skills of well-qualified individuals outside of the public education system to meet specialized teaching needs in secondary schools;
- A new maintenance-of-effort requirement regarding State funding of higher education;
- A new appeals process under which TRIO applicants may appeal scoring decisions, and new requirements regarding the methodologies that ED may use to evaluate the Upward Bound and other TRIO programs;
- The availability of two Pell Grants in one year to students who are attending an institution of higher education year-round, and an 18-semester overall limitation on a student's eligibility to receive Pell Grants;
- Changes undoing ED's regulations regarding mandatory assignment to ED of defaulted Federal Perkins Loans held by institutions that have been unable to collect on those loans for seven or more years;
- Several time-sensitive corrections to changes made by the Ensuring Continuing Access to Student Loans Act of 2008 (P.L. 110-227, ECASLA) to the eligibility and deferment requirements for PLUS Loans, loan limits for unsubsidized student loans, and eligibility requirements for the Academic Competitiveness Grant and National SMART Grant programs; and
- Changes to the so-called ''90-10'' rule (which requires a proprietary institution of higher education participating in the Title IV student aid programs to derive at least 10 percent of its total revenues from non-Title IV sources).

This legislation also creates more than 60 new programs, many of which will require implementing regulations if Congress appropriates funds for them.

Unless subject to an exemption, regulations to carry out changes to the student financial aid programs under Title IV of the HEA must generally go through the negotiated rulemaking process. In the coming year we will be conducting negotiated rulemaking to implement the law's new requirements.

Individuals with Disabilities Education Act

We plan to issue later this year final regulations that would address issues in part B of the Individuals with Disabilities Education Act (IDEA) that were not covered by final regulations issued in August 2006. We also plan to issue later this year final regulations implementing changes to the part C program—the early intervention

program for infants and toddlers with disabilities — under the IDEA.

Student Privacy

In March 2008, we issued a notice of proposed rulemaking to amend the regulations governing education records maintained by educational agencies and institutions under section 444 of the General Education Provisions Act, which is also known as the Family Educational Rights and Privacy Act of 1974, as amended. We plan to issue later this fall final regulations addressing several key privacy issues, including permissible disclosures of student information in health and safety emergencies, disclosures to contractors and other outside parties in connection with the outsourcing of institutional services and functions, and redisclosures by State and Federal officials.

Other Potential Regulatory Activities

Congress is considering legislation to reauthorize the Adult Education and Family Literacy Act (AEFLA) (Title II of the Workforce Investment Act of 1998)—including the National Institute for Literacy—and the Rehabilitation Act of 1973. The Administration is working with Congress to ensure that any changes to these laws improve and streamline the State grant and other programs providing assistance for adult basic education under the AEFLA and for vocational rehabilitation and independent living services for persons with disabilities under the Rehabilitation Act of 1973, and that they provide greater accountability in the administration of programs under both statutes. Changes to our regulations may be necessary as a result of the reauthorization of these two statutes.

During the coming year, other regulations may be necessitated by legislation or programmatic experience. In developing and promulgating any additional regulations we will be guided by the following Principles for Regulating:

Principles for Regulating

Our Principles for Regulating determine when and how we will regulate. Through consistent application of the following principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without any regulations or with only limited regulations.

We will regulate only if regulating improves the quality and equality of services to our customers. We will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

In deciding when to regulate, we consider:

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

In deciding how to regulate, we are mindful of the following principles:

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

ED—Office of Postsecondary Education (OPE)

PROPOSED RULE STAGE

33. ● TITLE IV AND TITLE II OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

20 USC 1098a

CFR Citation:

34 CFR Chapter VI

Legal Deadline:

None

Abstract:

The Secretary will propose regulations to implement the student financial aid and other provisions of Title IV, and possibly Title II, of the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act of 2008, P.L. 110-315.

Statement of Need:

These regulations are needed to implement certain provisions of the Higher Education Opportunity Act of 2008, P.L. 110-315, which amended the Higher Education Act of 1965.

Summary of Legal Basis:

These regulations are proposed to implement provisions of the Higher Education Opportunity Act of 2008, P.L. 110-315.

Alternatives:

To be determined.

Anticipated Cost and Benefits:

To be determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	07/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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BILLING CODE 4000–01–S

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory and Deregulatory Priorities

The Department of Energy (Department or DOE) makes vital contributions to the Nation's welfare through its activities focused on improving national security, energy supply, energy efficiency, environmental remediation, and energy research. The Department's mission is to:

- Promote dependable, affordable and environmentally sound production and distribution of energy;
- Foster energy efficiency and conservation;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Clean up the Department's sites and facilities, which include sites dating back to the Manhattan Project;
- Lead in the physical sciences and advance the biological, environmental and computational sciences; and
- Provide premier instruments of science for the Nation's research enterprise.

The Department's regulatory activities are essential to achieving its critical mission and to implementing major initiatives of the President's National Energy Policy. Among other things, the Regulatory Plan (Plan) and the Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda) contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy conservation standards and related test procedures. The Plan and Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public.

Energy Efficiency Program for Consumer Products and Commercial Equipment

The Energy Policy and Conservation Act (EPCA) requires DOE to set energy efficiency standards for residential appliances and commercial equipment at levels that achieve the maximum improvement in energy efficiency that is both technologically feasible and economically justified. Standards already in place for residential products are expected to save consumers nearly $93 billion by 2020, and to save enough energy to operate all U.S. homes for approximately two years.

On January 31, 2006, the Department released a schedule for setting new energy efficiency standards that will save American consumers billions of dollars in energy costs. The five-year plan outlined how DOE would address the energy efficiency standards rulemaking backlog and meet the statutory requirements established in EPCA and the Energy Policy Act of 2005 (EPACT 2005). The 2006 plan has been updated to address energy efficiency standards requirements included in the Energy Independence and Security Act of 2007 (EISA 2007). The plan provides for the issuance of one rulemaking for each of the 18 products in the backlog. The plan also provides for setting energy efficiency standards for products required under EPACT 2005 and EISA 2007.

The overall plan for implementing the schedule is contained in the periodic Report to Congress required under section 141 of EPACT 2005. The plan was last updated in August 2008. All of the reports are posted at:

http://www.eere.energy.gov/buildings/appliance__standards/schedule__setting.html.

The report identifies all products for which DOE has missed the deadlines established in EPCA (42 U.S.C. § 6291 *et seq.)* and the Department's plan for expeditiously prescribing new or amended standards. Information and timetables concerning these actions can also be found in the Department's Agenda, which is posted online at: www.reginfo.gov.

Estimate of Combined Aggregate Costs and Benefits

The regulatory action on energy efficiency standards for fluorescent and incandescent reflector lamps is in the early stages of rulemaking, and the Department has not yet proposed candidate standards levels for the covered products or equipment. Consequently, DOE cannot provide an estimate of combined aggregate costs and benefits for these actions. However, and in compliance with law, the Department will issue standards that provide the maximum energy savings that are technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notice of proposed rulemaking. The notice of proposed rulemaking for commercial refrigeration equipment contains standard levels that, if adopted, would result in energy savings of .83 quadrillion BTUs (quads) of energy over the course of 30 years (73 FR 50071). The standard levels for residential electric and gas ranges and ovens, microwave ovens, and commercial clothes washers, set forth in the notice of proposed rulemaking (73 FR 62034), if adopted, would result in energy savings of .75 quads over 30 years.

DOE—Energy Efficiency and Renewable Energy (EE)

PROPOSED RULE STAGE

34. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT REFLECTOR LAMPS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 6295(i)(1), (3) and (5)

CFR Citation:

10 CFR 430.32

Legal Deadline:

Final, Judicial, June 30, 2009.

Abstract:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for fluorescent lamps and incandescent reflector lamps. EPCA also requires DOE to undertake two subsequent rulemakings to determine whether the standard for a covered product should be amended. This is the first review of the standards for fluorescent and incandescent lamps. Previously, this rulemaking had considered energy conservation standards for general service incandescent lamps, however the Energy Independence and Security Act of 2007 established standard levels for general service incandescent lamps and modified spectrum general service incandescent lamps which take effect between 2012 and 2014. DOE is therefore no longer considering these lamps in this rulemaking.

Statement of Need:

The Energy Policy and Conservation Act requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

The EPCA, as amended by the Energy Policy Act of 1992, establishes initial

energy efficiency standard levels for fluorescent lamps and incandescent reflector lamps. The EPCA also requires DOE to undertake two subsequent rulemakings to determine whether the standard for a covered product should be amended.

Alternatives:

The statute requires the Department to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute.

Anticipated Cost and Benefits:

More efficient lamps may be more costly to purchase initially but will be economically justified over the life of the lamps. Benefits that may result from higher efficiency standards for these lighting products include significant energy savings along with a reduction in environmental impacts. The specific costs and benefits have not been established because DOE is still in the early stages of the rulemaking and has not yet proposed a standard level. Estimates of energy savings will be provided when the DOE issues the notice of proposed rulemaking for this regulatory action.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availability	05/31/06	71 FR 30834
ANPRM	03/13/08	73 FR 13620
ANPRM Comment Period End	04/14/08	
NPRM	11/00/08	
Final Action	06/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Additional Information:

The Energy Independence and Security Act of 2007 prescribes standards for general service incandescent lamps. Because standards are now in place for these products, they have been removed from this rulemaking.

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Related RIN: Related to 1904–AB72

RIN: 1904–AA92

DOE—EE

FINAL RULE STAGE

35. ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL ELECTRIC AND GAS RANGES AND OVENS AND MICROWAVE OVENS, AND COMMERCIAL CLOTHES WASHERS

Priority:

Other Significant

Legal Authority:

42 USC 6295(g) to (h)(cc); 42 USC 6313(e)

CFR Citation:

10 CFR 430; 10 CFR 431

Legal Deadline:

Final, Judicial, March 31, 2009.

Abstract:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for many types of major residential appliances and generally requires DOE to undertake two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended. Through this combined rulemaking, the Department is evaluating potential amendments to update the current energy efficiency standards for residential electric and gas ranges and ovens (including a new provision specific to microwave ovens) and is also considering establishing energy efficiency standards for commercial clothes washers, as required by the Energy Policy Act of 2005, which further amended EPCA. Previously, this rulemaking also included dishwashers and dehumidifiers. Because the Energy Independence Act of 2007 (EISA 2007) prescribed standards for dishwashers and dehumidifiers, they have been removed from the rulemaking.

Statement of Need:

EPCA requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

EPCA establishes initial energy efficiency standards for most types of major residential appliances and certain commercial equipment. EPCA generally requires DOE to subsequently undertake rulemaking, at specified times, to determine whether the standard for a covered product should be made more stringent. Pursuant to EPCA, the Department has conducted prior energy efficiency standards rulemakings for residential electric and gas ranges and ovens, as well as dishwashers. In addition, the Energy Policy Act of 2005 amended EPCA to authorize the Department to establish standards for energy (and water, where appropriate) used in the operation of dehumidifiers and commercial clothes washers, as well as to authorize the Department to conduct rulemakings to assess whether higher standards are appropriate.

Alternatives:

The statute requires the Department to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by statute.

Anticipated Cost and Benefits:

The standard levels for residential electric and gas ranges and ovens, microwave ovens, and commercial clothes washers set forth in the notice of proposed rulemaking, if adopted, would result in energy savings of .75 quadrillion BTUs of energy (quads) over 30 years.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availability	03/27/06	71 FR 15059
ANPRM	11/15/07	72 FR 64432
ANPRM Comment Period End	01/29/08	

Action	Date	FR Cite
NPRM	10/17/08	73 FR 62033
NPRM Comment Period End	12/16/08	
Final Action	03/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State

Additional Information:

EISA of 2007 prescribes standards for both dehumidifiers and dishwashers. Because standards are now in place for these products, they have been removed from this rulemaking.

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Related RIN: Related to 1904–AB78

RIN: 1904–AB49

DOE—EE

36. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL REFRIGERATION EQUIPMENT

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 6313(c)(4)(A)

CFR Citation:

10 CFR 431

Legal Deadline:

Final, Statutory, January 1, 2009.

Abstract:

The Energy Policy Act of 2005 (EPACT 2005) amendments to the Energy Policy and Conservation Act (EPCA) require that DOE establish standards for ice cream freezers; self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors; and remote-condensing commercial refrigerators, freezers, and refrigerator-freezers.

Statement of Need:

EPCA requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

The EPACT 2005 amendments to EPCA authorize DOE to establish energy conservation standards for commercial refrigeration equipment.

Alternatives:

The statute requires the Department to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by statute.

Anticipated Cost and Benefits:

The commercial refrigeration equipment standard levels set forth in the notice of proposed rulemaking, if adopted, would result in energy savings of .83 quadrillion BTUs of energy (quads) over 30 years.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availabiltiy	04/25/06	71 FR 23876
ANPRM	07/26/07	72 FR 41162
ANPRM Comment Period End	10/09/07	
NPRM	08/25/08	73 FR 50071
NPRM Comment Period End	10/24/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State

URL For More Information:

www.eere.energy.gov/buildings/appliance__standards/commercial/refrigeration__equipment.html

URL For Public Comments:

www.regulations.gov

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RIN: 1904–AB59

BILLING CODE 6450–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory Priorities

The Department of Health and Human Services (HHS) is the Federal Government's principal agency for protecting the health of all Americans and providing essential human services. HHS responsibilities include: Medicare, Medicaid, support for public health preparedness, biomedical research, substance abuse and mental health treatment and prevention, assurance of safe and effective drugs and other medical products, food safety, financial assistance to low income families, the Head Start program, services to older Americans, and direct health services delivery.

The HHS budget constitutes almost a quarter of all Federal outlays, and the Department administers more grant dollars than all other Federal agencies combined. The Medicare program is the Nation's largest health insurer, handling more than 1 billion claims per year. Medicare, Medicaid and the State Children's Health Insurance Program (SCHIP) together provide health care to more than 92 million beneficiaries, or almost one in three Americans.

HHS works closely with State and local governments. Many HHS-funded services are provided at the local level by State or county agencies, or through private sector grantees. The Department's 300 programs are administered by 11 Operating Divisions.

Since assuming the leadership of HHS, Secretary Michael O. Leavitt has consistently sought to make transparent his approach to overseeing the Department's programs. His current statement of the Department's priorities is available for public review at *http://www.hhs.gov/secretary/priorities/index*. The regulatory actions noted below reflect this policy framework.

Food Safety - Secretary Leavitt recently chaired the Interagency Working Group on Import Safety established by the President. The final report of the Working Group is accessible at: *http://www.importsafety.gov/report/actionupdate/actionplanupdate.pdf*. Reflecting the importance of the Nation's effort to strengthen import regulatory and inspection systems, the Plan includes:

- a final rule completing the rulemaking process requiring that the Food and Drug Administration be notified prior to the entry of imported food into the United States; and
- a final rule designed to have significant effect in reducing the risk of mortality and morbidity from salmonella-contaminated eggs.

Healthier US Initiative - The Secretary's priorities include emphasis on disease prevention and the need for individual responsibility for personal wellness. His *HealthierUS* initiative is a national effort to prevent and reduce the costs of disease, and promote community health and wellness. The Plan accordingly includes a final rule amending existing regulations governing investigational new drugs - the rule would delineate new avenues of access for patients to obtain such therapies on an individual basis. The Plan also includes a final rule to establish a multi-tiered illness detection and response process for communicable diseases, enhancing the Nation's public health prevention capacity.

Medicare Modernization - The Secretary's statement of priorities includes a focus on Medicare modernization. The Regulatory Plan, accordingly, highlights final rules establishing annual adjustments in payment amounts under Medicare for physicians' services and for hospital outpatient services for calendar year 2010; and for hospital inpatient services for fiscal year 2010.

Health Information Technology - The Secretary's strategy for reforming the Nation's health sector stresses maximum use of electronic information technology. The FY 2009 Regulatory Plan accordingly includes proposals: (1) to require medical-device firms to register electronically with the FDA; and (2) electronically to report to FDA post-marketing information about approved devices.

HHS—Centers for Disease Control and Prevention (CDC)

FINAL RULE STAGE

37. CONTROL OF COMMUNICABLE DISEASES FOREIGN QUARANTINE

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:

42 CFR 70 and 71

Legal Deadline:

None

Abstract:

By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. Quarantine regulations are divided into two parts: Part 71 dealing with foreign arrivals and part 70 dealing with interstate matters. This rule (42 CFR part 71) will update and improve CDC's response to both global and domestic disease threats by creating a multi-tiered illness detection and response process thus substantially enhancing the public health system's ability to slow the introduction, transmission, and spread of communicable. The rule will also modify current Federal regulations governing the apprehension, quarantinable disease, while respecting individual autonomy.

CDC maintains quarantine stations at 20 ports of entry staffed with medical and public health officers who respond to reports of diseases from carriers. According to the statutory scheme, the President determines through Executive order which diseases may subject individuals to quarantine. The current disease list, which was last updated in April 2005, includes cholera, diphtheria, tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, severe acute respiratory syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause a pandemic.

Statement of Need:

The quarantine or isolation of persons believed to be infected with or exposed to a communicable disease are public health prevention measures that have been used effectively to contain the spread of disease. As diseases evolve due to natural occurrences or man-made events, it is important to ensure that prevention procedures reflect new threats and uniform ways to contain them. Recent experiences with emerging infectious diseases such as West Nile Virus, SARS, and monkeypox have illustrated both the

rapidity with which disease may spread throughout the world and the impact that communicable diseases, when left unchecked, may have on the global economy. Stopping an outbreak—whether it is naturally occurring or intentionally caused—requires the use of the most rapid and effective public health tools available. Two of these tools are isolation and quarantine. Isolation refers to the separation or restriction of movement of ill persons with an infectious disease in order to prevent transmission to those who are not ill. Quarantine refers to the separation and restriction of movement of persons who, while not yet ill, have been exposed to an infectious agent and therefore may become infectious. Isolation and quarantine of ill and exposed persons may be one of the best initial strategies to prevent the uncontrolled spread of highly dangerous biologic agents—especially when combined with other health strategies such as vaccination, prophylactic drug treatment, and other appropriate infection control measures.

Summary of Legal Basis:

These regulations would be proposed under the authority of 25 U.S.C. 198, 231, 2001; 42 U.S.C. 243, 264 to 271. In addition, section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)) authorizes the ''apprehension, detention, or conditional release'' of persons to prevent the introduction, transmission, and spread of specified communicable diseases from foreign countries into the United States and from one State or possession into another. Among other public health powers, the lawful ability to inspect property, to medically examine and monitor persons, and to detain or quarantine exists in current regulations. Acknowledging the critical importance of protecting the public's health, long-standing court decisions uphold the ability of Congress and State legislatures to enact quarantine and other public health laws and to have them executed by public health officials.

Alternatives:

These regulations are necessary to ensure that HHS has the tools it needs to respond to public health emergencies and disease threats. Any less stringent alternatives would prevent the Department from the most effective possible pursuit of this objective.

Anticipated Cost and Benefits:

The primary cost impact of the proposed rule would be data collection, transmission, storage and retrieval, and costs associated with contact tracing. The benefits of this rule will offer procedures that more completely describe the 21st century implementation of disease containment measures such as isolation and quarantine. These procedures are expected to expedite and improve CDC operations by allowing immediate medical follow-up of potentially infected passengers and their contacts. The benefits of the rule would be measured in terms of the number of deaths and illnesses prevented by rapid intervention.

Risks:

Failure to move forward with this rulemaking would hinder the Nation's ability to use the most rapid and effective public health tools available when responding to public health emergencies and disease threats.

Timetable:

Action	Date	FR Cite
NPRM	11/30/05	70 FR 71892
Final Action	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—Food and Drug Administration (FDA)

PROPOSED RULE STAGE

38. MEDICAL DEVICE REPORTING; ELECTRONIC SUBMISSION REQUIREMENTS

Priority:

Other Significant

Legal Authority:

21 USC 352; 21 USC 360; 21 USC 360i; 21 USC 360j; 21 USC 371; 21 USC 374

CFR Citation:

21 CFR 803

Legal Deadline:

None

Abstract:

The Food and Drug Administration (FDA) is proposing to amend its postmarket medical device reporting regulations to require that manufacturers, importers, and user facilities submit mandatory reports of medical device adverse events to the agency in an electronic format that FDA can process, review, and archive. FDA is taking this action to improve the Agency's systems for collecting and analyzing postmarketing safety reports. The proposed change would help the Agency to more quickly review safety reports and identify emerging public health issues.

Statement of Need:

The proposed rule would require user facilities and medical device manufacturers and importers to submit medical device adverse event reports in electronic format instead of using a paper form. FDA is taking this action to improve its adverse event reporting program by enabling it to more quickly receive and process these reports.

Summary of Legal Basis:

The Agency has legal authority under section 519 of the Federal Food, Drug, and Cosmetic Act to require adverse event reports. The proposed rule would require manufacturers, importers, and user facilities to change their procedures to send reports of medical device adverse events to FDA in electronic format instead of using a hard copy form.

Alternatives:

The alternatives to this rulemaking include not updating the medical device reporting requirements and not requiring submission of this information in electronic format. For over 20 years, medical device manufacturers, importers, and user facilities have sent adverse event reports to FDA on paper forms. Processing paper forms is a time consuming and expensive process. FDA believes this rulemaking is the preferable alternative.

Anticipated Cost and Benefits:

The principal benefit would be to public health because the increased speed in the processing and analysis of the more than 200,000 medical device reports currently submitted annually on paper. In addition, requiring electronic submission would reduce FDA annual operating costs by $1.25 million.

The total one-time cost for modifying SOPs and establishing electronic submission capabilities is estimated to range from $58.6 million to $79.7 million. Annually recurring costs totaled $8.5 million and included maintenance of electronic submission capabilities, including renewing the electronic certificate, and for some firms the incremental cost to maintain high-speed internet access.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	04/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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HHS—FDA

39. ELECTRONIC REGISTRATION AND LISTING FOR DEVICES

Priority:

Other Significant

Legal Authority:

PL 107–188, sec 321; 21 USC 360(a) to 360(j); 21 USC 360(p)

CFR Citation:

21 CFR 807

Legal Deadline:

None

Abstract:

FDA is proposing to amend the medical device establishment registration and listing requirements under 21 CFR part 807 to reflect the requirements in section 321 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (BT Act) and section 510(p) of the Federal Food, Drug, and Cosmetic Act (the act). Section 510(p) was added to the act by section 207 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), and later amended by section 224 of the Food and Drug Administration Amendments Act of 2007 (FDAAA). This proposed rule would require domestic and foreign device establishments to submit registration and listing data electronically via the Internet using FDA's Unified Registration and Listing System. This proposed rule would convert registration and listing to a paperless process. However, for those companies that do not have access to the Web, FDA would offer an avenue by which they can register, list, and update information with a paper submission. The proposed rule also would amend part 807 to reflect the timeframes for device establishment registration and listing established by sections 222 and 223 of FDAAA.

Statement of Need:

FDA is proposing to amend the medical device establishment registration and listing requirements under 21 CFR part 807 to reflect the requirements in section 321 of the the BT Act and section 510(p) of the act, which was added by section 207 of MDUFMA and later amended by section 224 of FDAAA. This proposed rule would improve FDA's device establishment registration and listing system and utilize the latest technology in the collection of this information.

Summary of Legal Basis:

The statutory basis for our authority includes sections 510(a) through (j), 510(p), 701, 801, and 903 of the act.

Alternatives:

The alternatives to this rulemaking include not updating the registration and listing regulations and not requiring the electronic submission of registration and listing information. Because of the new statutory requirements, and the advances in data collection and transmission technology, FDA believes this rulemaking is the preferable alternative to the paper system currently in place.

Anticipated Cost and Benefits:

The Agency believes that there may be some one-time costs associated with the rulemaking, which involve resource costs of familiarizing users with the electronic system. Recurring costs related to submission of the information by domestic firms would probably remain the same or decrease because a paper submission and postage is not required. There might be some increase in the financial burden on foreign firms since they will have to supply additional registration information as required by section 321 of the BT Act.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	04/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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HHS—FDA

FINAL RULE STAGE

40. PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

21 USC 321; 21 USC 342; 21 USC 371; 21 USC 381; 21 USC 393; 42 USC 243; 42 USC 264; 42 USC 271; . . .

CFR Citation:

21 CFR 16; 21 CFR 116; 21 CFR 118

Legal Deadline:

None

Abstract:

Publication of this final rule is an action item in the Food Protection Plan announced by the Department of Health and Human Services (HHS) in November 2007.

In July 1999, the Food and Drug Administration (FDA) and the Food Safety Inspection Service (FSIS) committed to developing an action plan to address the presence of Salmonella Enteritidis (SE) in shell eggs and egg products using a farm-to-table approach. FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on the draft goals, as well as to further develop the objectives and action items for the action plan. The Egg Safety Action Plan was announced on December 11, 1999. The goal of the Action Plan is to reduce egg-related SE illnesses by 50 percent by 2005 and eliminate egg-related SE illnesses by 2010. The Egg Safety Action Plan consists of eight objectives covering all stages of the farm-to-table continuum as well as support functions. On March 30, 2000 (Columbus, OH), April 6, 2000 (Sacramento, CA), and July 31, 2000 (Washington, DC), joint public meetings were held by FDA and FSIS to solicit and discuss information related to the implementation of the objectives in the Egg Safety Action Plan.

On September 22, 2004, FDA published a proposed rule that would require egg safety measures to prevent the contamination of shell eggs with SE during egg production. The proposal also solicited comment on whether recordkeeping requirements should include a written SE prevention plan and records for compliance with the SE prevention measures, and whether safe egg handling and preparation practices should be mandated for retail establishments that specifically serve a highly susceptible population (e.g., nursing homes, hospitals, day care centers). The proposed egg production SE prevention measures included: (1) Provisions for procurement of chicks and pullets; (2) a biosecurity program; (3) a rodent and pest control program; (4) cleaning and disinfection of poultry houses that have had an environmental or egg test positive for SE; (5) egg testing when an environmental test is positive; and (6) refrigerated storage of eggs held at the farm. Additionally, to verify that the measures have been effective, the rule proposes that producers test the poultry house environment for SE. If the environmental test is positive, eggs from that environment must be tested for SE, and if the egg test is positive, the eggs must be diverted to egg products processing or a treatment process that achieves at least a five-log destruction of SE.

The proposed rule was a step in a broader farm-to-table egg safety effort that includes FDA's requirements for safe handling statements on egg cartons, and refrigerated storage of shell eggs at retail, and egg safety education for consumers and retail establishments. The rule had a 90-day comment period, which ended December 21, 2004. To discuss the proposed rule and solicit comments from interested stakeholders, FDA held three public meetings: October 28, 2004, in College Park, MD; November 9, 2004, in Chicago, IL; and November 16, 2004, in Los Angeles, CA. The comment period was reopened until July 25, 2005, to solicit further comment and information on industry practices and programs that prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into laying hen houses.

Statement of Need:

FDA proposed regulations as part of the farm-to-table safety system for eggs outlined by the President's Council on Food Safety in its Egg Safety Action Plan. FDA intends to publish a final egg safety rule because of the continued reports of outbreaks of foodborne illness and death caused by SE that are associated with the consumption of shell eggs. The agency believes that this rule, when final, will have significant effect in reducing the risk of illness from SE-contaminated eggs and will contribute significantly to the interim public health goal of a 50 percent reduction in egg-related SE illness.

Summary of Legal Basis:

FDA's legal basis derives in part from sections 402(a)(4) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the Act) ((21 U.S.C. 342(a)(4) and 371(a)). 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. Under section 701(a) of the Act, FDA is authorized to issue regulations for the efficient enforcement of the Act. FDA's legal basis also derives from section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), which gives FDA authority to promulgate regulations to control the spread of communicable disease.

Alternatives:

There are several alternatives that the Agency considered in the proposed rule. The principal alternatives included: (1) No new regulatory action; (2) alternative testing requirements; (3) alternative on-farm prevention measures; (4) alternative retail requirements; and (5) HACCP.

Anticipated Cost and Benefits:

The benefits from a final regulation to control Salmonella enteritidis in shell eggs derive from improved practices that reduce contamination and generate benefits measured as the value of the human illnesses prevented. FDA has produced estimates of costs and benefits for a number of options. The mitigations considered include on-farm rodent control, changes in retail food preparation practices, diversion of eggs from infected flocks to pasteurization, recordkeeping, refrigeration, and feed testing. The actual costs and benefits of the final rule will depend upon the set of mitigations chosen and the set of entities covered.

Risks:

The potential for contamination of eggs with SE and its subsequent survival or growth must be considered a very serious risk because of the possibility that such contamination, survival, and growth could cause widespread foodborne illness, including some severe long-term effects and even loss of life. FDA's decision to publish a

final rule to reduce this risk of SE contamination of shell eggs is based on a considerable body of evidence, literature, and expertise in this area. In addition, this decision was also based on the USDA risk assessment on SE in shell eggs and egg products and the identified public health benefits associated with controlling SE in eggs at the farm and retail levels.

Timetable:

Action	Date	FR Cite
NPRM	09/22/04	69 FR 56824
NPRM Comment Period End	12/21/04	
NPRM Reopened Comment Period End	06/09/05	70 FR 24490
NPRM Extension of Reopened Comment Period End	07/25/05	70 FR 33404
Final Action	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 0910–AC14

HHS—FDA

41. EXPANDED ACCESS TO INVESTIGATIONAL DRUGS FOR TREATMENT USE

Priority:

Other Significant

Legal Authority:

21 USC 355; 21 USC 360bbb; 21 USC 371; 42 USC 262

CFR Citation:

21 CFR 312.42; 21 CFR 312.300; 21 CFR 312.305; 21 CFR 312.310; 21 CFR 312.315; 21 CFR 312.320

Legal Deadline:

None

Abstract:

The Food and Drug Administration proposed in the Federal Register of December 14, 2006 (75 FR 75147), to amend the regulations governing investigational new drugs (IND) to describe the ways patients may obtain investigational drugs for treatment use under expanded access programs. Such use of investigational drugs would be available to: (1) Individual patients, including in emergencies; (2) intermediate-size patient populations; and (3) larger populations under a treatment protocol or treatment IND.

Statement of Need:

The Food and Drug Administration Modernization Act of 1997 (Modernization Act) amended the Federal Food, Drug, and Cosmetic Act (the Act) to include specific provisions concerning expanded access to investigational drugs for treatment use. In particular, section 561(b) of the Act permits any person, acting through a licensed physician, to request access to an investigational drug to diagnose, monitor, or treat a serious disease or condition provided that a number of conditions are met. The rule is needed to incorporate into FDA's regulations this and other provisions of the Modernization Act concerning access to investigational drugs.

In addition, the agency seeks to increase awareness and knowledge of expanded access programs and the procedures for obtaining investigational drugs for treatment use. The rule will assist in achieving this goal by describing in detail the criteria, submission requirements, and safeguards applicable to different types of treatment uses.

Summary of Legal Basis:

FDA has the authority to impose requirements concerning the treatment use of investigational drugs under various sections of the Act, including sections 505(i), 561, and 701(a) (21 U.S.C. 355(i), 360bbb, and 371(a)).

Section 505(i) of the Act directs the Secretary to promulgate regulations exempting from the operation of the new drug approval requirements drugs intended solely for investigational use by experts qualified by scientific training and expertise to investigate the safety and effectiveness of drugs. The rule explains procedures and criteria for obtaining FDA authorization for treatment uses of investigational drugs.

The Modernization Act provides significant additional authority for this rulemaking. Section 561(a) states that the Secretary may, under appropriate conditions determined by the Secretary, authorize the shipment of investigational drugs for the diagnosis, monitoring, or treatment of a serious disease or condition in emergency situations. Section 561(b) allows any person, acting through a physician licensed in accordance with State law, to request from a manufacturer or distributor an investigational drug for the diagnosis, monitoring, or treatment of a serious disease or condition if certain conditions are met. Section 561(c) closely tracks FDA's existing regulation at 21 CFR part 312.34 providing for treatment use by large patient populations under a treatment protocol or treatment IND if a number of conditions are met.

Section 701(a) provides the Secretary with the general authority to promulgate regulations for the efficient enforcement of the Act. By clarifying the criteria and procedures relating to treatment use of investigational products, this rule is expected to aid in the efficient enforcement of the Act.

Alternatives:

One alternative to this rulemaking that FDA considered was not to promulgate regulations implementing the expanded access provisions of the Modernization Act. However, the agency believes that promulgating regulations would further improve the availability of investigational drugs for treatment use by providing clear direction to sponsors, patients, and licensed physicians about the criteria for authorizing treatment use and what information must be submitted to FDA.

Another alternative FDA considered was a regulation describing only individual patient and large scale expanded access criteria. However, the agency concluded that it would be preferable to have a third category of expanded access for intermediate-size patient populations.

Anticipated Cost and Benefits:

FDA expects that the costs of the rule will range from a low of about $109,350 to $218,700 in the first year following implementation of the final rule, to a high of about $325,500 to $567,825 in the fourth and fifth years. These

estimates suggest that total annual costs for the rule would be between $1.2 million and $2.2 million for the 5-year period following implementation of the final rule. The agency also expects that the estimated incremental cost burdens associated with this rule are likely to be widely dispersed among affected entities.

The benefits of the rule are expected to result from improved patient access to investigational drugs generally and from treatment use being made available for a broader variety of disease conditions and treatment settings. In particular, the clarification of eligibility criteria and submission requirements would enhance patient access by easing the administrative burdens on individual physicians seeking investigational drugs for their patients and on sponsors who make investigational drugs available for treatment use.

Risks:

The agency foresees no risks associated with the rule.

Timetable:

Action	Date	FR Cite
NPRM	12/14/06	71 FR 75147
NPRM Comment Period End	03/14/07	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Organizations

Government Levels Affected:

None

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HHS—Centers for Medicare & Medicaid Services (CMS)

PROPOSED RULE STAGE

42. ● CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM FOR FY 2010 (CMS–1406–P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

Sec 1886(d) of the Social Security Act

CFR Citation:

42 CFR 412

Legal Deadline:

NPRM, Statutory, April 1, 2009.

Final, Statutory, August 1, 2009.

Abstract:

This major rule proposes to revise the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs to implement changes arising from our continuing experience with these systems.

Statement of Need:

CMS annually revises the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs to implement changes arising from our continuing experience with these systems. In addition, we describe the proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. The proposed rule solicits comments on the proposed IPPS payment rates and new policies. CMS will issue a final rule containing the payment rates for the 2010 IPPS at least 60 days before October 1, 2009.

Summary of Legal Basis:

The Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. The Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system (PPS). Under these PPSs, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. These changes would be applicable to services furnished on or after October 1, 2009.

Alternatives:

None. This is a statutory requirement.

Anticipated Cost and Benefits:

Total expenditures will be adjusted for FY 2010.

Risks:

If this regulation is not published timely, inpatient hospital services will not be paid appropriately beginning October 1, 2009.

Timetable:

Action	Date	FR Cite
NPRM	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Federalism:

Undetermined

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RIN: 0938–AP39

HHS—CMS

43. ● REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CY 2010 (CMS–1413–P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

Social Security Act, sec 1102; Social Security Act, sec 1871

CFR Citation:

42 CFR 405; 42 CFR 410 to 411; 42 CFR 413 to 414; 42 CFR 426

Legal Deadline:

Final, Statutory, November 1, 2009.

Abstract:

This major proposed rule would revise payment polices under the physician fee schedule, as well as other policy changes to payment under Part B.

Statement of Need:

The statute requires that we establish each year, by regulation, payment amounts for all physicians' services furnished in all fee schedule areas. This major proposed rule would make changes affecting Medicare Part B payment to physicians and other Part B suppliers.

The final rule has a statutory publication date of November 1, 2009, and implementation of January 1, 2010.

Summary of Legal Basis:

Section 1848 of the Social Security Act (the Act) establishes the payment for physician services provided under Medicare. Section 1848 of the Act imposes a deadline of no later than November 1 for publication of the final physician fee schedule rule.

Alternatives:

None. This is a statutory requirement.

Anticipated Cost and Benefits:

Total expenditures will be adjusted for CY 2010.

Risks:

If this regulation is not published timely, physician services will not be paid appropriately.

Timetable:

Action	Date	FR Cite
NPRM	06/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Federalism:

Undetermined

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Related RIN: Related to 0938–AN04

RIN: 0938–AP40

HHS—CMS

44. • CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEM FOR CY 2010 (CMS–1414–P)

Priority:

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

Legal Authority:

BBA; PPRA; BIPA; MMA; MMSEA; MIPPA

CFR Citation:

42 CFR 410; 42 CFR 410 to 413; 42 CFR 416; 42 CFR 419

Legal Deadline:

Final, Statutory, November 1, 2009.

Abstract:

This major rule would revise the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system and to implement certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003. In addition, the proposed rule describes proposed changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. The rule also proposes changes to the Ambulatory Surgical Center Payment System list of services and rates. These changes would be applicable to services furnished on or after January 1 annually.

Statement of Need:

Medicare pays over 4,200 hospitals for outpatient department services under the hospital outpatient prospective payment system (OPPS). The OPPS is based on groups of clinically similar services called ambulatory payment classifications (APCs). CMS annually revises the APC payment amounts based on claims data, proposes new payment polices, and updates the payments for inflation using the market basket. The proposed rule solicits comments on the proposed OPPS payment rates and new policies. This rule does not impact payments to critical access hospitals as they are not paid under the OPPS. CMS will issue a final rule containing the payment rates for the 2010 OPPS at least 60 days before January 1, 2010.

Summary of Legal Basis:

Section 1833 of the Social Security Act establishes Medicare payment for hospital outpatient services. The final rule revises the Medicare hospital OPPS to implement applicable statutory requirements and changes arising from our continuing experience with this system and to implement certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003. In addition, the proposed and final rules describe changes to the outpatient APC system, relative payment weights, outlier adjustments, and other amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. These changes would be applicable to services furnished on or after January 1, 2010.

Alternatives:

None. This is a statutory requirement.

Anticipated Cost and Benefits:

Total expenditures will be adjusted for CY 2010.

Risks:

If this regulation is not published timely, outpatient hospital services will not be paid appropriately beginning January 1, 2010.

Timetable:

Action	Date	FR Cite
NPRM	06/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Federalism:

This action may have federalism implications as defined in EO 13132.

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DEPARTMENT OF HOMELAND SECURITY (DHS)

Statement of Regulatory Priorities

The Department of Homeland Security was created in 2003 pursuant to the Homeland Security Act of 2002, Pub. L. 107-296. The Department's Strategic Plan governs the development of DHS's strategies, programs and projects, and ultimately is reflected in the Department's budget and regulatory agenda. DHS's Strategic Plan is posted on the Department's web site: http://www.dhs.gov/xlibrary/assets/DHS__StratPlan__FINAL__spread.pdf.

The Strategic Plan sets forth the five strategic goals of the Secretary of Homeland Security. Those goals are:

1. Protect our Nation from Dangerous People
2. Protect our Nation from Dangerous Goods
3. Protect Critical Infrastructure
4. Strengthen our Nation's Preparedness and Emergency Response Capabilities
5. Strengthen and Unify DHS Operations and Management

The regulations we have summarized below in the Department's 2008 Fall Regulatory Program and in the Unified Agenda support the Department's Strategic Plan and each of the five Strategic Goals listed above. These regulations will improve the Department's ability to accomplish its primary missions.

The regulations identified in the Department's 2008 Fall Regulatory Program also address recent legislative initiatives including, but not limited to: the Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act), Pub. L. 110-53 (Aug. 3, 2007); the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Pub. L. 109-295 (Oct. 4, 2006); the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-220 (May 7, 2008); the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347 (Oct. 13, 2006); and the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329 (Sept. 30, 2008).

DHS strives for organizational excellence and uses a centralized and unified approach in managing its regulatory resources. The Department's regulatory program, including the Unified Regulatory Agenda and Regulatory Plan, is managed by the Office of the General Counsel. In addition, DHS senior leadership reviews each significant regulatory project to ensure that the project fosters and supports the Department's Strategic Goals.

DHS is also committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to protect civil rights and civil liberties, integrate our actions, build coalitions and partnerships, develop human resources, innovate, and be accountable to the American public. The Department values public involvement in the development of its Regulatory Plan, Unified Agenda, and regulations, and takes particular concern with the impact its rules have on small businesses. DHS and each of its components continue to emphasize the use of plain language in our notices and rulemaking documents to promote a better understanding of regulations and increased public participation in the Department's rulemakings.

The Fall 2008 Regulatory Plan for DHS includes regulations issued by the Department's major offices and directorates such as the National Protection and Programs Directorate (NPPD). In addition, it includes regulations from DHS components—including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (Coast Guard), U.S. Customs and Border Protection (CBP), the Federal Emergency Management Administration (FEMA), the U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA)—that have active regulatory programs. Below is a discussion of the Fall 2008 Regulatory Plan for DHS offices and directorates as well as DHS regulatory components.

National Protection and Programs Directorate

US-VISIT

U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) is an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies aliens' identities, and authenticates aliens' travel documents by comparison of biometric identifiers. The goals of US-VISIT are to enhance the security of U.S. citizens and visitors to the United States, facilitate legitimate travel and trade, ensure the integrity of the U.S. immigration system, and protect the privacy of visitors to the United States.

Currently, aliens entering the United States pursuant to a nonimmigrant visa, or those traveling without a visa as part of the Visa Waiver Program, are subject to US-VISIT requirements with certain limited exceptions. NPPD will be issuing a final rule to expand the population of aliens who will be subject to US-VISIT requirements to nearly all aliens, including lawful permanent residents. Specifically, as proposed in our July 27, 2006 notice of proposed rulemaking (NPRM), the following classes of aliens, among others, would become subject to US-VISIT requirements:

- Lawful permanent residents.
- Aliens seeking admission on immigrant visas.
- Refugees and asylees.
- Certain Canadian citizens who receive a Form I-94 at inspection or who require a waiver of inadmissibility. (DHS did not propose to change the exemption for Canadian citizens entering the United States for temporary business or pleasure purposes under B visas).
- Aliens paroled into the United States.
- Aliens applying for admission under the Guam Visa Waiver Program.

NPPD also published an NPRM on April 24, 2008, proposing to establish an exit program at all air and sea ports of departure in the United States. Under section 711 of the 9/11 Act, DHS is required to establish an air exit system and to certify to Congress that such system is in place no later than June 30, 2009. DHS planned to issue a final rule by the end of 2008 to meet the requirements of the 9/11 Recommendations Act. However, under the title III, Division D of the recently enacted Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, the Department is now required to conduct two pilot programs to test the proposed methods of collecting biometric information from aliens upon departure from the United States before DHS can issue a final rule. DHS continues to work to ensure that the final air/sea exit rule will be issued during fiscal year 2009.

United States Citizenship and Immigration Services

The mission of U.S. Citizenship and Immigration Services (USCIS) is to protect national security while conveying our Nation's privileges of freedom and citizenship through the rule of law. The three strategic priorities of USCIS are national security, customer service and organizational excellence. USCIS seeks to welcome lawful immigrants while preventing

exploitation of the immigration system, and we seek to create and maintain a high-performing, integrated, public service organization. As a nation of immigrants, the United States has a strong commitment to welcoming those individuals who seek entry through our legal immigration system, and also to assisting those in need of humanitarian protection against harm.

USCIS has an essential role in supporting DHS's Strategic Goal to ensure the security and integrity of the immigration system by making certain that immigrants and nonimmigrants comply with the laws and security mandates to prevent those who seek to exploit our immigration benefits or engage in illegal activities from obtaining lawful status in this country.

USCIS also strives to provide efficient, courteous, accurate, and responsive services to those who seek and qualify for admission to our country as well as provide seamless, transparent and dedicated customer support services and organizational excellence within the agency. To meet these goals, USCIS is pursuing the following regulatory initiatives, which will directly support the core priorities of the Department.

Commonwealth of the Northern Mariana Islands Transitional Nonimmigrant Investor Classification. This rule proposes to implement the nonimmigrant investor visa provisions of the Consolidated Natural Resources Act of 2008. The Act extends the immigration laws of the United States to the Commonwealth of the Northern Marianas Islands. This proposed rule responds to the Congressional mandate requiring the federal government to assume responsibility for visas for foreign investors entering the CNMI. This rule proposes to amend the DHS regulations governing E-2 nonimmigrant treaty investors; it will establish procedures for classifying investors in the CNMI with long-term E2 nonimmigrant investor status. The benefits of this rule will include protection from the threat posed by the use of fraudulent visas from CNMI as means of entering the United States.

Nonimmigrant Transitional Worker Provisions for the Commonwealth of the Northern Marianas Islands. This rule proposes to implement the nonimmigrant transitional worker provisions of the Consolidated Natural Resources Act of 2008. The purpose of these provisions is to provide for a transition from an economy supported by a sizable population of temporary workers to an economy that is supported by temporary and permanent workers under the Immigration and Nationality Act. This rule proposes to amend DHS regulations to provide for a nonimmigrant transitional worker category for the CNMI only and to allow for enough planning by employers who may need to replace workers and who may need to have temporary workers perform legitimate business travel. The benefits of the proposed rule will include maintenance of current levels of employment in the CNMI and consistency with other USCIS regulations.

Designation of Acceptable Documents for Employment Verification. This rulemaking will reduce the number of acceptable documents that employees may present for Employment Verification, or Form I-9 purposes. The current employment verification process uses a very dated list of acceptable documents. USCIS will shorten the list of acceptable documents and reissue the Form I-9 with a shorter list of more highly secure documents. The benefit of this rulemaking is that it will provide for more detail, specificity, and security regarding acceptable identity and employment authorization documents.

Changes Affecting H-2A and H-2B Nonimmigrants and Their Employers. USCIS will be finalizing two rulemaking actions affecting the standards USCIS will use to grant H-2A (temporary and seasonal agricultural workers) and H-2B (temporary non-agricultural workers) status to nonimmigrant aliens. The H-2A rule removes certain limitations on H-2A employers and adopts streamlining measures in order to encourage and facilitate the lawful employment of foreign temporary and seasonal agricultural workers. The final rule also addresses concerns regarding the integrity of the H-2A program and sets forth several conditions to prevent fraud and to protect laborers' rights. The purpose of the final rule is to provide agricultural employers with an orderly and timely flow of legal workers, thereby decreasing their reliance on unauthorized workers, while protecting the rights of laborers.

The H-2B rule removes certain limitations on H-2B employers and adopts streamlining measures in order to facilitate the lawful employment of foreign temporary nonagricultural workers. The final rule also addresses concerns regarding the integrity of the H-2B program and sets forth several conditions to prevent fraud and protect laborers' rights. The final rule will benefit U.S. businesses by facilitating a timely flow of legal workers while ensuring the integrity of the program.

Both final rules provide that DHS will refuse to grant petitions for H-2A or H-2B nonimmigrant status for nationals of countries consistently refusing or unreasonably denying repatriation of their nationals. DHS will identify any countries that it has determined fail to adequately repatriate their nationals by notice in the **Federal Register.** Finally, both rules also establish a pilot exit control program for certain H-2A and H-2B workers, by requiring them to report their departure at designated ports of entry.

United States Coast Guard

The U.S. Coast Guard (Coast Guard) is an Armed Service of the United States and the only military organization within DHS. It is the principal federal agency responsible for maritime safety, security, and environmental stewardship and delivers daily value to the Nation through multi-mission resources, authorities, and capabilities.

Effective governance in the maritime domain hinges upon an integrated approach to safety, security, and environmental stewardship. The Coast Guard's policies and capabilities are integrated and interdependent, delivering results through a network of enduring partnerships. The Coast Guard's ability to field versatile capabilities and highly-trained personnel is the U.S. Government's most significant and important strength in the maritime environment.

America is a maritime nation, and our security, resilience, and economic prosperity are intrinsically linked to the oceans. Safety, efficient waterways, and freedom of transit on the high seas are essential to our well-being. The Coast Guard is leaning forward, poised to meet the demands of the new millennium. The Coast Guard creates value for the public through solid prevention and response efforts. Activities involving oversight and regulation, enforcement, maritime presence, and public and private partnership foster increased maritime safety, security, and stewardship.

The statutory responsibilities of the Coast Guard include ensuring marine safety and security, preserving maritime mobility, protecting the marine environment, enforcing U.S. laws and international treaties, and performing search and rescue. The Coast Guard supports the Department's overarching goals of mobilizing and organizing our Nation to secure the homeland from terrorist attacks, natural disasters, and

other emergencies. In performing its duties, the Coast Guard has established five strategic goals-maritime safety, protection of natural resources, maritime security, maritime mobility and national defense. In 2008, the Coast Guard began a strategic campaign to further advance the safety of recreational and commercial activities in the maritime domain using focused prevention and response programs and activities. In partnership with other federal agencies, state and local governments, marine industries, and individual mariners, the Coast Guard advances the safety of maritime communities, trade, transportation, and recreational boating through focused prevention and response programs. Although much has been achieved, developing comprehensive maritime safety, security, and environmental protection regimes for the nation remains our most important goal.

The Coast Guard rulemaking projects identified in the Unified Agenda, and the five rules listed below, support these strategic goals and reflect our regulatory policies.

Transportation Worker Identification Credential (TWIC); Card Reader Requirements. The Coast Guard continues the Department's work in the important area of implementing the transportation security card requirements found in 46 U.S.C. § 70105. Under the TWIC final rule issued on January 25, 2007, certain workers in the maritime sector are required to undergo security threat assessments and obtain TWICs. These cards are used as visual identity badges, and are only read electronically if the Coast Guard conducts spot checks or an annual examination at a vessel or facility regulated by 33 CFR chapter I, subchapter H. This advance notice of proposed rulemaking (ANPRM) asks whether the Coast Guard should require certain owners and operators of these vessels and facilities to also read the cards electronically, including checking for a match of the TWIC holder's fingerprint with the template stored on the TWIC. These proposed requirements would be necessary in order to ensure that only the individual to whom the TWIC was issued (and on whom the security threat assessment was conducted) is able to use it to gain unescorted access to secure areas or to hold their Coast Guard issued merchant mariner credential. The SAFE Port Act requires the Coast Guard to promulgate card reader regulations. This rulemaking supports the Coast Guard Commandant's strategic goal of maritime security.

Vessel Requirements for Notices of Arrival and Departure and Automatic Identification System. This is a regulatory action of particular importance to the Coast Guard in the Department's Fall 2008 Regulatory Plan. Currently, the Coast Guard does not have a mechanism to capture vessel, crew, passenger, or specific cargo information on vessels less than or equal to 300 gross tons intending to arrive at or depart from U.S. ports unless they are arriving with certain dangerous cargo or are arriving at a port or place within the 7th Coast Guard District (primarily Florida and surrounding waters). To remedy this situation, the Coast Guard will issue a NPRM that proposes to expand the applicability of these requirements to better enable the Coast Guard to correlate vessel Automatic Identification System data with Notices of Arrival and Departure (NOAD) data, enhance the Coast Guard's ability to identify and track vessels, detect anomalies, improve navigation safety, and heighten overall maritime domain awareness and security. This rulemaking would expand the applicability of NOADs to include all foreign commercial vessels, regardless of tonnage, and all U.S. commercial vessels arriving from a foreign port or place. This rulemaking supports the Coast Guard Commandant's strategic goals of maritime safety and maritime security.

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978. In 1995, the International Maritime Organization (IMO) comprehensively amended the STCW. The amendments came into force on February 1, 1997. This project implements those amendments by revising current regulations to ensure that the United States complies with their requirements for the training of merchant mariners, the documenting of their qualifications, and watch-standing and other arrangements aboard seagoing merchant ships of the Unites States. This rulemaking also makes several minor editorial and clarification changes throughout 46 CFR parts 10, 11, 12, and 15. This project supports the Coast Guard Commandant's strategic goal of maritime safety.

Increasing Passenger Weight Standards on Passenger Vessels. This project would develop a rule that addresses both the stability calculations and the environmental operating requirements for certain domestic passenger vessels. The proposed rule would address the outdated per-person weight averages that are currently used in stability calculations for certain domestic passenger vessels. In addition, the proposed rule would add environmental operating requirements for domestic passenger vessels that could be adversely affected by sudden inclement weather. This rulemaking would increase passenger safety by significantly reducing the risk of certain types of passenger vessels capsizing due to either passenger overloading or operating these vessels in hazardous weather conditions. This rulemaking supports the Coast Guard Commandant's strategic goal of maritime safety.

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters. This rulemaking would amend the ballast water management requirements (33 CFR part 151 subpart D) and establish a standard that specifies the level of biological treatment that must be achieved by a ballast water treatment system before ballast water can be discharged into U.S. waters. The unintentional introduction of nonindigenous species into U.S. waters via the discharge of vessels' ballast water has had significant impacts to the nation's aquatic resources, biological diversity, and coastal infrastructures. This rulemaking would increase the Coast Guard's ability to protect U.S. waters against the introduction of nonindigenous species via ballast water discharges and supports the Coast Guard Commandant's strategic goal of maritime safety and environmental stewardship.

United States Customs and Border Protection

U.S. Customs and Border Protection (CBP) is the federal agency principally responsible for the security of our Nation's borders, both at and between the ports of entry and at official crossings into the United States. CBP must accomplish its border security and enforcement mission without stifling the flow of legitimate trade and travel. The primary mission of CBP is its homeland security mission, that is, to prevent terrorists and terrorist weapons from entering the United States. An important aspect of this priority mission involves improving security at our borders and ports of entry, but it also means extending our zone of security beyond our physical borders.

CBP is also responsible for administering laws concerning the importation into the United States of goods, and enforcing the laws concerning the entry of persons into the United States. This includes regulating and facilitating international trade; collecting import duties; enforcing U.S. trade, immigration and other laws of the United States at our borders; inspecting imports, overseeing the activities of persons and businesses engaged in importing; enforcing the laws concerning smuggling and trafficking in contraband; apprehending individuals attempting to enter the United States illegally; protecting our agriculture and economic interests from harmful pests and diseases; servicing all people, vehicles and cargo entering the United States; maintaining export controls; and protecting U.S. businesses from theft of their intellectual property.

In carrying out its priority mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security. Consistent with its primary mission of homeland security, CBP published several final and proposed rules during the last fiscal year and intends to propose and finalize others during the next fiscal year that are intended to improve security at our borders and ports of entry. We have highlighted some of these rules below.

Electronic System for Travel Authorization (ESTA). On June 9, 2008, CBP published an interim final rule amending Title 8 of the Code of Federal Regulations. That rule implemented the Electronic System for Travel Authorization (ESTA) for aliens who wish to enter the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. This rule, which was effective August 8, 2008, establishes ESTA and delineates the data fields that DHS has determined the system will collect. The rule requires that each alien traveling to the United States under the VWP must obtain electronic travel authorization via the ESTA System in advance of such travel. VWP travelers may obtain the required ESTA authorization by electronically submitting to CBP biographic and other information as currently required by the I-94W Nonimmigrant Alien Arrival/Departure Form. The Secretary of Homeland Security will inform the public of the date on which ESTA is mandatory by Federal Register notice. DHS anticipates that the Secretary of Homeland Security will issue this notice in November 2008, for implementation of the mandatory ESTA requirements on or before January 12, 2009. Once ESTA is mandatory, all VWP travelers must either obtain travel authorization in advance of travel under ESTA or obtain a visa prior to traveling to the United States.

This rule is intended to fulfill the requirements of section 711 of the 9/11Act. By procedurally shifting from a paper form to an electronic form and requiring the data in advance of travel, CBP will be able to determine, before the alien departs for the United States, the eligibility of nationals from VWP countries and whether such travel poses a law enforcement or security risk. In addition to fulfilling a statutory mandate, the interim final rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, the ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays based on lengthy processes at ports of entry.

Western Hemisphere Travel Initiative (WHTI). On April 3, 2008, CBP finalized the second phase of a joint DHS and Department of State plan, known as WHTI, to implement new documentation requirements for U.S. citizens and certain nonimmigrant aliens entering the United States. This final rule identifies which documents U.S. citizens and nonimmigrant citizens of Canada, Bermuda, and Mexico will be required to present when entering the United States from within the Western Hemisphere at sea and land ports-of-entry. This final rule is effective on June 1, 2009. WHTI implements requirements of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, which provides that upon full implementation, U.S. citizens and certain classes of nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security designates as satisfactorily establishing identity and citizenship.

Advance Information on Private Aircraft Arriving and Departing the United States. On September 18, 2007, CBP published a NPRM titled ''Advance Information on Private Aircraft Arriving and Departing the United States.'' It proposes to require that the pilot of any private aircraft arriving in the United States from a foreign location or departing the United States for a foreign location provide an advance electronic transmission of information to CBP describing all of the individuals traveling onboard the aircraft. Under the proposal, the pilot must transmit this information by an electronic data interchange system approved by CBP. CBP intends to publish a final rule during the next fiscal year. These regulations will assist CBP in adequately and accurately assessing potential security threats by private aircraft entering and departing the United States.

Importer Security Filing and Additional Carrier Requirements. On January 1, 2008, CBP published an NPRM titled ''Importer Security Filing and Additional Carrier Requirements.'' It would amend CBP regulations to require carriers and importers to provide to CBP, via a CBP approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. Under the proposed rule, importers and carriers must submit certain information to CBP before the cargo is brought into the United States by vessel. These regulations would implement the provisions of section 203 of the Security and Accountability for Every Port Act of 2006 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002. This rule would improve CBP's risk assessment and targeting capabilities, while at the same time, enabling the agency to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information would assist CBP in increasing the security of the global trading system. CBP intends to publish a final rule during the next fiscal year.

Implementation of Guam-CNMI Visa Waiver Program. Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA) extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. CBP will be issuing an interim final rule to implement section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program.

Section 403(1) of the Homeland Security Act transferred the former U.S. Customs Service, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs

Service inspection and trade functions were combined with the immigration and agricultural inspection functions and the Border Patrol and transferred into CBP. The Department of the Treasury, however, retained regulatory authority of the U.S. Customs Service relating to customs revenue functions. In addition to its plans to continue issuing regulations to enhance border security, CBP, during fiscal year 2009, expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. CBP regulations regarding the customs revenue function are discussed in the regulatory plan of the Department of the Treasury.

Federal Emergency Management Agency

The Federal Emergency Management Agency's (FEMA) primary mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. FEMA is leading the Nation's efforts to develop and maintain an integrated, nationwide operational capability to prepare for, respond to, recover from, and mitigate against hazards, regardless of their cause, in partnership with other federal agencies, state and local governments, volunteer organizations, and the private sector. The agency also coordinates and implements the federal response to disasters declared by the President.

In fiscal year 2009, FEMA will continue to promote the DHS Strategic Goals of awareness, prevention, protection, response, and recovery. In furtherance of the Department's and agency's goals, FEMA will develop regulations that implement provisions of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (Pub. L. 109-295).

Disaster Assistance; Federal Assistance to Individuals and Households. The first of these rules will update the current interim rule entitled ''Disaster Assistance; Federal Assistance to Individuals and Households.'' This rulemaking would implement section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act). It would also make further revisions to 44 CFR part 206, subparts D (the Individuals and Households Program (IHP)) and E. Among other things, it would implement section 686 of PKEMRA to remove the IHP subcaps and implement section 685 regarding semi-permanent and permanent housing construction eligibility; revise FEMA's regulations pursuant to section 689 of PKEMRA; and revise FEMA's regulations to allow for the payment of security deposits and the costs of utilities, excluding telephone service, in accordance with section 689d of PKEMRA. This regulation would also implement section 689f of PKEMRA by authorizing assistance to relocate individuals displaced from their predisaster primary residence, to and from alternate locations for short-or long-term accommodations.

Public Assistance Program regulations. FEMA will also work to revise the Public Assistance Program regulations in 44 CFR part 206 to reflect changes made to the Stafford Act by PKEMRA, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act) (Pub. L. 109-308), the Local Community Recovery Act of 2006 (Pub. L. 109-218), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347), and to make other substantive and nonsubstantive clarifications and corrections. The proposed changes will expand eligibility to include performing arts facilities and community arts centers pursuant to section 688 of PKEMRA; include education in the list of critical services pursuant to section 689h of PKEMRA, thus allowing private nonprofit educational facilities to be eligible for restoration funding; add accelerated Federal assistance to available assistance and precautionary evacuations to activities eligible for reimbursement pursuant to section 681 of PKEMRA, include household pets and service animals in essential assistance pursuant to section 689 of PKEMRA and section 4 of the PETS Act, provide for expedited payments of grant assistance for the removal of debris pursuant to section 610 of the SAFE Port Act, and allow for a contract to be set aside for award based on a specific geographic area pursuant to section 2 of the Local Community Recovery Act of 2006. Other changes include the addition or revision of requirements to improve the Public Assistance grant application process.

Special Community Disaster Loans (SCDL) Program. In addition, FEMA intends to propose a revision to the Special Community Disaster Loans (SCDL) Program to implement loan cancellation provisions for SCDLs provided by FEMA to local governments in the Gulf region following Hurricanes Katrina and Rita. This rule would not result in the automatic cancellation of all SCDLs. Instead, it would propose procedures and requirements for governments who received SCDLs to apply for cancellation of loan obligations as authorized by section 4502 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28). The proposed procedures would provide FEMA with information that would then be used to determine when cancellation of a SCDL, in whole or in part, is warranted. The proposed rule would not apply to any loans made under FEMA's traditional Community Disaster Loans Program which is governed under separate regulations.

United States Immigration and Customs Enforcement

The mission of the U.S. Immigration and Customs Enforcement (ICE) is to prevent the movement across borders of people, money, and materials that could harm our Nation and its people; prevent violations of immigration law by terrorists, criminals, and others who exploit us by entering and remaining in the country illegally; and mitigate risks to national security at home and abroad.

During fiscal year 2009, ICE will pursue rulemakings that implement major components of the President's and Department's Strategic Goals. Specifically, ICE will focus on two critical areas: improving the tracking of foreign students, particularly alien flight training students; and fully implementing the certification, oversight, and recertification of schools certified by the Student and Exchange Visitor Program (SEVP) for attendance by F and/or M nonimmigrant students.

Amendment of Flight Training Regulations for F and M Nonimmigrants and to Transition J Flight Programs of the Department of State to M Flight Programs with the Department of Homeland Security. ICE will transition all J flight training programs from Department of State designation to DHS (i.e., SEVP certification); and promote international flight safety by modifying regulations to expand practical training opportunities for those in alien flight training programs. As a matter of national security, it is important that DHS provide efficient and effective oversight of flight training programs.

Student and Exchange Visitor Program (SEVP). ICE will also amend regulations, located at 8 CFR 214.3 and 214.4, which govern certification, oversight and

recertification of schools certified by SEVP for attendance by F and/or M nonimmigrant students. The rule will clarify the criteria for initial certification, compliance, and recertification of SEVP-certified schools every two years.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA is committed to continuously setting the standard for excellence in transportation security through its people, processes, and technology as we work to meet the immediate and long-term needs of the transportation sector.

In fiscal year 2009, TSA will promote the DHS Strategic Goals of awareness, prevention, protection, response, and service by emphasizing regulatory efforts that allow TSA to better identify, detect, and protect against threats against various modes of the transportation system, while facilitating the efficient movement of the traveling public, transportation workers, and cargo.

Screening of Air Cargo. TSA is developing a rulemaking that codifies a statutory requirement of the 9/11 Act that TSA establish a system to screen 100% of cargo transported on passenger aircraft by August 3, 2010. To assist in carrying out this mandate, TSA is establishing a voluntary program under which it will certify cargo screening facilities to screen cargo according to TSA standards prior to its being tendered to aircraft operators for carriage on passenger aircraft.

Large Aircraft Security Program (General Aviation (GA)). In addition, TSA plans to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements and by adding new requirements for certain large aircraft operators and airports serving those aircraft. To date, the government's focus with regard to aviation security generally has been on air carriers and commercial operators. As vulnerabilities and risks associated with air carriers and commercial operators have been reduced or mitigated, terrorists may perceive that GA aircraft are more vulnerable and may view them as attractive targets. This rule would enhance aviation security by requiring operators of aircraft with a maximum certificated takeoff weight above 12,500 pounds (''large aircraft'') to adopt a security program and to undertake other security measures. The rule would also impose security requirements on certain airports that serve large aircraft to adopt security programs.

Security Training for Non-Aviation Modes. TSA also will issue regulations to enhance the security of several non-aviation modes of transportation, in accordance with the requirements of the 9/11 Act. In particular, TSA will issue regulations requiring freight railroads, passenger railroads, mass transportation system operators, and over-the-road bus operators to conduct security training for certain of their employees.

Aircraft Repair Station Security. TSA will be promulgating regulations to require foreign repair stations that are certificated by the Federal Aviation Administration (FAA) under 14 CFR Part 145 to adopt and implement standard security programs and to comply with security directives issued by TSA. The rule also proposes to codify the scope of TSA's existing inspection program and to require regulated parties to allow DHS officials to enter, inspect, and test property, facilities, and records relevant to repair stations. This rulemaking action implements section 1616 of the 9/11 Act.

DHS Regulatory Plan for Fiscal Year 2009

A more detailed description of the priority regulations that comprise DHS's Fall 2008 Regulatory Plan follows.

DHS—Office of the Secretary (OS)

FINAL RULE STAGE

45. COLLECTION OF ALIEN BIOMETRIC DATA UPON EXIT FROM THE UNITED STATES AT AIR AND SEA PORTS OF DEPARTURE; UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (US–VISIT)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184 to 1185 (pursuant to EO 13323); 8 USC 1221; 8 USC 1365a, 1365b; 8 USC 1379; 8 USC 1731 to 1732

CFR Citation:

8 CFR 215.1; 8 CFR 231.4

Legal Deadline:

None

Abstract:

DHS established the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) in accordance with a series of legislative mandates requiring that DHS create an integrated automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates travel documents. On January 5, 2004, DHS published an Interim Final Rule in the Federal Register at 69 FR 468 authorizing the Secretary of Homeland Security to require, in part, certain aliens to provide fingerprints, photograph[s], or other biometric identifiers, documentation of immigration status in the United States, and other such evidence as may be required to determine the alien's identity and whether he or she has properly maintained immigration status while in the United States at the time of departure from the United States. The Interim Rule authorized the establishment of pilot programs at up to fifteen air and sea ports of entry to evaluate the implementation of this departure procedure. That evaluation pilot has been completed and this rule establishes procedures for collection of biometrics from aliens departing the United States from air or sea ports. This rule removes the limit on the collection of this information from the 15 locations of the pilot programs and authorizes implementation at all air and sea ports of entry. This rule requires aliens to provide biometric identifiers at entry to provide biometric identifiers upon departure at any air and sea port of entry at which facilities exist to collect such information.

Statement of Need:

This rule establishes an exit system at all air and sea ports of departure in the United States. This rule requires aliens subject to United States Visitor and Immigrant Status Indicator Technology Program biometric requirements upon entering the United States to also provide biometric identifiers prior to departing the United States from air or sea ports of departure.

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	04/24/08	73 FR 22065
NPRM Comment Period End	06/23/08	
Other/Final Rule	04/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Previously reported as 1650–AA04

RIN: 1601–AA34

DHS—OS

46. UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (US–VISIT), ENROLLMENT OF ADDITIONAL ALIENS IN US–VISIT

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

PL 106–215, sec 2(a), 114 Stat 337 (June 15, 2000); PL 106–396, sec 205, 114 Stat 1637, 1641 (October 30, 2000); PL 107–56, sec 114, 115 Stat 271, 553 (October 26, 2001); PL 107–173, sec 302, 116 Stat 543, 552 (May 14, 2002)

CFR Citation:

8 CFR 215.8; 8 CFR 235.1

Legal Deadline:

None

Abstract:

In 2003, the Department of Homeland Security established the United States Visitor and Immigrant Status Technology Program (US-VISIT), whose objective is to create and maintain an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies their identities, and authenticates their travel documents through comparison of biometric identifiers. The goals of the US-VISIT program are to enhance the security of United States citizens and visitors to the United States, facilitate legitimate travel and trade, ensure the integrity of the United States immigration system, and protect the privacy of visitors to the United States. In its early stages, US-VISIT applied only to nonimmigrants with visas and to those who did not require a visa as they were entering under the Visa Waiver Program. This rule would amend DHS regulations to provide that all aliens, including Lawful Permanent Residents, may be enrolled into US-VISIT, with the exception of Canadian citizens entering the United States as either B-1 visitors for business or B-2 visitors for pleasure, or these categories of alien expressly exempt by statute or regulation.

Statement of Need:

On July 27, 2006, DHS published a proposed rule in the Federal Register that outlined DHS' plan to begin enrolling additional groups of aliens into the US-VISIT biometric screening protocol. (US-VISIT is an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies aliens' identities, and authenticates aliens' travel documents through the comparison of biometric identifiers.) The expansion of US-VISIT biometric screening to these additional groups is needed in order to verify the identity and authenticity of aliens presenting United States issued travel documents upon an application for admission. The expansion is consistent with the implementation of the US-VISIT program to date, which has taken an incremental, phased-in approach to the biometric screening of aliens applying for admission to and exiting from the United States. This expansion will encompass the majority of aliens to-date not undergoing biometric screening by the US-VISIT program.

Summary of Legal Basis:

While the establishment of the US-VISIT program is found in the provisions of several public laws, the abstracts of which have been discussed in several rulemakings (See 69 FR 53318, for example), the authority for the expansion of the program to additional alien groups may be found in section 302(b)(2) of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107-173, 116 Stat. 543, 552 (May 14, 2002). This section of law requires the United States to install at all ports of entry equipment and software that allows for the biometric comparison and authentication of all United States visas and all machine-readable, tamper-resistant travel and entry documents that are issued to aliens. The installation of the needed equipment and software is complete.

Timetable:

Action	Date	FR Cite
NPRM	07/27/06	71 FR 42605
NPRM Comment Period End	08/28/06	
Final Rule	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Previously reported as 1650–AA06

RIN: 1601–AA35

DHS—U.S. Citizenship and Immigration Services (USCIS)

PROPOSED RULE STAGE

47. ● DOCUMENTS AND RECEIPTS ACCEPTABLE FOR EMPLOYMENT ELIGIBILITY VERIFICATION

Priority:

Other Significant

Legal Authority:

8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1324a

CFR Citation:

8 CFR 274a

Legal Deadline:

None

Abstract:

This rule proposes amendments to regulations governing the types of acceptable identity and employment authorization documents that employees may present to their employers for completion of the Form I-9, Employment Eligibility Verification. The purpose of this proposed rule is to further improve the integrity of the employment eligibility verification process by adding safeguards and ensuring that the list of acceptable identity and employment authorization documents contains secure and fraud-resistant documents.

Statement of Need:

To further improve the integrity of the employment eligibility verification process, and to ensure that the list of acceptable identity and employment authorization documents contain secure and fraud-resistant documents.

Summary of Legal Basis:

All employers and agricultural recruiters and referrers for a fee (collectively referred to as ''employer(s)'') are required to verify the identity and employment authorization of each individual they hire for employment in the United States, regardless of the individual's citizenship. (See Immigration and Nationality Act (INA) section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B)).

As part of the verification process, employers must complete Form I-9, Employment Eligibility Verification, retain the form for a statutorily-established period of time, and make the form available for inspection by certain government officials. (See INA section 274A(b), 8 U.S.C. 1324a(b); 8 CFR 274a.2).

The documents designated as acceptable for the Form I-9 are divided among three lists:

• List A—documents that establish both identity and employment authorization;

• List B—documents that establish only identity; and

• List C—documents that establish only employment authorization.

(See INA sections 274A(b)(1)(B),(C) and (D), 8 U.S.C. 1324a(b)(1)(B),(C); 8 CFR 274a.2(B)(1)(v)(A), B) and (C)).

Additionally, DHS possesses statutory authority to prohibit or place conditions on the use of documents establishing the employment authorization or identity of individuals for Form I-9 purposes if DHS finds, by regulation, that such documents do not reliably establish employment authorization or identity or are being used fraudulently to an unacceptable degree. (See INA section 274A(b)(1)(E), 8 U.S.C. 1324a(b)(1)(E)).

The changes proposed in this rule are not required by statute or court order.

Alternatives:

This proposed rule requests input from the public on what alternatives, if any, DHS should consider. The proposed rule also requests that any alternatives suggested should include the costs and benefits of those alternatives, as well as the effect on small entities.

Anticipated Cost and Benefits:

There are significant unquantifiable benefits.

The proposal provides details and specificity on acceptable identity and employment authorization documents, which are not present in the legislation or current regulations.

Cost Analysis.

The cost benefit analysis of this proposed rule will be provided to the Office of Management and Budget (OMB) and will be available for review in the public docket for this rulemaking at www.regulations.gov once this proposed rule is published in the Federal Register.

Risks:

An employment eligibility verification system that relies on a wide range of documents may result in 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	11/00/08	
NPRM Comment Period End	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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Related RIN: Related to 1615–AB69

RIN: 1615–AB72

DHS—USCIS

48. ● COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL NONIMMIGRANT INVESTOR CLASSIFICATION

Priority:

Other Significant

Legal Authority:

8 U.S.C. 1101; 8 U.S.C. 1102; 8 U.S.C. 1103; 8 U.S.C. 1182; 8 U.S.C. 1184; 8 U.S.C. 1186a

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

On May 8, 2008, Public Law 110-229, Commonwealth Natural Resources Act, established a transitional period for the application of the Immigration and Nationality Act (INA) to the Commonwealth of the Northern Mariana Islands (CNMI). Although the CNMI is subject to most U.S. laws, the CNMI has administered its own immigration system under the terms of its 1976 covenant with the United States. The Department of Homeland Security is proposing to amend its regulations by creating a new E2 CNMI Investor classification for the duration of the transition period. These temporary provisions are necessary to reduce the potential harm to the CNMI economy before these foreign workers and investors are required to convert into U.S. immigrant or nonimmigrant visa classifications.

Statement of Need:

This proposed rule responds to a Congressional mandate that requires the Federal Government assume responsibility for visas for entry to CNMI by foreign investors. This proposed rule will reduce the degree of fraud in visas to CNMI and the threat

to homeland security posed by terrorists trying to enter CNMI with fraudulent visas as a gateway to the continental United States.

Summary of Legal Basis:

This proposed rule is based upon a Congressional mandate to publish regulations to implement the nonimmigrant investor visa provisions of the Consolidated Natural Resources Act of 2008 (Pub.L. 110-229). This public law extends the immigration laws of the United States to the CNMI. Public Law 110-229 authorizes the Secretary of Homeland Security to classify an alien as a CNMI-only nonimmigrant under section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101(a)(15)(E)(ii)) if the alien meets the requirements of the Act.

Alternatives:

In light of the potential adverse economic impact of such limitations and the goal of limiting adverse economic impact on the CNMI, such limiting options were not chosen. DHS chose the broadest interpretation possible, whereby long-term business investors, perpetual foreign investors and foreign retiree investors would be eligible for CNMI E-2 Investor status, because it believes such an interpretation is most in keeping with the mandate to limit adverse economic impact.

Anticipated Cost and Benefits:

Public Costs:

This rule reduces the employer's annual cost by $200 per year ($500 - $300), plus any further reduction caused by eliminating the paperwork burden associated with the CNMI's process. In 2006 — 2007, there were 464 long-term business entry permit holders and 20 perpetual foreign investor entry permit holders and retiree investor permit holders, totaling 484, or approximately 500 foreign registered investors. The total savings to employers from this rule is thus expected to be $100,000 per year ($500 x $200).

Cost to the Federal Government:

The yearly Federal Government cost is estimated at $42,310.

Benefits:

The potential abuse of the visa system by those seeking to illegally emigrate from the CNMI to Guam or elsewhere in the United States reduces the integrity of the United States immigration system by increasing the ease by which aliens may unlawfully enter the United States through the CNMI. Federal oversight and regulations of CNMI foreign investors should help reduce abuse by foreign employees in the CNMI, and should help reduce the opportunity for aliens to use the CNMI as an entry point into the United States.

Conclusion:

This proposed rule responds to a Congressional mandate that requires the Federal Government to assume responsibility for all immigration to the CNMI by foreign investors, whether temporary or permanent. This proposed rule will implement this mandate and thus contribute to U.S. homeland security.

Risks:

This proposed regulation attempts to mitigate potential harm to the CNMI economy before the CNMI foreign investors are required to convert into United States immigrant or nonimmigrant visa classifications. The regulation is intended to assist CNMI investment permit holders to convert from their current status to a status covered under the Act during the transition period while considering their contributions to the well-being of the CNMI economy. Data gathered by the GAO suggests that perpetual foreign investors and long-term business permit holders invested at least $72 million in the CNMI in 2006 and 2007. The proposed regulation attempts to reduce the risk of losing substantial investments by including a majority of CNMI's current investor categories under the new E2 CNMI classification.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	
NPRM Comment Period End	12/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

CIS No. 2458-08

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DHS—USCIS

49. ● COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL WORKERS CLASSIFICATION

Priority:

Other Significant

Legal Authority:

PL 110–229

CFR Citation:

8 CFR 214.2

Legal Deadline:

None

Abstract:

This rule proposes to implement provisions of the Consolidated Natural Resources Act of 2008 to provide for a transition for a sizable population of temporary workers in the Commonwealth of Northern Mariana Islands (CNMI) to workers admitted under the Immigration and Nationality Act.

Statement of Need:

This rule is required by a statute that requires the Federal Government to assume responsibility for visas for entry to the CNMI by non-resident workers.

Summary of Legal Basis:

The Consolidated Natural Resources Act of 2008 (CNRA), P.L. 110-229, enacted on May 8, 2008, extends the Immigration and Nationality Act (INA) in full to the Commonwealth of Northern Mariana Islands.

Alternatives:

This rule is required by statute and alternatives were not considered.

Anticipated Cost and Benefits:

Each of the estimated 22,000 CNMI transitional workers will be required to pay a $320 fee per year, for an annualized cost to the affected public of $7 million.

Risks:

The effect of this rule on the CNMI economy is uncertain at this point. The Senate Report of Public Law 110-229 states that there are risks to the homeland security as a result of the lack of integrity in the CNMI immigration system that resulted in the passage of the legislation requiring this rule's promulgation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	
NPRM Comment Period End	01/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State

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RIN: 1615–AB76

DHS—USCIS

FINAL RULE STAGE

50. CHANGES TO REQUIREMENTS AFFECTING H–2A NONIMMIGRANTS

Priority:

Other Significant

Legal Authority:

8 USC 1101 and 1102

CFR Citation:

8 CFR 214; 8 CFR 274a

Legal Deadline:

None

Abstract:

U.S. Citizenship and Immigration Services is amending the regulations affecting temporary and seasonal agricultural workers within the H-2A nonimmigrant category and their U.S. employers. The rule relaxes the current limitations on the ability of U.S. employers to petition unnamed agricultural workers to come to the United States and makes related changes to the evidentiary requirements for such petitions. In addition, the rule revises the current limitations on agricultural workers' length of stay, including: Redefining ''temporary employment;'' lengthening the amount of time an agricultural worker may remain in the United States after their H-2A nonimmigrant status has expired; and shortening the time period that an agricultural worker whose H-2A nonimmigrant status has expired must wait before he or she is eligible to obtain H-2A nonimmigrant status again. Finally, this rule provides for temporary employment authorization to agricultural workers seeking an extension of their H-2A nonimmigrant status through a different U.S. employer. These changes are necessary to encourage and facilitate the lawful employment of foreign agricultural workers.

Statement of Need:

The final rule removes certain limitations on H-2A employers and adopts streamlining measures in order to encourage and facilitate the lawful employment of foreign temporary and seasonal agricultural workers. The final rule also addresses concerns regarding the integrity of the H-2A program and sets forth several conditions to prevent fraud and to protect laborers' rights. The purpose of the final rule is to provide agricultural employers with an orderly and timely flow of legal workers, thereby decreasing their reliance on unauthorized workers, while protecting the rights of laborers.

Summary of Legal Basis:

The H-2A nonimmigrant classification applies to aliens who are coming to the United States temporarily to perform agricultural labor or services of a temporary or seasonal nature. INA section 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a).

Alternatives:

Since DHS does not foresee the rule having a significant economic impact on small entities, this rule does not put forth significant alternatives to minimize impacts.

Anticipated Cost and Benefits:

USCIS funds the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs, by charging and collecting fees. For each Form I-129 USCIS charges a filing fee of $320. This rule does not change that fee, thus, the fee impacts of this rule on each petitioning firm are neutral. The enhancements in this rule are expected to increase the number of H-2A petitions per year by an estimated 3,600. Thus aggregate petition fees for H-2A employees as a result of this rule are expected to increase by $1,152,000.

This rule will benefit applicants by:

— Reducing delays caused by IBIS checks holding up the petition application process.

— Reducing disruption of the life and affairs of H-2A workers in the United States.

— Protecting laborers' rights by precluding payment of fees by the alien.

— Preventing the filing of requests for more workers than needed, visa selling, coercion of alien workers and their family members, or other practices that exploit workers and stigmatize the H-2A program.

— Encouraging employers who currently hire seasonal agricultural workers who are not properly authorized to work in the United States to replace those workers with legal workers.

— Minimizing immigration fraud and human trafficking.

Risks:

Since DHS does not foresee the rule having a significant economic impact on small entities, this rule does not put forth significant alternatives to minimize impacts.

Timetable:

Action	Date	FR Cite
NPRM	02/13/08	73 FR 8230
NPRM Comment Period End	04/14/08	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS 2428-07

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1615–AB65

DHS—USCIS

51. CHANGES TO REQUIREMENTS AFFECTING H–2B NONIMMIGRANTS AND THEIR EMPLOYERS

Priority:

Other Significant

Legal Authority:

8 USC 1101

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

The Department of Homeland Security is amending its regulations affecting temporary nonagricultural workers within the H-2B nonimmigrant category and their U.S. employers. The changes are designed to improve the efficiency and effectiveness of the H-2B nonimmigrant classification. This rule relaxes the current limitations on the ability of U.S. employers to petition unnamed nonagricultural workers to come to the United States. In addition, this rule creates a process that will allow for issuance of a partial approval notice in the event that a security check generates adverse information on one beneficiary who is part of a multiple beneficiary petition. Finally, this rule provides for employer notification to USCIS within 30 days of the date that the employee leaves employment or is terminated. These proposals will increase the efficiency of the program by eliminating certain regulatory barriers.

Statement of Need:

The final rule removes certain limitations on H-2B employers and adopts streamlining measures in order to facilitate the lawful employment of foreign temporary nonagricultural workers. The final rule also addresses concerns regarding the integrity of the H-2B program and sets forth several conditions to prevent fraud and protect laborers' rights. The final rule will benefit U.S. businesses by facilitating a timely flow of legal workers while ensuring the integrity of the program.

Summary of Legal Basis:

The H-2B classification applies to aliens who are coming to the United States to perform nonagricultural labor or services of a temporary nature. INA section 101(a)(15)(H)(ii)(b); 8 U.S.C. 1101(a)(15)(H)(ii)(b).

Alternatives:

This rule does not propose alternatives to minimize impacts. What cost increases occur due to the revised requirements are not expected to significantly affect entities and thus will not have a measurable impact on their ability to carry out their business activities.

Anticipated Cost and Benefits:

This rule eliminates the ''extraordinary circumstances'' restriction on periods of temporary need longer than one year and provides that such a period could last up to three years. This change will greatly benefit employers that utilize the H-2B program and that often need workers for specific long-term, but temporary projects. The fee impacts of this rule are neutral. Only those petitions received before the maximum annual number is reached are adjudicated and the fee check deposited. Petitions not received before the maximum annual number is reached are rejected. Because the total number of H-2B visas available per year will not increase and the total number of workers requested already greatly exceeds the number of H-2B visas available, fees will not increase because there will be no increase in Form I-129 filings that are processed.

Risks:

None. The amendments to the regulations affecting H-2B nonimmigrant workers and their U.S. employers are designed to improve the efficiency and effectiveness of the H-2B nonimmigrant classification while ensuring that the rights and interests of U.S. and H-2B workers are protected.

Timetable:

Action	Date	FR Cite
NPRM	08/20/08	73 FR 49109
NPRM Comment Period End	09/19/08	
Final Rule	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

2432-07

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1615–AB67

DHS—U.S. Coast Guard (USCG)

PRERULE STAGE

52. TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC); CARD READER REQUIREMENTS (USCG–2007–28915)

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1226, 1231; 46 USC Ch 701; 50 USC 191, 192; EO 12656

CFR Citation:

33 CFR subchapter H

Legal Deadline:

Final, Statutory, August 2010, SAFE Port Act, codified at 46 USC 70105(k).

The final rule is required 2 years after the start of the pilot program.

Abstract:

The Coast Guard is establishing electronic card reader requirements for maritime facilities and vessels to be used in combination with TSA's Transportation Worker Identification Credential.

Statement of Need:

The Maritime Transportation Security Act (MTSA) of 2002 explicitly required

the issuance of a biometric transportation security card to all U.S. merchant mariners and to workers requiring unescorted access to secure areas of facilities and vessels. On May 22, 2006, the Transportation Security Administration (TSA) and the Coast Guard published a Notice of Proposed Rule Making (NPRM) to carry out this statute, proposing a Transportation Worker Identification Credential (TWIC) Program where TSA conducts security threat assessments and issues identification credentials, while the Coast Guard requires integration of the TWIC into the access control systems of vessels, facilities and OCS facilities. This would have included the use of biometric TWIC readers by vessels, facilities, and OCS facilities. Based upon comments received during the public comment period, TSA and the Coast Guard bifurcated the TWIC rule. The final rule, published in January of 2007, addressed the issuance of the TWIC and use of the TWIC as a ''flash pass'' at access control points.

The requirement for integration of the TWIC into access control systems via TWIC card readers was deliberately excluded from the first TWIC Final Rule due to technology, operational and economic feasibility concerns. While the private sector has employed biometrics for a number of years in controlled, office-like environments, very few studies have examined how biometric card readers will withstand the comparatively harsh environments of vessels and facilities. The standard for the design and issuance of the TWIC did not provide for the card to be read without inserting it into an open slot reader, which commenters felt was operationally insufficient for the rigors of application in the maritime environment. Also, several commenters stated that the cost of biometric card readers would be extremely detrimental for small entities. With this in mind, Congress enacted several statutory requirements within the Security and Accountability for Every (SAFE) Port Act of 2006 to guide regulations pertaining to TWIC card readers.

This rulemaking is necessary to comply with the SAFE Port Act and to complete the implementation of the TWIC Program in our ports. By requiring electronic card readers at vessels and facilities, the Coast Guard will further enhance port security and improve access control measures.

Summary of Legal Basis:

The statutory authorities for the Coast Guard to prescribe, change, revise, or amend these regulations are provided under 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

The SAFE Port Act requires a final rule within two years of ''commencement'' of the TWIC pilot program.

Alternatives:

Alternative 1: Use several, if not all, of the concepts introduced in the first TWIC rule NPRM to address card reader requirements. This would mean that every facility and vessel regulated by 33 CFR subchapter H would need to purchase or have access to at least one reader.

Alternative 2: Don't implement a reader requirement, and instead have the Coast Guard do spot checks on regulated facilities and vessels using hand-held biometric card readers, while TWICs are used as flash passes.

Alternative 3: Require the use of card readers at regulated facilities and vessels based upon the risk of an access control related Transportation Security Incident taking place.

No non-regulatory alternatives are available at this time.

Anticipated Cost and Benefits:

The Coast Guard and TSA are in the process of revising earlier reader technology and compliance cost analysis from the Regulatory Evaluation used in support of the 2006 NPRM. We plan to revise the 2006 cost estimates associated with reader technology by incorporating data and findings from the pilot program and soliciting public comments. The pilot program discussed in the SAFE Port Act focuses on business processes, measurements of available technology, and operational impacts of readers. As of the publication date of this Regulatory Plan, data has not been collected from the pilot program. The Coast Guard and TSA anticipate reader technology deployed at vessels and facilities will further enhance port security and improve access control measures.

Based on preliminary analysis that does not include pilot data and information, we estimate the discounted first-year costs of this rulemaking to be $189 million or $204 million at a seven or three percent discount rate, respectively. The recurring annual costs after the first year, without technology replacement, range between $13.3 million and $6.9 million, depending on year and discount rate. The annual cost of this rulemaking with technology replacement in 2014 (five years after installation) is about $36 million or $47 million at a seven or three percent discount rate, respectively. The annualized cost over a ten-year period is $42.6 million or $40.6 million per year at a seven percent or three percent interest rate, respectively. We also estimate the total discounted ten-year cost of this rulemaking to be approximately $299 million at a seven percent discount rate and $347 million at a three percent discount rate.

Risks:

During the rulemaking process, we will take into account the various conditions in which TWIC card readers may be employed. For example, we will consider the types of vessels and facilities that will use TWIC readers, locations of secure and restricted areas, operational constraints, and need for accessibility. As part of this consideration, we are using the analytical hierarchy approach to incorporate Maritime Security Risk Analysis Model maximum consequence data, criticality, and TWIC utility factors to determine the level of TWIC authentication necessary at each type of facility and vessel. This will tie TWIC reader use requirements with facility and vessel risk, criticality, and TWIC utility. Recordkeeping requirements, amendments to security plans, and the requirement for data exchanges (i.e., TWIC hotlist) between TSA and vessel and facility owners/operators will also be addressed in this rulemaking.

The MTSA of 2002 further required the TWIC to be applicable to vessel pilots (46 U.S.C. 70105(b)(2)(C)). Most vessel pilots are already included in the first TWIC Final Rule as many hold federally issued merchant mariner credentials. In this proposed rulemaking, we will propose extending the TWIC applicability to vessel pilots holding only state commissions or credentials. Similarly, MTSA required the TWIC to be applicable to ''an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel'' (46 U.S.C. 70105(b)(2)(D)). While we have included individuals working on towing vessels subject to 33 CFR part 104 in the first TWIC Final Rule, we will propose extending TWIC applicability to those individuals who

work on towing vessels that push, pull, or haul alongside a tank vessel.

Another vital part of this rulemaking will be the vessel crew size limitations described in the SAFE Port Act. We are currently evaluating minimum crew size options as a component of proposed electronic reader requirements aboard vessels.

Finally, we will also revisit the concept of recurring unescorted access which was introduced in the first TWIC rule. As stated in the NPRM, published on May 22, 2006, ''As a result of this desire to provide flexibility, we propose the concept of 'recurring unescorted access,' which is intended to allow an individual to enter on a continual basis, without repeating the personal identity verification piece.'' We will examine the risks and benefits of this provision and propose an appropriate solution for vessels and facilities with small contingents of regular employees.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1625–AB02, Related to 1652–AA41

RIN: 1625–AB21

DHS—USCG

PROPOSED RULE STAGE

53. IMPLEMENTATION OF THE 1995 AMENDMENTS TO THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION, AND WATCHKEEPING (STCW) FOR SEAFARERS, 1978 (USCG–2004–17914)

Priority:

Other Significant

Legal Authority:

46 USC 2103; 46 USC chapters 71 and 73; DHS Delegation 0170.1

CFR Citation:

46 CFR 10; 46 CFR 12; 46 CFR 15

Legal Deadline:

None

Abstract:

The International Maritime Organization (IMO) comprehensively amended the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978, in 1995. The amendments came into force on February 1, 1997. This project implements those amendments by revising current rules to ensure that the United States complies with their requirements on: The training of merchant mariners, the documenting of their qualifications, and watch-standing and other arrangements aboard seagoing merchant ships of the United States. In addition, the Coast Guard has identified the need for additional changes to the interim rule issued in 1997. This rulemaking makes several minor editorial and clarification changes throughout title 46 parts 10, 11, 12, and 15. This project supports the Coast Guard's strategic goal of maritime safety. It also supports the goal of the Prevention Directorate by reducing deaths and injuries of crew members on domestic merchant vessels and eliminating substandard vessels from the navigable waters of the United States.

Market or Regulatory Failure Analysis: The IMO adopted amendments to the international convention on STCW in 1995. In 1997, we modified the regulations to implement these amendments. Since then, however, we found that more specificity is needed in the STCW regulations. The need for additional clarification resulted in the issuance of several policy guidelines over the past 10 years detailing mariner and training provider compliance to the STCW regulations. This regulatory action proposes to add the specificity from these guidelines, to close other regulatory gaps, and to propose some additional changes to the STCW regulations.

Statement of Need:

The Coast Guard proposes to amend its regulations to implement changes to its interim rule published on June 26, 1997. These proposed amendments go beyond changes found in the interim rule and seek to more fully incorporate the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) in the requirements for the credentialing of United States merchant mariners. The new changes are primarily substantive and: (1) Are necessary to continue to give full and complete effect to the STCW Convention; (2) Incorporate lessons learned from implementation of the STCW through the interim rule and through policy letters and NVICs; and (3) Attempt to clarify regulations that have generated confusion among USCG offices and industry.

Summary of Legal Basis:

The authority for the Coast Guard to prescribe, change, revise, or amend these regulations is provided under 46 U.S.C. 2103 and 46 U.S.C. chapters 71 and 73; and Department of Homeland Security Delegation No. 0170.1

Alternatives:

For each proposed change, the Coast Guard has considered various alternatives. We considered using policy statements, but they are not enforceable. We also considered taking no action, but this does not support the Coast Guard's fundamental safety and security mission. Additionally, we considered comments made during our 1997 rulemaking to formulate our alternatives. When we analyzed issues, such as license progression and tonnage equivalency, the alternatives chosen were those that most closely met the requirements of STCW.

Anticipated Cost and Benefits:

We estimate the non-discounted first-year and annual recurring costs of this proposed rule to be $14.6 million and $11.4 million, respectively. We estimate the annualized cost over a ten-year period to be at $11.9 million per year

at either a seven percent or a three percent discount rate. We estimate the total discounted ten-year cost of this rulemaking to be $83.8 million at a seven percent discount rate and $101.1 million at a three percent discount rate. The primary benefit of this rulemaking is to specify seafarer training.

Risks:

The ultimate goal of the regulation is to increase safety and facilitate consistency of the United States regulations with International Maritime Organization guidelines and requirements.

Timetable:

Action	Date	FR Cite
Notice of Meeting	08/02/95	60 FR 39306
Supplemental NPRM Comment Period End	09/29/95	
Notice of Inquiry	11/13/95	60 FR 56970
Comment Period End	01/12/96	
NPRM	03/26/96	61 FR 13284
Notice of Public Meetings	04/08/96	61 FR 15438
NPRM Comment Period End	07/24/96	
Notice of Intent	02/04/97	62 FR 5197
Interim Final Rule	06/26/97	62 FR 34505
Interim Final Rule Effective	07/28/97	
Supplemental NPRM	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Old Docket Number CGD 95-062.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AA16

DHS—USCG

54. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG–2001–10486)

Priority:

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

Legal Authority:

16 USC 4711

CFR Citation:

33 CFR 151

Legal Deadline:

None

Abstract:

This rulemaking would add a performance standard to 33 CFR part 151, subpart D, for all ballast water management methods being used as alternatives to mid-ocean ballast water exchange. It supports the Coast Guard's strategic goals of marine safety and protection of natural resources. This project is significant due to high interest from Congress and several Federal and State agencies.

Market or Regulatory Failure Analysis: There exists the potential introduction of new viable invasive species populations into U.S. waters. Commercial users of U.S. waterways (i.e., owners and operators of vessels) will not voluntarily install costly ballast water treatment systems to reduce the introduction of invasive species. We anticipate affected owners and operators cannot internalize the benefits of developing and testing such systems (e.g., receive a positive return on investment or benefit by increasing profits). Without regulation, we do not expect industry to incur the costs to develop, install, and maintain approved technology that can achieve effective ballast water discharge standards.

Statement of Need:

The unintentional introductions of nonindigenous species into U.S. waters via the discharge of vessels' ballast water has had significant impacts to the nation's aquatic resources, biological diversity, and coastal infrastructures. This rulemaking would amend the ballast water management requirements (33 CFR part 151 subpart D) and establish a standard that specifies the level of biological treatment that must be achieved by a ballast water treatment system before ballast water can be discharged into U.S. waters. This would increase the Coast Guard's ability to protect U.S. waters against the introduction of nonindigenous species via ballast water discharges.

Summary of Legal Basis:

Congress has directed the Coast Guard to develop ballast water regulations to prevent the introduction of nonindigenous species into U.S. waters under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and reauthorized and amended it with the National Invasive Species Act of 1996. This is not a statutory rulemaking.

Alternatives:

We would use the standard rulemaking process to develop regulations for a ballast water discharge standard. Nonregulatory alternatives such as navigation and vessel inspection circulars and the Marine Safety Manual have been considered and may be used for the development of policy and directives to provide the maritime industry and our field offices guidelines for implementation of the regulations. Nonregulatory alternatives cannot be substituted for the standard we would develop with this rule.

Anticipated Cost and Benefits:

We estimate the first-year (initial) cost of this rulemaking to be $241 million based on a seven percent discount rate and $250 million based on a three percent discount rate. Over the 10-year period of analysis (2012-2021), the total cost for the U.S. vessels is approximately $1.37 billion using the 3 percent discount rate and $1.19 billion using the 7 percent discount rate. Our cost assessment includes existing and new vessels.

We anticipate damages avoided from nonindigenous invasive species are the benefits of this rulemaking. Based on preliminary analysis, our primary annualized estimate of damages avoided range from $165 million to $282 million at a seven percent interest rate or $194 million to $330 million at a three percent discount rate. Estimated mid-point total benefits over a ten-year period of analysis, adjusted for the phase-in schedule, range from $1,161 million to $2,813 million depending on effective factors and discount rates.

Risks:

The rate at which nonindigenous species are unintentionally introduced into U. S. waters via ballast water continues to increase, and is estimated to cost the United States $7.98 billion annually (source: 2005 Pimental et al).

It is estimated that for areas such as the Great Lakes, San Francisco Bay, and Chesapeake Bay, one nonindigenous species becomes established per year. At this time, it is difficult to estimate the reduction of risk that would be accomplished by promulgating this rulemaking; however, it is expected a major reduction will occur.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/02	67 FR 9632
ANPRM Comment Period End	06/03/02	
NPRM	03/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AA32

DHS—USCG

55. VESSEL REQUIREMENTS FOR NOTICES OF ARRIVAL AND DEPARTURE, AND AUTOMATIC IDENTIFICATION SYSTEM (USCG–2005–21869)

Priority:

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

Legal Authority:

33 USC 1223; 33 USC 1225; 33 USC 1231; 46 USC 3716; 46 USC 8502 and ch 701; sec 102 of PL 107–295

CFR Citation:

33 CFR 160; 33 CFR 161; 33 CFR 164; 33 CFR 165

Legal Deadline:

None

Abstract:

This rulemaking would expand the applicability for Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements. These expanded requirements would better enable the Coast Guard to correlate vessel AIS data with NOAD data, enhance our ability to identify and track vessels, detect anomalies, improve navigation safety, and heighten our overall maritime domain awareness.

The NOAD portion of this rulemaking would expand the applicability of the NOAD regulations by changing the minimum size of vessels covered below the current 300 gross tons, require that a notice of departure be submitted for all vessels required to submit a notice of arrival, and mandate electronic submission of NOAD notices to the National Vessel Movement Center. The AIS portion of this rulemaking will expand current AIS carriage requirements for the population identified in the Marine Transportation Security Act (MTSA) of 2002.

Market or Regulatory Failure Analysis: The NOAD and AIS portions of the NPRM would attempt to close regulatory gaps by having smaller vessels submit Notices of Departure as well as Notices of Arrival and to do this electronically. AIS would help to track and identify the affected vessels (including enhancing situational awareness) and provide synergy with the NOAD portion of this rulemaking. The mandate for AIS is provided by the MTSA 2002.

Statement of Need:

We do not have a current mechanism in place to capture vessel, crew, passenger, or specific cargo information on vessels less than or equal to 300 gross tons (GT) intending to arrive at or depart from U.S. ports unless they are arriving with certain dangerous cargo (CDC) or are arriving at a port in the 7th Coast Guard District. The lack of NOA information on this large and diverse population of vessels represents a substantial gap in our maritime domain awareness (MDA). We can minimize this gap and enhance MDA by expanding the applicability of the NOAD regulation beyond vessels greater than 300 GT, cover all foreign commercial vessels and all U.S. commercial vessels coming from a foreign port; and enhance maritime domain awareness by tracking them (and others) with AIS. There is no current Coast Guard requirement for vessels to submit notification of departure information. This information is necessary in order to expand our MDA.

Summary of Legal Basis:

This rulemaking is based on congressional authority provided in the Ports and Waterways Safety Act and the Maritime Transportation Security Act of 2002.

Alternatives:

Our goal is to increase MDA and to identify anomalies by correlating vessel AIS data with NOAD data. NOAD and AIS information from a greater number of vessels would provide even greater MDA than the proposed rule. We considered expanding NOAD and AIS to even more vessels, but we determined we needed additional legislative authority to expand AIS beyond what we propose in this rulemaking; and that it was best to combine additional NOAD expansion with future AIS expansion.

Although not in conjunction with a proposed rule, the Coast Guard sought comment regarding expansion of AIS carriage to other waters and other vessels not subject to the current requirements (68 FR 39355-56, and 39370, July 1, 2003; USCG 2003-14878). Those comments were reviewed and considered in drafting this rule and will become part of this docket.

To fulfill our agency obligations, the Coast Guard needs to receive AIS reports and NOADs from vessels identified in this rulemaking that currently are not required to provide this information. Policy or other non-binding statements by the Coast Guard addressed to the owners of these vessels would not produce the information required to sufficiently enhance our MDA to produce the information required to fulfill our Agency obligations.

Anticipated Cost and Benefits:

We estimate the non-discounted first-year cost of this proposed rule to be about $94.4 million. We estimate the annualized cost over the 10-year period of analysis to be about $28.0 million at either a seven or a three percent discount rate. We estimate the total discounted 10-year cost of this proposed rule to be about $199.6 million at a seven percent discount rate and about $235.9 million at a three percent discount rate. We estimate the annualized benefit to be about $3.8 million at either a seven or a three percent discount rate. These estimates are based in part on available

technology. The primary benefit of this proposed rule is to enhance maritime security and safety through navigational and situational awareness. We also estimated there to be additional barrels of oil not spilled by this rulemaking. These estimates may change through further development of the rulemaking and after consideration of public comments.

Risks:

Considering the economic utility of U.S. ports, waterways, and coastal approaches, it is clear that a terrorist incident against our U.S. Maritime Transportation System (MTS) would have a disastrous impact on global shipping, international trade, and the world economy. By improving the ability of the Coast Guard both to identify potential terrorists coming to the United States while their vessel is far at sea and to coordinate appropriate responses and intercepts before the vessel reaches a U.S. port, this rulemaking would contribute significantly to the expansion of MDA, and consequently is instrumental in addressing the threat posed by terrorist actions against the MTS.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Additional Information:

Legal Deadline: With regard to the legal deadline, we have indicated in past notices and rulemaking documents, and it remains the case, that we have worked to coordinate implementation of AIS MTSA requirements with the development of our ability to take advantage of AIS data (68 FR 39355-56 and 39370, July 1, 2003).

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AA99

DHS—USCG

56. PASSENGER AND INSPECTED VESSEL STABILITY REQUIREMENTS (USCG–2007–0030)

Priority:

Other Significant

Legal Authority:

33 USC 1321(j); 43 USC 1333; 46 USC 2103, 3205, 3306, 3307, 3703, 6101; 49 USC App 1804; EO 11735; EO 12234; Dept of Homeland Security Delegation No. 0170.1

CFR Citation:

46 CFR 115; 46 CFR 116; 46 CFR 122; 46 CFR 170; 46 CFR 171; 46 CFR 176; 46 CFR 178; 46 CFR 185; 46 CFR 114; 46 CFR 175; 46 CFR 179

Legal Deadline:

None

Abstract:

The Coast Guard proposes developing a rule that addresses both the stability calculations and the environmental operating requirements for certain domestic passenger vessels. The proposed rule would address the outdated per-person weight averages that are currently used in stability calculations for certain domestic passenger vessels. In addition, the proposed rule would add environmental operating requirements for domestic passenger vessels that could be adversely affected by sudden inclement weather. This rulemaking would increase passenger safety by significantly reducing the risk of certain types of passenger vessels capsizing due to either passenger overloading or operating these vessels in hazardous weather conditions.

Market or Regulatory Failure Analysis: These regulations need to be updated to reflect current passenger weights. Standards are often set because owners and operators cannot internalize the benefits of appropriate safety standards. The commercial passenger vessel industry is not capable of voluntarily establishing uniform, nationwide standards for passenger weight. Failure to update the standards to reflect accurate, current passenger weights places passenger vessels at greater risk of capsizing.

This NPRM would support the Coast Guard's strategic goal of maritime safety.

Statement of Need:

Coast Guard regulations use an assumed average weight per person to calculate the maximum number of passengers and crew permitted on each deck. This assumed weight was established in the 1960s and is 160 pounds per person, except that vessels operating exclusively on protected waters carrying a mix of men, women, and children may use an average of 140 pounds. A recent report from the National Health and Nutrition Examination Survey (NHANES) program of the National Center for Health Statistics shows that there has been a significant increase in the average weights of the U.S. population between 1960 and 2002. Accordingly, the Coast Guard is updating the average passenger weight used in stability tests and evaluations for those vessels that may be at risk of capsizing due to excessive passenger weight.

Summary of Legal Basis:

The authority for the Coast Guard to prescribe, change, revise, or amend these regulations is provided under 33 U.S.C. 1321(j); 43 U.S.C. 1333; 46 U.S.C. 2103, 3205, 3306, 3307, 3703, and 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971 to 1975 Comp., p. 743; E.O. 12234; 45 FR 58801, 3 CFR, 1980 Comp., p. 277; and Department of Homeland Security Delegation No. 0170.1.

Alternatives:

The Coast Guard advised mariners through a Federal Register notice on April 26, 2006 (71 FR 24732) to voluntarily follow revised procedures to account for increased passenger weight when calculating the maximum number of persons permitted on board. The notice advised owners and operators of all pontoon vessels, and small passenger vessels not more than 65 feet in length, that met simplified

stability requirements using either 140 or 160 pounds, to voluntarily restrict the maximum number of passengers permitted on board by:

(1) Changing passenger capacity to a reduced number by dividing the total test weight by 185 pounds; or

(2) changing passenger capacity to a reduced number equal to 140 divided by 185 times the current number of passengers permitted to be carried. If the total test weight was based on 160 pounds per person, the multiplier may be taken as 160 divided by 185; or

(3) weighing persons and effects at dockside prior to boarding and limiting the actual load to the total test weight used in the vessel's SST or PSST.

On November 2, 2006, the Coast Guard published a second notice in the Federal Register clarifying the environmental conditions appropriate for operation of small passenger vessels (71 FR 64546). Guidance, though, does not carry the force of law. A regulatory solution is necessary to enact changes to the mandatory passenger weight limitations.

The Coast Guard also considered the option of directing Officers in Charge, Marine Inspection, pursuant to 46 CFR 178.210(c), to use a current assumed average passenger weight in stability tests for vessels under 65 feet in length. As with guidance, though, a policy directive is not enforceable and a regulatory change is necessary.

Anticipated Cost and Benefits:

We estimate the non-discounted first-year and recurring costs of this proposed rule to be about $10 million and $2.5 million, respectively. We estimate the annualized cost over the ten-year period at about $3.5 million per year at either a seven percent or a three percent discount rate. We estimate the total discounted ten-year cost of this rulemking to be $24.6 million at a seven percent discount rate and $28.7 million at a three percent discount rate.

These cost estimates may change through further development of the rulemaking and after consideration of public comments. The anticipated benefit is aligning regulation with the actual average passenger weight. We anticipate the revised weight standards would improve stability and reduce the risk of capsizings due either to passenger overloading or operating certain vessels in hazardous weather conditions, but have not assessed the extent of the risk reduction.

Risks:

Passenger vessel capsizings can involve significant loss of life and property. This rulemaking would reduce the risk of such incidents by updating the average passenger weight used in stability tests and evaluations of certain vessels. Consequently, this rulemaking would increase passenger safety and supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	08/20/08	73 FR 49244
NPRM Comment Period End	11/18/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AB20

DHS—U.S. Customs and Border Protection (USCBP)

FINAL RULE STAGE

57. ADVANCE INFORMATION ON PRIVATE AIRCRAFT ARRIVING AND DEPARTING THE UNITED STATES

Priority:

Other Significant

Legal Authority:

5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623 to 1624; 19 USC 1644 to 1644a

CFR Citation:

19 CFR 122

Legal Deadline:

None

Abstract:

This rule would amend Title 19 of the Code of Federal Regulations to require that the pilot of any private aircraft arriving in the United States from a foreign location or departing the United States for foreign provide an advance electronic transmission of information to Customs and Border Protection (CBP) regarding each individual traveling onboard the aircraft. In addition, the rule would add data elements to the existing notice of arrival requirements and proposes a new notice of departure requirement. The notice of arrival and notice of departure information would be required to be submitted to CBP via an approved electronic data interchange system in the same transmission as the corresponding arrival or departure manifest information. The means of transmission for these data elements must be via an electronic data interchange system approved by CBP. Under the proposed rule, the transmission of the data must be accomplished so that CBP receives the data prior to the private aircraft departing from a foreign airport, and prior to a private aircraft departing a United States airport for a foreign port or place.

Statement of Need:

Current regulations do not provide CBP the capability to assess potential threats posed by private aircraft entering and departing the United States. Private aircraft currently are not required to electronically transmit to CBP advance notice of arrival through an approved electronic data interchange system. In addition, private aircraft are not currently required to electronically transmit identifying information for all individuals onboard the aircraft (manifest data) before arriving in or departing from the United States. The existing regulations lack clarity in the procedures for requesting permission to land at landing rights airports. Private aircraft are also currently not required to obtain clearance or provide notice of departure prior to departing the United States.

To adequately and accurately assess potential threats posed by private aircraft entering and departing the United States, CBP needs sufficient and timely information about the impending arrival or departure of a

private aircraft, the passengers and crew onboard, and clear procedures regarding landing rights and departure clearance. Without these tools, CBP does not currently have the capability to perform risk assessments on passengers traveling on private aircraft.

Under this rule, CBP would receive advance electronic information of notice of arrival combined with passenger manifest data for those aboard private aircraft that arrive in and depart from the United States. This would provide critical information in a sufficient time to fully pre-screen information on all individuals intending to travel onboard private aircraft to or from the United States. Moreover, these changes would enable CBP to minimize potential threats posed by private aircraft by identifying high-risk individuals and aircraft and allowing CBP to coordinate with airport personnel and domestic or foreign government authorities to take appropriate action when warranted by a threat.

This rule serves to provide the nation, private aircraft operators, and the international traveling public, additional security from the threat of terrorism and enhance CBP's ability to carry out its border enforcement mission.

Alternatives:

This proposed rule is not economically significant under Executive Order 12866. Therefore, CBP did not consider regulatory alternatives.

Anticipated Cost and Benefits:

Currently, pilots of private aircraft must submit information regarding themselves, their aircraft, and any passengers prior to arrival into the United States from a foreign airport. Depending on the location of the foreign airport, the pilot provides the arrival information 1 hour prior to crossing the U.S. coastline or border (areas south of the United States) or during the flight (other areas). The information that would now be required for the pilot is similar to what is already required; it would now need to be submitted earlier (60 minutes prior to departure). The information that would now be required for passengers is more extensive that what is currently required and would also have to be submitted earlier. No notice of departure information is currently required for private aircraft departing the United States for a foreign airport.

CBP estimates that 138,559 private aircraft landed in the United States in 2006 based on current notice of arrival data. These aircraft collectively carried 455,324 passengers; including the 138,559 pilots of the aircraft, this totals 593,883 individuals arriving in the United States aboard private aircraft. CBP estimates that approximately two-thirds are U.S. citizens and the remaining one-third is comprosed of non-U.S. citizens.

CBP does not currently compile data for departures, as there are currently no requirements for private aircraft departing the United States. For this analysis, we assume that the number of departures is the same as the number of arrivals.

Thus, we estimate that 140,000 private aircraft arrivals and 140,000 departures will be affected annually as a result of the rule. While the current data elements for pilots are very similar to the proposed requirements, the data elements for passengers are more extensive. Based on the current information collected and accounting for proposed changes in the data elements, CBP estimates that one submission, which includes the arrival information and the passenger manifest data, will require 15 minutes of time (0.25 hours) to complete.

Currently, private aircraft arriving from areas south of the United States must provide advance notice of arrival at least 1 hour before crossing the U.S. coastline or border. There are no such timing requirements for other areas. Thus, some pilots and their passengers may decide that in order to comply with the new requirements, including submitting information through eAPIS and waiting for a response from CBP, they must convene at the airport earlier than they customarily would.

To estimate the costs associated with the time required to input data into eAPIS, we use the value of an hour of time as reported in the Federal Aviation Administration's (FAA) document on critical values, $28.60. This represents a weighted cost for business and leisure travelers in the air environment. The cost to submit advance notice of arrival data through eAPIS would be approximately $1 million (140,000 arrivals * 0.25 hours * $28.60 per hour). Similarly, costs to submit advance notice of departure data would be $1 million, for a total cost to submit the required data elements of $2 million annually.

To estimate the costs of arriving earlier than customary, we again use the value of time of $28.60 per hour. As noted previously, we assume that 301,000 pilots and passengers may choose to arrive 0.25 hours earlier than customary. This would result in a cost of approximately $2 million for arrivals and $2 million for departures, a total of $4 million annually (301,000 individuals * 0.25 hours * $28.60 per hour * 2).

Thus, the total annual cost of the proposed rule is expected to be $6 million. Over 10 years, this would total a present value cost of $47 million at a 7 percent discount rate ($55 million at a 3 percent discount rate).

As noted previously, the benefit of this proposed rule is enabling CBP to identify high-risk individuals and aircraft prior to their arrival in the United States, thus allowing CBP to coordinate with airport personnel and government authorities to take the action warranted by the threat. CBP would receive more information earlier to better assess risks of specific flights to national security and to take appropriate action in order to prevent security threats.

Timetable:

Action	Date	FR Cite
NPRM	09/18/07	72 FR 53393
NPRM Comment Period End	11/19/07	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

Transferred from RIN 1515-AD10

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1651–AA41

DHS—USCBP

58. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

PL 109–347, sec 203; 5 USC 301; 19 USC 66, 1431, 1433, 1434, 1624, 2071 note; 46 USC 60105

CFR Citation:

19 CFR 4

Legal Deadline:

None

Abstract:

This rule would amend DHS regulations to provide that Customs and Border Protection (CBP) must receive, by way of a CBP-approved electronic data interchange system, additional information from carriers and importers pertaining to cargo before the cargo is brought into the United States by vessel. The information required is that which is reasonably necessary to enable high-risk shipments to be identified so as to prevent smuggling and ensure cargo safety and security pursuant to the laws enforced and administered by CBP. The amendment is specifically intended to implement the provisions of section 203 of the Security and Accountability for Every Port Act of 2006.

Statement of Need:

Vessel carriers are currently required to transmit certain manifest information by way of the CBP Vessel Automated Manifest System (AMS) 24 hours prior to lading of containerized and non-exempt break bulk cargo at a foreign port. For the most part, this is the ocean carrier's or non-vessel operating common carrier (NVOCC)'s cargo declaration. CBP analyzes this information to generate its risk assessment for targeting purposes.

Internal and external government reviews have concluded that more complete advance shipment data would produce even more effective and more vigorous cargo risk assessments. In addition, pursuant to Section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 6 U.S.C. 943) (SAFE Port Act), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports.

Based upon its analysis, as well as the requirements under the SAFE Port Act, CBP is proposing to require the electronic transmission of additional data for improved high-risk targeting. Some of these data elements are being required from carriers (Container Status Messages and Vessel Stow Plan) and others are being required from ''importers,'' as that term is defined for purposes of the proposed regulations.

This rule will improve CBP's risk assessment and targeting capabilities, while at the same time, enabling the agency to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system and, thereby, reducing the threat to the United States and world economy.

Summary of Legal Basis:

Pursuant to Section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 6 U.S.C. 943) (SAFE Port Act), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports.

Alternatives:

CBP considered requiring an importer security filing for bulk cargo as well as for containerized and break-bulk cargo. If bulk cargo were not exempt from an importer security filing, the annualized costs of the rule would be increased by approximately $10 million.

Anticipated Cost and Benefits:

When the NPRM was published, CBP estimated that approximately 11 million import shipments conveyed by 1,200 different carrier companies operating 50,000 unique voyages or vessel-trips to the United States will be subject to the rule. Annualized costs range from $390 million to $630 million (7 percent discount rate over 10 years).

The annualized cost range results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to carriers for transmitting additional data to CBP.

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the regulation. CBP would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of direct benefits. However, existing data limitations and a lack of complete understanding of the true risks posed by terrorists prevent us from establishing the incremental risk reduction attributable to this rule. As a result, CBP has undertaken a ''break-even'' analysis to inform decision-makers of the necessary incremental change in the probability of such an event occurring that would result in direct benefits equal to the costs of the proposed rule.

CBP's analysis finds that the incremental costs of this regulation are relatively small compared to the median value of a shipment of goods despite the rather large absolute estimate of present value cost.

The proposed regulation may increase the time shipments are in transit, particularly for shipments consolidated in containers. For such shipments, the supply chain is generally more complex

and the importer has less control of the flow of goods and associated security filing information. Foreign cargo consolidators may be consolidating multiple shipments from one or more shippers in a container destined for one or more buyers or consignees. In order to ensure that the security filing data is provided by the shippers to the importers (or their designated agents) and is then transmitted to and accepted by CBP in advance of the 24-hour deadline, consolidators may advance their cut-off times for receipt of shipments and associated security filing data.

These advanced cut-off times would help prevent a consolidator or carrier from having to unpack or unload a container in the event the security filing for one of the shipments contained in the container is inadequate or not accepted by CBP. For example, consolidators may require shippers to submit, transmit, or obtain CBP approval of their security filing data before their shipments are stuffed in the container, before the container is sealed, or before the container is delivered to the port for lading. In such cases, importers would likely have to increase the times they hold their goods as inventory and thus incur additional inventory carrying costs to sufficiently meet these advanced cut-off times imposed by their foreign consolidators. The high end of the cost ranges presented assumes an initial supply chain delay of 1 day (24 hours) for the first year of implementation (2008) and a delay of 12 hours for years 2 through 10 (2009 to 2017).

The benefit of this rule is the improvement of CBP's risk assessment and targeting capabilities, while at the same time, enabling CBP to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system, and thereby reducing the threat to the United States and the world economy.

Timetable:

Action	Date	FR Cite
NPRM	01/02/08	73 FR 90
NPRM Comment Period End	03/03/08	
NPRM Comment Period Extended	02/01/08	73 FR 6061
NPRM Comment Period End	03/18/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1651–AA70

DHS—USCBP

59. CHANGES TO THE VISA WAIVER PROGRAM TO IMPLEMENT THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

8 USC 1103; 8 USC 1187; 8 CFR part 2

CFR Citation:

8 CFR 217.5

Legal Deadline:

None

Abstract:

This interim rule amends title 8 of the Code of Federal Regulations (CFR) on an interim basis to implement the Electronic System for Travel Authorization (ESTA) procedures for aliens who wish to travel to the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. Currently, aliens from VWP countries must provide certain biographical information to U.S. Customs and Border Protection (CBP) Officers at air and sea ports of entry on a paper form Nonimmigrant Alien Arrival/Departure (Form I-94W). Under this interim final rule, VWP travelers will provide the same information to CBP electronically before departing for the United States. By automating the I-94W process and establishing a system to provide VWP traveler data in advance of travel, CBP will be able to determine the eligibility of citizens and nationals from VWP countries to travel to the United States and whether such travel poses a law enforcement or security risk, before such individuals begin travel to the United States. ESTA will provide for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. ESTA will be implemented as a mandatory program 60 days after publication of another notice in the Federal Register DHS. DHS anticipates the such notice will be issued in November 2008, for implementation of the mandatory ESTA requirements on or before January 12, 2009.

Statement of Need:

Currently, aliens from VWP countries must provide certain biographical information to U.S. Customs and Border Protection (CBP) Officers at air and sea ports of entry on a paper form Nonimmigrant Alien Arrival/Departure (Form I-94W). Section 711 of the 9/11 Act requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system which will collect biographical and other information in advance of travel to determine the eligibility of the alien to travel to the United States and to determine whether such travel poses a law enforcement or security risk. ESTA is intended to fulfill these statutory requirements.

Under this interim final rule, VWP travelers will provide the same information to CBP electronically before departing for the United States. VWP travelers who receive travel authorization under ESTA will not be required to complete the paper Form I-94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status. By automating the I-94W process and establishing a system to provide VWP traveler data in advance of travel, CBP will be able to determine the eligibility of citizens and eligible nationals from VWP countries to travel to the United States and whether such travel poses a law

enforcement or security risk, before such individuals begin travel to the United States. ESTA will provide for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry.

Summary of Legal Basis:

The ESTA program is based on congressional authority provided under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 and section 217 of the Immigration and Nationality Act (INA).

Alternatives:

CBP considered three alternatives to this rule:

1: The ESTA requirements in the rule, but with a $1.50 fee per each travel authorization (more costly)

2: The ESTA requirements in the rule, but with only the name of the passenger and the admissibility questions on the I-94W form (less burdensome)

3: The ESTA requirements in the rule, but only for the countries entering the VWP after 2009 (no new requirements for VWP, reduced burden for newly entering countries)

CBP determined that the rule provides the greatest level of enhanced security and efficiency at an acceptable cost to traveling public and potentially affected air carriers.

Anticipated Cost and Benefits:

The purpose of ESTA is to allow DHS and CBP to establish the eligibility of certain foreign travelers to travel to the United States under the VWP, and whether the alien's proposed travel to the United States poses a law enforcement or security risk. Upon review of such information, DHS will determine whether the alien is eligible to travel to the United States under the VWP. Once ESTA is implemented as a mandatory program, citizens and eligible nationals of the 27 countries in the current VWP must comply with this rule.

Impacts to Air & Sea Carriers

CBP estimated that eight U.S.-based air carriers and eleven sea carriers will be affected by the rule. An additional 35 foreign-based air carriers and five sea carriers will be affected. CBP concluded that costs to air and sea carriers to support the requirements of the ESTA program could cost $137 million to $1.1 billion over the next 10 years depending on the level of effort required to integrate their systems with ESTA, how many passengers they need to assist in applying for travel authorizations, and the discount rate applied to annual costs.

Impacts to Travelers

ESTA will present new costs and burdens to travelers in VWP countries who were not previously required to submit any information to the U.S. Government in advance of travel to the United States. Travelers from Roadmap countries who become VWP countries will also incur costs and burdens, though these are much less than obtaining a nonimmigrant visa (category B1/B2), which is currently required for short-term pleasure or business to travel to the United States. CBP estimated that the total quantified costs to travelers will range from $1.1 billion to $3.5 billion depending on the number of travelers, the value of time, and the discount rate. Annualized costs are estimated to range from $133 million to $366 million.

Benefits

As set forth in section 711 of the 9/11 Act, it was the intent of Congress to modernize and strengthen the security of the Visa Waiver Program under section 217 of the Immigration and Nationality Act (INA, 8 USC 1187) by simultaneously enhancing program security requirements and extending visa-free travel privileges to citizens and eligible nationals of eligible foreign countries that are partners in the war on terrorism.

By requiring passenger data in advance of travel, CBP may be able to determine, before the alien departs for the United States, the eligibility of citizens and eligible nationals from VWP countries to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for the screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at U.S. ports of entry.

CBP concluded that the total benefits to travelers could total $1.1 billion to $3.3 billion over the period of analysis. Annualized benefits could range from $134 million to $345 million.

In addition to these benefits to travelers, CBP and the carriers should also experience the benefit of not having to administer the I-94W. While CBP has not conducted an analysis of the potential savings, it should accrue benefits from not having to produce, ship, and store blank forms. CBP should also be able to accrue savings related to data entry and archiving. Carriers should realize some savings as well, though carriers will still have to administer the I-94 for those passengers not traveling under the VWP and the Customs Declaration forms for all passengers aboard the aircraft and vessel.

Timetable:

Action	Date	FR Cite
Interim Final Action	06/09/08	73 FR 32440
Interim Final Rule Effective	08/08/08	
Interim Final Rule Comment Period End	08/08/08	
Final Rule	06/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1651–AA72

DHS—USCBP

60. ● IMPLEMENTATION OF THE GUAM–CNMI VISA WAIVER PROGRAM

Priority:

Other Significant

Legal Authority:

PL 110–229, sec 702

CFR Citation:

8 CFR 100.4; 8 CFR 212.1; 8 CFR 233.5; 8 CFR 235.5; 19 CFR 4.7b; 19 CFR 122.49a

Legal Deadline:

Final, Statutory, November 4, 2008, PL 110–229.

Abstract:

This rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. DHS is establishing six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program.

Statement of Need:

Currently, aliens who are citizens of eligible countries may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen (15) days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission. Section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), supersedes the Guam visa waiver program by providing for a visa waiver program for Guam and the Commonwealth of the Northern Mariana Islands (Guam-CNMI Visa Waiver Program). Section 702(b) requires DHS to promulgate regulations within 180 days of enactment of the CNRA to allow nonimmigrant visitors from eligible countries to apply for admission into Guam and the CNMI, for business or pleasure, without a visa, for a period of authorized stay of no longer than forty-five (45) days.

Under this interim final rule, a visitor seeking admission under the Guam-CNMI Visa Waiver Program must be a national of an eligible country and must meet the requirements enumerated in the current Guam visa waiver program as well as additional requirements that bring the Guam-CNMI Visa Waiver Program into soft alignment with the U.S. Visa Waiver Program provided for in 8 CFR 217. The country eligibility requirements established in this rule take into account the intent of the CNRA and ensure that the regulations meet current border security needs. The country eligibility requirements are designed to: (1) ensure effective border control procedures, (2) properly address national security and homeland security concerns in extending U.S. immigration law to the CNMI, and (3) maximize the CNMI's potential for future economic and business growth. This rule also provides that visitors from the People's Republic of China and Russia have provided a significant economic benefit to the CNMI. However, nationals from those countries can not, at this time, seek admission under the Guam-CNMI Visa Waiver Program due to security concerns. Pursuant to section 702(a) of the CNRA, which extends the immigration laws of the United States to the CNMI, this rule also establishes six ports of entry in the CNMI to enable the Secretary of Homeland Security (the Secretary) to administer and enforce the Guam-CNMI Visa Waiver Program.

Summary of Legal Basis:

The Guam-CNMI Visa Waiver Program is based on congressional authority provided under 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA).

Alternatives:

None

Anticipated Cost and Benefits:

The most significant change for admission to the CNMI as a result of the rule will be for visitors from those countries who are not included in either the existing U.S. Visa Waiver Program or the Guam-CNMI Visa Waiver Program established by the rule. These visitors must apply for U.S. visas, which require in-person interviews at U.S. embassies or consulates and higher fees than the CNMI currently assesses for its visitor entry permits. CBP anticipates that the annual cost to the CNMI will be $6 million. These are losses associated with the reduced visits from foreign travelers who may no longer visit the CNMI upon implementation of this rule.

The anticipated benefits of the rule are enhanced security that will result from the federalization of the immigration functions in the CNMI.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 1651–AA77

DHS—Transportation Security Administration (TSA)

PROPOSED RULE STAGE

61. AIRCRAFT REPAIR STATION SECURITY

Priority:

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

Legal Authority:

49 USC 114; 49 USC 44924

CFR Citation:

49 CFR 1554

Legal Deadline:

Final, Statutory, August 8, 2004, sec. 611 of Vision 100 requires TSA to issue a final rule within 240 days from date of enactment of Vision 100.

Final, Statutory, August 3, 2008, sec. 1616 of the 9/11 Commission Act requires that the final rule be issued within one year of the date of enactment.

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; Dec. 12, 2003; 117 Stat. 2490), codified at 49 U.S.C.

44924, requires TSA to issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations'' within 240 days from date of enactment of Vision 100.

Abstract:

The Transportation Security Administration (TSA) will propose to add a new regulation to improve the security of domestic and foreign aircraft repair stations, as required by the section 611 of Vision 100—Century of Aviation Reauthorization Act. The NPRM will propose general requirements for security programs to be adopted and implemented by repair stations certified by the Federal Aviation Administration (FAA). Regulations originally were to be promulgated by August 8, 2004. A Report to Congress was sent August 24, 2004, explaining the delay.

Statement of Need:

The Transportation Security Administration (TSA) is proposing regulations to improve the security of domestic and foreign aircraft repair stations. The proposed regulations will require repair stations that are certificated by the Federal Aviation Administration to adopt and carry out a security program. The proposal will codify the scope of TSA's existing inspection program. The proposal also will provide procedures for repair stations to seek review of any TSA determination that security measures are deficient.

Summary of Legal Basis:

Sec. 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; 12/12/2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA to issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations'' within 240 days from date of enactment of Vision 100. Section 1616 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266) requires that the FAA may not certify any foreign repair stations if the regulations are not issued within one year after the date of enactment of the 9/11 Commission Act unless the repair station was previously certified or is in the process of certification.

Anticipated Cost and Benefits:

The proposed rule would enhance aviation security by supplementing existing safety regulations with requirements for repair stations to implement specific security measures to protect aircraft from commandeering, tampering, or sabotage. The proposed security measures will mitigate the potential threat that an aircraft could be used as a weapon or be destroyed. Using a 7 percent discount rate, TSA estimated the 10-year cost impacts for the primary scenario of this rulemaking would total $242.4 million. This total is distributed among domestic repair stations, which would incur total costs of $119.7 million; foreign repair stations, which would incur costs of $68.9 million; and TSA-projected Federal Government costs, which would be $53.7 million. As of March 2007, the FAA reported that there are 4,227 domestic repair stations and 694 repair stations located outside the U.S. that have an FAA certificate under part 145 of the FAA's rules.

Timetable:

Action	Date	FR Cite
Notice—Public Meeting; Request for Comments	02/24/04	69 FR 8357
Report to Congress	08/24/04	
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1652–AA38

DHS—TSA

62. LARGE AIRCRAFT SECURITY PROGRAM, OTHER AIRCRAFT OPERATOR SECURITY PROGRAMS, AND AIRPORT OPERATOR SECURITY PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

6 USC 469; 18 USC 842; 18 USC 845; 46 USC 70102 to 70106; 46 USC 70117; 49 USC 114; 49 USC 5103; 49 USC 5103a; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation:

49 CFR 1515; 49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1542; 49 CFR 1544; 49 CFR 1550

Legal Deadline:

None

Abstract:

The Transportation Security Administration (TSA) proposes to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements, and by adding new requirements for certain large aircraft operators and airports serving those aircraft. TSA is proposing that all aircraft operations, including corporate and private charter operations, with aircraft having a maximum certificated takeoff weight (MTOW) above 12,500 pounds (''large aircraft'') be required to adopt a large aircraft security program. TSA also proposes to require certain airports that serve large aircraft to adopt security programs.

Statement of Need:

This NPRM would enhance current security measures, and would apply security measures currently in place for operators of certain types of aircraft, to operators of other aircraft. While the focus of TSA's existing aviation security programs has been on air carriers and commercial operators, TSA is aware that general aviation aircraft with a maximum certificated takeoff weight (MTOW) of over 12,500 pounds (''large aircraft'') may be vulnerable to terrorist activity. These aircraft are of sufficient size and weight to inflict significant damage and loss of lives if they are hijacked and used as missiles. TSA has current regulations that apply to large aircraft operated by air carriers and commercial operators, including the twelve five program, the partial program, and the private charter program. However, the current regulations do not cover all general aviation operations, such as those operated by corporations and individuals, and such operations do not have the features that are necessary to enhance security.

Anticipated Cost and Benefits:

The proposed rule would yield benefits in the areas of security and quality governance. The security and governance benefits are four-fold. First, the rule would enhance security by expanding the mandatory use of security measures to certain operators of large aircraft that are not currently required to have a security plan. These measures would deter malicious individuals from perpetrating acts that might compromise transportation or national security by using large aircraft for these purposes. Second, it would harmonize, as appropriate, security measures used by a single operator in its various operations and between different operators. Third, the new periodic audits of security programs would augment TSA's efforts to ensure that large aircraft operators are in compliance with their security programs. Finally, it would consolidate the regulatory framework for large aircraft operators that currently operate under a variety of security programs, thus simplifying the regulations and allowing for better governance.

TSA estimated the total 10-year cost of the program would be $1.3 billion, discounted at 7 percent. Aircraft operators, airport operators, and the Transportation Security Administration would incur costs to comply with the requirements of the proposed Large Aircraft Security Program rule. Aircraft operator costs comprise 85 percent of all estimated expenses. TSA estimated approximately 9,000 general aviation aircraft operators use aircraft with a maximum takeoff weight exceeding 12,500 pounds, and would be newly subjected to the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/30/08	73 FR 64790
NPRM Comment Period End	12/29/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1652–AA03, Related to 1652–AA04

RIN: 1652–AA53

DHS—TSA

63. PUBLIC TRANSPORTATION—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1408

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, November 3, 2007, Interim Rule is due 90 days after date of enactment.

Final, Statutory, August 3, 2008, Rule is due 1 year after date of enactment.

According to section 1408 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), interim final regulations are due 90 days after the date of enactment (Nov. 3, 2007), and final regulations are due 1 year after the date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will add a new regulation to improve the security of public transportation in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007.

This rulemaking will propose general requirements for a public transportation security training program to prepare public transportation employees, including frontline employees, for potential security threats and conditions.

Statement of Need:

A public transportation security training program is proposed to prepare public transportation employees, including frontline employees, for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; Sec. 1408 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	08/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA55

DHS—TSA

64. PUBLIC TRANSPORTATION—SECURITY PLAN

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1405

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Transportation Security Administration (TSA) will propose new regulations to enhance security in public transportation in accordance with section 1405 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

This rulemaking will propose general requirements to require public transportation agencies that the Secretary of the Department of Homeland Security (DHS) has determined are at high risk for terrorism to develop comprehensive security plans. Technical assistance and guidance will be provided to these agencies in preparing and implementing the security plans.

Statement of Need:

The rulemaking will propose general requirements for the development of comprehensive security plans by high-risk public transportation agencies to deter security threats.

Summary of Legal Basis:

49 U.S.C. 114; section 1405 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	10/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA56

DHS—TSA

65. RAILROADS—SECURITY TRAINING OF EMPLOYEES

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1517

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, February 3, 2008, due 6 months after date of enactment.

According to section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), TSA must issue a regulation no later than 6 months after the date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will add new regulations to improve the security of railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007.

The rulemaking will propose general requirements for a security training program to prepare railroad frontline employees for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

Statement of Need:

The rulemaking will propose general requirements for a security training program to prepare railroad frontline employees for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	08/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA57

DHS—TSA

66. RAILROADS—VULNERABILITY ASSESSMENT AND SECURITY PLAN

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1512

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, August 3, 2008, Due 12 months after date of enactment.

According to section 1512 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), TSA must issue a regulation no later than 12 months after date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will add new regulations to improve the security of rail transportation in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007.

This rulemaking will propose general requirements for each railroad carrier assigned by the Secretary of the Department of Homeland Security (DHS) to a high-risk tier to conduct a vulnerability assessment; implement a security plan that addresses security performance requirements; and establish standards and guidelines for developing and implementing these vulnerability assessments and security plans.

Statement of Need:

The rulemaking will propose general requirements for each high-risk railroad carrier to conduct a vulnerability assessment; implement a security plan that addresses security performance requirements; and establish standards and guidelines for developing and implementing these vulnerability assessments and security plans.

Summary of Legal Basis:

49 U.S.C. 114; section 1512 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	10/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA58

DHS—TSA

67. OVER–THE–ROAD BUSES—SECURITY TRAINING OF EMPLOYEES

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1534

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, February 3, 2008, Due 6 months after date of enactment.

According to section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007); 121 Stat. 266), TSA must issue a regulation no later than 6 months after date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will add new regulations to improve the security of over-the-road buses in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007.

The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

Statement of Need:

The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	08/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA59

DHS—TSA

68. OVER–THE–ROAD BUSES—VULNERABILITY ASSESSMENT AND SECURITY PLAN

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1531

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, February 3, 2009, section 1531 directs TSA to issue a regulation no later than 18 months after date of enactment.

According to section 1531 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), TSA must issue a regulation no later than 18 months after date of enactment (Feb. 3, 2009) of this Act.

Abstract:

The Transportation Security Administration (TSA) will add new regulations to improve the security of over-the-road bus operators in accordance with section 1531 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

The rulemaking will propose general requirements for each over-the-road bus operator assigned by the Secretary of the Department of Homeland Security (DHS) to a high-risk tier to conduct a vulnerability assessment and implement a security plan.

Statement of Need:

The rulemaking will propose general requirements for each high-risk over-the-road bus operator to conduct a vulnerability assessment and implement a security plan.

Summary of Legal Basis:

49 U.S.C. 114; section 1531 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	10/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA60

DHS—TSA

FINAL RULE STAGE

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69. SECURE FLIGHT PROGRAM

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 114; 49 USC 40113; 49 USC 44901 to 44903

CFR Citation:

49 CFR 1560

Legal Deadline:

Final, Statutory, September 2005.

Section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108-458; Dec. 17, 2004) requires that not later than January 1, 2005, TSA commence testing of an advanced passenger prescreening system; and that not later than 180 days after completion of testing, TSA begin to assume the performance of the passenger prescreening function.

Abstract:

The Transportation Security Administration (TSA) is issuing a rule to implement the requirement in section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108-458; Dec. 17, 2004) that TSA assume from aircraft operators the performance of the passenger screening function of comparing passenger information to appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government.

Statement of Need:

The Secure Flight program will fulfill the requirement of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108-458) that TSA begin to assume the pre-flight watch list matching function currently carried out by air carriers. The rule would establish the regulatory basis for initiation of the Secure Flight program.

Anticipated Cost and Benefits:

Secure Flight operational testing would exercise and validate TSA's ability to connect with the aircraft operators and the Terrorist Screening Center, receive passenger and non-traveler information, conduct watch list matching, and transmit watch list results back to the aircraft operators using live passenger data. Once the testing results achieve the program's desired efficacy levels, Secure Flight would be implemented and TSA would receive the primary responsibility for airline passenger watch list matching. Benefits could include more accurate, timely, and comprehensive screening, and a reduction in false positives. This would occur because Secure Flight would have access to more data than airlines with which to distinguish passengers from records in the watch lists. Further, the airlines would be relieved of watch list matching responsibilities, and once the program is fully implemented, TSA would be relieved of distributing the watch lists. Other benefits would include increased security due to the watch list matching of non-traveling individuals who request access to a sterile area.

TSA estimated the discounted 10-year costs of this rulemaking discounted at 7 percent would total from $2.074 billion to $3.5281 billion. Air carriers would incur total costs of $345.3 million to $1,422 million, and travel agents would incur costs of $170.8 to $256.6 million. TSA projected Federal Government costs would be from $943.9 to $1,155.7 million. The total cost of outlays would be from $2,074.4 billion to $3,581.1 billion. Additionally, the cost to individuals (value of time) would be between $602.1 and $726.3 million.

Timetable:

Action	Date	FR Cite
Notice: Information Collection; Emergency Processing	09/24/04	69 FR 57342
Notice: Information Collection; Emergency Processing Comment Period End	10/25/04	
Notice: Final Order for Secure Flight Test Phase; Response to Public Comments	11/15/04	69 FR 65619
NPRM	08/23/07	72 FR 48355
NPRM Comment Period End	10/22/07	
Notice: Public Meeting; Request for Comments	09/05/07	72 FR 50916
Notice: Public Meeting; Comment Period End	10/22/07	
NPRM Extension of Comment Period	10/24/07	72 FR 60307
NPRM Comment Period End	11/21/07	
Final Rule (Part II)	10/28/08	73 FR 64018
Final Rule Effective	12/29/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1652–AA48

RIN: 1652–AA45

DHS—TSA

70. RAIL TRANSPORTATION SECURITY

Priority:

Other Significant

Legal Authority:

46 USC 70102 to 70106; 46 USC 70117; 49 USC 114; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913 and 44914; 49 USC 44916 to 44918; 49 USC 44935 and 44936; 49 USC 44942; 49 USC 46105; PL 110–53, sec 1501; PL 107–71; PL 107–296

CFR Citation:

49 CFR 1520; 49 CFR 1580

Legal Deadline:

None

Abstract:

The Transportation Security Administration (TSA) will issue requirements in this rulemaking to enhance the security of our Nation's rail transportation system. Regulated entities would include freight railroad carriers; intercity, commuter, and short-haul passenger train service providers; rail transit systems; and operators of certain fixed-site facilities that ship or receive specified categories and quantities of rail security-sensitive materials by rail.

This rulemaking will codify the scope of TSA's existing inspection program and require regulated parties to allow TSA and Department of Homeland Security (DHS) officials to enter, inspect, and test property, facilities, conveyances, and records relevant to rail security. This action will also require that regulated parties designate rail security coordinators and report significant security concerns to DHS.

TSA further will identify a list of rail security-sensitive materials and require that freight rail carriers and certain facilities handling rail security-sensitive materials be equipped to report location and shipping information to TSA upon request and to implement chain of custody requirements to ensure a positive and secure exchange of specified hazardous materials. In this action, TSA will also clarify and extend the sensitive security information (SSI) protections to cover certain information associated with rail transportation.

Statement of Need:

The Transportation Security Administration (TSA) will issue this final rule to establish security requirements for freight railroad carriers; intercity, commuter, and short-haul passenger train service providers; rail transit systems; and rail operations at certain fixed-site facilities that ship or receive specified hazardous materials by rail. This rule will enhance the security of our nation's rail transportation system.

Summary of Legal Basis:

TSA has the responsibility for enhancing security in all modes of transportation. Under ATSA, and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation . . . including security responsibilities'' over modes of transportation that are exercised by the Department of Transportation. TSA's authority with respect to transportation security is comprehensive and supported with specific powers related to the development and enforcement of regulations, security directives, security plans, and other requirements. Accordingly, under this authority, TSA may assess a security risk for any mode of transportation, develop security measures for dealing with that risk, and enforce compliance with those measures.

Anticipated Cost and Benefits:

The primary estimate of the total 10-year cost of the final rule discounted at 7 percent is from $153 million to $174 million. The main costs are from the chain of custody and location reporting requirements.

The final rule will enhance rail transportation security by imposing requirements to designate rail security coordinators, report significant security concerns, and implement location reporting and chain of custody requirements. In addition, the broad inspection authorities codified in the final rule may help identify vulnerabilities in rail transportation that should be addressed in future rulemakings or through other mechanisms. Finally, changes to the SSI provisions will allow access to information by State, local, and tribal authorities that may assist them in addressing security threats.

Timetable:

Action	Date	FR Cite
NPRM	12/21/06	71 FR 76852
Notice—Public Meeting; Request for Comments	01/19/07	72 FR 2488
NPRM; Comment Period End	02/20/07	
NPRM; Initial Regulatory Flexibility Analysis (IRFA)	02/15/07	72 FR 7376
NPRM; IRFA; Comment Period End	02/20/07	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1652–AA51

DHS—TSA

71. AIR CARGO SCREENING

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 110–53, sec 1602; 49 USC 114; 49 USC 40113; 49 USC 44901 to 44905; 49 USC 44913 to 44914; 49 USC 44916; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation:

49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1544; 49 CFR 1548; 49 CFR 1549

Legal Deadline:

Other, Statutory, February 2009, 50 percent of cargo on passenger aircraft.

Final, Statutory, August 2010, 100 percent of cargo on passenger aircraft.

Sec 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, Aug. 3, 2007) requires that the Secretary of Homeland Security establish a system to screen 50 percent of cargo on passenger aircraft not later than 18 months after the date of enactment and 100 percent of such cargo not later than 3 years after the date of enactment.

Abstract:

The Transportation Security Administration (TSA) will establish the Certified Cargo Screening Program that will certify shippers, manufacturers, and other entities to screen air cargo intended for transport on a passenger aircraft. This will be the primary means through which TSA will meet the requirements of sec. 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 that mandates that 100 percent of air cargo transported on passenger aircraft, operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation, must be screened by August 2010, to ensure the security of all such passenger aircraft carrying cargo.

Under this rulemaking, each certified cargo screening facility (CCSF) and their employees and authorized representatives that will be screening cargo must successfully complete a security threat assessment. The CCSF must also submit to an audit of their security measures by TSA-approved auditors, screen cargo using TSA-approved methods, and initiate strict chain of custody measures to ensure the security of the cargo throughout the supply chain prior to tendering it for transport on passenger aircraft.

Statement of Need:

TSA will establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

The system shall require, at a minimum, that equipment, technology, procedures, personnel, or other methods approved by the Administrator of TSA, are used to screen cargo carried on passenger aircraft to provide a level of security commensurate with the level of security for the screening of passenger checked baggage.

Summary of Legal Basis:

49 U.S.C. 114; sec 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, 10/3/2007)

Anticipated Cost and Benefits:

TSA estimates the cost of the rule will be $3.0 billion (discounted at seven percent) over ten years. TSA analyzed the alternative of not establishing the Certified Cargo Screening Program (CCSP) and, instead, having aircraft operators and air carriers perform screening of all cargo transported on passenger aircraft. Absent the CCSP, the estimated cost to aircraft operators and air carriers is $8.5 billion (discounted at seven percent) over ten years. The bulk of the costs for both the CCSP and the alternative are attributed to personnel and the impact of cargo delays resulting from the addition of a new operational process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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RIN: 1652–AA64

DHS—U.S. Immigration and Customs Enforcement (USICE)

PROPOSED RULE STAGE

72. AMENDMENT OF FLIGHT TRAINING REGULATIONS FOR F AND M NONIMMIGRANTS AND TO TRANSITION J FLIGHT TRAINING PROGRAMS OF THE DEPARTMENT OF STATE TO M FLIGHT PROGRAMS WITH THE DEPARTMENT OF HOMELAND SECURITY

Priority:

Other Significant

Legal Authority:

Not Yet Determined

CFR Citation:

8 CFR 214; 22 CFR 62

Legal Deadline:

None

Abstract:

This regulation will ensure that, in the interest of national security, DHS provides efficient and effective oversight for flight training programs. The eight Department of State (DOS) flight training programs that are validated to enroll J visa exchange visitors will, at DOS request, be incorporated into the DHS Student and Exchange Visitor Program (SEVP) flight training certification process no later than June 1, 2010. This regulation will accomplish and facilitate this transition, modify existing M regulations to improve the tracking of flight training students in M classification and promote international flight safety by expanding practical training opportunities for this group.

Statement of Need:

On July 11, 2008, the Department of State published Public Notice 6284, 73 FR 40008, Exchange Visitor Program—Termination of Flight Training Programs. The notice informs the public that the Department of State will cease sponsorship of their existing flight training programs on June 1, 2010. To avoid adverse consequences to these programs, DHS will need to implement this rule no later than December 31, 2009.

Anticipated Cost and Benefits:

The benefits of the Amendment of Flight Training Regulations for F and M Nonimmigrants and to Transition J Flight Training Programs of the Department of State to M Flight Programs with the Department of Homeland Security are impossible to quantify or monetize using standard economic accounting techniques. The number of alien flight training students and the number of flight training programs and providers is in constant flux. There are immeasurable benefits for both national security and the economy to continued monitoring of flight training programs, improved tracking of alien flight training, and the promotion of international flight safety.

Timetable:

Action	Date	FR Cite
NPRM	03/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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RIN: 1653–AA43

DHS—USICE

73. CLARIFICATION OF CRITERIA FOR CERTIFICATION, OVERSIGHT, AND RECERTIFICATION OF SCHOOLS BY THE STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP) TO ENROLL F OR M NONIMMIGRANT STUDENTS

Priority:

Other Significant

Legal Authority:

8 USC 1356(m); PL 107–56; PL 107–173

CFR Citation:

8 CFR 103; 8 CFR 214.3; 8 CFR 214.4

Legal Deadline:

None

Abstract:

This rule amends DHS regulations 8 CFR 214.3 and 214.4 governing certification, oversight, and recertification of schools certified by the Student and Exchange Visitor Program (SEVP) for attendance by F and/or M nonimmigrant students. The rule clarifies the criteria for initial certification, compliance, and recertification of SEVP-certified schools every two years.

Statement of Need:

SEVP recertification of schools will commence Apr 1, 2009. It is essential that this rule be implemented by that date to establish the standard for adjudications in the two-year recertification cycle that will commence on that date.

Anticipated Cost and Benefits:

It is extremely difficult to quantify monetarily the benefits of the Clarification of Criteria for Certification, Oversight and Recertification of Schools by the Student and Exchange Visitor Program (SEVP) To Enroll F or M Nonimmigrant Students regulation using standard economic accounting techniques. Nonimmigrant students, the schools that serve them, and the communities in which they live will benefit from the improvements and clarifications to the rules governing the certification, oversight, and recertification of schools certified by SEVP.

Timetable:

Action	Date	FR Cite
NPRM	09/00/09	
NPRM Comment Period End	11/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Related to 1653–AA42

RIN: 1653–AA44

DHS—Federal Emergency Management Agency (FEMA)

PROPOSED RULE STAGE

74. SPECIAL COMMUNITY DISASTER LOANS PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 5121 to 5207

CFR Citation:

44 CFR 206

Legal Deadline:

None

Abstract:

FEMA would amend its regulations to implement loan cancellation provisions for Special Community Disaster Loans (Special CDLs) which were provided by FEMA to local governments in the Gulf region following Hurricanes Katrina and Rita. This proposed rule would not automatically cancel all Special CDLs, but would propose the procedures and requirements for governments who received Special CDLs to apply for cancellation of loan obligations as authorized by the U.S. Troop Readiness Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Troop Act). With the passage of the Troop Act, FEMA has the discretionary ability to cancel Special CDLs subject to the limitations of section 417(c) of the Stafford Act. Under section 417 of the Stafford Act, FEMA is authorized to cancel a loan if it determines that ''the revenues of the local government during the full three fiscal year period following the disaster are insufficient to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character.'' Since the cancellation provisions of section 417 of the Stafford Act already exist in the Traditional CDL Program regulations at 44 CFR 206.366, and section 417 of the Stafford Act provides the basis for cancellation of loans under both the Special CDL Program and the Traditional CDL Program, FEMA would propose to mirror the Traditional CDL cancellation provisions for Special CDLs. This rule would not affect the cancellation provisions for the Traditional CDL Program.

Statement of Need:

This rulemaking is needed to address the needs of the communities affected by Hurricanes Katrina and Rita in 2005. The Community Disaster Loan Act of 2005 (Pub. L. 109-88) authorized FEMA to transfer $750 million from the funds appropriated in the Second Emergency Supplemental Appropriations Act To Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005, (Pub. L. 109-62), to provide up to $1 billion in loan authority. The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234), authorized an additional $371,733,000 in loans authorized under the Community Disaster Loan Act of 2005. The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, (Pub. L. 110-28) removes the loan cancellation prohibitions contained in the 2005 and 2006 Acts.

Summary of Legal Basis:

This rulemaking is authorized by the Community Disaster Loan Act of 2005 (Pub. L. 109-88), the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, (Pub. L. 109-234), and the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

Alternatives:

The alternative to this notice of proposed rulemaking would be to finalize the interim rule for the Community Disaster Loan Act of 2005 without adding in a provision for cancellation of Special Community Disaster Loans. FEMA is not in favor of that alternative. The public will be afforded an opportunity to provide comments on the proposed loan cancellation provisions authorized in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28) when FEMA publishes the rulemaking in the Federal Register.

Anticipated Cost and Benefits:

The overall impact of this rule is, therefore, the cost to the applicant to apply for the cancellation, as well as the impact on the economy of potentially forgiving all Special Community Disaster Loans and any related interest and costs. The maximum total economic impact of this rule is approximately $1.3 billion. However, without knowing the dollar amount of the loans that may be cancelled, it is impossible to predict the amount of the economic impact of this rule with any precision. Although the impact of the rule could be spread over multiple years as applications are received, processed and loans cancelled, the total economic effect of a specific loan cancellation would only occur once, rather than annually.

Risks:

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

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/18/05	70 FR 60443
Interim Final Rule Effective	10/18/05	
Interim Final Rule Comment Period End	12/19/05	
NPRM	02/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1660–AA44

DHS—FEMA

75. UPDATE OF FEMA'S PUBLIC ASSISTANCE REGULATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 5121–5207

CFR Citation:

44 CFR 206

Legal Deadline:

None

Abstract:

This proposed rule would revise the Federal Emergency Management Agency's Public Assistance Program regulations. Many of these changes reflect amendments made to the Robert T. Stafford Disaster Relief and Emergency Assistance Act by the Post-Katrina Emergency Management Reform Act of 2006 and the Security and Accountability For Every Port Act of 2006. The proposed rule also proposes a few further substantive and nonsubstantive clarifications and corrections to the Public Assistance regulations. This proposed rule is intended to improve the efficiency and consistency of the Public Assistance Program, as well as implement new statutory authority

Statement of Need:

The proposed changes implement new statutory authorities and incorporate necessary clarifications and corrections to streamline and improve the Public Assistance Program. Portions of FEMA's Public Assistance regulations have become out-of-date and do not reflect current statutory requirements and authorities. These inconsistencies and deficiencies inhibit FEMA's ability to clearly articulate its regulatory requirements, and the Public Assistance applicants' understanding of the program. The proposed changes are intended to improve the efficiency and consistency of the Public Assistance Program.

Summary of Legal Basis:

The legal authority for the changes in this proposed rule is contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 as amended by the Post-Katrina Emergency Management Reform Act of 2006, 6 U.S.C. 701 et seq., the Security and Accountability for Every Port Act of 2006, 6 U.S.C. 901 note, the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333, and the Pets Evacuation and Transportation Standards Act of 2006, Public Law 109-308, 120 Stat. 1725.

Alternatives:

The alternative would be to not implement the new authorities provided to FEMA through post-Katrina legislation, and not take independent steps to improve upon the Public Assistance Program. FEMA does not deem this an acceptable alternative.

Anticipated Cost and Benefits:

FEMA is in the process of drafting a complete economic analysis for this proposed rulemaking. Although the economic analysis is not yet complete, the proposed rule is expected to have economic impacts on the public, Grantees, subgrantees, and FEMA. The expected benefits are a reduction in property damages, societal losses, and losses to local businesses, as well as improved efficiency and consistency of the Public Assistance Program. The expected cost impact of the proposed rule is mainly the costs to FEMA in administering the Public Assistance Program. The total economic impact of the proposed rule is estimated at approximately $100 million per year. These costs are expected to accrue from the inclusion of education to the list of eligible private nonprofit critical services; expansion of force account labor cost eligibility; the inclusion of durable medical equipment; the evacuation, care, and sheltering of pets; as well as precautionary evacuation measures; etc. However, most of the proposed changes are not expected to result in any additional cost to FEMA or any changes in the eligibility of assistance. For example, the proposed rule would provide for accelerated Federal assistance and expedited payment of Federal share for debris removal. These are expected to improve the agency's ability to quickly provide funding to Grantees and subgrantees without affecting Public Assistance funding amounts.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	04/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

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RIN: 1660–AA51

DHS—FEMA

FINAL RULE STAGE

76. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 5174

CFR Citation:

44 CFR 206

Legal Deadline:

Final, Statutory, October 15, 2002.

Abstract:

This rulemaking implements section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. It would also make further revisions to 44 CFR part 206, subpart D (the Individuals and Households Program (IHP)) and remove subpart E (Individual and Family Grant Programs). Among other things, it would implement section 686 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) to remove the IHP subcaps; section 685 regarding semi-permanent and permanent housing construction eligibility; revise FEMA's regulations related to individuals with disabilities pursuant to PKEMRA section 689; and revise FEMA's regulations to allow for the payment of security deposits and the costs of utilities, excluding telephone service, in accordance with section 689d of PKEMRA. This regulation also would implement section 689f of PKEMRA by authorizing assistance to relocate individuals displaced from their predisaster primary residence, to and from alternate locations for short-or long-term accommodations.

Statement of Need:

FEMA needs to revise its IHP regulations to update them based on lessons learned, comments from States about implementation of the regulations, and to implement recent legislative changes (i.e. Post-Katrina Emergency Management Reform Act of 2006). These changes are intended to provide clear information to disaster assistance applicants, implement new authorites, and help ensure consistent administration of programs by FEMA.

Summary of Legal Basis:

This rulemaking is authorized by Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended and the Post-Katrina Emergency Management Reform Act of 2006.

Alternatives:

The alternative would be to not implement the new authorities provided to FEMA through post-Katrina legislation, and not take independent steps to improve upon the Individuals and Households Program. FEMA does not deem this an acceptable alternative.

Anticipated Cost and Benefits:

Annually, FEMA pays out in excess of $100 million through the Individuals and Households Program. The proposed and interim rules were deemed significant but not economically significant because they did not cause FEMA to pay out $100 million per year more than the agency paid through its previous regulations. Although this second interim rule is expected to alter eligibility requirements, and generally expand the assistance provided through this program, preliminary estimates of the anticipated costs and benefits are not available at this time.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3412
NPRM Comment Period End	03/11/02	
Interim Final Rule	09/30/02	67 FR 61446
Corrections	10/09/02	67 FR 62896
Corrections Effective	10/09/02	
Interim Final Rule Effective	10/15/02	
Interim Final Rule Comment Period End	04/15/03	
Second Interim Final Rule	07/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

Transferred from RIN 3067-AD25

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RIN: 1660–AA18

BILLING CODE 4410–10–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year 2009 highlights the Department's most significant regulations and policy initiatives that it seeks to complete during the upcoming fiscal year. As the federal agency responsible for national policy and programs that address the housing needs of Americans, encourages community development, and enforces fair housing laws, HUD plays a significant role in the lives of families and in communities throughout America. The Department's program and initiatives help to provide decent, safe and sanitary housing, and to create suitable living environments for all Americans. HUD expands housing opportunities for Americans by enforcing fair housing laws that operate to eliminate housing discrimination. HUD also provides housing and other essential support to a wide range of individuals and families with special needs, including homeless individuals, the elderly, and persons with disabilities.

Secretary Preston has established a results-focused agenda for the Department that focuses on ways for HUD to support its constituents, provide transparency to major initiatives, and move the Department forward. The Secretary has charged HUD with completing certain strategic goals during his tenure, including promoting responsible, sustainable homeownership for all Americans, and maximizing options for safe and affordable housing so all Americans can embark on a path to self-sufficiency. The regulations highlighted in this Regulatory Plan and in the Semiannual Agenda of Regulations, published elsewhere in today's Federal Register, are directed toward achieving these goals.

Priority: Promoting Responsible and Sustainable Homeownership

One way that HUD can promote responsible and sustainable homeownership is to simplify and improve the disclosure requirements for mortgage settlement costs and to protect consumers from unnecessarily high settlement costs under the Real Estate Settlement Procedures Act (RESPA). The settlement costs associated with a mortgage loan are significant. In the case of purchase transactions these costs can become an impediment to homeownership, particularly for low- and moderate-income households. The purposes of RESPA include the provision of effective advance disclosure of settlement costs and elimination of practices that tend to unnecessarily increase the costs of settlement services.

Regulatory Action: Real Estate Settlement Procedures Act — Simplification and Improvement of the Process of Obtaining Home Mortgages and Reduce Consumer Settlement Costs

To improve the advance disclosure of settlement costs, this final rule amends HUD's RESPA regulations by improving and standardizing the Good Faith Estimate (GFE) form to make it easier to use for shopping among settlement providers, and modifies the HUD-1/1A to facilitate the comparison of the GFE and the HUD-1/HUD-1A Settlement Statements. The final rule follows publication of a March 14, 2008, proposed rule and takes into consideration the approximately 12,000 public comments received on the proposed rule. HUD believes that the result is a final rule that provides borrowers with additional and more reliable information about their mortgage loans and settlement costs earlier in the application process, and will better assure that the mortgage loans to which they commit at settlement will be the loans of their choice. The regulatory changes will not only improve advance disclosure of settlement costs, but will encourage shopping and competition to lower such costs. Moreover, the final rule updates the RESPA's regulations to better reflect changes to the mortgage industry since enactment of the statute in 1974.

Priority: Maximizing Options for Safe and Affordable Housing

In furtherance of its goal to maximize safe and affordable housing options available to American families, HUD must ensure that rental assistance is being correctly calculated, so as to eliminate the misallocation of scarce financial resources and ensure that subsidies are being provided to those families truly in need of such aid. Sections 6 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f), section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z-1), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) authorize HUD to provide financial assistance in the form of rent subsidies for participants in HUD's public and assisted housing programs. As part of the procedures for determining proper rent subsidies, PHAs and multifamily housing owners and management agents must conduct income verifications for applicants and participants in covered HUD programs. HUD requires the disclosure and verification of social security numbers, employer identification numbers, and citizenship or eligible immigration status.

Regulatory Action: Refinement of Income and Rent Determinations in Public and Assisted Housing Programs

This final rule amends HUD's regulations governing the verification of employment and income in the Department's public and assisted housing programs. The regulatory changes will help ensure that deficiencies in public and assisted housing rental determinations are identified and cured through quality control studies and internal audits. Most significantly, the final rule will require the use of upfront income verification (UIV) procedures, in lieu of the more time-consuming and less accurate third-party verification process. That process involves contacting individual employers identified by the family and reviewing handwritten documents reporting income.

The final rule follows publication of a June 9, 2007, proposed rule and takes into consideration the 34 public comments received on the proposed rule. HUD received public comments from a variety of sources, including: individuals; PHAs; national PHA and redevelopment organizations; affordable housing advocacy associations; and immigration policy groups. HUD is making several changes at this final rule stage, in response to the comments received on the proposed rule, and in further consideration of certain issues raised in the earlier proposed rule.

Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be made effective in calendar year 2009. HUD anticipates that, over the next twelve months, the two rules included in its Regulatory Plan, Real Estate Settlement Procedures Act - Simplification and Improvement of the Process of Obtaining Home Mortgages and Reduce Consumer Settlement Costs

and Refinement of Income and Rent Determinations in Public and Assisted Housing Programs, will have a combined impact of $570 million of one-time adjustment costs, $4.3 million of recurring costs, and $783 million of transfers. The $570 million one-time adjustment costs result from RESPA. The recurring costs and transfers result from the Refinement of Income and Rent Determination rule. Once the RESPA rule is implemented, after twelve months, the expected annual impact of these two rules will be $922 million in annual recurring costs and $9,133 million in transfers.

The Priority Regulations That Comprise HUD's FY 2009 Regulatory Plan

A more detailed description of the priority regulations that comprise HUD's FY 2009 Regulatory Plan follows.

HUD—Office of the Secretary (HUDSEC)

FINAL RULE STAGE

77. REFINEMENT OF INCOME AND RENT DETERMINATIONS IN PUBLIC AND ASSISTED HOUSING PROGRAMS (FR–4998)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1437f; 42 USC 3535(d); 42 USC 3543; 42 USC 3544; 42 USC 3608

CFR Citation:

24 CFR 5; 24 CFR 92; 24 CFR 908

Legal Deadline:

None

Abstract:

This final rule revises HUD's public and assisted housing program regulations to implement the upfront income verification (UIV) process and to require the use of HUD's Enterprise Income Verification (EIV) system by public housing agencies (PHAs), and multifamily housing owners and management agents (O/As), when verifying the employment and income of program participants at the time of all reexaminations or recertifications. The rule will ensure that deficiencies in public and assisted housing rental determinations are identified and cured through quality control studies and internal audits. This final rule is consistent with HUD's comprehensive strategy under the Rental Housing Integrity Improvement Project initiative to reduce by half the number and dollar amount of errors in HUD's rental assistance programs. This final rule follows publication of a June 19, 2007, proposed rule and makes certain changes at this final rule stage in response to public comment and further consideration of certain issues by HUD.

Statement of Need:

This rule is needed to meet HUD's goal of reducing errors, including overpayment of subsidy, caused by incorrect income determinations and rent calculations in HUD's public and assisted housing programs. To do this, this rule would implement the upfront income verification (UIP) process and require the use of HUD's Enterprise Income Verification (EIV) systems. The use of UIV will allow entities to validate the accuracy of a family's self-reported household income and reduce the incidence of fraud, waste, and abuse in public and assisted housing programs. HUD also believes that the use of UIV is less time-consuming and more accurate than third-party verification.

Summary of Legal Basis:

Sections 6 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f), section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z-1), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) authorize HUD to provide financial assistance in the form of rent subsidies for participants in HUD's public and assisted housing programs. These statutory provisions and HUD's general rulemaking authority under section 7(d) the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) authorize HUD to establish regulatory policies and procedures governing such rental subsidies, including the verification of employment and income necessary to determine the subsidy amounts.

Alternatives:

The policies and procedures governing employment and income verification are codified in regulation. Accordingly, any revisions to the regulatory requirements must also be implemented through notice and comment rulemaking. Implementation of the changes necessary changes described above through other means, such as a handbook, would not be binding or enforceable.

Anticipated Cost and Benefits:

Under the Improper Payments Information Act (IPIA) of 2002 and Office of Management and Budget (OMB) implementing guidance Circular No. A-123, agencies are to assess all programs and activities they administer and identify those that may be susceptible to significant improper payments. Consistent with these directives, HUD initiated the Rental Housing Integrity Program (RHIP) in the spring of 2001with the goal of reducing improper payments in HUD's rental housing assistance programs. The recurring study cost is about $4.3 million annually. The findings of the latest Quality Control Study, implies that the gross transfer resulting from eliminating all the under- and over-payments of rents is approximately $783 million ($523.7 million in rent subsidy overpayment and $258.7 million in rent subsidy underpayment). The single major benefit of the initiative is an improvement on the integrity of HUD programs.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	06/19/07	72 FR 33844
NPRM Comment Period End	08/20/07	
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2501–AD16

HUD—Office of Housing (OH)

FINAL RULE STAGE

78. REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA): SIMPLIFICATION AND IMPROVEMENT OF THE PROCESS OF OBTAINING HOME MORTGAGES AND REDUCING CONSUMER COSTS (FR–5180)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

12 USC 2601 et seq; 42 USC 3535(d)

CFR Citation:

24 CFR 3500

Legal Deadline:

None

Abstract:

This final rule amends HUD's regulations to further RESPA's purposes by requiring more timely and effective disclosures related to mortgage settlement costs for federally related mortgage loans to consumers. The changes made by this final rule are designed to protect consumers from unnecessarily high settlement costs by taking steps to: (1) improve and standardize the Good Faith Estimate (GFE) form, to make it easier to use for shopping among settlement providers; (2) ensure that page one of the GFE provides a clear summary of the loan terms and total settlement charges, so that borrowers will be able to use the GFE to identify a particular loan product and then comparison-shop among loan originators; (3) provide more accurate estimates of costs of settlement services shown on the GFE; (4) improve disclosure of yield spread premiums, to help borrowers understand how they can affect their settlement charges; (5) facilitate comparison of the GFE and the HUD-1/HUD-1A Settlement Statements; (6) ensure that at settlement, borrowers are aware of final costs as they relate to the particular mortgage loan and settlement transaction; (7) clarify HUD-1 instructions; (8) clarify HUD's current regulations concerning discounts; and (9) expressly state when RESPA permits certain pricing mechanisms that benefit consumers, including volume-based discounts. The final rule follows a March 14, 2008, proposed rule and makes changes in response to public comment and further consideration of certain issues by HUD.

Statement of Need:

The rule is needed to simplify and improve the process of obtaining a home mortgage, to lower costs for consumers. The current disclosure requirements under RESPA have not been substantially revised in several years. The proposed rule was of significant public interest. By the end of an extended public comment period on June 12, 2008, HUD had received approximately 12,000 comments (although many were identical form letters submitted as part of letter writing campaigns). Many commenters on the March 14, 2008, proposed rule — including consumers, industry representatives, and federal and state regulatory agencies — supported the concept of better disclosures in general, and commended both HUD's efforts and particular provisions in the proposed rule. HUD also received a considerable number of comments about many aspects of the proposed rule from mortgage industry representatives, including requests that HUD withdraw its proposal entirely, or that HUD postpone its current efforts in order to work with the Federal Reserve Board to arrive at a joint regulatory approach. HUD takes these mortgage industry comments very seriously and appreciates the concerns raised by these commenters. HUD's strong view continues to be, however, that improvements in disclosures to consumers about critical information relating to the costs of obtaining a home mortgage, often the most significant financial transaction a consumer will enter into, are needed, and that such disclosures are a central purpose of RESPA. Moreover, given the current mortgage crisis, the foreclosure situation many homeowners are now facing because they entered into mortgage transactions that they did not fully understand, and the prospect that future homeowners may find themselves in this same situation, HUD believes that it is important that the improvements in mortgage disclosures made by this final rule move forward immediately.

Summary of Legal Basis:

The Secretary is authorized to prescribe such rules and regulations as may be necessary to achieve the purpose of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617).

Alternatives:

The Department considered and acted upon several non-regulatory alternatives prior to issuance of the March 14, 2008, proposed rule, but determined that the changes in the marketplace and recent judicial decisions called for new regulations on the part of HUD. As part of its review of the public comments on the proposed rule, HUD will consider, and possibly adopt, alternatives to the regulatory requirements contained in the proposed rule.

Anticipated Cost and Benefits:

The nation's home mortgage market is a billion-dollar industry. Accordingly, as was the case with the preceding proposed rule, there are costs and benefits associated with this rule that will be addressed in the Economic Analysis that will accompany the final rule. The Economic Analysis has identified a wide range of benefits, costs, efficiencies, transfers and market impacts. It estimated that borrowers will save $8.35 billion in origination and settlement charges. The total one-time adjustment costs to the lending and settlement industry of the proposed GFE and HUD-1 are estimated to be $570 million. Total recurring costs are estimated to be $918 million annually. Because there is a twelve-month implementation period, only the one-time adjustment costs will be realized over the next year.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	03/14/08	73 FR 14030
NPRM Comment Period End	05/13/08	
NPRM Comment Period Extended	05/12/08	73 FR 26953
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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BILLING CODE 4210–67–S

DEPARTMENT OF THE INTERIOR (DOI)

Statement of Regulatory Priorities

The Department of the Interior (DOI) is the principal Federal steward of our nation's public lands and resources, including many of our cultural treasures. We serve as trustee to Native Americans and Alaska natives and also are responsible for relations with the island territories under United States jurisdiction. We manage more than 500 million acres of Federal lands, including 391 park units, 548 wildlife refuges, and approximately 1.7 billion of submerged offshore acres. The Department protects natural, historic, and cultural resources, recovers endangered species, manages water projects, manages forests and fights wildland fires, regulates surface coal mining operations, leases public lands for coal, oil, and gas production to meet the Nation's energy needs, educates children in Indian schools, and provides recreational opportunities for over 400 million visitors annually in our national parks, Bureau of Land Management public lands, national wildlife refuges, and Bureau of Reclamation recreation areas. To fulfill these responsibilities, the Department generates scientific and other information relating to land and resource management.

The Department is committed to achieving its stewardship objectives in partnership with States, communities, landowners, and others through consultation, cooperation, and communication.

We will review and update the Department's regulations and policies to ensure that they are effective, efficient, and promote accountability. Special emphasis will be given to regulations and policies that:

- Adopt performance approaches focused on achieving cost-effective, timely results;
- Incorporate the best available science and utilize peer review where appropriate;
- Promote partnerships with States, tribes, local governments, other groups, and individuals;
- Provide incentives for private landowners to achieve conservation goals; and
- Minimize regulatory and procedural burdens, promoting fairness, transparency, and accountability by agency regulators while maintaining performance goals.

Major Regulatory Areas

DOI bureaus rely on regulations to implement legislatively mandated programs that focus 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 development oversight 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 Indians;
- 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, 12630, 13132, 13175, 13211, and 12988, DOI's regulatory programs seek 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 work with other Federal agencies, non-Federal government agencies, and public entities to make our regulations easier to comply with and understand. Regulatory improvement is a continuing process that requires the participation of all affected parties. We strive to include all affected entities in the decision-making process and to issue rules efficiently. To better manage and review the regulatory process, we have revised our internal rulemaking and information quality guidance. Our regulatory process ensures that bureaus share ideas on how to reduce regulatory burdens while meeting the requirements of the laws they enforce and improving their stewardship of the environment and resources under their purview. Results include:

- 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 departmental effort to evaluate the economic effects of planned rules and regulations;
- Issuance of guidance in the Departmental Manual to ensure we use plain language in our regulations and guidance documents;
- Issuance of new guidance in the Departmental Manual to ensure that National Environmental Policy Act policies that streamline decision making and enhance citizen participation are institutionalized;
- Issuance of revised procedures in the Departmental Manual to clarify our responsibility to offer cooperating agency status to qualified agencies and governments, and to make clear the role of cooperating agencies in the implementation of the Department's NEPA compliance process;
- Increased outreach to involved parties in the Natural Resources Damage Assessment Program, stressing cooperation and restoration of affected sites;
- Streamlined decision-making pertaining to fuels-reduction projects under the Healthy Forests Initiative and Healthy Forests Restoration Act; and
- A joint effort with the Departments of Agriculture and Commerce, in consultation with FERC, to streamline the licensing and appeals process in hydropower licensing, as called for in the Energy Policy Act of 2005. A final rule is expected to publish before January of 2009.

Implementing the President's National Energy Policy and the Energy Policy Act

The President's National Energy Policy promotes ''dependable, affordable, and environmentally sound production and distribution of energy for the future.'' The Department of the Interior plays a vital role in implementing the President's energy policy goals. The lands, waters, and facilities managed by the Department account for nearly 30 percent of all the energy produced in the United States.

Through over 100 actions from 2005-2008, the Department has been implementing the President's energy policy and the Energy Policy Act of 2005, including numerous regulatory actions. These actions will encourage development of dependable, affordable, and environmentally sound domestic sources of energy, including alternative sources of energy such as wind, geothermal, hydropower, and alternative fuels.

The Bureau of Land Management and the Minerals Management Service have completed several regulations that implement provisions of the Energy Policy Act and are continuing to develop additional regulations required by the Act. A key component of our energy efforts is the BLM's issuance of oil shale regulations. Oil shale regulations would provide critical ''rules of the road'' for private investors. Oil shale is a strategically important domestic energy resource, with a potential of 800 billion barrels of recoverable oil- enough to meet U.S. demand for oil at current levels for 110 years. The BLM has issued proposed regulations that set out the policies and procedures of a commercial program for oil shale resources on Federal lands, in keeping with the Energy Policy Act of 2005 and the Mineral Leasing Act of 1920. The BLM expects to finalize those regulations in 2008.

The Office of Surface Mining has developed regulations that will promote better mining and reclamation practices while maintaining a stable regulatory framework conducive to coal production. As a result, concern for the environment during mining and reclamation afterwards are now well established components of energy production through coal mining operations. OSM continues to refine its program as science, circumstances or legislation require. OSM recently issued regulations that encourage the reforestation of reclaimed coal mine sites by revising vegetative ground cover standards that required excessive levels of ground cover vegetation which interfere with tree survival and growth. OSM also issued regulations on financial assurances in the form of trust funds and annuities to fund the treatment of long-term post-mining pollution discharges from surface coal mining operations.

The Energy Policy Act of 2005 directed Interior to promulgate regulations regarding geothermal leasing, National Petroleum Reserve Alaska, tar sands leasing, oil and gas lease acreages and lease reinstatement, APD processing procedures, right-of-way rental fees, oil shale leasing, and coal lease provisions, alternative energy on the Outer Continental Shelf (OCS), royalty relief for ultra-deep wells on the OCS, and discretionary relief for OCS leases offshore Alaska. The MMS has issued proposed regulations for the OCS-related issues and plans to issue final regulations before the end of 2008. These will provide the regulatory framework for expanding the development of alternative energy to the nation's OCS, provide royalty relief with well-defined price thresholds, encouraging production of clean-burning natural gas at ultra-deep depths, and provide revenue sharing to Gulf-producing states for critical projects ranging from conservation and coastal restoration, to hurricane protection, and the mitigation of the impacts of OCS activities. Other energy-related regulations have also been promulgated. The Minerals Management Service, for example, published a final regulation addressing technical issues pertaining to valuation of oil on Indian lands, a regulation on open and nondiscriminatory access to OCS pipelines and electronic payment of fees.

The BLM has issued final regulations for most of the requirements of the Energy Policy Act, but continues work on the oil shale leasing regulations and the coal lease regulations. In particular, the BLM has issued proposed regulations to set out the policies and procedures of a commercial program for oil shale resources on Federal lands, in keeping with the Energy Policy Act of 2005 and the Mineral Leasing Act of 1920. The Energy Policy Act authorizes the BLM to allow the exploration, development, and utilization of oil shale resources on BLM-managed lands. The goal of the BLM oil shale program is to promote economically viable and environmentally sound oil shale production that augments current domestic oil production while accounting for the potential effects of development on states and local communities. The BLM's oil shale program could result in the addition of up to 800 billion barrels of recoverable oil from lands in the Western United States.

The BLM has seen a sharp and sustained increase in the submission of oil and natural gas drilling permit applications. BLM met the challenge by initiating numerous innovative streamlining strategies to reduce the backlog of pending drilling permits. As BLM continues to make steady progress in reducing the backlog, it must work even more aggressively in the face of rising energy prices and increased demand for drilling permits. To aid in this effort, new process improvement tools have become available with the passage of the Energy Policy Act that will help reduce the backlog of pending permits while allowing the development of energy resources in an environmentally responsible manner.

The BLM is continuing its program of environmental Best Management Practices (BMPs) to help ensure the continued development of energy resources in an environmentally responsible manner. BMPs are innovative, dynamic, and improved environmental protection practices aimed at reducing impacts to the many natural resources BLM manages on behalf of the public. The BLM requires that appropriate environmental BMPs be considered for use in all new oil and gas drilling and production operations on the public lands administered by the BLM. A full discussion and many examples of BMPs can be found at BLM's BMP website: www.blm.gov/bmp

The BLM is revising and updating numerous land-use plans, including those in Utah (for example, public land under the management of the BLM's Vernal and Kanab Field Offices), western Oregon, and New Mexico, that would incorporate the land restoration and rehabilitation objectives of the Healthy Lands Initiative. This initiative, launched by Secretary of the Interior Dirk Kempthorne in Fiscal Year 2007, is a visionary landscape-scale effort aimed at improving the health and productivity of the public lands in today's fast-growing West, where demand for public land uses and products is at an all-time high. Focused on areas where energy development intersects with world-class wildlife habitat, the Healthy Lands Initiative takes a comprehensive, ridge-to-ridge approach to land management, one that involves Federal agencies, state and local governments, private organizations, and private industry working across jurisdictional lines to implement conservation and restoration projects that make a difference on the land. The Healthy Lands Initiative responds to a multitude of pressures on the public lands, including more intense urban-suburban development, increased outdoor recreational activity, rising demands for energy, impacts from large-scale wildfires, and the effects of an ongoing weed invasion.

The Bureau of Indian Affairs finalized regulations implementing provisions of

the Energy Policy Act concerning tribal energy resource development on tribal lands (73 FR 12808; March 10, 2008). Specifically, the Indian Tribal Energy Development and Self-Determination Act of 2005, Title XXVI, Section 2604 of the Energy Policy Act, as amended, authorizes tribes, at their discretion, to apply for and enter into Tribal Energy Resource Agreements (TERAs) with the Secretary. Upon Secretarial approval of TERAs, tribes may enter into energy-related business agreements and leases, and grant rights-of-way for pipelines and electric transmission and distribution lines, on tribal lands without the Secretary's review and approval. The final regulations provide the process by which a tribe may apply for, and the Secretary may grant, authority for the tribe to review and approve business agreements and leases. The final regulations also provide the process for implementation of TERAs, including periodic review and evaluation of a tribe's activities under a TERA, enforcement of TERA provisions, administrative appeals, and voluntary rescission of a TERA. Implementation of the final regulations providing for TERAs furthers the Federal Government's policy of providing enhanced self-determination and economic development opportunities for Indian tribes by promoting tribal oversight and management of energy resource development on tribal lands. The Act and the regulations provide another process, in addition to the Indian Minerals Development Act and the Indian Mineral Leasing Act, under which tribes may develop their mineral resources. Implementation of these regulations also supports the national energy policy of increasing utilization of domestic energy resources.

Encouraging Responsible Management of the Nation's Resources

The Department's mission includes protecting and providing access to our Nation's natural and cultural heritage and honoring our trust responsibilities to tribes. We are committed to this mission and to applying laws and regulations fairly and effectively. The Department's priorities include protecting public health and safety, restoring and maintaining public lands, protecting threatened and endangered species, ameliorating land and resource-management problems on public lands, and ensuring accountability and compliance with Federal laws and regulations.

Consistent with the President's Executive Order on Cooperative Conservation, the Department is continuing to work with State and local governments, tribes, landowners, conservation groups, and the business community to conserve species and habitat. Building on successful approaches such as habitat conservation plans, safe harbor agreements, and candidate conservation agreements, the Department is reviewing its policies and regulations to identify opportunities to streamline the regulatory process where possible, consistent with protection of wildlife, and to enhance incentive-based programs to encourage landowners and others to implement voluntary conservation measures. For example, the Fish and Wildlife Service has issued guidance to promote the establishment of conservation banks as a tool to offset adverse impacts to species listed under the Endangered Species Act and restore habitat. The Service has developed guidance for expanding the use of the Recovery Credit System that was crafted in collaboration with partners at Fort Hood, Texas.

Under President Bush's leadership, the Department has emphasized partnership with landowners and local communities. These partnerships have benefited many species through improved habitat and have improved forest and rangeland. Information on our cooperative agreements policy and examples of successful partnerships are available on the Internet at http://www.doi.gov/news/CoopConserv__PRINT.pdf.

The BLM Wildlife Program continues to focus on the maintenance and management of wildlife habitat to help ensure self-sustaining populations and a natural abundance and diversity of wildlife resources on public lands. In partnership with the U.S. Geological Survey and the Fish and Wildlife Service, BLM is developing a landscape-scale approach to public lands management under the Department's Healthy Lands Initiative. BLM-managed terrestrial lands are vital to big game, upland game, waterfowl, shorebirds, songbirds, raptors and hundreds of species of non-game mammals, reptiles, and amphibians. In order to provide for the long-term protection of these wildlife resources, especially given other mandated land use requirements, the Wildlife Program supports aggressive habitat conservation and restoration activities, many funded by partnerships with Federal, state, and non-governmental organizations. For instance, the Wildlife Program continues the implementation of a suite of complementary wildlife habitat restoration efforts across a multi-state region in support of sagebrush vegetation community dependent wildlife species. Projects are tailored to address regionally specific issues such as fire (as in the western portion of the sagebrush biome) or habitat degradation and loss (as in the eastern portion of the sagebrush biome). Additionally, the BLM undertakes habitat improvement projects in partnership with a variety of stakeholders and consistent with State (Fish and Game) Wildlife Action Plans and Local Working Group Plans.

The Department is improving incentives through administrative flexibility under the Endangered Species Act. Released in April 2004 was a rule change intended to provide greater clarity as to what is allowable under incidental take permits and to provide greater private landowner protections under safe harbor agreements. On August 15, 2008, the Department published a proposed rule that would clarify when consultation required under Section 7 of the Endangered Species Act of 1973 is applicable and the correct standards for effects analysis, and would establish timeframes for the informal consultation process.

The U.S. Geological Survey (USGS) has developed a policy and procedures for reporting, investigating, and adjudicating allegations of scientific misconduct by USGS employees and volunteers in accordance with the Federal policy on research misconduct. All covered employees and volunteers must follow this policy and are required to sign a statement indicating they have received, read, and understand the policy. These efforts will help to protect the public from the effects of inaccurate or misleading information produced through scientific activities and help to ensure scientific integrity in the conduct of scientific activities.

In 2006, the Secretaries of Interior and Agriculture, Western Governors, county commissioners, and other affected parties completed a revision of the 10-Year Comprehensive Strategy Implementation Plan, a collaborative national effort to reduce the risk wildland fire poses to people, communities, and the environment. The revision incorporates new understanding and lessons learned over the last five years. It draws upon new tools like LANDFIRE (an advanced natural resource geographic information system), National Fire Plan Operating and Reporting System (NFPORS) (a comprehensive interagency fuels treatment, community assistance, and post-fire rehabilitation tracking system),

and the emergence of Community Wildfire Protection Plans (CWPP) called for in the Healthy Forests Restoration Act signed by the President in December 2003. The revision contains new performance measures and implementation tasks covering collaboration, fire prevention and suppression, hazardous fuels reduction, pre- and post-fire landscape restoration, and community assistance.

Since the President announced the Healthy Forests Initiative in 2002, the Department has made extensive progress in reducing hazardous fuels. From 2003 to 2006, the bureaus treated an average of over 1,260,000 acres annually compared to 728,000 acres in 2001. The Department shifted emphasis toward the wildland urban interface (WUI), each year treating three times as many WUI acres as were reached in 2001. In 2007, the Department treated 1.787 million acres of wildland urban interface and non-wildland urban interface lands. The Department has rapidly inculcated the new tools provided by the Healthy Forests Initiative and the Healthy Forests Restoration Act into its work. The Department now uses the streamlined NEPA-compliance on some 80 percent of new hazardous fuels NEPA work while, in 2006, over 45 percent of all fuels treatments accomplished where associated with either a streamlined NEPA tool or a CWPP.

The National Park Service developed a new winter use plan and EIS for Yellowstone and Grand Teton National parks and the John D. Rockefeller, Jr. Memorial Parkway. These park areas operated for three winters under a Temporary Winter Use Plan that expired at the end of the 2006-2007 winter season. The regulation published late in 2007 provided for an average daily entrance of 540 snowmobiles (compared to 720 under the interim plan), continued requirements for guided tours and group size not to exceed 10 snowmobiles, and established daily limits on snowcoach entrances to the park. The rule also proposed closing the Sylvan Pass area to snowmobile and snowcoach travel during the winter, but committed NPS to participating with the town of Cody in a facilitated conflict resolution process. That process resulted in a decision to retain over-snow travel and a revised rule was developed in the summer of 2008.

The National Park Service completed a nearly 10-year public process to develop a management plan for the Colorado River in Grand Canyon National Park with the signing of a Record of Decision on the Environmental Impact Statement in November, 2006. Conforming regulations consistent with the management directions outlined in the plan are now necessary. These include changes affecting: permit requirements for commercial river trips below a specified location in the canyon; updating visitor use restrictions (i.e. beach uses, trip requirements) and camping closures; and eliminating unnecessary provisions in the current regulation. The National Park Service intends to publish proposed regulations in 2008.

The National Park Service is working with the BLM and FWS to finalize rulemaking to implement Public Law 106-206, which directs the Secretary to establish a reasonable fee system (location fees) for commercial filming and still photography activities on public lands. Commercial filming and still photography are activities generally allowed on Federal lands. In many circumstances, it is in the government's interest to manage the activity through a permitting process to minimize the possibility of damage to the cultural or natural resources or interference with other visitors to the area. This regulation would standardize the collection of location fee by DOI agencies.

The BLM published final grazing regulations in June of 2006. The new regulations sought to: (1) improve the Bureau's working relationships with those holding the nearly 18,000 leases and permits that authorize grazing on BLM-managed land; (2) advance the BLM's efforts in assessing and protecting rangelands; and (3) enhance the agency's administrative efficiency. However, litigation resulted in a ruling against the regulations on February 28, 2008, by the U.S. District Court for Idaho, which blocked the BLM from implementing the regulations. On April 25, 2008, the Department of Justice, on behalf of all Federal defendants, filed an appeal to the Ninth Circuit Court of Appeals regarding the February 28, 2008, ruling. The issues proposed to be raised on appeal include: (1) whether the District Court properly denied Federal defendants' motion to dismiss the Endangered Species Act claim for lack of jurisdiction and (2) whether the District Court properly held that BLM's promulgation of the final grazing regulations violated the National Environmental Policy Act, the Federal Land Policy and Management Act, and the Endangered Species Act. In a related matter, the BLM has been working to update and refine its grazing policies, although these changes would not be regulatory in nature. This effort is expected to result in the revision during 2008 of two rangeland manuals and five handbooks that have not been updated since the late 1980s. There are more manuals and handbook updates proposed for fiscal year 2009.

In December 2004, President Bush issued the U.S. Ocean Action Plan, in response to the US Commission on Ocean Policy Report. The Action Plan includes a series of proposals from across the Government that included policy proposals, legislative recommendations, and regulatory initiatives. DOI has a number of responsibilities under the Action plan including: implementation of interim regulations and joint permits to support the President's Proclamation establishing the Papahanaumokuakea National Marine Monument in the northwest Hawaiian islands; development of a seamless network to protect and conserve the nations ocean and coastal refuges, reserves, parks and sanctuaries; and creation of a National Water Quality Network. The U.S. Fish and Wildlife Service, in cooperation with the National Oceanic and Atmospheric Administration, the State of Hawaii's Department of Land and Natural Resources and Office of Hawaiian Affairs, made available a draft monument management plan on Earth Day, April 22, 2008. The draft management plan and associated environmental assessment were available for a 90-day public comment period from April 23, 2008 through July 23, 2008.

Minimizing Regulatory Burdens

We are using the regulatory process to improve results while easing regulatory burdens. 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 identified approximately 12 species for which delisting or downlisting (reclassification from endangered to threatened) has been or may be appropriate. Since January 1, 2008, we have delisted one species, the Virginia northern flying squirrel (8/26/08), and proposed delisting for four other species: brown pelican (2/20/08), Maguire daisy (5/16/08), concho water snake (7/08/08), and the Hawaiian hawk (8/06/08). By the end of this calendar year, we expect to propose delisting for five additional species: valley elderberry longhorn beetle, Eureka Valley evening-primrose, Eureka Valley dunegrass, Utah valvata snail, and Tennessee

purple coneflower. We also expect to propose downlisting for two species: Okaloosa darter and tulotoma snail.

The Fish and Wildlife Service has found that making listing decisions under the Endangered Species Act on candidate species in Hawaii on a traditional, species-by-species basis is inefficient in both cost and time, since very similar information and analysis would be repeated in each rule. To improve regulatory efficiency while using the best science available, the Fish and Wildlife Service has taken an approach that includes consideration of 48 species in one regulatory package. This allows us to address the existing backlog of candidate species more quickly. Most candidate species on the Hawaiian Islands face nearly identical threats and are only found in the few remaining native-dominated ecological communities. The impacts of these threats are well understood at the community level, while their impacts to the individual candidate species relatively less studied. Because a significant focus under this approach is on the conservation of the key physical and biological components of these native communities and ecosystems (and not just the individual listed species found there), this approach may preclude the need to list additional species found in the same ecological communities. Recovery plans developed in response to the Kauai listing package will focus conservation efforts on the protection and restoration of ecosystem processes, allowing us to more efficiently address common threats in the most important areas.

The Department has submitted over a dozen proposed categorical exclusions provided for under NEPA to expedite a range of activities that the agencies routinely conduct. These range from periodic road closures over dams to activities related to improving Forest Health and energy related activities.

The Federal Power Act authorizes the Department to include in hydropower licenses issued by the Federal Energy Regulatory Commission conditions and prescriptions necessary to protect Federal and tribal lands and resources and to provide fishways when navigable waterways or Federal reservations are used for hydropower generation. The Department of the Interior developed a joint rule with the Departments of Agriculture and Commerce that establishes a trial-type hearing for a review of disputes over ''material facts'' included in hydropower licenses, as required by section 241 of the Energy Policy Act of 2005. The Department expects to publish a final rule in 2008.

The Department of the Interior has proposed a regulatory change affecting the firearms regulations of the National Park Service and the Fish and Wildlife Service. The proposed regulatory change would update the current regulations to reflect current state laws authorizing the possession of concealed firearms. The Department proposes to amend existing regulations to allow individuals to carry concealed weapons in park units and refuges to the extent that they could lawfully do so on analogous state-administered lands. The proposed rule was published on April 30, 2008. The comment period was re-opened in the summer, and closed August 8. Analysis of comments is underway. DOI expects to publish a final rule in 2008.

The National Park Service published a proposed rule regarding permits for inaugural events on August 8, 2008. The comment period closes September 22, 2008. This rule was needed to respond to legal decisions that would affect the upcoming inaugural, regardless of the election results. The proposed rule changes are intended to protect the planning prerogatives of future presidential inaugural committees. The NPS proposed regulation would expressly authorize the NPS to apply for permits on behalf of a Presidential Inaugural Committee so that the Inaugural Committee can continue its traditional functions along Pennsylvania Avenue. The permits would include the time to set-up and take-down structures. The regulation would establish a priority for PIC activities in designated areas. The regulation would also establish set-up and take-down times for Inaugural-related construction activities on parkland directly in front of the White House.

Encouraging Public Participation and Involvement in the Regulatory Process

The Department is encouraging increased public participation in the regulatory process to improve results by ensuring that regulatory policies take into account the knowledge and ideas of our customers, regulated community, and other interested participants. The Department is reaching out to communities to seek public input on a variety of regulatory issues. For example, every year 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, opportunities to participate in establishing the upcoming season's regulations.

Similarly, BLM uses Resource Advisory Councils (RACs) made up of affected parties to help prepare land management plans and regulations that it issues under the Federal Land Policy and Management Act and other statutes.

The Department reviewed and reformed its NEPA compliance program and in 2004 implemented new procedures to improve public participation and reduce paperwork and redundancy of effort in the field. The reforms include: consensus-based management, public participation, community-based training, use of integrated analysis, adaptive management, and tiered and transferred analysis. To promote greater transparency and public accountability, the Department is promulgating regulations to codify these policies in the Code of Federal Regulations. These regulations will supplement the CEQ regulations and must be used in conjunction with them. The regulations will ensure that field staffs have the tools to tailor their implementation of the NEPA process to local needs and interests.

The Federal Lands Recreation Enhancement Act (REA; PL 108-447), enacted in December 2004, required the Forest Service and BLM to establish Recreation Resource Advisory Committees (RRACs), or use existing BLM RACs to perform the duties of RRACs. These committees make recreation fee program recommendations to the two agencies on agency proposals to implement or eliminate certain recreation fees; to expand or limit their fee programs; and to implement fee level changes. The Department of the Interior and the Department of Agriculture signed an Interagency Agreement establishing the framework, processes, and collaborative RRAC approach the two agencies are using to comply with the REA's public participation requirements. The RRACs began reviewing agency fee proposals in 2007.

We 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 consensus on regulatory issues. As part of this process, OSM meets on a

regular basis with organizations that represent coal-producing states such as the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs. OSM also meets on a regular basis with Indian tribes regarding coal mining activity on their tribal lands.

- The Bureau of Indian Affairs (BIA) engaged in a comprehensive approach to public consultation while developing regulations related to Indian probate and other areas of Indian trust management reform. BIA held five tribal consultation sessions in different regions of the country, presented the regulatory changes at several conferences, provided Continuing Legal Education (CLE) training at a symposium sponsored by the Institute of Indian Estate Planning and Probate, held workshops, and made available public outreach materials describing the regulatory changes.
- The Golden Gate National Recreation Area, a unit of the National Park System, has engaged in negotiated rulemaking to resolve an issue regarding walking dogs off-leash in the park and their impacts to endangered species. Existing NPS regulations require all dogs to be on a leash while in Golden Gate NRA, and the park has asked interested parties on both sides of the issue to help draft a proposed regulation. NPS published a final rule to provide temporary protection on 9/19/2008 (73 FR 54317). NPS expects to publish special rules on dog management by winter 2010.

Rules of Particular Interest to Small Businesses

FWS is making critical habitat designations more site-specific and is using the ESA section 4(b) exclusion process to reduce regulatory costs on small businesses.

BLM has developed Stewardship Contracting Guidance that provides a framework for the preparation, implementation, and tracking of BLM stewardship projects, in accordance with Section 323 of Public Law 108-7, the Consolidated Appropriations Resolution, 2003, which authorizes BLM to enter into stewardship projects with private persons or public or private entities, by contract or by agreement, to perform services to achieve land management goals for the national forests or public lands that meet local and rural community needs. The legislation also authorizes the value of timber or other forest products removed to be applied as an offset against the cost of services received.

The Future of DOI

Interior updated its 2003-2008 strategic plan in accordance with the Government Performance and Results Act requirement to update such plans every three years. Employee teams from bureaus and offices across Interior engaged in the revision process. Senior Departmental leadership was involved in reviews and approval of recommended changes before releasing the draft plan for public comment. The draft GPRA Strategic Plan: 2007-12 was the subject of a number of public meetings, tribal government to government consultations, and employee focus groups during August and September 2006. Modifications based on analysis of the comments received were completed and the final plan was published on December 28, 2006.

The Department has established cooperative conservation principles as a central organizing theme for enhancing resource management and reducing conflict relating to public lands decisions. The Department can best achieve conservation by leveraging its resources through successful partnerships, cooperative agreements and participation from farmers, ranchers, hunters, anglers, landowners, and others who are interested in conservation. As we empower people as stewards of the land, we become more effective in our conservation mission. President Bush has emphasized the value of cooperative conservation through Executive Order 13352. The Executive Order defines cooperative conservation as ''actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and Tribal governments, private for-profit and non-profit institutions, other nongovernmental entities and individuals.'' The DOI has aligned budgets, administrative tools, and policies to strengthen its capacity to encourage cooperative conservation and fulfill its potential to achieve on-the-ground conservation results. Below are only a few of many examples of actions the Department has taken to maximize conservation through cooperation:

- We increased programs and grants designed to facilitate cooperative conservation from $217.1 million in 2001 to $311.3 million in 2008, a 43 percent increase.
- We incorporated cooperative conservation goals into employee performance plans;
- We established a permanent Office of Conservation, Partnerships and Management Policy within the Office of the Secretary that works with an intradepartmental team to strengthen capacity for collaboration, mediation, and partnering.
- We revised our Departmental Manual chapter on donations to improve our ability to partner effectively with the public. The revised policy encourages partnerships while upholding the principles that the integrity and impartiality of the Department and public confidence in the Department are key considerations in any acceptance of donations.
- The National Park Service adopted a Building Better Partnership Projects (BBPP) process to help ensure that partnership-assisted construction projects in National Parks are properly designed, vetted and managed and that the fundraising campaign is slated for success. The BBPP process is intended to help ensure that:

1) the project is appropriately designed and sized for the park

2) the capital campaign will succeed in raising all the needed funds without having to turn to Congress to make up any difference the campaign cannot raise

3) the project can be staffed and maintained over time

4) there is proper compliance with and oversight of design and construction

5) all appropriate parties, including the Department and Congress, are aware and supportive of the projects.

Recent examples of successful projects include the $18.5 million Craig Thomas Discovery and Visitor Center at Grand Teton National Park, funded in part by the Grand Teton National Park Foundation and the Grand Teton Natural History Association; the $14 million Lower Yosemite Falls Trail Improvement Project, funded primarily by the Yosemite Fund; and the new museum and visitor center at Gettysburg National Military Park funded principally through the $125 million Campaign to Preserve Gettysburg by the Gettysburg Foundation.

- We revised the Departmental Manual chapter on contracts, grants and cooperative agreements to address single source awards while continuing to uphold the

Department's policy that the bureaus must use appropriate instruments for federal financial assistance transactions, provide appropriate justifications and documentation for files and conduct periodic compliance reviews.

The revised GPRA Strategic Plan:

- Incorporates key Administration and Secretarial priorities into Interior's goals and performance measures
- Provides for more ''results-oriented'' goals for Interior programs
- Provides the basis for the Departmental Annual Performance Plan

Interior bureaus will continue to prepare internal plans to support their budget initiatives and to meet management excellence and accountability needs.

Bureaus and Offices Within DOI

The following brief descriptions summarize the regulatory functions of DOI's major regulatory bureaus and offices.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 66 million acres of land held in trust by the United States for Indians and Indian tribes, providing services to approximately 1.7 million Indians and Alaska Natives, and maintaining a government-to-government relationship with the 562 federally recognized Indian tribes. BIA's mission is to ''... enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives'' as well as to provide quality education opportunities to students in Indian schools.

In fiscal year 2008, BIA has two primary areas of regulatory focus:

1) improved management of trust responsibilities and

2) promotion of economic development in Indian communities.

The focus on Indian trust management reform originated with Congress's enactment of the Trust Fund Management Reform Act of 1994. Since that time, BIA, with the input of tribal leaders, individual Indian beneficiaries, and other subject matter experts, has been examining ways to better serve its beneficiaries. The American Indian Probate Reform Act of 2004 (AIPRA) amendments to the Indian Land Consolidation Act (ILCA) made clear that regulatory changes were necessary to update the manner in which BIA meets its trust management responsibilities. The focus on promoting economic development in Indian communities is a core component of BIA's mission and furthers the Secretary's Safe Indian Communities initiative by preventing crime through economic development opportunities.

BIA's regulatory priorities are to:

- *Meet the Indian trust reform goals for land consolidation and improve service to individual Indian and tribal beneficiaries.* BIA and the Office of the Secretary plan to finalize in late 2008 several regulations related to Indian trust management to meet the policies articulated by Congress in ILCA, as amended by AIPRA. These regulations address Indian trust management issues in the areas of probate; probate hearings and appeals; tribal probate codes; life estates and future interest in Indian land; and conveyances of trust or restricted land. These amendments to 25 CFR parts 15, 18, 152, 179, and 43 CFR Parts 4, 30 form an integrated approach to Indian trust management related to probate and conveyances that allows the Department to better meet the needs of its beneficiaries. (See proposed rule at 71 FR 45174; August 6, 2006). BIA is also developing amendments to regulations in the areas of land title and records; leasing; grazing; minerals and energy; rights-of-way; and trust fund accounting and appeals. Together, these regulatory changes, to be proposed in 2009, will provide the Department with the tools it needs to better serve beneficiaries and will standardize procedures for consistent execution of fiduciary responsibilities across the BIA.
- *Promote economic development through regulated gaming activities.* Congress identified gaming as a means of promoting tribal economic development, self-sufficiency and strong tribal governments. See, e.g., the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 et seq. In fiscal year 2008, BIA established a process for Indian tribes to take advantage of this important means of economic development on lands acquired after October 17, 1988. Specifically, BIA finalized a new rule that establishes the process for Indian tribes to submit applications and demonstrate that they meet the statutory requirements allowing them to conduct class II or class III gaming activities on those lands (73 FR 12808; May 20, 2008). This year, BIA also proposed, and plans to finalize, a rule that clarifies the process for Indian tribes to submit their Tribal-State Gaming Compacts for review and approval by the Secretary (73 FR 37907; July 2, 2008). Tribal-State Gaming Compacts govern the conduct of class III gaming activities on the tribe's Indian lands located within that State.

The Bureau of Land Management

The Bureau of Land Management (BLM) manages about 258 million acres of land surface, including 15 National Monuments, and about 700 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 archaeological and cultural sites. The BLM manages these lands and resources for multiple purposes and the sustained yield of renewable resources. Primary statutes under which the BLM operates 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; the Wilderness Act; and the Wild Free-Roaming Horse and Burro Act.

The BLM regulatory focus is directed primarily by priorities of the President and Congress. For example, many regulatory efforts support the objectives of the Energy Policy Act of 2005. These objectives include those that facilitate the domestic production of various sources of energy, including biomass, wind, solar, and other alternative sources of energy, including oil shale. Other statutory objectives include providing for a wide variety of public uses while maintaining the long-term health and diversity of the land and preserving significant natural, cultural, and historic resource values; understanding the arid, semi-arid, arctic, and other ecosystems we manage and committing ourselves to using the best scientific and technical information to make resource management decisions; understanding the needs of the people who use the BLM-managed public lands and providing them with quality service; securing the recovery of a fair return for using publicly owned resources and avoiding the creation of long-term liabilities for American taxpayers; and resolving problems and implementing decisions in cooperation with other agencies, States, tribal governments, and the public.

During the development of regulations, the BLM recognizes the need to ensure communication, coordination, and consultation with all affected interests and the public and that the regulations are easy for the public to understand, especially those who would be most affected by them.

The BLM's regulatory priorities include:

- *Finalizing oil shale regulations to provide critical ''rules of the road'' essential to oil shale development.* The BLM has issued proposed regulations (73 FR 42926; July 23, 2008) that set out the policies and procedures of a commercial program for oil shale resources on Federal lands, in keeping with the Energy Policy Act of 2005 and the Mineral Leasing Act of 1920. It expects to finalize these regulations in 2008. Finalizing these regulations is a key component of our effort to promote America's energy security. Oil shale is a strategically important domestic energy resource, with a potential of 800 billion barrels of recoverable oil-enough to meet U.S. demand for oil at current levels for 110 years.

Other regulatory and planning efforts seek to improve the agency's management of public rangelands and other land resources, such as land-use plan revisions that incorporate the objectives of the Healthy Lands Initiative. Through these actions, the BLM is working to ensure that America's public lands stay healthy and productive for multiple uses, both now and in the years to come.

Minerals Management Service

Minerals Management Service (MMS) has two major responsibilities. The first is timely and accurate collection, distribution, and accounting for revenues associated with mineral production from leased Federal and Indian lands. The second is management of the resources of the Outer Continental Shelf (OCS) in a manner that provides for safety, protection of the environment, and conservation of natural resources. Both of these responsibilities are carried out under the provisions of the Federal Oil and Gas Royalty Management Act, the Federal minerals leasing acts, the Outer Continental Shelf Lands Act, the Indian mineral leasing acts, and other related statutes.

Our regulatory focus in fiscal year 2008 is directed primarily by priorities of the President and Congress. Legislation enacted by Congress and signed by the President emphasizes contributing to our nation's energy supply, developing new energy sources and sharing OCS revenues with coastal states affected by offshore oil and gas exploration. Through the Energy Policy Act of 2005 (EPAct) and the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Congress directed MMS to:

1) develop regulations to encourage development of alternative energy and alternate uses of facilities on the OCS, and

2) distribute a fair share of Federal royalty revenue to States and political subdivisions affected by offshore oil and gas exploration in the Gulf of Mexico.

Our regulatory priorities are to:

- *Meet our Indian trust responsibilities.* We have an ongoing trust responsibility to collect and disburse oil and gas royalties on Indian lands. The Minerals Management Service announced its intent to establish an Indian Oil Valuation negotiated rulemaking committee by Federal Register notice (73 FR 22970), published on April 28, 2008. This effort will address issues pertaining to the valuation of oil produced from Indian lands and add more certainty to oil valuation for royalty purposes. The negotiated rulemaking process will involve stakeholders in the rulemaking process and address some of the unique terms contained in Indian tribal and allotted leases - in particular, the major portion provision to ensure consistent, fair and proper calculation of oil value from Indian lands.
- *Encourage development of alternative energy and alternate uses for existing facilities.* In responding to the mandates of the EPAct, MMS has moved forward in developing and codifying the regulatory framework for alternative energy projects on the OCS. We published a proposed rule (RIN 1010-AD30) in July, 2008, and expect to publish the final regulations by the end of the year. The regulations will provide a mechanism for developing the nations' offshore wind, wave and ocean current resources in a safe and environmentally sound manner.
- *Promote Gulf of Mexico coastal restoration through revenue sharing with affected States.* We published a proposed rule (RIN 1010-AD46) in May, 2008, and expect to publish a final rule before the end of 2008 that would establish a formula and provide a process for allocating a portion of OCS revenues (royalties, rents and bonuses) from leases in specified areas of the Gulf of Mexico to the States of Alabama, Mississippi, Louisiana and Texas and their coastal political jurisdictions. The funds provided would be used for the purposes of coastal protection, including conservation, coastal restoration, hurricane protection, mitigation of damage to fish, wildlife or natural resources, and the mitigation of the impacts of OCS activities.
- *Royalty Relief for Ultra-Deep gas wells and Deep Gas wells pursuant to the EPAct.* We are promulgating a final rule (RIN 1010-AD33) to reflect the statutory changes enacted in the EPAct to provide royalty relief, with price thresholds, for certain ultra-deep wells on OCS leases in shallow water in the Gulf of Mexico. The rule would provide relief under certain circumstances and could foster increased production of clean burning natural gas for the nation.

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 those operations, require land reclamation once mining ends, and require rules and enforcement procedures to ensure that the standards are met. Under SMCRA, as amended by the Surface Mining Control and Reclamation Act Amendments of 2006, OSM is the primary enforcer of SMCRA's provisions until a State or Indian tribe achieves ''primacy;'' that is, until it demonstrates that its regulatory program meets all of the specifications in SMCRA and has regulations consistent with those issued by OSM. When a primacy State or Indian tribe takes over the permitting, inspection, and enforcement activities of the Federal Government, OSM changes its role from regulating mining activities directly to overseeing and evaluating State and Indian programs. Today, 24 of the 26 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. At present, none of the Indian tribes with coal resources has primacy. Tribal primacy was not authorized until passage of the 2006 amendments to SMCRA. Since passage of the 2006 amendments, three tribes have expressed an interest in submitting a tribal program. In summary, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on Indian lands when the tribe does not have primacy.

OSM has sought to develop and maintain a stable regulatory program for surface coal mining hat is safe, cost-effective, and environmentally sound. A stable regulatory program provides regulatory certainty so that coal companies know what is expected of them and citizens know what is intended and how they can participate. During the development and maintenance of its program, OSM has recognized the need to (a) respond to local conditions, (b) provide flexibility to react to technological change, (c) be sensitive to geographic diversity, and (d) eliminate burdensome recordkeeping and reporting requirements that over time have proved unnecessary to ensure an effective regulatory program.

OSM's major regulatory priorities are to:

- *Revise Our Abandoned Mine Land Program Regulations To Be Consistent With the Surface Mining Control Act Amendments of 2006.* We published a proposed rule (RIN 1029-AC56) on June 20, 2008, that aligns our existing regulations to be consistent with the 2006 amendments to SMCRA which extended the AML fee through 2021 with several substantive changes. The rule also uses plain English to make the regulations easier to understand where no substantive change is intended and provides further guidance and clarification on implementation of the 2006 amendments where appropriate or needed. The primary benefits of the rule will be to insure the stable and efficient administration of these significant changes to the abandoned mine land program through the fee extension provided by the new legislation.
- *Issue Regulations for Stream Buffer Zones and Excess Spoil Placement.* We published a proposed rule (RIN 1029-AC04) on August 24, 2007, concerning stream buffer zones, stream-channel diversions, siltation structures, impoundments, excess spoil, and coal mine waste. Among other things, the rule would require that surface coal mining operations be designed to minimize the creation of excess spoil and the adverse environmental impacts of fills constructed to dispose of excess spoil and coal mine waste. The primary benefits of the rule will be (1) minimization of adverse environmental impacts from construction of excess spoil fills and (2) regulatory clarity and stability with respect to buffer zones for intermittent and perennial streams.

U.S. Fish and Wildlife Service

The mission of the Fish and Wildlife Service is, working with others, to conserve, protect, and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. The Service's vision is to be a leader and trusted partner in fish and wildlife conservation, known for its scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service.

The Service has six priorities:

1) National Wildlife Refuge System - conserving our lands and resources;

2) Landscape Conservation - working with others;

3) Migratory Birds - conservation and management;

4) Threatened and Endangered Species - achieving recovery and preventing extinction;

5) Aquatic Species - National Fish Habitat Action Plan and trust species; and

6) Connecting People with Nature - ensuring the future of conservation.

Our regulatory focus through fiscal year 2008 is on four of those priorities - National Wildlife Refuges, Connecting People with Nature, Migratory Birds, and Threatened and Endangered Species.

The regulatory priority for the National Wildlife Refuge System and Connecting People with Nature is to meet our responsibilities to provide quality hunting and fishing opportunities for the American people.

- We published a final rule (1018-AU61) on June 11, 2008, that opens select National Wildlife Refuges to hunting and sport fishing. The National Wildlife System Administration Act of 1966 closes all national wildlife refuges in all states, except Alaska, unless opened. This final rule added one refuge to the list of refuges open for sport fishing and amends certain other regulations pertaining to hunting and sport fishing for the 2008-2009 season.
- We published a proposed rule (1018-AV20) on June 11, 2008, that proposed to add one refuge to the list of refuges open to hunting and/or sport fishing and that would increase activities available on six other refuges for the 2008-2009 season. The comment period for this rule closed on July 11, 2008. The final rule published on August 29, 2008.

Our regulatory priorities for Migratory Birds are to provide assurances and/or permits for entities covered under ESA Section 7 or Section 10 permits prior to the delisting of the bald eagle and to finalize regulations proposed in 2007 to establish two new permits under the Eagle Act.

- On May 20, 2008, we published a final rule to extend Eagle Act authorizations to holders of existing ESA authorizations.

1) We provide take authorization to ESA section 10(a)(1)(B) permittees where the bald eagle is covered in a Habitat Conservation Plan (HCP) or the golden eagle is covered as a non-listed species.

2) We established a new permit category to provide expedited Eagle Act permits to entities authorized to take bald eagles through section 7 incidental take statements.

- On August 14, 2008, we published a Draft Environmental Assessment on issuance of permits under the Act. We also reopened the comment period on the rule proposed in 2007.

1) We plan to issue regulations for permits take of eagles and nests where necessary for the safety of humans or the eagles, and to allow disturbance of eagles where the disturbance is associated with otherwise-lawful activities.

2) These regulations will establish a priority for Native American take of eagles for religious purposes.

3) We plan to complete and implement these regulations in fall 2008.

Our regulatory priorities for Threatened and Endangered Species are as follows.

- *Facilitate implementation of conservation provisions for the polar bear by harmonizing Endangered Species Act and Marine Mammal*

Protection Act provisions. We published a proposed section 4(d) rule (1018-AV79) on May 15, 2008 and the comment period closed on July 14, 2008. We are in the process of gathering and analyzing all comments received. We expect to publish a final rule by the end of this year.

- *Take the following actions to list the polar bear:*

1) We published a final rule (1018-AV19) listing the polar bear as a threatened species on May 15, 2008. The rule affords the polar bear the protections of the provisions of the Endangered Species Act.

2) We also published a special rule (1018-AV79) under the authority of section 4(d) of the Endangered Species Act of 1973, as amended, to provide customized measures that are necessary and advisable for the conservation of the polar bear.

- *Improve Interagency Consultation Regulations.* Targeted revisions to Section 7 interagency consultation regulations were proposed on August 15 (1018-AT50) to increase efficiencies and enable Fish and Wildlife Service biologists to devote more time to assessing the status of potential species at risk.

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 resources conservation and outdoor recreation throughout this country and the world.

There are 391 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
- Preserve America grant program
- National Register of Historic Places
- National historic landmarks
- Historic preservation
- Technical preservation services
- Historic American Buildings survey
- Historic American Engineering Record
- 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. The regulatory priorities to be accomplished through the balance of this Administration include:

- Providing consistency between NPS and state parks or other analogous lands with regarded to allowing the carrying of concealed firearms (RIN1024-AD70)(public comment period closed 8/8/08);
- Assuring consistency between regulations and management actions associated with the presidential inaugural every four years (RIN 1024-AD71) (proposed rule published 8/8/08; comment period closes 9/22/08);
- Implementing the Colorado River Management Plan through conforming regulations (RIN 1024-AD50); and
- Addressing the challenges of managing off-leash dogs and protecting endangered species habitat at Golden Gate National Recreation Area (RIN 1024-AD71).

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. Reclamation has increased security at its facilities and is implementing its law enforcement authorization received in November 2001.

Reclamation's regulatory program focus in fiscal year 2008 is to ensure that its mission and newly adopted laws that require regulatory actions are carried out expeditiously, efficiently, and with an emphasis on cooperative problem solving by:

- *Implementing a Collaborative Agreement on Water Management.* After decades of dispute over the ownership and use of water and water rights in the Truckee and Carson River basins, the Secretary successfully negotiated the Truckee River Operating Agreement (TROA), an agreement for the major Federal and private reservoirs on the Truckee River upstream from Reno. This agreement was formally signed on September 6, 2008. TROA, which satisfies requirements of the 1990 Truckee-Carson-Pyramid Lake Water Rights Settlement Act, is intended to increase the operational flexibility, efficiency, and coordination of reservoirs in the Lake Tahoe and Truckee River basins to provide multiple environmental benefits while protecting existing water rights. Reclamation published a proposed rule on September 15, 2008 and expects to publish a final rule codifying the TROA in January of 2009 (RIN 1006-AA48).
- *Efficiently Managing Water and Lands Associated with Reclamation Projects.*

1) In support of the Secretary's role as water master for the Colorado River, Reclamation has negotiated a set of procedures to identify water that is

being pumped from the Colorado River without a valid entitlement. It also establishes a set of procedures to deal with those who are taking water unlawfully. Developed in concert with the Colorado River Basin States and with water users, these procedures are consistent with state procedures for other river systems. Reclamation published a proposed rule on July 16, 2008 and expects to publish a final rule in 2008 (RIN 1006-AA50).

2) Reclamation has published a proposed revised rule addressing public uses of lands, facilities, and water bodies associated with Reclamation projects. The rule establishes procedures for obtaining authorization for uses other than individual, non-commercial use for occasional activities such as hiking, picnicking, swimming, or boating, to ensure that water management goals as authorized by Congress can continue to be effectively accomplished. Reclamation published a proposed rule on July 18, 2008 and expects to publish a final rule in 2008 (RIN 1006-AA51).

3) Reclamation is finalizing a rule to clarify how and where seaplanes can land on Reclamation reservoirs. This rule will balance the need to ensure the safety and security of vital dams and reservoirs with the need for seaplane access to reservoirs. Reclamation expects to publish a final rule in 2008 (RIN 1006-AA55).

- *Implementing New Statutorily Authorized Programs.*

1) Public Law 109-451 (Title I) authorized the establishment of a rural water supply program to enable the Bureau of Reclamation to coordinate with rural communities throughout the Western United States to identify their potable water supply needs and evaluate options for meeting that need. Pursuant to the Act, Reclamation is finalizing a rule to establish programmatic criteria to define how it will identify and work with eligible rural communities. Reclamation expects to publish a final rule in 2008 (RIN 1006-AA554).

2) Public Law 109-451 (Title II) authorizes the Secretary, through the Bureau of Reclamation, to issue loan guarantees to assist in financing (a) rural water supply projects, (b) extraordinary maintenance and rehabilitation of Bureau of Reclamation project facilities, and (c) improvements to infrastructure directly related to a Reclamation project. This new program will provide an additional funding option to help western communities and water managers to cost effectively meet their water supply and maintenance needs. Pursuant to the Act, Reclamation is working with the Office of Management and Budget to publish a Rule that will establish programmatic criteria and define how the loan guarantee program will be administered. Reclamation published a proposed rule on October 6, 2008 and expects to publish a final rule in 2008.

Office of the Secretary, Natural Resource Damage Assessment and Restoration Program

The regulatory functions of the Natural Resource Damage Assessment and Restoration Program (Restoration Program) 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 revisions, as appropriate, of these rules. Rules have been promulgated for the optional use by natural resource trustees to assess appropriate restoration for injury to natural resources caused by hazardous substances. The Restoration Program established the Natural Resources Damage Assessment and Restoration Program Advisory Committee that has provided advice and recommendations on DOI's authorities and responsibilities, including its responsibility to promulgate regulations in the implementation of the National Resource Damage provisions of CERCLA. The proposed change to the NRDAR regulations is a targeted regulatory revision to clarify the appropriateness of a restoration-based approach for all natural resource damages. The revised language responds simultaneously to one of the Advisory Committee's recommendations and to a Court remand [see *Kennecott v. DOI*, 88 F. 3rd 1191 (D.C. Cir. 1996)]. These regulatory changes will provide flexibility to use simpler, more cost effective, and more transparent methods to relate natural resource damage claims to restoration, rather than monetary damages, and promote an early focus on restoration actions.

Costs and Benefits of Department of the Interior Regulations

As required by Executive Order 12866, the Department attempts to estimate the costs and benefits associated with each of our significant regulations. Where costs can be calculated, our figures can at best represent only an order of magnitude estimate. This is because each estimate can vary based upon the assumptions made about baselines, different time periods, different discount rates, and other variables that can result in widely varying cost estimates.

In attempting to estimate benefits, the same variability exists due to potentially different baselines, different time periods, different discount rates, different underlying behavioral assumptions, and different treatment of risk and uncertainty that may not result in a meaningful estimate of net benefits. Furthermore, the treatment of environmental goods and services, which are not typically bought and sold in markets, presents additional problems. The Office of Management and Budget recognizes these difficulties in Circular A-4, which states that benefits may in many cases be unquantifiable. This is the case with most of the Department's regulations.

For the foregoing reasons, it is impossible for the Department to quantify in any meaningful way the aggregate costs of its regulatory program, even though we have attempted to quantify costs where possible in individual cases. Aggregate figures for the benefits of the Department's regulatory program are not possible to calculate, since we have been able to quantify the approximate benefits in only a very small percentage of cases.

DOI—Office of Surface Mining Reclamation and Enforcement (OSMRE)

FINAL RULE STAGE

79. PLACEMENT OF EXCESS SPOIL

Priority:

Other Significant

Legal Authority:

30 USC 1201 et seq

CFR Citation:

30 CFR 780; 30 CFR 784; 30 CFR 816; 30 CFR 817

Legal Deadline:

None

Abstract:

This rule will establish permit application requirements and review

procedures for applications that propose to place excess spoil or coal mine waste from surface coal mining operations into waters of the United States. Among other things, it will require that mine operators minimize the creation of excess spoil and the adverse environmental impacts resulting from the construction of excess spoil fills. In addition, it will clearly specify the activities to which that requirement does and does not apply, and revise the findings required for a variance from the buffer requirement to more closely track the underlying statutory provisions.

Statement of Need:

This rule will provide long-term regulatory stability by clearly specifying the activities to which the buffer requirement does and does not apply and describing the relationship between our rules and the Clean Water Act. It also will promote environmental protection by requiring that mining operations be designed to minimize both the creation of excess spoil and adverse environmental impacts resulting from the disposal of excess spoil and coal mine waste.

Summary of Legal Basis:

General rulemaking authority: Section 201(c)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1211(c)(2), directs the Secretary of the Interior (the Secretary), acting through OSM, to publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of SMCRA.

Legal basis under SMCRA: Sections 515(b)(10)(B)(i) and 516(b)(9)(B) of SMCRA, 30 U.S.C. 1265(b)(10)(B)(i) and 1266(b)(9)(B), require that surface coal mining operations be conducted so as to prevent the contribution of additional suspended solids to streamflow or runoff outside the permit area to the extent possible using the best technology currently available. Sections 515(b)(24) and 516(b)(11) of SMCRA, 30 U.S.C. 1265(b)(24) and 1266(b)(11), require that surface coal mining and reclamation operations be conducted to minimize disturbances to and adverse impacts on fish, wildlife, and related environmental values ''to the extent possible using the best technology currently available.'' These statutory provisions form the basis for the new rules concerning excess spoil, coal mine waste, and buffer zones for waters of the United States.

Alternatives:

Alternatives considered in the Environmental Impact Statement include:

A. Alternative 1 — Changing the Excess Spoil and Stream Buffer Zone Regulations (OSM's Preferred Alternative and Most Environmentally Protective Alternative):

OSM would revise the regulations applicable to excess spoil generation and placement to further lessen the adverse environmental effects stemming from excess spoil fill construction. OSM would require the applicant for a surface coal mining permit to demonstrate that (1) the operation has been designed to minimize the creation of excess spoil and (2) excess spoil fills have been designed to be no larger than needed to accommodate the anticipated volume of excess spoil that the operation will generate. Finally, OSM would require the applicant to consider various alternative spoil disposal plans in which the size, numbers, and locations of the excess spoil fills vary, and to submit an analysis showing that the preferred excess spoil disposal plan would result in the least adverse environmental impact.

Similarly, OSM would revise its coal mine waste disposal regulations to require permit applicants to describe the steps to be taken to minimize adverse environmental impacts and identify and analyze the environmental impacts associated with alternative disposal methods and potential locations.

OSM would revise the stream buffer zone regulation to clarify which kinds of coal mining activities are subject to the rule. Surface mining and reclamation activities occurring adjacent to, but not in, waters of the United States would be subject to the rule. Stream crossings, sedimentation ponds, excess spoil fills, mining through waters of the United States, and coal mine waste disposal facilities would not be subject to the prohibition on disturbance of the buffer zone.

OSM would also revise the criteria for authorizing variances from the 100-foot buffer zone to more accurately reflect the statutory basis for the rule. The stream buffer zone is principally based on two SMCRA provisions: Sections 515(b)(10)(B)(i) and 515(b)(24). The first provision requires, among other things, that surface coal mining operations be conducted so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area. The second provision, Section 515(b)(24), requires that to the extent possible using the best technology currently available, surface coal mining and reclamation operations must minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable. Variances to use of a 100-foot buffer as BTCA could be authorized if equally or more effective alternative means to achieve the performance standards of sections 515(b)(10)(B)(i) and (24) would be used.

Finally, OSM would also extend the requirement of a 100-foot buffer zone to other water bodies in addition to streams, so as to apply the rule to lakes, ponds, and adjacent wetlands (to the extent those water bodies constitute ''waters of the United States'' under the Clean Water Act).

As a variant of this alternative, OSM is also considering largely retaining the existing buffer zone rule language at 30 CFR 816.57(a) and 817.57(a), but modifying the criteria for allowing a variance from the 100-foot buffer requirement: The first modification would retain the current criterion that requires that the regulatory authority find that the ''mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream.'' This variant would explicitly note that the appropriate Federal and State Clean Water Act agencies in accordance with sections 401, 402, or 404 would make this determination. The second modification would replace the phrase ''adversely affect'' with ''significantly degrade.''

B. Alternative 2 — January 7, 2004 Proposed Rule

OSM would change the excess spoil regulations essentially as described in Alternative 1 but would change the stream buffer zone regulations at 30 CFR 816.56 and 817.57 as described in the January 7, 2004 Federal Register notice of the previous proposed stream buffer zone rule [69 FR 1036].

OSM would retain the prohibition on disturbance of land within 100 feet of a perennial or intermittent stream for surface coal mining operations but allow the regulatory authority to grant a variance to this requirement if the regulatory authority finds in writing

that the activities would, to the extent possible, use the best technology currently available:

(1) Prevent additional contributions of suspended solids to the section of stream within 100 feet downstream of the mining activities, and outside the area affected by mining activities; and

(2) Minimize disturbances and adverse impacts on fish, wildlife, and other related environmental values of the stream.

C. Alternative 3 — Change Only the Excess Spoil Regulations

OSM would change the excess spoil regulations as described in Alternative 1. No changes would be made to the stream buffer zone regulations.

D. Alternative 4 — Change Only the Stream Buffer Zone Regulations

OSM would change the stream buffer zone regulations as described in Alternative 1. No changes would be made to the excess spoil regulations.

E. Alternative 5 — No Action Alternative:

OSM would not adopt any new rules. The current regulations applicable to excess spoil generation and fill construction and the stream buffer zone would remain unchanged.

Anticipated Cost and Benefits:

It is anticipated that some of the regulatory changes will result in an increase in the costs and burdens placed on coal operators and on some primacy States. We estimate that the total annual increase for operators would be approximately $240,500, and for the primacy States the total annual increase is estimated at approximately $24,200. These increases are a result of the requirement to document the analyses and findings required by the regulatory changes. This estimated increase in costs would likely only affect those coal operators and States (Kentucky, Virginia, and West Virginia) located in the steep slope terrain of the central Appalachian coalfields, where the bulk of excess spoil is generated. Because all of the regulatory agencies in the Appalachian coalfields have implemented policies to minimize the volume of excess spoil, no significant additional costs of implementing these regulatory changes are anticipated other than those required to document the strengthened requirements to consider all alternative excess spoil construction and disposal sites.

One of the primary benefits of the rule is an expected reduction in the placement of excess spoil with resulting positive environmental consequences. The rule is also expected to clarify mining requirements for steep slope and mountaintop mining operations in Appalachia and thereby establish regulatory certainty for the coal industry, which has been hesitant to expend large sums of money on this type of mining operations because of legal uncertainty.

Risks:

If the proposed rule is not adopted, the controversy and uncertainty concerning the meaning of the existing stream buffer zone rule may continue to exist. That uncertainty creates the risk of additional litigation concerning the existing rule, which could result in regulatory instability and a reluctance on the part of coal mining companies to invest in new mining projects. There is also the risk that not all of the environmental benefits of the excess spoil minimization rules would be achieved. Finally, failure to adopt this rule would result in the retention of legally and technically obsolete provisions of the existing rules.

Timetable:

Action	Date	FR Cite
NPRM	01/07/04	69 FR 1036
NPRM Comment Period End	03/08/04	
Second NPRM	08/24/07	72 FR 48890
Other/Second NPRM Comment Period End	11/23/07	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State

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RIN: 1029–AC04

DOI—Bureau of Land Management (BLM)

FINAL RULE STAGE

80. OIL SHALE LEASING AND OPERATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Sec. 369(d) of the Energy Policy Act of 2005

CFR Citation:

43 CFR 3900

Legal Deadline:

None

Abstract:

The Energy Policy Act of 2005 envisions a 3-step approach to the development of oil shale resources. The first step is the creation of a limited Research, Development, and Demonstration (RDD) Leasing Program designed to evaluate and test promising oil shale technology. Step two in the process is the completion of a Programmatic Environmental Impact Statement for leasing of Oil Shale and Tar Sands on public lands, with an emphasis on the most geologically prospective lands within the States of Colorado, Utah, and Wyoming. The third step in the process is the creation of rules regulating the leasing and development of the oil shale. This rule would create the regulations necessary to develop converted RDD leases and make commercial exploration, leasing, and development possible.

Statement of Need:

Currently there are no regulations in place that allow leasing and development of oil shale resources. The rule would establish the regulatory framework allowing commercial leasing and development of oil shale.

Summary of Legal Basis:

Sec. 369(d) of the Energy Policy Act of 2005 requires that the Secretary of the Interior publish final regulations establishing a commercial leasing program for Oil Shale and Tar Sands.

Alternatives:

There is no alternative to creation of the regulations. Creation of the regulations is mandated by sec. 369(d) of the Energy Policy Act of 2005.

Anticipated Cost and Benefits:

BLM anticipates the following benefit: Increased Federal revenue and domestic fuel production, decreased dependency on energy imports, and the expansion of local economies through employment and taxes.

The major categories of costs include: BLM administrative costs, including enforcement and monitoring, and compliance costs for lessees.

Risks:

Development of the oil shale resources will place additional demands on the lands and localities containing the oil shale resources. These demands will result in increased resource conflicts (i.e., oil and gas, nahcolite, and wildlife) and pressure on local governments/infrastructure (i.e., law enforcement, schools, hospitals and roads).

Timetable:

Action	Date	FR Cite
ANPRM	08/25/06	71 FR 50378
ANPRM Comment Period End	09/25/06	
Comment Period Extended	09/26/06	71 FR 56085
ANPRM Comment Period End	10/25/06	
NPRM	07/23/08	73 FR 42926
NPRM Comment Period End	09/22/08	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DEPARTMENT OF JUSTICE (DOJ)

Statement of Regulatory Priorities

The first and overriding priority of the Department of Justice is to prevent, detect, disrupt, and dismantle terrorism while preserving constitutional liberties. To fulfill this mission, the Department is devoting all the resources necessary and utilizing all legal authorities to eliminate terrorist networks, to prevent terrorist attacks, and to bring to justice those who kill Americans in the name of murderous ideologies. It is engaged in an aggressive arrest and detention campaign of lawbreakers with a single objective: To get terrorists off the street before they can harm more Americans. In addition to using investigative, prosecutorial, and other law enforcement activities, the Department is also using the regulatory process to enhance its ability to prevent future terrorist acts and safeguard our borders while ensuring that America remains a place of welcome to foreigners who come here to visit, work, or live peacefully. The Department also has important and wide-ranging responsibilities for criminal investigations, law enforcement, and prosecutions and, in certain specific areas, makes use of the regulatory process to better carry out the Department's law enforcement missions.

The Department of Justice's regulatory priorities focus in particular on a major regulatory initiative in the area of civil rights. Specifically, the Department is planning to revise its regulations implementing titles II and III of the Americans With Disabilities Act (ADA). However, in addition to this specific initiative, 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 anti-terrorism and law enforcement priorities.

Civil Rights

The Department has published proposed rules to revise its regulations implementing titles II and III of the ADA to amend the ADA Standards for Accessible Design (28 CFR part 36, appendix A) to be consistent with the revised ADA accessibility guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) in final form on July 23, 2004. (The Access Board had issued the guidelines in proposed form in November 1999 and in final draft form in April 2002.) 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. In implementing these provisions, the Department of Justice is required by statute to publish regulations that include design standards that are consistent with the guidelines developed by the Access Board. The Access Board was engaged in a multiyear effort to revise and amend its accessibility guidelines. The goals of this project were: 1) To address issues such as unique State and local facilities (e.g., prisons, courthouses), recreation facilities, play areas, and building elements specifically designed for children's use that were not addressed in the initial guidelines; 2) to promote greater consistency between the Federal accessibility requirements and the model codes; and 3) to provide greater consistency between the ADA guidelines and the guidelines that implement the Architectural Barriers Act. The Access Board issued guidelines that address all of these issues. Therefore, to comply with the ADA requirement that the ADA standards remain consistent with the Access Board's guidelines, the Department proposed to adopt revised ADA Standards for Accessible Design that are consistent with the revised ADA Accessibility Guidelines.

The Department's proposed rules also revise its regulations implementing title II and title III (28 CFR parts 35 and 36) to ensure that the requirements applicable to new construction and alterations under title II are consistent with those applicable under title III, to update the regulations to reflect the current state of law, and to ensure the Department's compliance with section 610 of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Department's proposed rules were the second step in a three-step process to adopt and interpret the Access Board's revised and amended guidelines in three steps. The first step of the rulemaking process was an advance notice of proposed rulemaking, published in the Federal Register on September 30, 2004, at 69 FR 58768, which the Department believes simplified and clarified the preparation of the proposed rule. In addition to giving notice of the proposed rule that will adopt revised ADA accessibility standards, the advance notice raised two sets of questions for public comment, and proposed a framework for the regulatory analysis that will accompany the proposed rule. One set of questions addresses interpretive matters related to adopting revised ADA accessibility standards, such as what should be the effective date of the revised standards and how best to apply the revised standards to existing facilities that have already complied with the current ADA standards. Another set of questions was directed to collecting data about the benefits and costs of applying the new standards to existing facilities. The second step of the rulemaking process was a proposed rule proposing to adopt revised ADA accessibility standards consistent with the Access Board's revised and amended guidelines that will, in addition to revising the current ADA Standards for Accessible Design, supplement the standards with specifications for prisons, jails, court houses, legislative facilities, building elements designed for use by children, play areas, and recreation facilities. The proposed rule also offered proposed answers to the interpretive questions raised in the advance notice and presented an initial regulatory assessment; it will be followed by a final rule, the third step of the process.

The Department's revised and supplemented regulations under the ADA will affect small businesses, small governmental jurisdictions, and other small organizations (together, small entities). The Access Board has prepared regulatory assessments (including cost impact analyses) to accompany its new guidelines, which estimate the annual compliance costs that will be incurred by covered entities with regard to construction of new facilities. These assessments include the effect on small entities and will apply to new construction under the Department's revised and supplemented regulations. With respect to existing facilities, the Department has prepared an additional regulatory assessment of the estimated annual cost of compliance. In this process, the Department has given careful consideration to the cost effects on small entities, including the solicitation of comments specifically designed to obtain compliance data relating to small entities.

Other Department Initiatives

1. DNA Sample Collection

The Department will publish a final rule to implement legislative amendments that authorize the Attorney General to expand the categories of

persons from whom DNA samples are collected in the Federal system beyond convicts, to also include arrestees and non-U.S. persons detained under Federal authority. The effect will be to equate DNA sample collection by Federal agencies to fingerprinting as a routine justice system identification measure, thereby maximizing the capability of the DNA identification technology to solve rapes, murders, and other serious crimes.

2. Protecting Children From Exploitation in Pornography

The Department will publish a combined rule finalizing 1) a proposed rule published on July 12, 2007 (72 FR 38033) to implement the changes made by the Adam Walsh Act to 18 U.S.C. § 2257, most importantly, including graphic nude photos not involving sexual intercourse in the scope of the requirements; and 2) a proposed rule implementing the recordkeeping and inspection requirements to title 28 of the Code of Federal Regulations to implement 18 U.S.C. § 2257A, enacted as section 503 of the Adam Walsh Child Protection and Safety Act of 2006, which requires a producer of depictions of simulated sexually explicit conduct to maintain records of the identities and ages of performers in those depictions. This rule will implement changes to the statute that will strengthen the record-keeping regime to protect children from exploitation in pornography.

3. Criminal Law Enforcement

In large part, the Department's criminal law enforcement components do not rely on the rulemaking process to carry out their assigned missions. The Federal Bureau of Investigation (FBI), for example, is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to Federal, State, municipal, and international agencies and partners. Only in very limited contexts does the FBI rely on rulemaking. For example, the FBI is currently updating its National Instant Criminal Background Check System regulations to allow criminal justice agencies to conduct background checks prior to the return of firearms.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issues regulations to enforce the Federal laws relating to the manufacture and commerce of firearms and explosives. ATF's mission and regulations are designed to:

- 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 firearms and explosives industries, including systems for licenses and permits;
- Assure the collection of all National Firearms Act (NFA) firearms taxes and obtain a high level of voluntary compliance with all laws governing the firearms industry; and
- Assist the States in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes and alcohol in avoidance of Federal and State taxes.

ATF will continue, as a priority during fiscal year 2009, to seek modifications to its regulations governing commerce in firearms and explosives. ATF plans to issue final regulations implementing the provisions of the Safe Explosives Act, title XI, subtitle C, of Public Law 107-296, the Homeland Security Act of 2002 (enacted November 25, 2002).

Combating the proliferation of methamphetamine and preventing the diversion of prescription drugs for illicit purposes are among the Attorney General's top drug enforcement priorities. The Drug Enforcement Administration (DEA) is responsible for enforcing the Controlled Substances Act and its implementing regulations to prevent the diversion of controlled substances, while ensuring adequate supplies for legitimate medical, scientific, and industrial purposes. 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 continues to develop and enhance regulatory controls relating to the diversion control requirements for controlled substances.

One of DEA's key regulatory initiatives is its Notice of Proposed Rulemaking ''Electronic Prescriptions for Controlled Substances'' [RIN 1117-AA61]. This regulation would provide practitioners with the option of writing prescriptions for controlled substances electronically and permit pharmacies to receive, dispense, and archive electronic prescriptions for controlled substances. This regulation would provide pharmacies, hospitals, and practitioners with the ability to use modern technology for controlled substance prescriptions while maintaining the closed system of controls on controlled substances.

In the past, drug traffickers have been able to easily obtain large quantities of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, and others used in the clandestine production of methamphetamine from both foreign and domestic sources. One of DEA's key regulatory initiatives has been implementation of the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which further regulates the importation, manufacture, and retail sale of ephedrine, pseudoephedrine, and phenylpropanolamine and drug products containing these three chemicals. CMEA imposes sales and purchase limits for over-the-counter ephedrine, pseudoephedrine, and phenylpropanolamine products at the retail level; provides for the establishment of aggregate and individual company import and manufacturing quotas; and limits importation to that which is necessary to provide for medical, scientific, and other legitimate purposes. CMEA also provides investigators with necessary identifying information regarding manufacturers and importers of these chemicals. Regulations pertaining to implementation of CMEA include, but are not limited to:

- ''Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products'' [RIN 1117-AB05]
- ''Implementation of the Combat Methamphetamine Epidemic Act of 2005; Notice of Transfers Following Importation or Exportation'' [RIN 1117-AB06]
- ''Import and Production Quotas for Certain List I Chemicals'' [RIN 1117-AB08]
- ''Elimination of Exemptions for Chemical Mixtures Containing the List I Chemicals Ephedrine and/or Pseudoephedrine'' [RIN 1117-AB11]
- ''Registration Requirements for Importers and Manufacturers of Prescription Drug Products Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine'' [RIN 1117-AB09]

- ''Removal of Thresholds for the List I Chemicals Pseudoephedrine and Phenylpropanolamine'' [RIN 1117-AB10]

The Federal Bureau of Prisons issues regulations to enforce the Federal laws relating to its mission: To protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. During the next 12 months, in addition to other regulatory objectives aimed at accomplishing its mission, the Bureau will continue its ongoing efforts to: improve drug abuse treatment services and early release consideration; improve disciplinary procedures; and reduce the introduction of contraband through various means (such as clarifying drug and alcohol surveillance testing programs). In addition, the Bureau will finalize regulations relating to the civil commitment of sexually dangerous persons.

4. Immigration Matters

On March 1, 2003, pursuant to the Homeland Security Act of 2002 (HSA), the responsibility for immigration enforcement and for providing immigration-related services and benefits such as naturalization and work authorization was transferred from the Justice Department's Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). However, the immigration judges and the Board of Immigration Appeals in the Executive Office for Immigration Review (EOIR)) remain part of the Department of Justice; the immigration judges adjudicate approximately 300,000 cases each year to determine whether the aliens should be ordered removed or should be granted some form of relief from removal, and the Board has jurisdiction over appeals from those decisions, as well as other matters. Accordingly, the Attorney General has a continuing role in the conduct of removal hearings, the granting of relief from removal, and the detention or release of aliens pending completion of removal proceedings. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

In several pending rulemaking actions, the Department is working to revise and update the regulations relating to removal proceedings in order to improve the efficiency and effectiveness of the hearings in resolving issues relating to removal of aliens and the granting of relief from removal.

On August 9, 2006, the Attorney General announced a series of initiatives to improve the quality of adjudications before immigration judges, in response to the review of the Immigration Courts and the Board of Immigration Appeals which he ordered. Several regulations proposed in FY 2008, once finalized, will implement different aspects of the Attorney General's initiatives. In addition, other regulations are currently being drafted to further those initiatives, such as expanding the role of pro bono organizations to provide free or low cost legal services to aliens in immigration proceedings, and enhancing the ability of the Executive Office for Immigration Review to impose discipline for misconduct on practitioners in those proceedings.

DOJ—Civil Rights Division (CRT)

FINAL RULE STAGE

81. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

CFR Citation:

28 CFR 36

Legal Deadline:

None

Abstract:

In 1991, the Department of Justice published regulations to implement title III of the Americans With Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG) published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board began the process of revising ADAAG a number of years ago. It published new ADAAG in final form on July 23, 2004, after having published guidelines in proposed form in November 1999 and in draft final form in April 2002. In order to maintain consistency between ADAAG and the ADA Standards, the Department is reviewing its title III regulations and expects to propose, in one or more stages, to adopt revised ADA Standards consistent with the final revised ADAAG and to make related revisions to the Department's title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions is to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department's technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The first step in adopting revised Standards was an advance notice of proposed rulemaking that was published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes that the advance notice simplified and clarified the preparation of the proposed rule. In addition to giving notice that the proposed rule will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second

step of the above described title III rulemaking. This notice proposed to adopt revised ADA Standards for Accessible Design consistent with the minimum guidelines of the revised ADAAG, and initiated the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

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 title III. Section 306(c) of the ADA requires the Attorney General to promulgate regulations implementing title III that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title III regulation is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by SBREFA.

Summary of Legal Basis:

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

Alternatives:

The Department is required by the ADA to issue this regulation. Pursuant to SBREFA, the Department's title III regulation will consider whether alternatives to the currently published requirements are appropriate.

Anticipated Cost and Benefits:

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA standards published by the Department.

As part of its revised ADAAG, the Access Board made available in summary form an updated regulatory assessment to accompany the final revised ADAAG. The Department prepared an initial Regulatory Impact Analysis (RIA), pursuant to E.O. 12866, of the combined economic impact of changes contained in this proposed rule and in the companion NPRM to amend the Department's Title II regulation (RIN 1190-AA46). The RIA incorporates the elements required for the Initial Regulatory Flexibility Analysis (IRFA) required by the Regulatory Flexibility Act, as amended. A summary of this RIA was published in the Federal Register at 73 FR 37009, 37042 (June 30, 2008). The full analysis is available for public review on www.regulations.gov and on the Department's ADA Home Page, www.ada.gov. A revised RIA will be made available to the public when the final rules are published.

The preliminary RIA indicates that the proposed rules will have a net positive public benefit, i.e., the benefits will exceed the costs over the life of the rule. This concept is expressed as the discounted net present value (NPV) The RIA projects that the NPV will be between $7.5 billion (at a 7% discount rate) and $ 31.1 billion (at a 3% discount rate). The RIA also concludes that the combined effect of the proposed rules would not have a significant economic impact on a substantial number of small entities.

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Risks:

Without the proposed changes to the Department's title III regulation, the ADA Standards will fail to be consistent with the ADAAG.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/04	69 FR 58768
ANPRM Comment Period End	01/28/05	
ANPRM Comment Period Extended	01/19/05	70 FR 2992
ANPRM Comment Period End	05/31/05	
NPRM	06/17/08	73 FR 34508
NPRM Comment Period End	08/18/08	
NPRM Correction	06/30/08	73 FR 37009
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

RIN 1190-AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190-AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA).

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RIN: 1190–AA44

DOJ—CRT

82. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101–336

CFR Citation:

28 CFR 35

Legal Deadline:

None

Abstract:

On July 26, 1991, the Department published its final rule implementing title II of the Americans With Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. The Access Board published an Availability of Draft Final Guidelines on April 2, 2002, and published the ADA Accessibility Guidelines in final form on July 23, 2004. The ADA (section 204(c))

requires the Department's standards to be consistent with the Access Board's guidelines. In order to maintain consistency between ADAAG and the Standards, the Department is reviewing its title II regulations and expects to propose, in one or more stages, to adopt revised standards consistent with new ADAAG. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The first part of the rulemaking process was an advance notice of proposed rulemaking, published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes the advance notice simplified and clarified the preparation of the proposed rule to follow. In addition to giving notice of the proposed rule that will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADA Standards consistent with revised ADAAG will also serve to address changes to the ADA Standards previously proposed under RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above-described title III rulemaking. This notice also proposed to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design.

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 title II. Section 204(c) of the ADA requires the Attorney General to promulgate regulations implementing title II that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title II regulations is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Summary of Legal Basis:

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

Alternatives:

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. Pursuant to SBREFA, the Department's title II regulation will consider whether alternatives to the currently published requirements are appropriate.

Anticipated Cost and Benefits:

The 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 design standard 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 persons with disabilities will be better served.

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA Standards published by the Department.

As part of its revised ADAAG, the Access Board made available in summary form an updated regulatory assessment to accompany the final revised ADAAG. The Department prepared an initial Regulatory Impact Analysis (RIA), pursuant to E.O. 12866, of the combined economic impact of changes contained in this proposed rule and in the companion NPRM to amend the Department's Title III regulation (RIN 1190-AA44). The RIA incorporates the elements required for the Initial Regulatory Flexibility Analysis (IRFA) required by the Regulatory Flexibility Act, as amended. A summary of this RIA was published in the Federal Register at 73 FR 36964, 36996 (June 30, 2008). The full analysis is available for public review on www.regulations.gov and on the Department's ADA Home Page, www.ada.gov. A revised RIA will be made available to the public when the final rules are published.

The preliminary RIA indicates that the proposed rules will have a net positive public benefit, i.e., the benefits will exceed the costs over the life of the rule. This concept is expressed as the discounted net present value (NPV) The RIA projects that the NPV will be between $ 7.5 billion (at a 7% discount rate) and $ 31.1 billion (at a 3% discount rate). The RIA also concludes that the combined effect of the proposed rules would not have a significant economic impact on a substantial number of 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

effects. These effects are discussed in the Access Board's regulatory assessment, which also applies to the Department's proposed rule. Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

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
ANPRM	09/30/04	69 FR 58768
ANPRM Comment Period End	01/28/05	
ANPRM Comment Period Extended	01/19/05	70 FR 2992
ANPRM Comment Period End	05/31/05	
NPRM	06/17/08	73 FR 34466
NPRM Comment Period End	08/18/08	
NPRM Correction	06/30/08	73 FR 36964
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

RIN 1190-AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190-AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA). By adopting revised ADAAG, this rulemaking will, among other things, address changes to the ADA Standards previously proposed in RINs 1190-AA26, 1190-AA36, and 1190-AA38, which have been withdrawn and merged into this rulemaking. These changes include accessibility standards for State and local government facilities that had been previously published by the Access Board (RIN 1190-AA26) and the timing for the compliance of State and local governments with the curb-cut requirements of the title II regulation (RIN 1190-AA36). In order to consolidate regulatory actions implementing title II of the ADA, on February 15, 2000, RINs 1190-AA26 and 1190-AA38 were merged into this rulemaking and on March 5, 2002, RIN 1190-AA36 was merged into this rulemaking.

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BILLING CODE 4410–BP–S

DEPARTMENT OF LABOR (DOL)

2008 Regulatory Plan

Executive Summary: Protecting America's Employees

Since its creation in 1913, the Department of Labor has been guided by the idea that employees deserve safe and healthy workplaces, as well as protection of their wages and pensions. The Secretary of Labor has made protecting America's employees a top priority, and has combined tough enforcement with compliance assistance to ensure the health, safety and economic security of the American workforce. While the vast majority of employers work hard to keep their employees and workplaces safe and secure, strong enforcement is needed to protect employees whose employers otherwise would not comply with safety and health, wage, and pension laws and regulations.

The Secretary's compliance assistance initiative provides employers with the knowledge and tools they need to carry out their legal obligations, and is based on the proven success that comes when government, employers, unions and employees work together. Educating and encouraging employers helps employees far more than enforcement alone, since no enforcement process can possibly identify every violation of the law, and fines and penalties can never fully redress losses of life, health, and economic well-being.

The Department is committed to aggressively enforcing the laws that protect employees, including the rights of employees returning to their jobs after military service. Workers also need information about protection of their health insurance and pension benefits. In addition, DOL has responsibilities beyond worker protection. The Department recognizes that employees need constant updating of skills to compete in a changing marketplace. DOL helps employers and employees bridge the gap between the requirements of new high-technology jobs and the skills of the workers who are needed to fill them.

The Secretary of Labor's Regulatory Plan for Accomplishing These Objectives

In general, DOL tries to help employees and employers meet their needs in a cooperative fashion. DOL will maintain health and safety standards and protect employees by working with the regulated community.

DOL considers the following proposals to be proactive, common sense approaches to the issues most clearly needing regulatory attention.

The Department's Regulatory Priorities

The Occupational Safety and Health Administration (OSHA) oversees a wide range of measures in the public and private sectors. OSHA is committed to establishing clear and sensible priorities, and to continuing to reduce occupational deaths, injuries, and illnesses.

OSHA's first initiative in the area of health standards addresses worker exposures to crystalline silica (RIN 1218-AB70). This substance is one of the most widely found in workplaces, and data indicate that silica exposure causes silicosis, a debilitating respiratory disease, and perhaps cancer as well. OSHA has obtained input from small businesses about regulatory approaches through a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel, and the Panel report was submitted to the Assistant Secretary of OSHA on December 19, 2003. OSHA plans to complete an external peer review of the health effects and risk assessment by January 2009.

OSHA has initiated rulemaking to revise its Hazard Communication Standard (HCS) (RIN 1218-AC20) to adopt provisions to make it consistent with a globally harmonized approach to hazard communication. First promulgated in 1983, the HCS requires chemical manufacturers and importers of chemicals to evaluate the hazards of the chemicals they produce or import, and prepare labels and safety data sheets to communicate the hazards and protective measures to users of their products. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including labels on containers, safety data sheets, and employee training. OSHA estimates that the HCS covers over 945,000 hazardous chemical products in 7 million American workplaces. OSHA and other Federal agencies have participated in long-term international negotiations to develop the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Adopted by the United Nations in 2003, the GHS includes harmonized criteria for health, physical and environmental hazards, as well as specifications for container labels and safety data sheets. There is an international goal to have as many countries as possible implement the GHS by 2008. Revising the HCS to be consistent with the GHS is expected to improve the communication of hazards in American workplaces, as well as facilitate international trade in chemicals.

OSHA is continuing work on its rulemaking to update the 1971 Cranes and Derricks Standards (RIN 1218-AC01) using the recommendations of a negotiated rulemaking committee. The committee submitted its recommendations in July 2004. A Small Business Regulatory Enforcement Fairness Act panel was convened in August 2006 to obtain input from small businesses; a report summarizing the panel's findings was issued in October 2006. The Agency issued a notice of proposed rulemaking in September 2008.

Protection of pension and health benefits continues to be a priority of the Secretary of Labor. Consistent with the Secretary's priorities for FY 2008, the Employee Benefits Security Administration (EBSA) will focus on compliance assistance for pension and group health plans through issuance of guidance. Specific initiatives for group health plans include guidance on the application of the Genetic Information Nondiscrimination Act (GINA) health coverage provisions of the Employee Retirement Income Security Act (ERISA) (RIN 1210-AB27). With respect to pension plans, the Department will be establishing standards to improve the disclosure of information concerning plan service provider fees and potential conflicts of interest to assist fiduciaries and participants in making informed decisions about their plans (RIN 1210-AB07 and 1210-AB08). In addition, the Department is developing guidance on several initiatives relating to the implementation of the Pension Protection Act of 2006, including investment advice guidance (RIN 1210-AB13). ERISA's requirements affect private sector employee benefit plans including an estimated 679,000 pension benefit plans, covering approximately 117 million participants; an estimated 2.5 million group health benefit plans, covering 137 million participants and dependents; and similar numbers of other welfare benefits plans and participants.

The Employment and Training Administration (ETA) has one priority regulatory initiative that reflects the Secretary's emphasis on meeting the needs of the 21st century workforce. The Senior Community Service Employment Program (SCSEP) regulations (RIN 1205-AB48 and 1205-AB47), due to the issuance of the Older

Americans Act Amendments of 2006, enacted October 2006, make substantial changes to the current SCSEP.

DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

83. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Priority:

Other Significant

Legal Authority:

42 USC 3056 et seq

CFR Citation:

20 CFR 641

Legal Deadline:

None

Abstract:

The Older Americans Act Amendments of 2006, Pub. L. 109-365, enacted on October 17, 2006, contain provisions amending title V of that Act, which authorizes the Senior Community Service Employment program (SCSEP). The Amendments, effective July 1, 2007, made substantial changes to the SCSEP provisions in the Older Americans Act, including new requirements relating to performance accountability, income eligibility for program participation, competition of national grants, and services to participants.

This NPRM consists of 8 subparts: subpart A—Purpose and Definitions; Subpart B—Coordination with the Workforce Investment Act; subpart C—the State Plan; subpart D—Grant Application and Responsibility Review Requirements for State and National Grants, Subpart E—Services to Participants; subpart F—Pilots, Demonstration, and Evaluation Projects, subpart H—Administrative Requirements; and subpart I—Grievance Procedures and Appeals Process. The performance accountability requirements (subpart G) were implemented through a separate Interim Final Rule (IFR).

Statement of Need:

The 2006 Amendments to the Older Americans Act (OAA-2006) were enacted on October 17, 2006. The amendment instituted a number of significant changes to the SCSEP, including time limits on the participation of eligible individuals, new enrollment priorities, streamlined and strengthened performance measures, more training options for participants, new limits on participant fringe benefits, and required open competition of national grants every 4 years.

The Department was required to implement the new performance measures by July 1, 2007, and published an IFR on these requirements in the Federal Register on June 29, 2007, (72 FR 35832). However, SCSEP grantees were advised that they were responsible for complying with all the OAA-2006 changes as of July 1, 2007, as communicated in administrative guidance issued on June 11, 2007. Since OAA-2006 instituted so many significant changes in addition to those relating to performance accountability, it is important that regulations implementing the full requirements of the Amendments be issued consistent with the identified timetable.

Summary of Legal Basis:

These regulations are authorized by 42 U.S.C. 3056 et seq to implement amendments to Title V of the Older Americans Act of 1965.

Alternatives:

The public will be afforded an opportunity to provide comments on the SCSEP program changes when the Department publishes the NPRM in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NPRM, and IFR (1205-AB47).

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.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	08/14/08	73 FR 47770
NPRM Comment Period End	10/14/08	
Final Rule	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

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Related RIN: Related to 1205–AB47

RIN: 1205–AB48

DOL—ETA

FINAL RULE STAGE

84. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM; PERFORMANCE ACCOUNTABILITY

Priority:

Other Significant

Legal Authority:

42 USC 3056 et seq

CFR Citation:

20 CFR 641

Legal Deadline:

Other, Statutory, June 30, 2007, Interim Final Rule.

Abstract:

The Older Americans Act Amendments of 2006, Pub. L. 109-365, enacted on October 17, 2006, contains provisions amending title V of that Act, which authorizes the Senior Community Service Employment Program (SCSEP). The Amendments, effective July 1, 2007, make substantial changes to the current SCSEP provisions in the Older Americans Act relating to performance accountability.

Section 513(2) of title V requires that the Agency establish and implement new measures of performance by July 1, 2007. Section 513(b)(3) requires that the Secretary issue definitions of indicators of performance through regulation after consultation with stakeholders. Therefore, this Interim Final Rule (IFR) is intended to implement changes to the SCSEP program performance accountability regulations found at 20 CFR 641 in subpart G. Changes to other subparts

of part 641 will be implemented through a separate Notice of Proposed Rulemaking.

Statement of Need:

The 2006 Amendments to the Older Americans Act (OAA-2006) were enacted on October 17, 2006. The Amendments instituted a number of significant changes to the SCSEP, including time limits on the participation of eligible individuals, new enrollment priorities, streamlined and strengthened performance measures, more training options for participants, new limits on participant benefits, and required open competition of national grants every four years.

The Department was required to implement the new performance measures by July 1, 2007, and published an Interim Final Rule on these requirements in the Federal Register on June 29, 2007 (72 FR 35832). However, SCSEP grantees were advised that they were responsible for complying with all the OAA-2006 changes as of July 1, 2007, as communicated in administrative guidance issued on June 11, 2007. Since OAA-2006 instituted so many significant changes in addition to those relating to performance accountability, it is important that regulations implementing the full requirements of the Amendments be issued consistent with the identified timetable.

Summary of Legal Basis:

These regulations are authorized by 42 U.S.C. 3056 et seq. to implement amendments to title V of the Older Americans Act of 1965.

Alternatives:

The public was afforded an opportunity to provide comments on the SCSEP performance measurement system changes when the Department published the IFR in the Federal Register. Comments on the IFR and a proposed rule for the SCSEP (RIN 1205-AB48) will be incorporated into one final rule.

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.

Risks:

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

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/29/07	72 FR 35832
Interim Final Rule Comment Period End	08/28/07	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

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Related RIN: Related to 1205–AB48

RIN: 1205–AB47

DOL—Employee Benefits Security Administration (EBSA)

FINAL RULE STAGE

85. FIDUCIARY REQUIREMENTS FOR DISCLOSURE IN PARTICIPANT–DIRECTED INDIVIDUAL ACCOUNT PLANS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 1104; 29 USC 1135

CFR Citation:

29 CFR 2550

Legal Deadline:

None

Abstract:

This rulemaking will ensure that the participants and beneficiaries in participant-directed individual account plans are provided the information they need, including information about fees and expenses, to make informed investment decisions. The rulemaking may include amendments to the regulation governing ERISA section 404(c) plans (29 CFR 2550.404c-1). The rulemaking is needed to clarify and improve the information currently required to be furnished to participants and beneficiaries.

Statement of Need:

Given the potentially significant impact fees and expenses can have on retirement savings, understanding what and how fees and expenses are charged to 401(k) plans is essential to plan participants and beneficiaries in making informed investment decisions.

Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she considers necessary and appropriate to carry out the provisions of title I of the Act, including section 404 of ERISA.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Timetable:

Action	Date	FR Cite
Request for Information	04/25/07	72 FR 20457
Comment Period End	07/24/07	
NPRM	07/23/08	73 FR 43014
NPRM Comment Period End	09/08/08	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1210–AB07

DOL—EBSA

86. PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE TO PARTICIPANTS IN INDIVIDUAL ACCOUNT PLANS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 1108(g); 29 USC 1135; PL 109–280, sec 601(a), Pension Protection Act of 2006; ERISA sec 408(g); ERISA sec 505

CFR Citation:

29 CFR 2550

Legal Deadline:

None

Abstract:

Section 601 of the Pension Protection Act (Pub. L. 109-280) amended ERISA by adding new sections 408(b)(14) and 408(g). Section 408(b)(14) is a prohibited transaction exemption that permits the provision of investment advice to participants or beneficiaries of certain individual account plans if the investment advice is provided under an ''eligible investment advice arrangement,'' as defined in section 408(g). In order to qualify as an ''eligible investment advice arrangement,'' the arrangement must either provide that any fees received by the adviser do not vary depending on the basis of any investment options selected, or use a computer model under an investment advice program that meets the criteria set forth in section 408(g) in connection with the provision of investment advice. Further, with respect to both types of advice arrangements, the investment adviser must disclose to advice recipients all fees that the adviser or any affiliate is to receive in connection with the advice. Section 408(g) requires that the computer model which serves as the basis for an eligible investment advice arrangement be certified by an ''eligible investment expert'' in accordance with rules prescribed by the Secretary of Labor. Section 408(g) also directs the Secretary of Labor to issue a model form for the required disclosure of fees. EBSA published a Request for Information that invited interested persons to submit written comments and suggestions concerning the expertise and procedures that may be needed to certify that a computer model meets the statutory criteria, and the content, types, and designs of fee disclosure materials currently used and their usefulness to plan participants.

Statement of Need:

This rulemaking is necessary to fully implement the new exemption under section 408(b)(14) of ERISA pursuant to section 601 of the PPA.

Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. In addition, section 408(g)(3) of ERISA provides the Secretary with authority to establish rules governing the computer model certification process.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Timetable:

Action	Date	FR Cite
Request for Information	12/04/06	71 FR 70429
Request for Information Comment Period End	01/30/07	
NPRM	08/22/08	73 FR 49896
NPRM Comment Period End	10/06/08	
Notice of Hearing To Be Held—October 21, 2008	10/14/08	73 FR 60657
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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RIN: 1210–AB13

DOL—Occupational Safety and Health Administration (OSHA)

PRERULE STAGE

87. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline:

None

Abstract:

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50µg/m3 and 25µg/m3 exposure limits, respectively, for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials (ASTM) has published a recommended standard for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended

comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

Statement of Need:

Over 2 million workers are exposed to crystalline silica dust in general industry, construction, and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: Foundries, industries that have abrasive blasting operations, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur; between 1990 and 1996, 200 to 300 deaths per year are known to have occurred where silicosis was identified on death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer (IARC) has designated crystalline silica as a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune respiratory diseases. Exposure studies and OSHA enforcement data indicate that some workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000. There is a particular need for the Agency to modernize its exposure limits for construction and maritime workers, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rule will recognize that the PELs for construction and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

Alternatives:

Over the past several years, the Agency has attempted to address this problem through a variety of non-regulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site. The Agency is currently evaluating several options for the scope of the rulemaking.

Anticipated Cost and Benefits:

The scope of the proposed rulemaking and estimates of the costs and benefits are still under development.

Risks:

A detailed risk analysis is under way.

Timetable:

Action	Date	FR Cite
Completed SBREFA Report	12/19/03	
Complete Peer Review of Health Effects and Risk Assessment	02/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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DOL—OSHA

PROPOSED RULE STAGE

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88. CRANES AND DERRICKS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 651(b); 29 USC 655(b); 40 USC 333

CFR Citation:

29 CFR 1926

Legal Deadline:

None

Abstract:

A number of industry stakeholders asked OSHA to update the cranes and derricks portion of subpart N (29 CFR 1926.550), specifically requesting that negotiated rulemaking be used.

In 2002 OSHA published a notice of intent to establish a negotiated rulemaking committee. A year later, in 2003, committee members were announced and the Cranes and Derricks Negotiated Rulemaking Committee was established and held its first meeting. In July 2004, the committee reached consensus on all issues resulting in a final consensus document.

Statement of Need:

There have been considerable technological changes since the consensus standards upon which the 1971 OSHA standard is based were developed. In addition, industry consensus standards for derricks and crawler, truck and locomotive cranes were updated as recently as 2004.

The industry indicated that over the past 30 years, considerable changes in both work processes and crane technology have occurred. There are estimated to be 64 to 82 fatalities associated with cranes each year in construction, and a more up-to-date standard would help prevent them.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 USC 651).

Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action and not update the standards in 29 CFR 1926.550 pertaining to cranes and derricks.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

OSHA's risk analysis is under development.

Timetable:

Action	Date	FR Cite
Notice of Intent To Establish Negotiated Rulemaking	07/16/02	67 FR 46612
Comment Period End	09/16/02	
Request for Comments on Proposed Committee Members	02/27/03	68 FR 9036
Request for Comments Period End	03/31/03	68 FR 9036
Established Negotiated Rulemaking Committee	06/12/03	68 FR 35172
Rulemaking Negotiations Completed	07/30/04	
SBREFA Report	10/17/06	
NPRM	10/09/08	73 FR 59714
NPRM Comment Period End	12/08/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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DOL—OSHA

89. HAZARD COMMUNICATION

Priority:

Other Significant

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21

Legal Deadline:

None

Abstract:

OSHA's Hazard Communication Standard (HCS) requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and prepare labels and material safety data sheets to convey the hazards and associated protective measures to users of the chemicals. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including labels on containers, material safety data sheets (MSDS), and training for employees. Within the United States (U.S.), there are other Federal agencies that also have requirements for classification and labeling of chemicals at different stages of the life cycle. Internationally, there are a number of countries that have developed similar laws that require information about chemicals to be prepared and transmitted to affected parties. These laws vary with regard to the scope of substances covered, definitions of hazards, the specificity of requirements (e.g., specification of a format for MSDSs), and the use of symbols and pictograms. The inconsistencies between the various laws are substantial enough that different labels and safety data sheets must often be used for the same product when it is marketed in different nations.

The diverse and sometimes conflicting national and international requirements can create confusion among those who seek to use hazard information. Labels and safety data sheets may include symbols and hazard statements that are unfamiliar to readers or not well understood. Containers may be labeled with such a large volume of information that important statements are not easily recognized. Development of multiple sets of labels and safety data sheets is a major compliance burden for chemical manufacturers, distributors, and transporters involved in international trade. Small businesses may have particular difficulty in coping with the complexities and costs involved.

As a result of this situation, and in recognition of the extensive international trade in chemicals, there has been a longstanding effort to harmonize these requirements and develop a system that can be used around the world. In 2003, the United Nations adopted the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Countries are now considering adoption of the GHS into their national regulatory systems. There is an international goal to have as many countries as possible implement the GHS by 2008. OSHA is considering modifying its HCS to make it consistent with the GHS. This would involve changing the criteria for classifying health and physical hazards, adopting standardized labeling requirements, and requiring a standardized order of information for safety data sheets.

Statement of Need:

Multiple sets of requirements for labels and safety data sheets present a compliance burden for U.S. manufacturers, distributors, and transports involved in international trade. Adoption of the GHS would facilitate international trade in chemicals, reduce the burdens caused by having to comply with differing requirements for the same product, and allow companies that have not had the resources to deal with those burdens to be involved in international trade. This is particularly important for small producers who may be precluded currently from international trade because of the compliance resources required to address the extensive regulatory requirements for classification and labeling of chemicals. Thus every producer is likely to experience some benefits from domestic harmonization, in addition to the benefits that will accrue to producers involved in international trade.

Additionally, comprehensibility of hazard information will be enhanced as the GHS will: (1) Provide consistent information and definitions for hazardous chemicals; (2) address stakeholder concerns regarding the need for a standardized format for material safety data sheets; and (3) increase understanding by using standardized pictograms and harmonized hazard statements.

Several nations, as well as the European Union, are preparing proposals for adoption of the GHS. U.S. manufacturers, employers, and employees will be at a disadvantage in the event that our system of hazard communication is not compliant with the GHS.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

OSHA's risk analysis is under development.

Timetable:

Action	Date	FR Cite
ANPRM	09/12/06	71 FR 53617
ANPRM Comment Period End	11/13/06	
Complete Peer Review of Economic Analysis	11/19/07	
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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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, public transportation, motor vehicle, 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, public transportation, the maritime industry, railroads, and motor vehicle safety. It writes regulations carrying out such varied statutes as the Americans with Disabilities Act and the Uniform Time Act. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern internal programs such as acquisitions and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, and the use of aircraft and vehicles.

The Department 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.

In establishing its regulatory priorities—in identifying rulemaking actions that deserve special attention—the Department has focused on a number of factors, including the following:

- The relative risk being addressed
- Requirements imposed by statute or other law
- Actions on the National Transportation Safety Board ''Most Wanted List''
- The costs and benefits of regulations
- The advantages to non-regulatory alternatives
- Opportunities for deregulatory action
- The enforceability of any rule, including the effect on agency resources

An important initiative of the Department has been to conduct high quality rulemakings in a timely manner and to reduce the number of old rulemakings. To implement this, the following actions have been required: (1) Regular meetings of senior DOT officials to ensure effective policy leadership and timely decisions, (2) better tracking and coordination of rulemakings, (3) regular reporting, (4) early briefings of interested officials, (5) better training of staff, and (6) necessary resource allocations. The Department has achieved significant success as a result of this initiative with the number of old rulemakings as well as the average time to complete rulemakings decreasing. This is also allowing the Department to use its resources more effectively and efficiently.

The Department's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. DOT continually seeks to improve its regulatory process. A few examples include: the Department's development of regulatory process and related training courses for its employees; creation of an electronic, Internet-accessible docket that can also be used to submit comments electronically; a ''list serve'' that allows the public to sign up for e-mail notification when the Department issues a rulemaking document; creation of an electronic rulemaking tracking and coordination system; the use of direct final rulemaking; and the use of regulatory negotiation.

In addition, the Department continues to engage in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. The Department's agencies also have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

The Department is 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, and Executive Order 12866. This includes determining whether the rules would be more understandable if they are written using a plain language approach. Appendix D to our Regulatory Agenda highlights our efforts in this area.

The Department will also continue its efforts to use advances in technology to improve its rulemaking management process. For example, the Department created an effective tracking system for significant rulemakings to ensure that either rules are completed in a timely manner or delays are identified and fixed. Through this tracking system, a monthly report is generated. To make its efforts more transparent, the Department has made this report Internet-accessible. By doing this, the Department is providing valuable information concerning our rulemaking activity and is providing information necessary for the public to evaluate the Department's progress in meeting its commitment to completing rulemakings in a timely manner.

The Department will continue to place great emphasis on the need to complete high quality rulemakings by involving senior Departmental officials in regular meetings to resolve issues expeditiously.

Office of the Secretary of Transportation (OST)

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with Executive Order 12866 and other legal and policy requirements affecting rulemaking, including new statutes and Executive orders. Although OST's principal role concerns the review of the Department's significant rulemakings, this office has the lead role in the substance of projects concerning aviation economic rules and those affecting 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. OST also plays an instrumental role in the Department's efforts to improve our economic analyses; risk assessments; regulatory flexibility analyses; other related analyses; and data quality, including peer reviews.

OST also leads and coordinates the Department's response to 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 amended its Air Carrier Access Act (ACAA) rules to apply to foreign carriers (2105-AC97). The final rule also added new provisions concerning passengers who use medical oxygen and passengers who are deaf or hard-of-hearing. The rule also reorganized and updated the entire ACAA rule.

During fiscal year 2009, OST will continue to focus its efforts on enhancing airline passenger protections by requiring carriers to adopt various consumer service practices (2105-AB72).

OST will also continue its efforts to help coordinate the activities of several operating administrations that advance the Department's congestion initiative. Specific rulemakings concerning congestion relief can be found under the headings of the operating administrations.

Federal Aviation Administration (FAA)

The Federal Aviation Administration is charged with safely and efficiently operating and maintaining the most complex aviation system in the world. It is guided by its Flight Plan goals—Increased Safety, Greater Capacity, International Leadership, and Organizational Excellence. It issues regulations to provide a safe and efficient global aviation system for civil aircraft, while being sensitive to not imposing undue regulatory burdens and costs on small businesses. Activities that may lead to rulemaking include:

- Promotion and expansion of safety information sharing efforts such as FAA-industry partnerships and data-driven safety programs that prioritize and address risks before they lead to accidents. Specifically, FAA will continue implementing Commercial Aviation Safety Team projects related to controlled flight into terrain, loss of control of an aircraft, uncontained engine failures, runway incursions, weather, pilot decision making, and cabin safety. Some of these projects may result in rulemaking and guidance materials.
- Continuing to work cooperatively to harmonize the U.S. aviation regulations with those of other countries, without compromising rigorous safety standards. The differences worldwide in certification standards, practice and procedures, and operating rules must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operators. Standardization should help the U.S. aerospace industry remain internationally competitive. The FAA continues to publish regulations based on recommendations of Aviation Rulemaking Committees that are the result of cooperative rulemaking between the U.S. and other countries.

Top regulatory priorities for 2008-2009 include:

- Automatic Dependent Surveillance — Broadcast (ADS-B) Out equipment (2120-AI92)

The FAA is pursuing an ADS-B rulemaking to:

1. Accommodate the expected increase in demand for air transportation, as described in the Next Generation Air Transportation System Integrated Plan;
2. Provide the Federal Aviation Administration with a comprehensive surveillance system that accommodates the anticipated increase in operations; and
3. Provide a platform for additional flight applications and services in the future.

Lastly, the FAA also is continuing actions to advance the Department's congestion initiative to provide a long-term solution to increased congestion and delay in New York.

Federal Highway Administration (FHWA)

The Federal Highway Administration (FHWA) carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. The FHWA's mission is to improve continually the quality and performance of our Nation's highway system and its intermodal connectors.

Consistent with this mission, the FHWA will continue:

- With ongoing regulatory initiatives in support of its surface transportation programs;
- To implement legislation in the least burdensome and restrictive way possible; and
- To pursue regulatory reform in areas where project development can be streamlined or accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of our State and local partners can be increased.

On August 10, 2005, President George W. Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU authorizes the Federal surface transportation programs for highways, highway safety, and transit for the five-year period from 2005-2009. The FHWA has analyzed SAFETEA-LU and identified a number of congressionally directed rulemakings. These rulemakings include:

1. Express Lane Demonstration Project (2125-AF07);
2. Projects of National and Regional Significance (2125-AF08); and
3. Environmental Review of Activities that Support the Deployment of ITS Projects (2125-AF15).

These rulemakings are the FHWA's top regulatory priorities. Additionally, the FHWA is in the process of reviewing all FHWA regulations to ensure that they are consistent with SAFETEA-LU and will update those regulations that are not consistent with this legislation.

In addition, the FHWA is updating the Department's regulation for Credit Assistance for Surface Transportation Projects at 49 CFR Part 80 to incorporate changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program made by SAFETEA-LU, and to incorporate a number of programmatic features which the U.S. DOT believes will improve the administration of the TIFIA progam.

Finally, the FHWA has completed the rulemaking that amends the Manual on Uniform Traffic Control Devices (MUTCD) to include a standard for minimum maintained levels of traffic sign retroreflectivity and methods to

maintain traffic sign retroreflectivity at or above these levels. This rulemaking (2125-AE98) addresses comments received in response to the Office of Management and Budget's (OMB's) request for regulatory reform nominations from the public. The OMB is required to submit an annual report to Congress on the costs and benefits of Federal regulations. The 2002 report included recommendations for regulatory reform that OMB requested from the public. One recommendation was that the FHWA should establish standards for minimum levels of brightness of traffic signs. The FHWA has identified this rulemaking as responsive to that recommendation.

Federal Motor Carrier Safety Administration (FMCSA)

The mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. A strong regulatory program is a cornerstone of FMCSA's compliance and enforcement efforts to advance this safety mission. Developing new and more effective safety regulations is key to increasing safety on our Nation's highways. FMCSA regulations establish standards for motor carriers, drivers, vehicles, and States agencies receiving certain motor carrier safety grants and issuing commercial drivers' licenses.

FMCSA continues to develop regulations both mandated by Congress and initiated by the Agency to increase safety. With the anticipated publication in 2009 of the final rule to merge the medical certificate and CDL issuance and renewal processes, FMCSA has completed all rulemakings required under the Motor Carrier Safety Improvement Act of 1999. Additionally, FMCSA continues to address a significant number of rules required by its most recent reauthorization legislation, Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The Agency is committed to promulgating the SAFETEA-LU mandated rules while continuing to make progress on a large and challenging rulemaking agenda.

In 2008, FMCSA anticipates completion of several significant rulemakings including Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment, Hours of Service of Drivers, New Entrant Safety Assurance Process, and Electronic On-Board Recorders. FMCSA has also published notices of proposed rulemaking on Consumer Complaint Information for Household Goods Shipments, Entry Level Driver Training, CDL Learner's Permits, and the Agency anticipates publishing NPRMs on National Registry of Certified Medical Examiners and Railroad Grade Crossing.

FMCSA's implementation of Comprehensive Safety Analysis 2010 (CSA 2010) commences with the rulemaking Carrier Safety Fitness Determination (RIN 2126-AB11). The Agency continues work on its CSA 2010 initiative, which will improve the way FMCSA conducts compliance and enforcement operations over the coming years. CSA 2010's goal is to improve large truck and bus safety by assessing a wider range of safety performance data of a larger segment of the motor carrier industry through an array of progressive compliance interventions. FMCSA is targeting 2010 for deployment of this new operational model. The Agency anticipates that the impacts of CSA 2010 and its associated rulemakings will contribute further to the Agency's overall goal of decreasing CMV-related fatalities and injuries.

FMCSA's Regulatory Plan includes a number of rules that are high priorities for the Agency because they would have a positive impact on safety. Among the rulemakings included in the plan are: (1) Carrier Safety Fitness Determination (RIN 2126-AB11), (2) National Registry of Certified Medical Examiners (RIN 2126-AA97), and (3) Commercial Driver's License Testing and Commercial Learner's Permit Standard (RIN 2126-AB02).

Together these priority rules will help to substantially improve commercial motor vehicle (CMV) safety on our nation's highways by improving FMCSA's ability to provide safety oversight of motor carriers and drivers. For example, the Commercial Driver's License Testing and Learner's Permit rulemaking (RIN 2126-AB02) would revise commercial driver's license testing and require new minimum Federal standards for States to issue commercial learner's permits. The National Registry of Certified Medical Examiners rulemaking (RIN 2126-AA97) would establish training and testing requirements for healthcare professionals who issue medical certificates to truck and bus drivers.

In order to manage its rulemaking agenda, FMCSA continues to involve senior agency leaders at the earliest stages of its rulemakings, and continues to refine its regulatory development process. The Agency also holds senior executives accountable for meeting deadlines for completing rulemakings.

National Highway Traffic Safety Administration (NHTSA)

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) relating to motor vehicles include reducing the number of, and mitigating the effects of, motor vehicle crashes and related fatalities and injuries; providing safety performance information to aid prospective purchasers of vehicles, child restraints, and tires; and improving automotive fuel efficiency. NHTSA pursues policies that encourage the development of non-regulatory approaches when feasible in meeting its statutory mandates. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

NHTSA continues to pursue the high priority vehicle safety area of occupant protection in rollover events. The Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (SAFETEA-LU) calls for a final rule that establishes a new performance standard to reduce complete and partial ejections of vehicle occupants from outboard seating positions during FY 2009.

NHTSA will also continue its efforts to publish a final rule setting corporate average fuel economy (CAFE) standards for Model Years 2011-2015 for both cars and light trucks.

In addition to numerous programs that focus on the safe performance of motor vehicles, the agency is engaged in a variety of programs to improve driver and occupant behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. NHTSA has identified two high priority areas: safety belt use and impaired driving. To address these issue areas, the agency is focusing especially on three strategies—conducting highly visible, well publicized enforcement; supporting prosecutors who handle impaired driving cases and expanding the use of DWI/Drug Courts, which hold offenders accountable for receiving and completing treatment for alcohol abuse and dependency; and the adoption of alcohol screening and brief intervention by medical and health care professionals. Other behavioral efforts

encourage child safety-seat use; combat excessive speed and aggressive driving; improve motorcycle, bicycle, and pedestrian safety; and provide consumer information to the public.

Federal Railroad Administration (FRA)

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 and require cooperative action by all affected parties. In order to foster an environment for collaborative rulemaking, FRA established the Railroad Safety Advisory Committee (RSAC). The purpose of the RSAC is to develop consensus recommendations for regulatory action on issues referred to it by FRA. Where consensus is achieved, and FRA believes the consensus recommendations serve 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 the RSAC's recommendations. The RSAC meets regularly, and its working groups are actively addressing the following tasks: (1) the development of safety standards for handling railroad equipment to reduce the number of human factor caused accidents; (2) revisions to the locomotive safety standards; (3) the development of passenger train emergency systems; (4) establishing medical standards for railroad personnel in safety critical functions.

On Oct. 16, 2008, FRA provided regulatory relief by adopting a rule regarding Electronically Controlled Pneumatic Brake System Implementation (2130-AB84). This rulemaking established criteria for operating trains equipped with Electronically Controlled Pneumatic Brake System technology.

Lastly, FRA will continue its work to ensure the long-term sustainability of the Railroad Rehabilitation and Improvement Financing (RRIF) Program. This would be accomplished by amending the eligibility and application form and content criteria in the regulations to promote competition in the railroad industry, and reduce the risk of default for applicants and the Government (2130-AB91).

Federal Transit Administration (FTA)

The Federal Transit Administration (FTA) provides financial assistance to State and local governments for public 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 public transportation needs have changed over the years, so have the requirements for Federal financial assistance under the Federal transit laws and related statutes. As a result of the reauthorization legislation, the FTA's regulatory activity includes a number of substantive rulemakings. A few of those rulemakings are explicitly mandated by the statute. Others will become necessary simply to make amendments to current regulations to make them consistent with the statute. FTA's regulatory priorities for the coming year will be reflective of the directives and the programmatic priorities established by the statute.

Although FTA has been directed by Congress to delay its initiatives with the New Starts/Small Starts (2132-AA81) project, during FY 2009, FTA will continue to assess how the agency can effectively support the Department's congestion initiatives by continuing its focus on methods that would encourage increased ridership.

Maritime Administration (MARAD)

The Maritime Administration (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 administers the Deepwater Port Act of 1974, as amended (DWPA, 33 U.S.C. § 1501 et seq.), which established a licensing system for ownership, construction, and operation of oil and natural gas deepwater port (DWP) structures located seaward of U.S. territorial waters. The DWPA authorizes the Secretary of Transportation, and by delegation the Maritime Administration, to issue licenses for deepwater ports.

By its delegated authority, MARAD is responsible for determining the financial capability of potential licensees, rendering citizenship determinations for ownership, and securing operational and decommissioning guarantees for deepwater port projects. In concert with the U.S. Coast Guard (USCG) and other cooperating federal agencies, MARAD prepares a Record of Decision (ROD) for each application. Through the administration of the DWPA, the Maritime Administration plays a vital role in meeting Presidential energy directives, protecting the environment, building local economies, and improving mobility, safety, and security in our Nation's oceans and ports.

MARAD's other 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.

MARAD's regulatory priorities are to update existing regulations and to reduce unnecessary burden on the public. This fall, the Agency will implement its new America's Marine Highway regulation in response to the enactment of the Energy Independence and Security Act of 2007 (Pub. L. 110-140) which directs the Secretary of Transportation to establish a short sea transportation program and designate short sea transportation projects to mitigate landside congestion. Finally, during FY 2009, MARAD will focus on revising its cargo preference regulations.

Pipeline and Hazardous Materials Safety Administration (PHMSA)

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has responsibility for rulemaking under two programs. Through the Associate Administrator for Hazardous Materials Safety, PHMSA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of

1990. Through the Associate Administrator for Pipeline Safety, PHMSA administers regulatory programs under the Federal pipeline safety laws and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

PHMSA will continue to work toward the elimination of deaths and injuries associated with the transportation of hazardous materials by all transportation modes, including pipeline. We will use data to focus our efforts on the prevention of high-risk incidents, particularly those of high consequence to people and the environment. PHMSA will use all available agency tools to assess data; evaluate alternative safety strategies, including regulatory strategies as necessary and appropriate; target enforcement efforts; and enhance outreach, public education, and training to promote safety outcomes. For maximum effectiveness, we will work closely with other DOT safety agencies and other federal, State and local agencies to bring together stakeholders who can contribute to safety solutions.

PHMSA will continue to focus its safety efforts on the resolution of highest priority risks, including those posed by the air transportation of hazardous materials and bulk transportation of high hazard materials. In addition, PHMSA is working with FAA to assess safety risks associated with the transportation by aircraft of hazardous materials in non-bulk packagings. To enhance aviation safety, the two agencies are seeking to identify cost-effective solutions that can be implemented to reduce incident rates and potentially detrimental consequences without placing unnecessary burdens on the regulated community. To address the risks posed by the bulk transportation of high-risk hazardous materials, PHMSA in conjunction with FRA plans to issue a final rule incorporating effective strategies for maintaining tank car integrity during rail incidents, with a particular focus on the containment of lethal compressed gases in high pressure tank cars. Additionally, to address the need for an overall national program to enhance rail security, PHMSA is working with FRA and TSA to issue a final rule addressing the safe and secure transportation of hazardous materials transported in commerce by rail. In addition, we would adopt a new requirement for rail carriers to inspect placarded hazardous materials rail cars for signs of tampering or suspicious items, including improvised explosive devices (2137-AE02).

PHMSA will continue to look for ways to reduce the regulatory burden on hazardous materials shippers and carriers, consistent with our overall safety goals. For example, PHMSA is conducting a comprehensive review of special permits to identify those with demonstrated safety records that should be adopted as regulations of general applicability. We will continue to review regulatory standards to ensure they are necessary, easy to understand, contemporary and enforceable.

Over the next year, PHMSA expects to complete its integrity management initiative by adding integrity management regulations applicable to gas distribution pipelines. Integrity management regulations require pipeline operators to establish risk-based programs that focus increased safety attention on portions of pipeline posing the highest risk (2137-AE15).

Research and Innovative Technology Administration (RITA)

The Research and Innovative Technology Administration (RITA) seeks to identify and facilitate solutions to the challenges and opportunities facing America's transportation system through:

- Coordination, facilitation, and review of the Department's research and development programs and activities;
- Providing multi-modal expertise in transportation and logistics research, analysis, strategic planning, systems engineering and training;
- Advancement, and research and development, of innovative technologies, including intelligent transportation systems;
- Comprehensive transportation statistics research, analysis, and reporting;
- Education and training in transportation and transportation-related fields; and
- Managing the activities of the John A. Volpe National Transportation Systems Center.

Through its Bureau of Transportation Statistics, RITA collects, compiles, analyzes, and makes accessible information on the Nation's transportation system. RITA collects airline financial, traffic, and operating statistical data, including on-time flight performance data. This information gives the Government consistent and comprehensive economic and market data on airline operations and is used in supporting policy initiatives, negotiating international bilateral aviation agreements, awarding international route authorities, and meeting international treaty obligations.

Through its Intelligent Transportation Systems Joint Program Office (ITS/JPO), RITA develops new regulations as appropriate, in coordination with OST and other DOT operating administrations, to enable deployment of ITS research and technology results.

Through its Volpe National Transportation Systems Center, RITA provides a comprehensive range of engineering expertise, and qualitative and quantitative assessment services, focused on applying, maintaining and increasing the technical body of knowledge to support DOT operating administration regulatory activities.

Through its Transportation Safety Institute, RITA designs, develops, conducts and evaluates training and technical assistance programs in transportation safety and security to support DOT operating administration regulatory implementation and enforcement activities.

RITA's regulatory priorities are to assist OST and all DOT operating administrations in updating existing regulations by applying research, technology and analytical results; to provide reliable information to transportation system decision makers; and to provide safety regulation implementation and enforcement training.

QUANTIFIABLE COSTS AND BENEFITS OF RULEMAKINGS ON THE 2008-2009 DOT REGULATORY PLAN

This chart does not account for non-quantifiable benefits, which are often substantial

Agency/RIN Number	Title	Stage	Quantifiable Costs Discounted 2007 $ (Millions)	Quantifiable Benefits Discounted 2007 $ (Millions)
OST				
2105-AD72	Enhancing Airline Passenger Protections	NPRM 11/08	TBD	TBD
Total for OST			**0**	**0**
FAA				
2120-AI92	Automatic Dependent Surveillance - Broadcast (ADS-B) Out	ARC Recommendation 11/08	3,010	2,660
Total for FAA			**3,010**	**2,660**
FMCSA				
2126-AA97	National Registry of Certified Medical Examiners	NPRM 12/08	658	1,014
2126-AB02	Commercial Driver's Licenses and Learner's Permit	FR 09/09	30	71
2126-AB11	Carrier Safety Fitness Determination	NPRM 12/08	TBD	TBD
Total for FMCSA			**688**	**1,085**
NHTSA				
2127-AK23	Ejection Mitigation	NPRM 04/09	TBD	TBD
Total for NHTSA			**0**	**0**
PHMSA				
2137-AE15	Pipeline Safety: Distribution Integrity Management	FR 06/09	1,484	2,691
Total for PHMSA			**1,484**	**2,691**
TOTAL FOR DOT			**5,182**	**6,436**

Notes:
Estimated values are shown after rounding to the nearest $1 million and represent discounted present values assuming a discount rate of 7 percent.
Costs and benefits of rulemakings may be forecast over varying periods. Although the forecast periods will be the same for any given rulemaking, comparisons between proceedings should be made cautiously.
The Department of Transportation generally assumes that there are economic benefits to avoiding a fatality of $5.8 million. That economic value is included as part of the benefits estimates shown in the chart. As noted above, we have made no effort to include the non-quantifiable benefits.

DOT—Office of the Secretary (OST)

PROPOSED RULE STAGE

90. +ENHANCING AIRLINE PASSENGER PROTECTIONS

Priority:

Other Significant

Legal Authority:

49 USC 40101; 49 USC 41702; 49 USC 41712

CFR Citation:

14 CFR 234; 14 CFR 253; 14 CFR 259; 14 CFR 399

Legal Deadline:

None

Abstract:

This rulemaking would propose to enhance airline passenger protections in the following ways: (1) require carriers to adopt contingency plans for lengthy tarmac delays and to incorporate these plans in their contracts of carriage, (2) require carriers to respond to consumer problems, (3) declare the operation of flights that remain chronically delayed to be an unfair and deceptive practice and an unfair method of competition, (4) require carriers to publish delay data on their websites, and (5) require carriers to adopt customer service plans, incorporate these in their contracts of carriage, and audit their adherence to their plans.

Statement of Need:

This rule is needed to provide consumers with more information and protections to minimize the adverse consequences of air travel delays and cancellations. The Department's Office of the Inspector General has recommended that the Department take specific action to improve the air travel environment for passengers and Congress has proposed legislation to improve airline passenger protections.

Summary of Legal Basis:

The Department has authority and responsibility under 49 USC 41712, in concert with 49 USC 40101(a)(4) and 40101(a)(9) and 49 USC 41702, to protect consumer from unfair and deceptive practices and to ensure safe

and adequate service in air transportation.

Alternatives:

The main alternative would be to take no regulatory action to address the increasing number of passengers who are dissatisfied with airline service as a result of recent marathon tarmac waits and the epidemic of flight delays, and to rely on the airlines to regulate themselves.

Anticipated Cost and Benefits:

The rule is estimated to cost $5.6 million and result in benefits of $14.1 million per year (at a 7 percent discount rate).

Risks:

The risk of not taking regulatory action would be a continuation of the dissatisfaction and frustration passengers have with the air travel environment.

Timetable:

Action	Date	FR Cite
ANPRM	11/20/07	72 FR 65233
ANPRM Comment Period End	01/22/08	
Clarification Concerning ANPRM	03/05/08	73 FR 11843
NPRM	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2105–AD72

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

91. +AUTOMATIC DEPENDENT SURVEILLANCE—BROADCAST (ADS–B) EQUIPAGE MANDATE TO SUPPORT AIR TRAFFIC CONTROL SERVICE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531; 49 USC 106(g); Articles 12 and 29 of 61 Stat. 1180

CFR Citation:

14 CFR 91

Legal Deadline:

None

Abstract:

This rulemaking would require Automatic Dependent Surveillance—Broadcast (ADS-B) Out equipment on aircraft to operate in certain classes of airspace within the United States National Airspace System. The rulemaking is necessary to accommodate the expected increase in demand for air transportation, as described in the Next Generation Air Transportation System Integrated Plan. The intended effect of this rule is to provide the Federal Aviation Administration with a comprehensive surveillance system that accommodates the anticipated increase in operations and would provide a platform for additional flight applications and services.

Statement of Need:

Congress has tasked the FAA with creating the Next Generation Air Transportation System (NextGen) to accommodate the projected increase in demand for air traffic services. The current FAA surveillance system will not be able to maintain the same level of service as operations continue to grow.

Summary of Legal Basis:

This rulemaking is promulgated under the authority described in 49 USC subtitle VII, part A, subpart I, section 40103, Sovereignty and use of airspace, and subpart III, section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft, including regulations on safe altitudes, navigating, protecting, and identifying aircraft, and the safe and efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

Alternatives:

The FAA considered the following alternatives before proceeding with this rulemaking:

1. Status quo. The FAA rejected the status quo alternative because the ground based radars tracking congested flyways and passing information among the control centers for the duration of the flights is becoming operationally obsolete. The current system is not efficient enough to accommodate the estimated increases in air traffic, which would result in mounting delays or limitations in service for many areas.

2. Multilateration. Multilateration is a separate type of secondary surveillance system that is not radar and has limited deployment in the U.S. At a minimum, multilateration requires upwards of four ground stations to deliver the same volume of coverage and integrity of information as ADS-B, due to the need to ''triangulate'' the aircraft's position. Multilateration meets the need for accurate surveillance but the total life cycle system costs is very high.

3. Exemption to small air carriers. This alternative would mean that small air carriers would rely on the status quo ground based radars tracking their flights and passing information among the control centers for the duration of the flights. This alternative would require compliance costs to continue for the commissioning of radar sites. Air traffic controller workload and training costs would increase having to employ two systems in tracking aircraft. Small entities may request ATC deviations prior to operating in the airspace affected by this proposal. It would also be contrary to our policy for one level of safety in part 121 operations to exclude certain operators simply because they are small entities.

Thus, this alternative is not considered to be acceptable.

Anticipated Cost and Benefits:

The estimated cost of this proposed rule ranges from a low of $1.31 billion to a high of $7.51 billion. The estimated quantified potential benefits of the proposed rule are $8.11 billion and primarily result from fuel, operating cost and time savings from more efficient flights. On a present value basis costs range from $1.0 billion to $3.95 billion, with benefits estimated at $2.02 billion (using a 7% discount rate).

Risks:

The demand for air travel is expected to double within the next 20 years. Current FAA projections are that by 2025, operations will grow to more than half a million departures and arrivals per year at approximately 16 additional airports. The present air traffic control system will be unable to handle this level of growth. Not only will the current method of handling traffic flow not be able to adapt to the highest volume and density for future operations, but the nature of the new growth may be problematic, as future aviation activity will be much more diverse than it is today. A shift of 2 percent of today's commercial passengers to very light jets that seat 4-6 passengers would result in triple the number of flights necessary to carry the same number of passengers. Furthermore, the challenges grow with the advent of other non-conventional aircraft, such as the UAS.

Timetable:

Action	Date	FR Cite
NPRM	10/05/07	72 FR 56947
NPRM Extension of Comment Period End	11/19/07	72 FR 64966
NPRM Comment Period End	01/03/08	
Extended Comment Period End	03/03/08	
NPRM Comment Period Reopened	10/02/08	73 FR 57270
Comment Period End	11/03/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Project number ATO-06-552-R.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2120–AI92

DOT—Federal Motor Carrier Safety Administration (FMCSA)

PROPOSED RULE STAGE

92. +NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

Sec. 4116 of PL 109–59 (2005); 49 USC 31136(a); 49 USC 31149(d)

CFR Citation:

49 CFR 390; 49 CFR 391

Legal Deadline:

Final, Statutory, August 10, 2006, Final Rule.

Abstract:

This rulemaking would establish training, testing and certification standards for medical examiners responsible for certifying that interstate commercial motor vehicle drivers meet established physical qualifications standards; provide a database (or National Registry) of medical examiners that meet the prescribed standards for use by motor carriers, drivers, and Federal and State enforcement personnel in determining whether a medical examiner is qualified to conduct examinations of interstate truck and bus drivers; and require medical examiners to transmit electronically to FMCSA the name of the driver and a numerical identifier for each driver that is examined. The rulemaking would also establish the process by which medical examiners that fail to meet or maintain the minimum standards would be removed from the National Registry. This action is in response to section 4116 of Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users.

Statement of Need:

In enacting the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, August 10, 2005], Congress recognized the need to improve the quality of the medical certification of drivers. SAFETEA-LU addresses the requirement for medical examiners to receive training in physical examination standards and be listed on a national registry of medical examiners as one step toward improving the quality of the commercial motor vehicle (CMV) driver physical examination process and the medical fitness of CMV drivers to operate CMVs. The safety impact will result from ensuring that medical examiners have completed training and testing to demonstrate that they fully understand FMCSA's physical qualifications standards and are capable of applying those standards consistently, thereby decreasing the likelihood that a medically unqualified driver may obtain a medical certificate.

Summary of Legal Basis:

The fundamental legal basis for the NRCME program comes from 49 U.S.C. 31149(d), which requires FMCSA to establish and maintain a current national registry of medical examiners that are qualified to perform examinations of CMV drivers and to issue medical certificates. FMCSA is required to remove from the registry any medical examiner who fails to meet or maintain qualifications established by FMCSA. In addition, in developing its regulations, FMCSA must consider both the effect of driver health on the safety of CMV operations and the effect of such operations on driver health, 49 U.S.C. 31136(a).

Alternatives:

The rulemaking is statutorily mandated. Thus, the Agency must establish the National Registry.

Anticipated Cost and Benefits:

We estimated 10 year costs (discounted at 7 percent) at $586,969,000, total benefits at $662,130,000, and net benefits over 10 years at $75,161,000.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AA97

DOT—FMCSA

93. +CARRIER SAFETY FITNESS DETERMINATION

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

Section 4009 of TEA–21; 49 USC 31133; 49 USC 31144

CFR Citation:

49 CFR 385

Legal Deadline:

None

Abstract:

This rulemaking would revise 49 CFR Part 385, Safety Fitness Procedures, in accordance with the Agency's major new initiative, Comprehensive Safety Analysis (CSA) 2010. CSA 2010 is a new operational model FMCSA plans to implement that is designed to help the Agency carry out its compliance and enforcement programs more efficiently and effectively. Currently, the safety fitness rating of a motor carrier is determined based on the results of a very labor intensive compliance review conducted at the carrier's place of business. Aside from roadside inspections and new audits, the compliance review is the Agency's primary intervention. Under CSA 2010, FMCSA would propose to implement a broader array of progressive interventions, some of which allow FMCSA to make contact with more carriers. Through this rulemaking FMCSA would establish safety fitness determinations based on safety data consisting of crashes, inspections, and violation history rather than the standard compliance review. This will enable the Agency to assess the safety performance of a greater segment of the motor carrier industry with the goal of further reducing large truck and bus crashes and fatalities.

Statement of Need:

Because of the time and expense associated with the on-site compliance review, only a small fraction of carriers (approximately 12,000) receive a safety fitness determination (SFD) each year. Since the current SFD process is based exclusively on the results of an on site compliance review, the great majority of carriers subject to FMCSA jurisdiction do not receive a timely determination of their safety fitness.

The proposed methodology for determining motor carrier safety fitness should correct the deficiencies of the current process. In correcting these deficiencies, FMCSA has made a concerted effort to develop a ''transparent'' method for the SFD that would allow each motor carrier to understand fully how FMCSA established that carrier's specific SFD.

Summary of Legal Basis:

This rule is based primarily on the authority of 49 U.S.C. 31144, which directs the Secretary of Transportation to ''determine whether an owner or operator is fit to operate a commercial motor vehicle'' and to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' This statute was first enacted as part of the Motor Carrier Safety Act of 1984, § 215, Pub. L. 98-554, 98 Stat. 2844 (Oct. 30, 1984).

The proposed rule also relies on the provisions of 49 U.S.C. 31133, which gives the Secretary ''broad administrative powers to assist in the implementation'' of the provisions of the Motor Carrier Safety Act now found in chapter 311 of title 49, U.S.C. These powers include, among others, authority to conduct inspections and investigations, compile statistics, require production of records and property, prescribe recordkeeping and reporting requirements and to perform other acts considered appropriate. These powers are used to obtain the data used by the Safety Management System and by the proposed new methodology for safety fitness determinations.

Under 49 CFR 1.73(g), the Secretary has delegated the authority to carry out the functions in subchapters I, III, and IV of chapter 311, title 49, U.S.C., to the FMCSA Administrator. Sections 31133 and 31144 are part of subchapter III of chapter 311.

Alternatives:

The Agency has been considering only two alternatives: the no-action alternative and the proposal.

Anticipated Cost and Benefits:

FMCSA has not yet fully assessed the costs and benefits at this time.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AB11

DOT—FMCSA

FINAL RULE STAGE

94. +COMMERCIAL DRIVER'S LICENSE TESTING AND COMMERCIAL LEARNER'S PERMIT STANDARDS

Priority:

Other Significant

Legal Authority:

Sec. 703 of PL 109–347; 49 USC 31102 and 31136; PL 105–178, 112 Stat. 414 (1998); PL 99–570, title XII, 100 Stat. 3207 (1086); Sec. 4007(a)(1) of PL 102–240, Stat. 1914, 2151; Sec. 4122 of PL 109–59 (2005)

CFR Citation:

49 CFR 380; 49 CFR 383; 49 CFR 384; 49 CFR 385

Legal Deadline:

Final, Statutory, April 13, 2008, Publish Final Rule by April 13, 2008.

The statutory deadline results from section 703 of the SAFE Port Act (enacted October 13, 2006). The Act requires the Agency to implement certain statutory provisions within 18 months of enactment.

Abstract:

This rulemaking would establish revisions to the commercial driver's license knowledge and skills testing standards as required by section 4019 of TEA-21, implement fraud detection and prevention initiatives at the State driver licensing agencies as required by the SAFE Port Act of 2006, and establish new minimum Federal standards for States to issue commercial learner's permits (CLPs), based in part on the requirements of section 4122 of SAFETEA-LU. In addition to ensuring the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle, this rule would establish the minimum information that must be on the CLP document and the electronic driver's record. The rule would also establish maximum issuance and renewal periods, establish a minimum age limit, address issues related to a driver's State of Domicile, and incorporate previous regulatory guidance into the Federal regulations. This rule would also address issues raised in the SAFE Port Act.

Statement of Need:

This proposed rule would create a Federal requirement for a commercial learner's permit (CLP) as a pre-condition for a commercial driver's license (CDL) and make a variety of other changes to enhance the CDL program. This would help to ensure that drivers who operate CMVs are legally licensed to do so and that they do not operate CMVs without having passed the requisite tests.

Summary of Legal Basis:

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, title XII, 100 Stat. 3207-170; 49 U.S.C. chapter 313); section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, at 1734; 49 U.S.C. 31302, 31308, and 31309); and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347, 120 Stat. 1884, at 1944). It is also based in part on the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98-554, title II, 98 Stat. 2832; 49 U.S.C. 31136, and the safety provisions of the Motor Carrier Act of 1935 (MCA) (ch. 498, 49 Stat. 543, codified at 49 U.S.C. 31502).

Alternatives:

There are 17 issues described in this rulemaking document and several alternatives were considered for each.

Anticipated Cost and Benefits:

We estimate 10-year costs (discounted at 7%) at $25,836,000, total benefits at $95,913,000, and net benefits over 10 years at $70,076,000.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
NPRM	04/09/08	73 FR 19282
NPRM Comment Period End	06/09/08	
NPRM Comment Period Extended	06/09/08	73 FR 32520
Second NPRM Comment Period End	07/09/08	
Final Rule	09/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

Docket ID FMCSA-2007-27659

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 2126–AB00

RIN: 2126–AB02

DOT—National Highway Traffic Safety Administration (NHTSA)

PROPOSED RULE STAGE

95. +EJECTION MITIGATION

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 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; delegation of authority at 49 CFR 1.50

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, October 1, 2009, Final Rule.

Abstract:

This rulemaking would create a new Federal Motor Vehicle Safety Standard (FMVSS) for reducing occupant ejection. Currently, there are over 52,000 annual ejections in motor vehicle crashes, and over 10,000 ejected fatalities per year. This rulemaking would propose new requirements for reducing occupant ejection through passenger vehicle side widows. The requirement would be an occupant containment requirement on the amount of allowable excursion through passenger vehicle side windows. The SAFETEA-LU legislation requires that: ''[t]he Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.''

Statement of Need:

The agency's annualized injury data from 1997 to 2005 show that there are 6,174 fatalities and 5,271 Maximum Abbreviated Injury Scale (MAIS) 3+ non-fatal serious injuries for occupants partially and completely ejected through side windows in vehicles with a gross vehicle weight rating (GVWR) less than 4,536 kg (10,000 lbs.). Sixty-five percent of the fatalities and 78 percent of the serious injuries are from ejections that involve a rollover as part of the crash event.

Summary of Legal Basis:

Section 30111, Title 49 of the USC, states that the Secretary shall prescribe motor vehicle safety standards. Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to issue by October 1, 2009, an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions.

Alternatives:

The agency is not pursuing any alternatives to reduce side window ejections of light vehicle occupants other than establishing FMVSS No. 226.

Anticipated Cost and Benefits:

The agency is reducing the population of partial and complete side window ejections through a series of rulemaking actions. These actions included adding a pole impact upgrade to FMVSS No. 214 — Side Impact Protection (72 FR 51908) and promulgating FMVSS No. 126 — Electronic Stability Control Systems (72 FR 17236). We estimate that promulgating FMVSS No. 226 will reduce the remaining population of ejection fatalities and serious injuries by 406 and 318, respectively. The cost per equivalent fatality at a seven percent discount rate is estimated to be $2.0 million.

Risks:

The agency believes there are no substantial risks to this rulemaking, and that only beneficial outcomes will occur as the industry moves to reduce side window ejections of light vehicle occupants.

Timetable:

Action	Date	FR Cite
NPRM	04/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2127–AK23

DOT—Pipeline and Hazardous Materials Safety Administration (PHMSA)

FINAL RULE STAGE

96. +PIPELINE SAFETY: DISTRIBUTION INTEGRITY MANAGEMENT

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 5103; 49 USC 60102; 49 USC 60104; 49 USC 60108 to 60110; 49 USC 60113; 49 USC 60118; 49 CFR 1.53

CFR Citation:

49 CFR 192

Legal Deadline:

None

Abstract:

This rulemaking would establish integrity management program requirements appropriate for gas distribution pipeline operators. This rulemaking would require gas distribution pipeline operators to develop and implement programs to better assure the integrity of their pipeline systems.

Statement of Need:

This rule is necessary to comply with a Congressional mandate and to enhance safety by managing and reducing risks associated with gas distribution pipeline systems.

Summary of Legal Basis:

The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 (Public Law No. 109-468), requires PHMSA to prescribe minimum standards for integrity management programs for gas distribution pipelines.

Alternatives:

PHMSA considered the following alternatives:

—No Action: No new requirements would be levied.

—Apply existing gas transmission pipeline IMP regulations to gas distribution pipelines.

—Model State legislation by imposing requirements on excavators and others outside the regulatory jurisdiction of pipeline safety authorities.

—Develop guidance documents for adoption by states with the intent of states mandating use of the guidance.

—Implement prescriptive Federal regulations, specifying in detail, actions that must be taken to assure distribution pipeline integrity.

—Implement risk-based, flexible, performance-oriented Federal regulations, establishing high-level elements that must be included in integrity management programs—the alternative selected.

Anticipated Cost and Benefits:

The monetized benefits resulting from the rulemaking are estimated to be $214 million per year. The costs of the rulemaking are estimated to be $155.1 million in the first year and $104.1 million in each subsequent year.

Risks:

These regulations will require operators to analyze their pipelines, including unique situations; identify the factors that affect risk, both risk to the pipeline and the risks posed by the pipeline; and manage those factors.

Timetable:

Action	Date	FR Cite
NPRM	06/25/08	73 FR 36015
NPRM Comment Period End	09/23/08	
NPRM Extension of Comment Period	09/12/08	73 FR 52938
NPRM Extended Comment Period End	10/23/08	
Final Rule	06/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Docket Nos. PHMSA-04-18938 and PHMSA-04-19854.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are:

- To promote prosperous and stable American and world economies, including promoting domestic economic growth and maintaining our Nation's leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream.
- To manage the Government's finances by protecting the revenue and collecting the correct amount of revenue under the Internal Revenue Code, overseeing customs revenue functions, financing the Federal Government and managing its fiscal operations, and producing our Nation's coins and currency.
- To safeguard the U.S. and international financial systems from those who would use these systems for illegal purposes or to compromise U.S. national security interests, while keeping them free and open to legitimate users.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. It is the policy of the Department to comply with the requirement to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

In response to the events of September 11, 2001, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Since then, the Department has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN).

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive 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.

Emergency Economic Stabilization Act

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 (EESA) (Pub. L. 110-334). Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a Troubled Assets Relief Program (TARP) to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.''

EESA provides authority to issue regulations and guidance to implement the program. Regulations and guidance required by EESA include conflicts of interest, executive compensation, and tax guidance. The Secretary is also charged with establishing a program that will guarantee principal of, and interest on, troubled assets originated or issued prior to March 14, 2008.

To date, the Department has issued guidance and regulations and will continue to provide program information through the next year. In October 2008, the Department issued an interim final rule that set forth executive compensation guidelines for the TARP Capital Purchase Program (73 FR 62205). Related tax guidance on executive compensation was announced in IRS Notice 2008-94. In addition, among other EESA tax guidance, the IRS issued interim guidance regarding loss corporation and ownership changes in Notice 2008-100, providing that any shares of stock owned by the Department of the Treasury under the Capital Purchase Program will not be considered to cause Treasury's ownership in such corporation to increase. On October 14, 2008, the Department released a request for public input on an insurance program for troubled assets.

During the remainder of Fiscal Year 2009, the Department will continue implementing the EESA authorities to restore capital flows to the consumers and businesses that form the core of the nation's economy.

Terrorism Risk Insurance Program Office

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (TRIA). The new law, which was enacted as a consequence of the events of September 11, 2001, established a temporary Federal reinsurance program under which the Federal Government shares the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers. The Act, originally scheduled to expire on December 31, 2005, was extended to December 31, 2007 by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). The Act has since been extended to December 31, 2014, by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA).

The Office of the Assistant Secretary for Financial Institutions is responsible for developing and promulgating regulations implementing TRIA, as extended and amended by TRIEA and TRIPRA. The Terrorism Risk Insurance Program Office, which is part of the Office of the Assistant Secretary for Financial Institutions, is responsible for operational implementation of TRIA. The purposes of this legislation are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Over the past year, the Office of the Assistant Secretary has issued guidance implementing changes authorized by TRIPRA. In addition, the following priority regulation projects should be published by December 31, 2008:

- *Terrorism Risk Insurance Program Reauthorization Act Implementation*. This interim rule will implement certain aspects of TRIPRA (the Reauthorization Act) including mandatory availability, disclosure requirements, and conforming changes.
- *Recoupments of Federal Share of Compensation for Insured Losses*. This proposed rule would implement and establish requirements for determining amounts to be recouped and for procedures insurers are to use for collecting terrorism policy surcharges and remitting them to the Treasury.
- *Cap on Annual Liability and Pro Rata Share of Insured Losses*. This

proposed rule would establish, for purposes of the $100 billion cap on annual liability, how Treasury will determine whether aggregate insured losses will exceed $100 billion and, if so, how Treasury will determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

During 2009, Treasury will continue the ongoing work of implementing TRIA and revising operations as a result of the TRIPRA related regulation changes.

Customs Revenue Functions

On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the United States Customs Service from the Department of the Treasury to the DHS, where it is was known as the Bureau of Customs and Border Protection (CBP). Effective March 31, 2007, DHS changed the name of the Bureau of Customs and Border Protection to the U.S. Customs and Border Protection (CBP) pursuant to section 872(a)(2) of the Act (6 USC 452(a)(2)) in a Federal Register notice (72 FR 20131) published on April 23, 2007. Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs and the establishment of recordkeeping requirements relating thereto.

During the past fiscal year, among the Treasury- retained CBP customs-revenue function regulations issued were final rules adopting the interim regulations which implemented the preferential trade benefit provisions of the United States - Jordan Free Trade Agreement Implementation Act, the United States - Bahrain Free Trade Agreement Implementation Act and the United States - Morocco Free Trade Agreement Implementation Act. CBP also published an interim rule regarding the implementation of the preferential tariff treatment and other customs-related provisions of the Dominican Republic-Central America-United States Free Trade Agreement (also known as ''CAFTA-DR''). In addition, during the past fiscal year, CBP amended the regulations on an interim basis to implement the duty-free provisions of the Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006 (the ''HOPE I'') Act of 2006 which concerned the extension of certain trade benefits to Haiti in the Tax Relief and Health Care Act of 2006. As a result of the changes necessitated by enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement (''HOPE II'') Act of 2008 which is contained in the recent Food, Conservation and Energy Act of 2008 (commonly referred to as the ''Farm Bill'' legislation), CBP published in one final rule both the HOPE I Act and the HOPE II Act on September 30, 2008, the statutory deadline.

During this past year, CBP also finalized its interim regulations, which established special entry requirements applicable to shipments of softwood lumber products from Canada for purposes of monitoring the 2006 Softwood Lumber Agreement between the Governments of Canada and the United States. As a result of the Softwood Lumber Act of 2008, which is also part of the recent ''Farm Bill'' legislation, CBP published implementing interim regulations which prescribe special entry requirements as well as an importer declaration program applicable to certain softwood lumber (SWL) and SWL products exported from any country into the United States.

During fiscal year 2009, CBP and Treasury plan to give priority to the following regulatory matters involving the customs revenue functions not delegated to DHS:

- *Trade Act of 2002.* Treasury and CBP plan to finalize several interim regulations that implement the trade benefit provisions of the Trade Act of 2002 including the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act.
- *Preferential trade benefit provisions.* Treasury and CBP also plan to finalize interim regulations this fiscal year to implement the preferential trade benefit provisions of the United States-Singapore Free Trade Agreement Implementation Act and the Dominican Republic — Central America — United States Free Trade Agreement (CAFTA-DR) Implementation Act.
- *United States-Australia Free Trade Agreement.* Treasury and CBP expect to issue interim regulations implementing the United States-Australia Free Trade Agreement Implementation Act
- *Country of Origin of Textile and Apparel Products.* Treasury and CBP also plan to publish a final rule adopting an interim rule that was published on the Country of Origin of Textile and Apparel Products, which implemented the changes brought about, in part, by the expiration of the Agreement on Textile and Clothing and the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organizations (WTO) members.
- *North American Free Trade Agreement country of origin rules.* Treasury and CBP plan to finalize a proposal, which was published in July 2008 seeking public comment regarding uniform rules governing the determination of the country of origin of imported merchandise. These uniform rules would extend the application of the North American Free Trade Agreement country of origin rules to all trade if this proposal is finalized.
- *Customs Modernization provisions of the North American Free Trade Implementation Act (Customs Mod Act).* Treasury and CBP also plan to continue moving forward with amendments to improve its regulatory procedures began under the authority granted by the Customs Mod Act. These efforts, in accordance with the principles of Executive Order 12866, have involved and will continue to involve significant input from the importing public. CBP will also continue to test new programs to see if they work before proceeding with proposed rulemaking to establish permanently the programs. Consistent with this practice, we expect to finalize a proposal to establish permanently the remote location filing program, which has been a test program under the Customs Mod Act. This rule would allow remote location filing of electronic entries of merchandise from a location other

than where the merchandise will arrive.

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 the following programs: the Community Development Financial Institutions (CDFI) Program, the Bank Enterprise Award (BEA) Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit (NMTC) Program.

In fiscal year (FY) 2009, subject to funding availability, the Fund will provide the following financial assistance awards and technical assistance grants through the CDFI Program.

- *Native American CDFI Assistance (NACA) Program.* Through the NACA Program, subject to funding availability, the Fund will provide technical assistance grants and financial assistance awards to promote the development of CDFIs that serve Native American, Alaska Native, and Native Hawaiian communities. In FY 2009, the Fund expects to revise the CDFI Program regulations to include certain programmatic policy changes and application processing streamlining efforts.
- *Bank Enterprise Award (BEA).* Subject to funding availability for the BEA Program, the Fund will provide financial incentives to encourage insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs. In FY 2009, the Fund expects to revise the BEA Program regulations to include certain new programmatic policy changes and application processing streamlining efforts.
- *New Markets Tax Credit (NMTC).* Through the NMTC Program, the CDFI Fund will provide allocations of tax credits to qualified community development entities (CDEs). The CDEs in turn provide tax credits to private sector investors in exchange for their investment dollars; investment proceeds received by the CDEs are be used to make loans and equity investments in low-income communities. The Fund administers the NMTC Program in coordination with the Office of Tax Policy and the Internal Revenue Service.

Financial Crimes Enforcement Network

As chief administrator of the Bank Secrecy Act (BSA), FinCEN's regulations constitute the core of the Department's anti-money laundering and counter terrorism financing programmatic efforts. FinCEN's responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism. Those regulations also require designated financial institutions to establish anti-money laundering programs and compliance procedures. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. These objectives and priorities include: (1) issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and, as appropriate, overseeing compliance examination functions delegated to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA; (4) maintaining a Government-wide access service to that same data, and for network users with overlapping interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and the financial sector; and (6) coordinating with and collaborating on anti-terrorism and anti-money laundering initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

During fiscal year 2008, FinCEN issued the following final rules: a final rule updating the list of financial institutions exempt from establishing anti-money laundering programs to reflect previous actions with regard to mutual funds and insurance companies; withdrawals of the proposed rulemakings against one jurisdiction and one foreign financial institution deemed to be of primary money laundering concern pursuant to section 311 of the USA PATRIOT Act; and a renewal of a rule without change imposing special measures against a foreign financial institution deemed to be of primary money laundering concern pursuant to section 311 of the USA PATRIOT Act. FinCEN issued 10 Administrative Rulings and 10 written guidance pieces (as of August 2008) interpreting the BSA and providing clarity to regulated industries.

In addition, FinCEN has been working on the following initiatives that should be issued in September 2008, or (if not) prior to December 31, 2008:

- *Currency Transaction Reporting Exemptions.* FinCEN published a notice of proposed rulemaking in the Federal Register on April 23, 2008 that would simplify the existing currency transaction reporting exemption regulatory requirements. The amendments were recommended by the Government Accountability Office in GAO-08-355. By simplifying the regulatory requirements regarding CTR exemptions, FinCEN believes that more depository institutions will avail themselves of the exemptions. FinCEN intends to finalize the notice of proposed rulemaking prior to September 30, 2008.
- *Reorganization of BSA Rules.* As part of Secretary Paulson's BSA Effectiveness and Efficiency initiative, FinCEN is proposing to re-designate and reorganize the BSA regulations in a new chapter within the Code of Federal Regulations. The re-designation and reorganization of the regulations in a new chapter is not intended to alter regulatory requirements. The regulations will be organized in a more consistent and intuitive structure that more easily allows financial institutions to identify their specific regulatory requirements under the BSA. The new chapter will replace 31 CFR Part 103. FinCEN intends to issue the proposal prior to December 31, 2008.
- *Money Services Businesses.* Also as part of Secretary Paulson's BSA Effectiveness and Efficiency initiative, FinCEN intends to issue a notice of proposed rulemaking addressing definitional thresholds for Money

Services Businesses (MSBs), incorporating previously issued Administrative Rules and guidance with regard to MSBs, and addressing the issue of foreign-located MSBs. In addition, FinCEN intends to issue an advance notice of proposed rulemaking concerning MSB agents. FinCEN intends to issue the proposal and advance notice prior to December 31, 2008.

- *Confidentiality of Suspicious Activity Reports.* FinCEN intends to issue a notice of proposed rulemaking clarifying the non-disclosure provisions with respect to the existing regulations pertaining to the confidentiality of suspicious activity reports. FinCEN intends to issue the proposal prior to December 31, 2008.
- *Mutual Funds.* FinCEN intends to issue a notice of proposed rulemaking addressing the definition of financial institution in the BSA's implementing regulations to include open-end investment companies (mutual funds). Despite the fact that mutual funds are already required to comply with anti-money laundering and customer identification program requirements, file Suspicious Activity Reports, comply with due diligence obligations pursuant to rules implementing section 312 of the USA PATRIOT Act, and perform other BSA compliance functions, a mutual fund is not designated as a 'financial institution' under the BSA implementing regulations. The proposed rule would address obligations to file Currency Transaction Reports for cash transactions over $10,000 vis-à-vis obligations to file Form 8300s. FinCEN intends to issue the proposal prior to December 31, 2008.
- *Withdrawal of Proposed Rules.* FinCEN plans to withdraw the proposed rules (issued in 2002 and 2003) for investment advisers, commodity trading advisors, and unregistered investment companies. Withdrawing the proposed rules will eliminate uncertainty associated with the existence of out-of-date proposed rules. It will also allow FinCEN to issue new notices of proposed rulemaking at a later date that take into account industry regulatory developments with respect to investment advisers, commodity trading advisors, and unregistered investment companies since 2003. FinCEN intends to withdraw the proposals prior to December 31, 2008.

FinCEN's regulatory priorities for fiscal year 2009 include concluding any of the initiatives mentioned above that are not concluded as of September 30, 2008, as well as the following projects:

- *Anti-Money Laundering Programs.* Pursuant to section 352 of the USA PATRIOT Act, certain financial institutions are required to establish anti-money laundering programs. FinCEN will propose rulemaking to require state-chartered credit unions and other depository institutions without a federal functional regulator to implement anti-money laundering programs. FinCEN expects to finalize the anti-money laundering program rule for dealers in precious metals, precious stones, or jewels. FinCEN will continue to research and analyze issues regarding potential regulation of the loan and finance industry (including pawnbrokers). Finally, FinCEN also will continue to consider regulatory options regarding certain corporate and trust service providers.
- *Regulatory Framework for Stored Value.* FinCEN will evaluate the current regulatory framework for stored value to take into consideration the development and use of these products, which has grown significantly over the last 10 years. Currently, issuers, sellers, and redeemers of stored value are subject to a less comprehensive BSA/AML regime than are other actors falling within the scope of FinCEN's regulations. Suspicious activity is not reported and the lack of transparency inherent in many products makes it difficult to assess the money laundering risks and abuses. FinCEN will explore options to address the existing vulnerabilities without impeding continued development of the industry and without imposing competitive disadvantages.

Other Requirements. FinCEN will consider the need for regulatory action in conjunction with the feasibility study prepared pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 concerning the issue of obtaining information about certain cross-border funds transfers and transmittals of funds. FinCEN also will continue to issue proposed and final rules pursuant to Section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects to propose various technical and other regulatory amendments in conjunction with its ongoing, comprehensive review of existing regulations to enhance regulatory efficiency.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the Office of 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 Internal Revenue Service 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 2009, the Internal Revenue Service will accord priority to the following regulatory projects:

- *Unified Rule for Loss on Subsidiary Stock.* Prior to the opinion in Rite Aid Corp. v. United States, 255 F.3d 1357 (2001), Treas. Reg. § 1.1502-20 (the loss disallowance rule or LDR) addressed both noneconomic and duplicated loss on subsidiary stock by members of consolidated groups. In Rite Aid, the Federal Circuit rejected the validity of the duplicated loss component of the LDR. Following Rite Aid, the IRS and Treasury issued temporary regulations, Treas. Reg. §§ 1.337(d)-2T (to address noneconomic loss on subsidiary stock) and 1.1502-35T (to address loss duplication within consolidated groups). The regulations were promulgated as an interim measure to address both concerns while a broader study of the issues was conducted. Both regulations were finalized, but the preamble to each regulation alerted taxpayers of the ongoing nature of the study and the intent to propose a new approach to both issues. In January 2007, the IRS and Treasury proposed regulations that addressed noneconomic and duplicated stock loss, as well as certain related issues presented by the investment adjustment system. During fiscal year 2009, the IRS and Treasury intend to finalize those regulations.
- *Issue Price and Treatment of Qualified Hedges for a Tax-Exempt*

Bond Issue. The arbitrage rules under section 148 generally prohibit issuers of tax-exempt bonds from investing the proceeds of those bonds in investments with a yield that is materially higher than the bond yield. The yield on the bonds is calculated using the issue price of the bonds, which, in the case of publicly offered bonds, is based upon the amount received from the sale of the bonds to the public. Questions have arisen regarding the definition of issue price, including whether sales to certain parties are sales to the public for this purpose. The issue price definition broadly affects all issuers of tax-exempt bonds. Further, issuers often enter into qualified hedges, the payments for and receipts from which are integrated with the payments for and receipts from the bonds in calculating the bond yield. Due to the restructuring or refunding of auction rate bonds, many of these hedges have been terminated or deemed to be terminated. The industry is uncertain as to how the arbitrage rules under section 148 apply to these terminations. During fiscal year 2009, the IRS and Treasury intend to issue proposed regulations to clarify the definition of issue price, to clarify the treatment of hedge terminations under the qualified hedging rules, and to clarify and simplify selected other aspects of the arbitrage regulations.

- *Financial Instruments and Products*. In February 2004, the IRS and Treasury issued proposed regulations regarding (i) the timing of income or deduction of contingent nonperiodic payments on notional principal contracts, and (ii) the character of payments made pursuant to notional principal contracts and other financial transactions. In July 2004, the IRS and Treasury released Notice 2004-52, requesting comments and information with respect to transactions frequently referred to as credit default swaps. On December 7, 2007, the IRS and Treasury released Notice 2008-2, requesting comments and information with respect to transactions frequently referred to as prepaid forward contracts. The IRS and Treasury intend to finalize the regulations proposed in 2004 and issue other guidance relating to credit default swaps and prepaid forward contracts, in light of comments received.
- *Deduction and Capitalization of Costs for Tangible Assets*. Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Under section 263(a) of the Code, no immediate deduction is allowed for amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Those expenditures are capital expenditures that generally may be recovered only in future taxable years, as the property is used in the taxpayer's trade or business. It often is not clear whether an amount paid to acquire, produce, or improve property is a deductible expense or a capital expenditure. Although existing regulations provide that a deductible repair expense is an expenditure that does not materially add to the value of the property or appreciably prolong its life, the IRS and Treasury believe that additional clarification is needed to reduce uncertainty and controversy in this area. In August 2006, the IRS and Treasury issued proposed regulations in this area and received numerous comments. In March 2008, the IRS and Treasury withdrew the 2006 proposed regulations and issued new proposed regulations, which have generated relatively few comments. In fiscal year 2009, the IRS and Treasury intend to finalize those regulations.
- *Transfer Pricing Initiatives*. In August 2005, the IRS and Treasury issued proposed regulations providing guidance on ''cost sharing arrangements,'' where related parties agree to share the costs and risks of intangible development in proportion to their reasonable expectations of their share of anticipated benefits from their separate exploitation of the developed intangibles. The proposed regulations are designed to prevent abuses possible under the existing rules, and to ensure that Congressional intent underlying section 482 of the Internal Revenue Code is fulfilled by requiring that cost sharing arrangements between controlled taxpayers produce results consistent with the arm's length standard. In August 2006, the IRS and Treasury issued temporary regulations that provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible owned by another controlled party. The regulations provide much-needed guidance on the transfer pricing methods to determine the arm's length price in a services transaction, including a new method that allows routine back-office services to be charged at cost with no markup. As part of a continuing effort to modernize the transfer pricing rules to keep them current with changing business practices, the IRS and Treasury intend to finalize both the cost-sharing and services regulations during fiscal year 2009. The IRS and Treasury also intend to issue proposed regulations addressing the source and allocation of income and expense related to the operation of a global dealing operation.
- *Foreign Tax Credit*. In April 2006, the IRS and Treasury issued temporary regulations addressing the elimination of the separate foreign tax credit category for so-called 10-50 companies. In August 2006, the IRS and Treasury issued proposed regulations to clarify who is considered to pay foreign tax for purposes of determining the foreign tax credit. On July 16, 2008, the IRS and Treasury issued temporary regulations relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. The IRS and Treasury intend to finalize all of these regulations during fiscal year 2009. In addition, the IRS and Treasury intend to continue issuing regulations and other guidance implementing provisions of the American Jobs Creation Act, including section 901(l), which relates to minimum withholding taxes on gain and income other than dividends.
- *Subpart F Anti-deferral Regime Initiatives*. On February 27, 2008, the IRS and Treasury issued proposed regulations that addressed the use of contract manufacturing arrangements under the foreign base company sales income rules. The proposed regulations would update regulations that have been in effect since 1964, a time when the subpart F issues raised by cross-border manufacturing were significantly different than they are today. The IRS and Treasury intend to finalize these regulations during fiscal year 2009. In January 2007, the IRS and Treasury issued Notice 2007-13, which announced that the IRS and Treasury will amend the foreign base company services rules to limit the definition of substantial assistance. During fiscal year 2009, the IRS and Treasury intend to issue proposed regulations that will limit the definition of substantial assistance, and therefore limit the instances in

which foreign base company services income may result.

- *Classification of Series LLCs and Cell Companies*. Series LLCs were first introduced in Delaware in 1996, and since then, series LLC statutes have been adopted in several other states. In the insurance and foreign arena, similar entities are sometimes referred to as cell companies. In Notice 2008-19, the Service requested comments on when a cell of a protected cell company should be treated as an insurance company for federal income tax purposes. The Service also requested comments on similar segregated arrangements, such as series LLCs, that do not involve insurance. It is likely that, over time, the use of series LLCs and cell companies will increase. Accordingly, it is important to provide timely guidance to clarify the classification and other tax treatment of this new form of organization. The use of series LLCs and cell companies may facilitate the capital markets by providing more efficient methods of formation and operation. The industry has requested guidance on the federal tax classification of these domestic and foreign entities. During fiscal year 2009, the IRS and Treasury intend to issue regulations under section 7701 that will address whether these domestic and foreign entities are single or multiple entities for federal tax purposes.
- *Understatement of Taxpayer's Liability by Tax Return Preparer*. The Small Business and Work Opportunity Tax Act of 2007 amended the tax return preparer penalty under section 6694 of the Internal Revenue Code to include preparers of estate and gift tax returns, employment tax returns, excise tax returns, and returns of exempt organizations. The standard of conduct under section 6694(a) for underpayments due to unreasonable positions taken on tax returns was also amended in two ways. First, for undisclosed positions, the realistic possibility standard was replaced with a requirement that there be a reasonable belief that the tax treatment of a position taken on a tax return would more likely than not be sustained on its merits. Second, for disclosed positions, the not frivolous standard was replaced with a requirement that there be a reasonable basis for the tax treatment of a position taken on a tax return. Finally, the penalty amounts under both section 6694(a) and 6694(b), relating to understatements due to willful or reckless conduct, were increased. The amendments to section 6694 were effective for tax returns prepared after May 25, 2007. In June 2007, the IRS and Treasury issued Notice 2007-54, which provided transitional relief relating to the standard of conduct under section 6694(a). Additional guidance relating to the tax return preparer penalty, as amended, was provided in Notice 2008-11, Notice 2008-13 and Notice 2008-46. Proposed regulations were published in June 2008. During fiscal year 2009, the IRS and Treasury intend to finalize those regulations.
- *Withholding on Government Payments for Property and Services*. Section 3402(t) was added to the Internal Revenue Code by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). Section 3402(t) requires all Federal, State and local Government entities (except for certain small State entities) to deduct and withhold an income tax equal to 3 percent from all payments (with certain enumerated exceptions) the Government entity makes for property or services. Section 3402(t) is effective for payments made after December 31, 2010. On March 11, 2008, the Service issued Notice 2008-38 soliciting public comments regarding guidance to be provided to Federal, State and local governments required to withhold under section 3402(t). Many entities and vendors impacted by this provision requested guidance on the scope of the provision both as to the types of payments on which withholding is required and as to the impact on payees. Many governmental entities requested guidance describing the measures they must take to comply with the requirements for withholding and reporting. During fiscal year 2009, the IRS and Treasury Department intend to issue proposed regulations under section 3402(t) describing the scope of the provision and steps required for compliance, as well as the method of depositing the withheld tax and reporting the amount of the payments and withheld tax to the IRS and to the payees.
- *Rules under the Pension Protection Act of 2006*. Significant new rules regarding the funding of qualified defined benefit pension plans were enacted as part of the Pension Protection Act of 2006 (PPA). The IRS and Treasury Department prioritized the various pieces of guidance required to comply with those rules and issued several proposed regulations during fiscal year 2008. During fiscal year 2009, the IRS and Treasury Department intend to finalize those proposed regulations. Specifically, these final regulations will include rules related to the measurement of assets and liabilities and the determination of the minimum required contributions under new section 430 of the Internal Revenue Code. The IRS and Treasury Department also intend to issue final regulations on the provisions of the PPA related to automatic enrollment in salary deferral plans.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe and sound, competitive and profitable, and capable of serving in the best possible manner the banking needs of their customers.

The OCC seeks to assure a banking system in which national banks soundly manage their risks, maintain the ability to compete effectively with other providers of financial services, meet the needs of their communities for credit and financial services, comply with laws and regulations, and provide fair access to financial services and fair treatment of their customers.

The OCC's regulatory program furthers these goals. For example, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the OCC, together with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (the agencies), conducted a review of its regulations to identify opportunities to streamline regulations and reduce unnecessary regulatory burden. The agencies' review included: (1) issuing six notices, published in the Federal Register, that solicit comment from the industries they regulate and the public on ways to reduce regulatory burden with respect to specific categories of regulations; and (2) conducting outreach meetings with bankers and consumer groups in cities across the country for the same purpose. The agencies have fulfilled the statutory requirement to publish all categories of their regulations for public comment. They also completed the summary of the comments and recommendations

received, as the statute requires. The final report was published in the Federal Register and submitted it to Congress on November 1, 2007. 62 FR 62036 (November 1, 2007).

Significant rules issued during fiscal year 2008 include:

- *Risk-Based Capital Guidelines: Implementation of New Basel Capital Accord (Basel II) (12 CFR Part 3).* The OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the banking agencies) issued a final rule based on the International Convergence of Capital Measurement and Capital Standards: A Revised Framework. The new capital adequacy standards, commonly known as Basel II, were published on December 7, 2007 at 72 FR 69288. In particular, the rule described significant elements of the Advanced Internal Ratings-Based approach for credit risk and the Advanced Measurement Approaches for operational risk (together, the advanced approaches). The rule specified criteria that a banking organization must meet to use the advanced approaches. Under the advanced approaches, a banking organization would use internal estimates of certain risk components as key inputs in the determination of its regulatory capital requirements.
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Basel II Standardized Approach (12 CFR Part 3).* As part of the banking agencies' ongoing efforts to develop and refine the capital standards to enhance their risk sensitivity and ensure the safety and soundness of the banking system, they issued a notice of proposed rulemaking to amend various provisions of the capital rules on July 29, 2008, at 73 FR 43982. The changes involve amending the current capital rules for those banks that will not be subject to the advanced internal ratings-based approaches. The OCC has included this rulemaking project in the Regulatory Plan (1557-AD07).
- *Lending Limits (12 CFR Part 32).* In FY 2008, the OCC issued an interim final rule with request for comment on March 20, 2008 (73 FR 14922), providing that, with the written approval of the OCC, a national bank may make loans and extensions of credit pursuant to a special temporary lending limit established by the OCC. Use of such a lending limit will be approved only when the OCC determines that it is necessary to address an emergency situation, such as critical financial markets stability, and where the loans and extensions of credit will be of short duration, will be reduced in amount in a timeframe and manner acceptable to the OCC, and will not present unacceptable risk to the lending national bank. In connection with the establishment of a special temporary lending limit, the OCC will impose supervisory oversight and reporting conditions that it determines are appropriate to monitor compliance with the standards contained in the interim final rule.
- *Identity Theft Red Flags and Address Discrepancies (12 CFR Parts 30 and 41).* The agencies and Federal Trade Commission issued final rules and guidelines to implement section 114 and final rules to implement 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The final rules implementing section 114 require financial institutions and creditors to develop and implement a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts and certain existing accounts. The rules contain a separate provision for issuers of credit and debit cards requiring that they develop and implement policies and procedures to validate address changes when card holders request an additional or replacement card shortly after sending the issuer a notice of change of address. Guidelines were also issued elaborating on these rules that financial institutions and creditors must consider and adopt if appropriate. The guidelines include a list of 26 examples of patterns, practices, and forms of activity that indicate the possible existence of identity theft (''red flags''). Rules were also issued implementing section 315 regarding reasonable policies and procedures that a user of consumer reports must employ when the user receives a notice of address discrepancy from a consumer reporting agency informing the user of a substantial discrepancy between the address for the consumer that the user provided to request the consumer report and the address(es) in the file for the consumer. The rules and guidelines were issued on November 9, 2007 (72 FR 63718).
- *Fair Credit Reporting; Affiliate Marketing Regulations (12 CFR Part 41).* On November 7, 2007 (72 FR 62910), the agencies issued a final rule to implement the affiliate marketing provisions of section 214 of the FACT Act. The final rule implements the consumer notice and opt-out provisions of the FACT Act regarding the sharing of consumer information among affiliates for making solicitations for marketing purposes.
- *Regulatory Burden Reduction and Technical Amendments (12 CFR Chapter I).* The OCC issued a final rule to further the goal of reducing regulatory burden for national banks. (73 FR 22216). The changes relieve burden by eliminating or streamlining existing requirements or procedures, enhancing national banks' flexibility in conducting authorized activities, eliminating uncertainty by harmonizing a rule with other OCC regulations or with the rules of another agency, or by making technical revisions to update OCC rules to reflect changes in the law or in other regulations. In a few cases, revisions also add or enhance requirements for safety and soundness reasons.

The OCC's regulatory priorities for fiscal year 2009 include the following:

- *Fair Credit Reporting, Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (12 CFR Part 41).* The agencies and the Federal Trade Commission (FTC) plan to issue a joint final rule to implement section 312 of the FACT Act. Section 312 requires the issuance of guidelines regarding the accuracy and integrity of information entities furnish to a consumer reporting agency. Section 312 also requires the agencies and the FTC to issue regulations requiring entities that furnish information to a consumer reporting agency to establish reasonable policies and procedures for the implementation of the guidelines. In addition, section 312 requires the agencies and the FTC to jointly prescribe regulations that identify the circumstances under which a furnisher of information to a consumer reporting agency shall be required to investigate a dispute concerning the accuracy of information contained in a consumer report on the consumer based on the consumer's direct request to the furnisher. A notice of proposed rulemaking was issued on December 13, 2007 (72 FR 70944).

- *Risk-Based Capital Standards: Market Risk (12 CFR Part 3).* The banking agencies plan to issue a second notice of proposed rulemaking to amend the market risk capital requirements for national banks. The banking agencies issued a notice of proposed rulemaking on September 25, 2006 (71 FR 55958). The rule would make the current market risk capital requirements generally more risk sensitive with respect to the capital treatment of trading activities in banks and bank holding companies.
- *Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act (GLB Act) (12 CFR Part 40).* The agencies, along with the Federal Trade Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission, issued a joint notice of proposed rulemaking pursuant to section 728 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109-351) on March 29, 2007 (72 FR 14940). Specifically, a safe harbor model privacy form was proposed that financial institutions may use to provide the disclosures under the privacy rules. Work on a final rule is now underway.
- *Recordkeeping Requirements for Bank Exceptions from Securities Broker or Dealer Registration.* The banking agencies plan to issue this rulemaking to implement section 204 of the GLB Act. Section 204 directs the banking agencies to establish recordkeeping requirements for banks relying on exceptions to the definitions of ''broker'' and ''dealer'' contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Pursuant to section 101 of the Financial Services Regulatory Relief Act of 2006, the SEC and the FRB jointly published final rules to implement the ''broker'' provisions of the GLB Act on October 3, 2007. The rulemaking to implement section 204 of the GLB Act commenced upon the adoption of a final rule by the SEC and the FRB.

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 supervise thrift institutions effectively and efficiently. 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 mortgage credit; and a risk-focused, timely approach to supervision.

OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the banking agencies) continue to work together on regulations where they share the responsibility to implement statutory requirements. For example, the banking agencies are working jointly on several rules to update capital standards to maintain and improve consistency in agency rules. These rules implement revisions to the *International Convergence of Capital Management and Capital Standards: A Revised Framework (Basel II Framework) and include:*

- *Risk-Based Capital Guidelines: Implementation of Revised Basel Capital Accord.* The final Basel II rule was published by the U.S. Banking Agencies on December 7, 2007 and effective April 1, 2008. The OTS, in conjunction with the other federal banking agencies, is working on implementing issues supporting this extremely complex risk-based capital rule. The banking agencies issued related proposed guidance on credit risk and operation risk (72 FR 9084; Feb. 2, 2007). The banking agencies will issue final guidance in fiscal year (FY) 2009.
- *Risk-Based Capital Standards: Market Risk.* On September 25, 2006, the Agencies issued an NPRM on Market Risk. In this rule, OTS proposed to require savings associations to measure and hold capital to cover their exposure to market risk. The other banking agencies proposed to revise their existing market risk capital rules to implement changes to the market risk treatment contained in Basel II Framework. These changes would enhance risk sensitivity of the existing market risk capital rules and introduce requirements for public disclosure of certain information about market risk (71 FR 55958; Sept. 25, 2006). The banking agencies will issue final market risk rules in FY 2009.
- *Risk-Based Capital Standards: Standardized Approach.* The banking agencies issued an NPRM implementing the Standardized Approach to credit risk and approaches to operational risk that are contained in the Basel II Framework. 73 FR 43982 (July 29, 2008). Banking organizations would be able to elect to adopt these proposed revisions or remain subject to the agencies' existing risk-based capital rules, unless the banking organization uses the Advanced Capital Adequacy Framework described above. This NPRM replaces the NPRM on Domestic Capital Modifications, which was published at 71 FR 77446 on Dec. 26, 2006.

Significant final rules issued during fiscal year 2008 include:

- *Prohibited Service at Savings and Loan Holding Companies.* This interim final rule implemented new section 19(e) of the Federal Deposit Insurance Act, which prohibits any person who has been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering (or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company. The interim final rule incorporated the statutory restrictions, prescribed procedures for applying for an OTS order granting case-by-case exemptions from the restrictions, and included two regulatory exemptions from the restrictions (72 FR 29548; May 8, 2007). OTS expects to finalize the interim rule in FY 2009.

OTS anticipates implementing the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) as follows:

- *Fair Credit Reporting — Accuracy & Integrity of Information Furnished to Consumer Reporting Agencies.* The banking agencies, NCUA, and Federal Trade Commission (FTC) plan to issue a joint proposed rule and joint final rule to implement section 312 of the FACT Act. Section 312 requires the agencies to consult and coordinate with each other in order to issue consistent and comparable regulations requiring persons that furnish information to a consumer reporting agency to establish reasonable policies and procedures for the implementation of the agencies' guidelines regarding the accuracy and integrity of information relating to consumers. In addition, the agencies are to jointly prescribe regulations that identify the circumstances under which a furnisher of information to a consumer reporting agency shall be required to reinvestigate a dispute the accuracy of information contained in a consumer report based on the consumer's direct request to the

furnisher. The agencies published an Advance Notice of Proposed Rulemaking (ANPR) on March 22, 2006, at 71 FR 14419.

Under the authority of section 5 of the Federal Trade Commission Act:

- OTS, FRB and NCUA proposed to prohibit certain unfair or deceptive acts or practices in the areas of credit cards and overdrafts at 73 FR 28904 (May 19, 2008).

OTS anticipates implementing section 728 of the Financial Services Regulatory Relief Act by amending its privacy rules under the Gramm-Leach-Bliley Act to include a safe harbor model privacy form. The banking agencies, NCUA, FTC, Commodity Futures Trading Commission (FTC), and SEC published a proposed rule on March 29, 2007.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce the Federal laws relating to alcohol, tobacco, firearms, and ammunition taxes and relating to commerce involving alcohol beverages. TTB's mission and regulations are designed to:

1) Regulate with regard to permits to operate in the alcohol and tobacco industries;

2) Assure the collection of all alcohol, tobacco, and firearms and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries; and

3) Suppress commercial bribery, consumer deception, and other prohibited practices in the alcohol beverage industry.

In fiscal year 2009, the Bureau plans to give priority to the following regulatory matters:

- *Modernization of title 27, Code of Federal Regulations. TTB* will continue to pursue its multi-year program of modernizing its regulations in title 27 of the Code of Federal Regulations. This program involves updating and revising the regulations to be more clear, current, and concise, with an emphasis on the application of plain language principles. TTB laid the groundwork for this program in 2002 when it started to recodify its regulations in order to present them in a more logical sequence. In FY 2005, TTB evaluated all of the 36 CFR parts in title 27 and prioritized them as ''high,'' ''medium,'' or ''low'' in terms of the need for complete revision or regulation modernization. TTB determined importance based on industry member numbers, revenue collected, and enforcement and compliance issues identified through field audits and permit qualifications, statutory changes, significant industry innovations, and other factors. The 10 CFR parts that TTB ranked as ''high'' include the five parts directing operation of the major taxpayers under the Internal Revenue Code of 1986: Part 19 - Distilled Spirits Plants; Part 24 - Wine; Part 25 - Beer; Part 40 - Manufacture of Tobacco Products and Cigarette Papers and Tubes; and Part 53 - Manufacturers Excise Taxes - Firearms and Ammunition. These five CFR parts represent nearly all the tax revenue that TTB collects, or $14.7 billion in FY 2007. The remaining five parts rated ''high'' consist of regulations covering imports and exports (Part 27 - Importation of Distilled Spirits, Wine and Beer; Part 28 - Exportation of Alcohol; and Part 41 - Importation of Tobacco Products and Cigarette Papers and Tubes), the American Viticultural Area program (Part 9), and TTB procedures (Part 70).

To date, related to the modernization plan, the Department of the Treasury has published notices of proposed rulemaking on parts 9 and 19. The Bureau plans to review the comments received regarding these notices and publish final rules on them. In addition, the Bureau will put forward for Department of the Treasury publication an advance notice of proposed rulemaking on part 25. In FY 2009, TTB plans to review the comments received on this modernization document and to move forward as appropriate. In FY 2009, TTB also plans to draft a modernization notice of proposed rulemaking for part 28.

- *Serving Facts.* In 2007, the Department published a notice of proposed rulemaking soliciting comments on a proposal to require a serving facts statement on alcohol beverage labels. The proposed statement would include information about the serving size, the number of servings per container, and per-serving information on calories and grams of carbohydrates, fat, and protein. The proposed rule would also require information about alcohol content. TTB plans to put forward for Department publication a final rule on this matter.
- *Allergen Labeling.* On July 26, 2006, TTB published interim regulations setting forth standards for voluntary allergen labeling of alcohol beverages. These regulatory changes were an outgrowth of changes made to the Food, Drug and Cosmetic Act by the Food Allergen Labeling and Consumer Protection Act of 2004. At the same time, TTB published a proposal to make those interim requirements mandatory. TTB intends to put forward for Department publication a final rule in this matter in 2009.
- *Multi-Region Appellations for Imported Wine.* TTB will put forward for Department publication a proposal to amend its wine labeling regulations to allow the labeling of imported wines with multi-region appellations of origin. The proposed regulatory change would provide labeling treatment for imported wines that is similar to what is currently available for domestic wines, which may be labeled with a multi-state or multi-county appellation of origin.
- *Specially Denatured and Completely Denatured Alcohol Formulas.* TTB will submit for publication by the Department a proposal to reclassify some specially denatured alcohol (SDA) formulas as completely denatured alcohol (CDA) for which formula submission to TTB is not required. The proposed regulatory changes would also allow other SDA formulas to be used without the submission of article formulas. These changes would allow TTB to shift its SDA-dedicated resources from the current front-end pre-market formula control approach to a post-market assessment of actual compliance with SDA regulations.
- *Alcohol Fuel Plants.* TTB intends to put forward for Department publication proposed amendments to the alcohol fuel plant regulations, in recognition of the significant growth in this industry segment. The proposed changes would include updated procedures for producers of distilled spirits intended for fuel use that will enhance their operations consistent with TTB's responsibility to protect the revenue.
- *Special (Occupational) Tax Repeal.* TTB will submit for publication by the Department amendments to conform the TTB regulations to the statutory repeal of the special (occupational) taxes on producers and marketers of alcoholic beverages. The regulatory changes will reflect the replacement of tax payment by a registration procedure.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) has responsibility for borrowing the money needed to operate the Federal Government and accounting for the resulting debt, regulating the primary and secondary Treasury securities markets, and ensuring that reliable systems and processes are in place for buying and transferring Treasury securities.

BPD administers regulations: (1) Governing transactions in Government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended; (2) Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local Government securities; (3) Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations; (4) Governing securities held in Treasury's retail systems; and (5) Governing the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

Treasury's GSA rules govern financial responsibility, the protection of customer funds and securities, record keeping, reporting, audit, and large position reporting for all government securities brokers and dealers, including financial institutions.

Treasury maintains regulations governing two retail systems for purchasing and holding Treasury securities: Legacy Treasury Direct, in which investors can purchase, manage, and hold marketable Treasury securities in book-entry form, and TreasuryDirect, in which investors may purchase, manage, and hold savings bonds, marketable Treasury securities, and certificates of indebtedness in an Internet-based system.

During fiscal year 2009, BPD will accord priority to the following regulatory projects:

- *TreasuryDirect.* To date, only individuals have been able to open accounts in TreasuryDirect. BPD plans to issue a final rule to permit a trustee of a trust, corporation, limited liability company, partnership, sole proprietorship, legal representative of a decedent's estate, and legal guardian of the estate of an incompetent person or minor to open accounts in TreasuryDirect and conduct transactions in eligible Treasury securities. BPD will also take the opportunity to make non-substantive technical corrections to the regulations.
- *Series I Savings Bonds.* BPD plans to issue a final rule amending the regulations for Series I savings bonds to clarify that the fixed rate of return and the composite rate will always be greater than or equal to zero percent. The amendment makes no substantive change to the regulations but will benefit investors by clarifying that the fixed rate and the composite rate will not be negative under any market conditions.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, debt collection, and Government-wide accounting programs. For fiscal year 2009, FMS's regulatory plan includes the following priority:

- *Management of Federal Agency Disbursements.* FMS is amending 31 CFR part 208 to increase the use of agency electronic payments. Currently, 31 CFR - 208.6 requires that Federal electronic payments other than vendor payments be directed to a deposit account at the financial institution ''in the name of'' the individual. Treasury waived this requirement for Federal agencies issuing part or all of an employee's travel reimbursement to the travel card issuing bank for crediting to the employee's travel card account. In fiscal year 2009, a proposed rule will codify the terms of the waiver. In addition, the proposed rule would prohibit a Federal agency from making a check payment to another Federal agency, and would instead require that all agency-to-agency payments be made through the Intra-Governmental Payment and Collection System.

Domestic Finance - Office of the Fiscal Assistant Secretary (OFAS)

The Office of the Fiscal Assistant Secretary develops policy for and oversees the operations of the financial infrastructure of the federal government; including payments, collections, cash management, financing, central accounting, and delinquent debt collection.

Treasury strongly encourages electronic payment of Federal benefits, but electronic payments may cause problems in certain instances. Specifically, individuals who have bank accounts and are subject to garnishment actions may find direct deposit unattractive. Financial institutions may freeze accounts that receive federal benefits as they perform due diligence in complying with State garnishment orders, even though Federal statues exempt most Federal benefits from garnishment.

In FY 2009, Treasury plans to promulgate a joint rule, with federal benefit agencies, to address the practice of account freezes and holds to ensure that benefit recipients have access to a certain amount of lifeline funds while garnishment orders or other legal processes are adjudicated.

The regulation will provide financial institutions with specific instructions on the manner and extent to which accounts with exempt funds can be frozen in the face of a garnishment order. It may also include some provisions aimed at Federal benefit agencies necessary to help financial institutions comply with the instructions. We do not expect the policy to have specific provisions for consumers, States, debt collectors, or banking regulators. However, the banking regulators would enforce the policy in cases of non-compliance by means of their general authorities.

The regulation will not specifically address the process for adjudicating garnishment orders, State debt collection or claims laws in a broader sense, or other banking practices and procedures. This proposed regulation will be a new part in Title 31.

TREAS—Comptroller of the Currency (OCC)

FINAL RULE STAGE

97. BASEL II STANDARDIZED APPROACH

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

12 USC 93a; 12 USC 3907; 12 USC 3909

CFR Citation:

12 CFR 3

Legal Deadline:

None

Abstract:

The OCC, FRB, FDIC, and OTS have decided to withdraw the proposed revisions to the existing domestic risk-based capital framework known as Basel 1A. Instead, the Federal banking agencies proposed a new risk-based capital framework based on the Standardized Approach for credit risk and the Basic Indicator approach for operational risk described in the capital adequacy framework titled ''International Convergence of Capital Measures and Capital Standards: A Revised Framework,'' published by the Basel Committee on Banking Supervision.

Statement of Need:

This rulemaking is necessary to enhance the risk-sensitivity of the risk-based capital rules for those banks that will not be subject to the New Basel Capital Accord (Basel II) capital framework.

Summary of Legal Basis:

The OCC is implementing the Basel II Standardized Approach capital framework for domestic financial institutions that choose to adopt it. This initiative is based on the OCC's general rulemaking authority in 12 U.S.C. 93a and its specific authority under 12 U.S.C. 3907 and 3909. 12 U.S.C. 3907(a)(2) specifically authorizes the OCC to establish minimum capital levels for financial institutions that the OCC, in its discretion, deems necessary or appropriate.

Alternatives:

Please see the OCC's regulatory impact analysis, which can be found in its entirety at http://www.occ.treas.gov/law/basel.htm under the link of ''Regulatory Impact Analysis for Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Standardized Risk-Based Capital Rules (Basel II: Standardized Option), Office of the Comptroller of the Currency, International and Economic Affairs (2008).''

Anticipated Cost and Benefits:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	07/29/08	73 FR 43982
NPRM Comment Period End	10/27/08	
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers benefit programs that recognize the important public obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their beneficiaries. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve at least one of three VA components: The Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The primary mission of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their beneficiaries. The primary mission of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The primary mission of the National Cemetery Administration is to bury eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful Nation to honor the memory and service of those who served in the Armed Forces.

VA's regulatory priorities include a special project to undertake a comprehensive review and improvement of its existing regulations. The first portion of this project is devoted to reviewing, reorganizing, and rewriting the VA's compensation and pension regulations found in 38 CFR part 3. The goal of the Regulation Rewrite Project is to improve the clarity and logical consistency of these regulations in order to better inform veterans and their family members of their entitlements.

BILLING CODE 8320–01–S

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

OVERVIEW

The mission of the Environmental Protection Agency (EPA) is to protect and safeguard human health and the environment. Since 1970, EPA, together with its partners and stakeholders, has been delivering a cleaner, healthier environment to the public. EPA's achievements, from regulating auto emissions to banning the use of DDT, from cleaning up toxic waste to protecting the ozone layer, and from increasing recycling to revitalizing inner-city brownfields, have resulted in cleaner air, purer water, and better protected land. Our air is cleaner, our water is purer, and our land is healthier than just a generation ago.

Between 1970 and 2004, total emissions of the six major air pollutants dropped by 54 percent. This is particularly impressive when noted that the gross domestic product increased 187 percent, energy consumption increased 47 percent, and U.S. population grew by 40 percent during the same time. Through land restoration efforts, 600,000 acres of contaminated land now provide ecological, economic, and recreational benefits. In 2004, EPA and its partners took action to restore, enhance, and protect nearly 830,000 acres of wetlands. EPA continues to build on its past success by using regulatory and innovative approaches to achieve effective results. In doing so, the Agency uses three guiding principles to govern its work to maintain the strongest level of environmental protection.

The Agency uses three guiding principles to govern its work to maintain the strongest level of environmental protection:

- ***Results and Accountability.*** EPA is committed to being a good steward of our environment and a good steward of America's tax dollars. To provide the public with the environmental results it expects and deserves, we must operate as efficiently and effectively as possible. Accountability for results is a key component of the President's Management Agenda, designed to make government citizen-centered, results-oriented, and market-based.
- ***Innovation and Collaboration.*** Our progress depends both on our ability and continued commitment to identify and use innovative tools, approaches, and solutions to address environmental problems and to engage extensively with our partners, stakeholders, and the public. Under each of our goals, we are working to promote a sense of environmental stewardship and a shared responsibility for addressing today's challenges.
- ***Best Available Science.*** EPA needs the best scientific information available to anticipate potential environmental threats, evaluate risks, identify solutions, and develop protective standards. Sound science helps us ask the right questions, assess information, and characterize problems clearly to inform Agency decision makers.

Science guides EPA's identification and treatment of emerging issues and advances our understanding of long-standing human health and environmental challenges. EPA's research is typically crosscutting, multidisciplinary, and at the cutting edge of environmental science; reflects the dynamic nature of science; and brings scientific rigor to the characterization of uncertainty and risk.

EPA applies these principles as it works with its Federal, State, tribal, and local government partners to advance the mission of protecting human health and the environment. As a result of these collaborations, tremendous progress has been made in protecting and restoring the Nation's air, water, and land:

- EPA has strengthened the Nation's air quality standards for ground-level ozone, revising the standards for the first time since 1997. Ozone levels have dropped 21 percent nationwide since 1980 as EPA, States, and local governments have worked together to continue to improve the Nation's air.
- In FY 2007, 91.5 percent of the population served by community water systems received drinking water that met all applicable health-based drinking water standards.
- EPA issued four national drinking water regulations to boost public health and reduce risks from pathogens and other contaminants: the Cryptosporidium Rule, the Disinfection Byproducts Rule, the Ground Water Rule, and the Lead in Drinking Water Rule.
- EPA assessed over 8,000 properties while creating 28,500 new jobs through the Brownfields and Land Revitalization program since 2002.
- EPA established a permanent National Homeland Security Research Center in 2004 to provide scientific expertise, advice and guidance on homeland security issues, including how to respond to chemical and biological attacks.
- EPA established the U.S. as the first country in the world to reassess all pesticides used in food, removing unsafe products from the marketplace and bringing about stronger and more effective health protections for consumers.
- EPA's ocean survey vessel, the BOLD, has conducted scientific surveys from the Gulf of Mexico and the Caribbean, to the waters of New England since 2005. The BOLD has researched red tide, monitored coral reefs and most notably, assisted in the Federal response to hurricanes Katrina and Rita — testing the coastal impact of those storms and analyzing the health of marine life. In 2007, the BOLD completed 40 oceanographic surveys while spending over 270 days at sea.
- EPA released the first-ever, national Report on the Environment in 2003 to educate the American people about environmental trends in the condition of the air, water, and land and related trends in human health and ecological condition in the United States.
- Over the past 6 years, EPA's climate change partnership programs have prevented an estimated 500 million metric tons of greenhouse gas emissions. That is equivalent to taking 55 million cars off the road.
- EPA also promotes international partnerships to reduce greenhouse gasses and deploy clean technologies. Through the Methane to Markets Partnership, we work with other countries and the U.S. private sector to reduce global methane emissions, enhance economic growth, promote energy security, and improve the environment by using cost-effective methane recovery technologies. In addition, the United States has joined Australia, China, India, Japan, and South Korea in the Asia-Pacific Partnership on Clean Development and Climate), which will advance the President's goal for cleaner and more efficient technologies and practices.

EPA continues to accelerate its pace of environmental protection while maintaining the Nation's economic competitiveness. To that end, the Agency has a number of regulatory goals in order to meet the challenge while demonstrating progress consistent with its principles of results and accountability, innovation and collaboration, and the use of the best

available science. Using these three principles as the foundation of its activity, EPA is sharpening focus on achieving measurable environmental results on the following five strategic goals:

Clean Air and Global Climate Change

Among the high-priority issues for EPA over the next year and beyond are climate change, energy efficiency, and energy security. These issues are closely related, and this Regulatory Plan describes current efforts to address them.

EPA also continues to advance its efforts to control the more familiar air pollutants, such as smog, soot, and oxides of nitrogen and sulfur. While EPA has made tremendous progress toward achieving clean, healthy air that is safe to breathe, air pollution continues to be a great problem. The average adult breathes more than 3000 gallons of air every day, and children breathe more air per pound of body weight. Air pollutants, such as those that form urban smog can remain in the environment for long periods of time and can be carried by the wind hundreds of miles from their origin. This year's Regulatory Plan describes efforts to review standards for oxides of nitrogen and oxides of sulfur.

EPA's programs will allow the Nation to make substantial progress in protecting human health and ecosystems from air pollution. For example, by 2011, new motor vehicles, including trucks and buses, will emit 75 to 95 percent less particulate matter and nitrogen oxides than they did in 2003. These programs, when fully implemented, may prevent tens of thousands of premature deaths and hospitalizations, and may prevent millions of lost work and school days each year. These national programs will be supplemented by local control strategies designed to ensure that the air quality standards are achieved and maintained.

EPA also works to address climate change. Since the beginning of the industrial revolution, concentrations of several greenhouse gases (particularly carbon dioxide) have increased substantially. EPA is currently working with other Federal Agencies to implement the President's 20 in 10 program, to reduce gasoline consumption up to 20% in the next ten years.

Clean and Safe Water

EPA's ''Clean and Safe Water'' goal defines the improvements that EPA expects to see in the quality of the Nation's drinking water and of surface waters over the next 4 years. These goals include improving compliance with drinking water standards, maintaining safe water quality at public beaches, restoring more than 2,000 polluted waterbodies, and improving the health of coastal waters.

In an effort to address the Nation's aging water infrastructure system, EPA is developing and implementing more innovative, market-based infrastructure financing tools for States, tribes, and communities. These initiatives will increase and accelerate investment in water infrastructure and offer greater flexibility and cost-effectiveness to provide clean and safe water for every American. Through technology, innovation, and collaboration, EPA makes better use of its resources to help the Nation's water and wastewater systems be highly efficient and to move infrastructure toward greater sustainability for many years to come.

Land Preservation and Restoration

EPA's land preservation and restoration goal addresses the need for managing waste, conserving and recovering the value of wastes, preventing releases, responding to emergencies, and cleaning up contaminated land. Uncontrolled wastes can cause acute illness or chronic disease and can threaten healthy ecosystems.

Over the next 4 years, EPA will establish or update approved controls to prevent dangerous releases at approximately 500 hazardous waste treatment, storage, and disposal facilities and also will address 2 long-standing tribal waste management concerns: increasing the number of tribes covered by integrated waste management plans and cleaning up open dumps.

To reduce and control the risks posed by accidental and intentional releases of harmful substances, EPA plans to maintain a high level of readiness to respond to emergencies, lead or oversee the response at more than 1,600 hazardous waste removals and reduce by 25 percent the number of gallons of oil spilled by facilities subject to Facility Response Plan regulations relative to previous levels. EPA and its partners, and responsible parties will remediate contaminated land, reduce risk to the public, and enable communities to return properties to beneficial reuse. We will also apply leading-edge scientific research to improve our capability to assess conditions and determine relative risks posed by contamination at hazardous waste sites.

Healthy Communities and Ecosystems

With a mix of regulatory programs and partnership approaches the Agency achieves results in ways that are efficient, innovative and sustainable. EPA continues to work collaboratively with other nations and international organizations to identify, develop, and implement policy options to address global environmental issues of mutual concern. Following this, EPA strives to build a community's capability to make decisions that affect the environment.

EPA's efforts to share information and provide assistance offers the tools needed to effectively address the myriad aspects of planned development or redevelopment. These contributions are tailored to circumstances spanning the issues of sensitive communities and international cooperation. In a similar manner, EPA's ecosystem protection programs encompass a wide range of approaches that address specific at-risk regional areas, such as large waterbodies. EPA also works with partners to protect larger categories of threatened systems, such as estuaries and wetlands. In cooperation with the U.S. Army Corps of Engineers, EPA will assure ''no net loss'' of wetlands.

Compliance and Environmental Stewardship

EPA ensures that government, business, and the public comply with Federal laws and regulations by monitoring compliance and taking enforcement actions that result in reduced pollution and improved environmental management practices. To accelerate the Nation's environmental protection efforts, EPA works to prevent pollution at the source, to advance other forms of environmental stewardship, and to employ the tools of innovation and collaboration.

Effective compliance assistance and strong, consistent enforcement are critical to achieving the human health and environmental benefits expected from the country's environmental laws. EPA monitors compliance patterns and trends and focuses on priority problem areas identified in consultation with States, tribes, and other partners. The Agency supports the regulated community by assisting regulated entities in understanding environmental requirements, helping them identify cost-effective compliance options and strategies, and providing incentives for compliance.

EPA promotes the principles of responsible environmental stewardship, sustainability, and accountability to achieve its strategic goals. Collaborating closely with other Federal agencies, States, and tribes, the Agency identifies and promotes innovations that assist businesses and communities in improving their environmental performance. EPA works to improve and encourage pollution prevention and sustainable practices, helping businesses and communities move beyond compliance and become partners in protecting our national resources and improving the environment and our citizens' health.

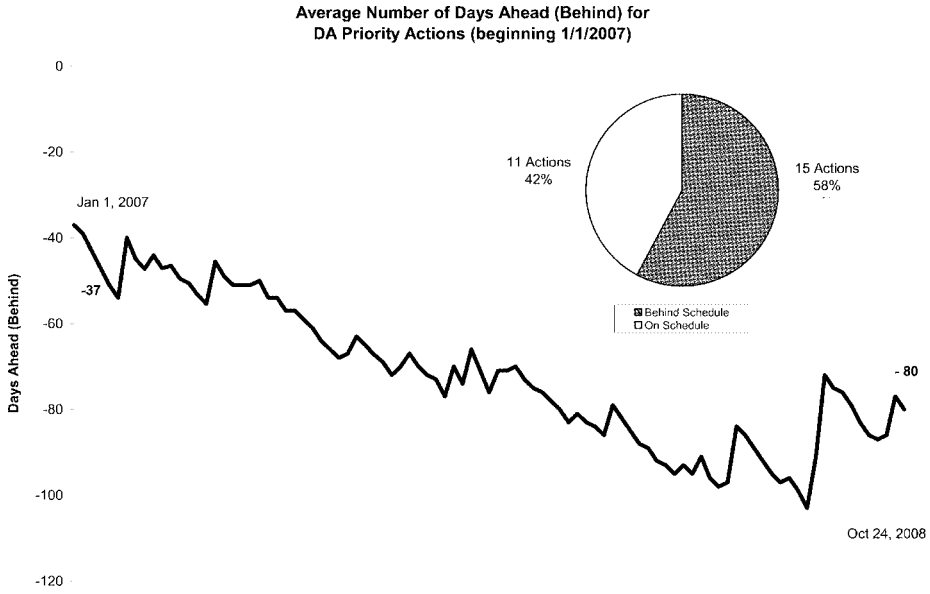
Performance Management

In 2007, the Environmental Protection Agency (EPA) was awarded the President's *Quality Award for Overall Management* for operating a results-oriented, data-driven, performance management system. In 2008, EPA's management achievements included: EPA receiving ''all greens'' in the five government-wide management initiatives under the President's Management Agenda; the Government Accountability Office acknowledging EPA as a positive ''outlier'' among Federal Agencies and Departments in its use of performance management data; EPA leading development of improved efficiency measures for research projects across government; working with our State partners to align performance measures; creating the Performance Management Council to provide guidance on incorporating performance management into the Agency; establishing a division devoted to improving Agency outcomes; and EPA's launch of the first Federal 'stat' program, EPA*Stat,* to provide frequent information about how the Agency performs and how our operations can be improved. As a result, EPA is increasingly viewed not only as a well-managed organization, but also as a model for making the government more effective and efficient. You can find additional information on performance management and indicators, as well as the EPA's Quarterly Management Report at http://www.epa.gov/ocfo/qmr/index.htm

Timeliness and Transparency of Regulatory Actions

Completing actions on time or ahead of schedule means EPA keeps its commitments, improves the quality of decisions, and the public and environment benefit from EPA's key actions sooner. As part of EPA*Stat,* the Agency is focusing management attention on several dozen key actions and tracking their adherence to an agreed-to schedule for the completion of a standard set of development milestones leading to promulgation of rules or finalization of other types of actions. Actions that are completed on time or early are used by EPA as potential exemplars of best practices; program offices that achieve timely completion of actions are encouraged to share their success stories and lessons learned. Actions that are off-track are identified early and corrective steps are taken to expedite their completion.

The following shows the results of EPA's effort to track the timeliness of the Deputy Administrator's priority actions since January 2007:



Of the 26 actions being tracked against internal milestones, 15 actions accounted for the days behind schedule as of 10/24/08.

EPA is also making Federal environmental regulation more transparent by providing on-line information as soon as the agency begins the development of a new rule. EPA is using Action Initiation Lists (AILs) to notify the public about new rules and other regulatory actions. AILs will be posted on the EPA Web site at roughly the end of each month; they will describe those actions that were approved for commencement during the given month. Formerly, the public had to wait for EPA's *Semiannual Regulatory Agenda,* which is updated only every six months, to learn about new regulatory actions. Visit the AIL at http://www.epa.gov/lawsregs/search/ail.html

Aggregate Costs and Benefits

Per the amendments to E.O. 12866, we are providing a combined aggregate estimate of costs and benefits of regulations included in the Regulatory Plan. Any aggregate estimate of total costs and benefits must be highly qualified. Problems with aggregation arise due to differing baselines, data gaps, and inconsistencies in methodology and type of regulatory costs and benefits considered. The aggregate estimates presented combine

annualized and annual numbers. Cost savings are treated as benefits. Dollars were converted to 2001 using the GDP deflator. The ranges presented below do not reflect the full range of uncertainty in the benefit and cost estimates for these rules.

It is critical to note that the aggregate estimates omit important benefits and costs that cannot be monetized. For example, the estimates leave out many health and welfare benefits, such as ecosystem functions, visibility, avoided cases of chronic respiratory damage, hypertension, and coronary heart disease, among many others. In addition, for many of the rules in the Plan, we were unable to estimate costs and benefits at this time because the range of policy options under consideration is wide and varied.

The monetized aggregate estimates provided below reflect the following rules in the Regulatory Plan: (1) Monetized cost and benefit information was provided for: Hazardous Waste Manifest Revisions — Standards for Electronic Manifests Final Rule; and Expanding the Comparable Fuels Exclusion under RCRA; (2) Monetized cost information (but no monetized benefits) was provided for: Test Rule — Certain High Production Volume (HPV) Chemicals; (3) Monetized benefit information (but no monetized costs) was provided for: Spill Prevention, Control and Countermeasure (SPCC).

Aggregate annual monetized benefits range from $329 million to $422 million per year. Aggregate annual monetized costs are estimated to range from $144 million to $153 million per year.

Rules Expected to Affect Small Entities

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. A number of rules included in this Plan might be of particular interest to small businesses including:

- Control of Emissions from Spark-Ignition Engines and Fuel Systems from Marine Vessels and Small Equipment (2060-AM34);
- Renewable Fuel Standard Program (2060-AO810); and
- Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (2040-AE91).

Reducing States' Reporting Burden

In an effort to address State concerns over escalating reporting requirements, EPA and the Environmental Council of the States (ECOS) launched a joint Burden Reduction Initiative in October 2006. This Initiative aimed to reduce States' low-value, high-burden reporting requirements, thus conserving both States' and EPA's valuable resources while maintaining a commitment to protecting human health and the environment.

Each of the 50 States was asked to identify their top five reporting requirements for potential streamlining or elimination. Thirty-eight States responded, recommending more than 200 ways to reduce reporting frequency and level of detail. States also recommended that EPA enable States to submit more data electronically and, to the extent possible, standardize regional differences in reporting requirements.

EPA has been steadily working to address the States' recommendations since the Initiative began. In 2008, EPA has focused on:

1. Addressing priority areas identified by the States in summer 2007;
2. Improving the Initiative's transparency and accuracy; and
3. Creating tools for incorporating burden reduction into EPA's standard operating procedures.

Examples of the priority areas include:

a. Integrated Compliance Information System for the National Pollutant Discharge Elimination System (ICIS-NPDES) - States recommended that EPA harmonize and reduce reporting requirements.

b. Disadvantaged Business Enterprise (DBE) - States recommended that EPA reduce DBE utilization reporting frequency.

c. National Emissions Inventory (NEI) - States recommended that EPA streamline NEI reporting requirements.

More information about the Burden Reduction Initiative is available at http://www.epa.gov/burdenreduction/.

Trade and Environment Policy

EPA is committed to encouraging the development of environmentally sound international policy. In part, EPA pursues this goal by advancing environmental objectives in international trade agreements, investment projects, and financial ventures. In so doing, EPA supports the realization of two of the three critical elements of sustainable development: environmental and economic progress.

Recognizing that the relationship between trade and environmental policy is complex, EPA helps ensure that trade agreements balance both economic and environmental interests. EPA encourages the development of agreements that: 1) encourage high levels of environmental protection; 2) include commitments to effective enforcement of environmental laws and regulations; 3) provide capacity building in response to relevant environmental needs and issues in the developing world; and, 4) do not undercut domestic health, safety and environmental measures.

EPA promoted the development of environmental reviews of trade agreements and that these reviews follow specific guidelines. EPA plays a lead role in negotiating the environmental provisions of a number of bilateral and regional trade agreements (e.g., with Jordan, Chile, Singapore and Central America, among others).

EPA's Regulatory Plan

EPA's Regulatory Plan is an important element of the Agency's strategy for achieving environmental results within the framework described above. The Agency's regulatory program includes several efforts that will reduce the burden placed on small businesses while ensuring the integrity of the environment. Many of these have been nominated for Agency action through the public nomination process initiated by the Office of Management and Budget (OMB) in 2001, 2002, and 2004 and many of these have been completed. Taken as a whole, the Agency's Regulatory Plan will ensure that the Nation continues to achieve improvements in environmental quality while minimizing burden to States and the regulated community.

HIGHLIGHTS OF EPA'S REGULATORY PLAN

Office of Air and Radiation

This year EPA plans to take initial steps to address the interconnected issues of climate change, energy efficiency, and energy security. In taking these steps, EPA is carrying out two Congressional mandates. Title II of the 2007 Energy Independence and Security Act amended Section 211(o) of the Clean Air Act, directing EPA to set a modified standard that will increase the quantities of renewable fuels available to consumers. EPA is implementing this

mandate by developing the Renewable Fuels Standard Program outlined in this Regulatory Plan. Moreover, in the FY 2008 Consolidated Appropriations Act, Congress directed EPA to develop a rule to establish monitoring, reporting and recordkeeping requirements on facilities that produce, import or emit greenhouse gases above a specific threshold in order to inform future regulatory policy options related to greenhouse gases. EPA is fulfilling this mandate through the Greenhouse Gas Reporting Rule currently under development and summarized below in this Regulatory Plan.

Another important and ongoing OAR regulatory priority is to protect public health and the environment from exposure to harmful pollutants. In the coming year, EPA will reach important milestones in the development of two rules that address the harmful effects of Oxides of Nitrogen and Oxides of Sulfur. The first of these two efforts is a review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide, which can constrict the body's air passages and impair pulmonary function, and also increase respiratory illness in children. The second effort is a review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur. Reviews of these two pollutants are being combined due to the fact that these two pollutants and their associated transformation products are linked from an atmospheric chemistry perspective, as well as from an environmental effects perspective, most notably through aerosol formation and acidification in ecosystems. Both of these review efforts are summarized below in this Regulatory Plan.

EPA continues to address toxic air pollution under authority of the Clean Air Act Amendments of 1990. The largest part of this effort is the ''Maximum Achievable Control Technology'' (MACT) program, which is now well into its second phase consisting of evaluation of the effectiveness of work done so far, assessment of the need for additional controls, and assessment of advances in control technology. These evaluations and assessments are grouped into rulemakings called ''Risk and Technology Reviews.'' The remaining MACT source categories requiring Risk and Technology Reviews are being combined into several groups to help meet statutory dates, raise and resolve programmatic issues more effectively, minimize resources by using available data and focusing on high risk sources, and provide consistent review and analysis. One example of the rulemakings currently underway is summarized in this Regulatory Plan. The example, called ''Risk and Technology Review Phase II Group 2a,'' covers nine source categories including rubber production, mineral wool production, pharmaceuticals production, printing and publishing, and marine vessel loading operations.

Since many air quality programs are administered through permitting and monitoring programs, OAR continues to work toward improving these programs to increase efficiency and reduce regulatory burden. OAR is continuing to develop rulemakings to streamline and improve its New Source Review (NSR) permitting program. This effort will clarify the circumstances under which companies must obtain construction permits before building new facilities or significantly modifying existing facilities. These revisions will provide more regulatory certainty by clarifying compliance requirements, and will also make the program easier to administer while maintaining its environmental benefits. In developing these NSR rule revisions, OAR is drawing upon many years of intense involvement with major stakeholders, who have helped shape a suite of reforms that are expected to both improve the environmental effectiveness of these programs and make them easier to comply with. One example of this effort is included in this Regulatory Plan, entitled ''NSR: Electric Generating Units,'' addressing issues in emission measurement.

Office of Solid Waste and Emergency Response

The Office of Solid Waste and Emergency Response (OSWER) contributes to the Agency's overall mission of protecting public health and the environment by focusing on preparing for, preventing and responding to chemical and oil spills, accidents, and emergencies; enhancing homeland security; increasing the beneficial use and recycling of secondary materials, the safe management of wastes and cleaning up contaminated property and making it available for reuse. EPA carries out these missions in partnership with other Federal agencies, States, tribes, local governments, communities, nongovernmental organizations, and the private sector. To further these missions, OSWER has identified several regulatory priorities for the upcoming fiscal year that will promote stewardship and resource conservation and focus regulatory efforts on risk reduction and statutory compliance.

Consistent with the Agency's goal to reduce unnecessary reports where there would be no likely Federal, State or local emergency response to such notice(s), the Agency is considering an administrative reporting exemption from particular notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. The exemption being considered is for releases of hazardous substances to the air where the source of those hazardous substances is animal waste at farms. If finalized, it is estimated that the rule will reduce burden on farms associated with making notifications under CERCLA section 103 by approximately 3,408,000 hours over the ten year period beginning in 2009 and associated costs by approximately $155,313,000 over the same period.

Under the Clean Air Act (CAA), EPA applies different standards to the combustion of waste materials than to the combustion of fuels or feedstocks which are not solid wastes. The definition of non-hazardous solid waste can have a significant impact on whether certain materials (including biomass, tires, etc.) are used as a fuel or feedstock or are disposed. In this rulemaking, EPA will look to define which secondary materials are fuels or feedstocks, and not considered ''solid wastes'' under RCRA subtitle D. Allowing for the legitimate use of secondary materials as a fuel or feedstock can preserve natural resources, conserve energy, reduce greenhouse emissions, as well as save money by reducing costs for raw materials and disposal that would otherwise be necessary.

EPA is continuing its pursuit to improve and modernize the hazardous waste tracking system by developing an ''E-manifest.'' This system will allow electronic processing of hazardous waste transactions that will greatly enhance tracking capabilities, while significantly reducing administrative burden and costs for governments and the regulated community. The E-manifest will build on the new standardized manifest form that took effect in September 2006, and will ensure the continued safe management of hazardous waste. However, such regulations cannot be promulgated until legislative authority is provided to implement such a system.

Office of Prevention, Pesticides, and Toxic Substances

The primary goal of EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) is to prevent and reduce pesticide and industrial and commercial chemical risks to humans, communities and ecosystems. OPPTS employs a mix of regulatory and non-regulatory methods to achieve this goal. For more information about OPPTS's regulatory actions, as well as information about our other programs and activities, please visit our Web site at www.epa.gov/oppts.

In Spring of 2008, EPA received a section 21 petition to use section 6 of TSCA to adopt a recently promulgated California State regulation concerning emissions of formaldehyde from certain composite wood products. OPPTS has responded to the petition and has initiated the development of an advanced notice of proposed rule-making (ANPRM) to investigate whether and what type of regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from pressed wood products. OPPTS is working to publish the ANPR and plans to hold five stakeholder meetings to solicit comments by the end of 2008. OPPTS is also working with ORD to develop a hazard characterization for formaldehyde and to initiate peer review early in 2009. In addition, OPPTS has embarked on a study of substitutes to formaldehyde used in pressed wood, and plans to initiate an industry survey to better understand the use of formaldehyde within the pressed wood market. OPPTS plans to determine the appropriate course of regulatory action in 2009 based on the ANPRM and supporting work.

Office of Water

Among EPA's Office of Water's primary goals are to ensure that drinking water is safe; to restore and maintain oceans, watersheds, and their aquatic ecosystems; to protect human health; to support economic and recreational activities; and to provide healthy habitat for fish, plants, and wildlife. OW 's regulatory priority for the coming year is a proposed rulemaking that will address erosion and sediment discharges associated with construction and development activities. This rulemaking and its schedule respond to a court order that requires the Agency to promulgate final regulations by December of 2009.

EPA

PRERULE STAGE

98. REVIEW OF THE PRIMARY NATIONAL AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

None

Abstract:

The Clean Air Act Amendments of 1977 require EPA to review and, if appropriate, revise the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) periodically. On October 11, 1995, the EPA published a final rule not to revise either the primary or secondary NAAQS for nitrogen dioxide (NO2). That action provided the Administrator's final determination, after careful evaluation of comments received on the October 1995 proposal, that revisions to neither the primary nor the secondary NAAQS for NO2 were appropriate at that time. On December 9, 2005, the EPA/ORD initiated the current periodic review of NO2 air quality criteria, the scientific basis for the NAAQS, with a call for information in the Federal Register. This regulatory action is for the Agency's review of the primary NO2 NAAQS. Review of the secondary NO2 NAAQS will be part of a separate regulatory action combined with review of the sulfur dioxide NAAQS. As part of the review process, the Agency will prepare an Integrated Review Plan, an Integrated Science Assessment, and a Risk/Exposure Assessment. These documents will be reviewed by the public and by the Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee established to review the scientific and technical basis of the NAAQS. The final documents will reflect the input received through these reviews. An Advance Notice of Proposed Rulemaking (ANPRM) reflecting Agency views will then be published. This ANPRM will also be reviewed by the public and by CASAC during a public comment period. Input received through these reviews will inform the development of a proposed rulemaking. The Administrator's proposal to retain or revise the NO2 NAAQS will be published with a request for public comment. Input received during the public comment period will be considered in the Administrator's final decision.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for NO2 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 NO2 are whether to reaffirm or revise the existing standards.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States and Regional Planning Organizations information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Typically, an analysis plan for preparing a regulatory impact plan for a NAAQS proposed rulemaking will begin after CASAC has reviewed two drafts of the Integrated Science Assessment (ISA) as well as the 1st draft of the Agency's Risk/Exposure Assessment. Therefore, work on the

developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

Risks:

During the course of this review, risk assessments will be conducted to evaluate health risks associated with retention or revision of the NO2 standards

Timetable:

Action	Date	FR Cite
ANPRM	12/00/08	
NPRM	05/00/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 5111; EPA Docket information: EPA-HQ-OAR-2006-0922

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RIN: 2060–AO19

EPA

99. REVIEW OF THE SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OXIDES OF NITROGEN AND OXIDES OF SULFUR

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

NPRM, Judicial, February 12, 2010, No court schedule has been ordered for this review as of yet. This date represents the date submitted by EPA to the court.

Final, Judicial, October 19, 2010, No court schedule has been ordered for this review as of yet. This date represents the date submitted by EPA to the court.

Abstract:

The Clean Air Act Amendments of 1977 require EPA to review and, if appropriate, revise air quality criteria, primary (health-based), and secondary (welfare-based) national ambient air quality standards (NAAQS) every five years. On October 11, 1995, the EPA published a final rule not to revise either the primary or secondary NAAQS for nitrogen dioxide (NO2). That action provided the Administrator's final determination, after careful evaluation of comments, that revisions to neither the primary nor the secondary NAAQS for NO2 were appropriate at that time. On May 22, 1996, the EPA published a final decision that revisions of the primary and secondary NAAQS for sulfur dioxide (SO2) were not appropriate at that time, aside from several minor technical changes. That action provided the Administrator's final determination, after careful evaluation of comments, that signficant revisions to the primary and the secondary NAAQS for SO2 would not be made at that time. On December 9, 2005, the EPA/ORD initiated the current periodic review of NO2 air quality criteria with a call for information in the Federal Register. On May 3, 2006, the EPA/ORD initiated the current periodic review of SO2 air quality criteria with a call for information in the Federal Register. The decision was made to review the oxides of nitrogen and the oxides of sulfur together, rather than individually, as has been done in the past. This decision derives from the fact that NOx, SOx, and their associated transformation products are linked from an atmospheric chemistry perspective, as well as from an environmental effects perspective (most notably in the case of secondary aerosol formation and acidification in ecosystems).

A workshop was held in July 2007 to discuss key policy-relevant issues around which EPA would structure the review and to provide an opportunity for peer review of draft chapters of the Integrated Science Assessment being prepared by ORD. In addition to providing input into the Science Assessment, the workshop also provided important input as OAR and ORD consider the appropriate design and scope of the major elements that inform the Agency's Policy Assessment under the new NAAQS process: an integrated plan highlighting the key policy-relevant issues prepared by OAR and ORD, an Integrated Science Assessment prepared by ORD, and a Risk/Exposure Assessment prepared by OAR.

The Policy Assessment prepared by OAR will evaluate the policy implications of key information contained in the Integrated Science Assessment and Risk/Exposure Assessment, as well as any appropriate technical analyses. The Policy Assessment will be published as an ANPRM that reflects Agency views regarding options to retain or revise the NO2 and/or SO2 NAAQS. EPA will solicit comments from the Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee established to review the scientific and technical basis of the NAAQS, and the public several times during the development of the critical documents identified above, including the ANPRM. A Scope and Methods Plan for the review was developed and released to CASAC and the public for comment. CASAC provided comment on both the ISA (developed by ORD) and the Scope and Methods Plan on April 2-3 2008. The second draft ISA and first draft risk and exposure assessment will be released to CASAC and the public in August, 2008 for a public meeting on October 1-2, 2008. Upon the completion of the risk assessments and the development of the ANPR, the Administrator will propose to retain or revise the secondary NO2 and/or SO2 NAAQS, as appropriate,taking into consideration CASAC and public commenton the ANPR. Input received during the public comment period for the proposed decision will be considered in the Adminstrator's final decision.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for oxides of nitrogen and oxides of sulfur are to be reviewed every 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 oxides of nitrogen and oxides of sulfur are whether to reaffirm or revise the existing standards.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States and Regional Planning Organizations information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Typically, an analysis plan for preparing a regulatory impact plan for a NAAQS proposed rulemaking will begin after CASAC has reviewed two drafts of the Integrated Science Assessment (ISA) as well as the 1st draft of the Agency's Risk/Exposure Assessment. Therefore, work on the developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

Risks:

During the course of this review, risk assessments may be conducted to evaluate public welfare risks associated with retention or revision of the standards.

Timetable:

Action	Date	FR Cite
ANPRM	08/00/09	
NPRM	02/00/10	
Final Action	11/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 5170; EPA Docket information: EPA-HQ-OAR-2007-1145

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RIN: 2060–AO72

EPA

100. • FORMALDEHYDE EMISSIONS FROM PRESSED WOOD PRODUCTS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 2605 ''TSCA 6''

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

In response to a petition filed under TSCA section 21, EPA has initiated a proceeding to investigate risks posed by formaldehyde emitted from pressed wood products. As indicated in that response, EPA plans to issue an advance notice of proposed rulemaking (ANPRM) in the Fall of 2008. As part of the ANPRM process, EPA will engage stakeholders to contribute to obtaining a better understanding of the available control technologies and approaches, industry practices, and the implementation of California's regulations. Concurrently, EPA plans to develop and conduct an industry survey and initiate development of an exposure assessment and a hazard characterization that could be used for evaluating emissions standards or other approaches. Subsequently, EPA plans to develop an irritation risk assessment and quantify costs and benefits. At the conclusion of this work, OPPTS anticipates determining whether it should take action, which may include action under TSCA, or via the development of a voluntary consensus standard or other approaches. As OPPTS evaluates risks and options under TSCA, OPPTS intends to coordinate its efforts with other interested EPA offices and agencies, as well as engage the public and stakeholders.

Statement of Need:

On March 24, 2008, 25 organizations/5,000 individuals petitioned EPA to use TSCA § 6 to adopt a California Air Resources Board regulation as a national standard for formaldehyde emissions from composite wood products. In response, EPA committed to initiate a proceeding to investigate whether and what type of regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from pressed wood products. This decision was based on the hazards of formaldehyde, in combination with the potential for prolonged exposure to potentially problematic levels of formaldehyde for occupants of newly constructed housing.

Summary of Legal Basis:

The Agency has not decided to take any rulemaking action, but it is evaluating potential actions under TSCA sections 6(a) and 6(b).

Alternatives:

The Agency has not yet determined that any action is necessary, but it is evaluating potential actions under TSCA sections 6(a) and 6(b) as well as voluntary action.

Anticipated Cost and Benefits:

The Agency has not determined that any action is necessary or evaluated the costs and benefits of any possible actions.

Risks:

Formaldehyde is an eye, nose, throat, and skin irritant. At this time, the Agency is primarily concerned with the irritation risks posed by formaldehyde emissions from pressed wood products.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/08	
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 5287

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RIN: 2070–AJ44

EPA

101. ● DEFINITION OF SOLID WASTE FOR NON–HAZARDOUS MATERIALS

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 7429(a)(1)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The DC Circuit Court of Appeals vacated and remanded two EPA rules promulgated under the Clean Air Act (CAA) - the Commercial and Industrial Solid Waste Incineration (CISWI) definitions rule, issued under section 129 of the CAA, and the Boiler MACT, issued under section 112. The court concluded that EPA erred by excluding units that combust solid waste for the purpose of energy recovery from the CISWI rule and including such units in the Boilers rule. In response to the court's decision, EPA is now preparing to establish new standards under sections 112 and 129 for the various units subject to each section.

Section 129 regulates solid waste incineration units, defining them as units that combust ''any'' solid waste. It further defines ''solid waste'' as having the meaning established by the Administrator pursuant to the Solid Waste Disposal Act (SWDA). Thus, if a material is not a solid waste as established by the Administrator pursuant to the SWDA, the unit in which it is burned would not be covered under section 129.

Statement of Need:

The Office of Solid Waste and Emergency Response (OSWER) needs to determine which non-hazardous materials are ''solid wastes'' under SWDA so that the Office of Air and Radiation (OAR) can conduct appropriate sampling and determine MACT standards.

Summary of Legal Basis:

Section 129 of the CAA directs EPA to promulgate emission standards for ''solid waste incineration units'' under the Act. 42 U.S.C. Section 7429(a)(1). Previous rulemaking was vacated by the Court, therefore it is critical for OSWER to determine what constitutes a solid waste for purposes of section 129 of the CAA.

Alternatives:

No alternatives exist at this time.

Anticipated Cost and Benefits:

Non-hazardous industrial materials, such a coal combustion products and refuse materials, spent foundry sands, and construction and demolition (C&D) materials, as well as scrap tires, wood/biomass, used oil, and solvents, all represent examples of ''usable materials'' that are generated by industry in the process of producing primary products. These materials, when used as ''secondary materials'' for fuel or as ingredients in production processes, can provide significant and wide-spread benefits. The productive reuse of ''secondary materials'' for these purposes is central to the very principles of conservation and sustainability.

Risks:

Risks to human health and the environment, if any, will be addressed by either Section 112 or Section 129 of the CAA.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 5266

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RIN: 2050–AG44

EPA

PROPOSED RULE STAGE

102. GREENHOUSE GAS MANDATORY REPORTING RULE

Priority:

Other Significant

Legal Authority:

42 USC 7401 et seq

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, September 26, 2008, FY08 Consolidated Appropriations

directed EPA to publish a proposal 9 months after enactment.

Final, Statutory, June 26, 2009, FY08 Consolidated Appropriations directed EPA to publish final 18 months after enactment.

Abstract:

On December 26, 2007, President Bush signed the FY2008 Consolidated Appropriations Amendment which authorized funding for EPA to ''develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than 18 months after the date of enactment of this Act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.'' The accompanying joint explanatory statement directed EPA to ''use its existing authority under the Clean Air Act'' to develop a mandatory greenhouse gas reporting rule. The joint explanatory statement went on to say that ''The Agency is further directed to include in its rule reporting of emissions resulting from upstream production and downstream sources, to the extent that the Administrator deems it appropriate.'' Accordingly this rulemaking would establish monitoring, reporting, and recordkeeping requirements on facilities that produce, import, or emit greenhouse gases above a specific threshold in order to provide comprehensive and accurate data to support a range of future climate policy options.

Statement of Need:

This action is necessary because the FY2008 Consolidated Appropriations Amendment signed by President Bush on December 26, 2007, authorized EPA to ''develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than 18 months after the date of enactment of this Act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.''

Summary of Legal Basis:

The legal basis is the Clean Air Act, 42 U.S.C. 7401, et seq.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	02/00/09	
Final Action	10/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

SAN No. 5242

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RIN: 2060–AO79

EPA

103. RENEWABLE FUELS STANDARD PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

Clean Air Act Section 211(o)

CFR Citation:

40 CFR Part 86, 40 CFR Part 80

Legal Deadline:

Final, Statutory, December 19, 2008.

Abstract:

This action will implement certain provisions in Title II of the 2007 Energy Independence and Security Act that amend Section 211 (o) of the Clean Air Act. The new law sets a modified standard for renewable fuels increasing the national requirement to 9.0 billion gallons in 2008 and rising to 36 billion gallons by 2022. Of the latter total, 21 billion gallons is required to be obtained from cellulosic ethanol and other advanced biofuels. Starting in 2016, all of the increase in the RFS target must be met with advanced biofuels, defined as cellulosic ethanol and other biofuels derived from feedstock other than corn starch — with explicit standards for cellulosic biofuels and biomass-based diesel. Renewable fuels produced from new biorefineries will be required to reduce by at least 20% the life cycle greenhouse gas (GHG) emissions relative to life cycle emissions from gasoline and diesel.

Statement of Need:

This action will implement certain provisions in Title II of the 2007 Energy Independence and Security Act that amend Section 211 (o) of the Clean Air Act. This new law sets a modified standard for renewable fuels and directs EPA to implement that standard.

Summary of Legal Basis:

Clean Air Act Section 211(o)

Alternatives:

Alternatives are being developed and will be presented in the Preamble to the proposed rule.

Anticipated Cost and Benefits:

We haven't completed the necessary ananlytical work that supports calculating and developing the costs and benefits of this rule. Once the analysis plan/work is completed, we can then compile and present the information.

Risks:

This rule will increase energy security by increasing the domestic supply of energy, and will reduce greenhouse gas emissions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	
Final Action	06/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

Additional Information:

SAN No. 5250

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RIN: 2060–AO81

EPA

104. RISK AND TECHNOLOGY REVIEW PHASE II GROUP 2A

Priority:

Other Significant

Legal Authority:

CAA Section 112(f)(2); CAA Section 112(d)(6)

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, September 19, 2003, 5 MACT included in RTR Group 2A. EPA required to complete RTR 8 yrs after promulgation. RTR due for this rule: 09/2003 to 06/2007.

Abstract:

This action is the Risk and Technology Review (RTR) Group 2A and its title is: National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Epichlorohydrin Elastomers Production, HypalonTM Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, and Styrene Butadiene Rubber and Latex Production); National Emission Standards for Marine Vessel Loading Operations; National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production; National Emission Standards for Pharmaceuticals Production; and National Emission Standards for the Printing and Publishing Industry. It will address both EPA's obligation to conduct a residual risk review and to conduct a technology review. It includes nine source categories, each affected by one of five MACT standards.

Statement of Need:

CAA section 112(f)(2) requires us to determine for source categories subject to certain CAA section 112(d) standards whether the emissions limitations provide an ample margin of safety to protect public health. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' EPA must promulgate residual risk standards for the source category (or subcategory), as necessary, to provide an ample margin of safety to protect public health. EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect, ''Adverse environmental effect'' is defined in CAA section 112(a)(7) as any significant and widespread adverse effect which may be reasonably anticipated to wildlife, aquatic life, or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas. but must consider cost, energy, safety, and other relevant factors in doing so. This residual risk review is due 8 years after MACT standard compliance date. EPA is also required to review and revise the MACT standards every 8 years with regard to practices, processes and control technologies according to Section 112(d)(6) of the CAA.

Summary of Legal Basis:

Clean Air Act Sections 112(f)(2) and 112(d)(6).

Alternatives:

Alternatives are developed for residual risk to evaluate ample margin of safety or if risk is unaccetable. Alternatives are developed for technology review if there have been significant advances in practices, processes and control technologies. For the Printing and Publishing MACT, risks were acceptable and an ample margin of safety was achieved, and no significant technological advances were identified. Therefore, no alternatives were evaluated. For the other eight source categories in RTR Group 2A, alternatives were considered; none was cost-effective relative to the associated reduction in risk.

Anticipated Cost and Benefits:

No revisions to the MACT standards were proposed; therefore, there are no associated costs or emissions reductions.

Risks:

The risk assessment found that after application of the MACT standards the chronic cancer risks are below 100-in-1 million, which is acceptable, and additional controls were not cost-effective; therefore, the MACT standards provide an ample margin of safety to protect public health and no further cancer risk reduction was required. The analysis also found that non-cancer and acute risks to humans, as well as ecological risks from these facilities, were low and that no further controls were warranted.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

SAN No. 5093.2; Split from RIN 2060-AN85.

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RIN: 2060–AO91

EPA

105. EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

CWA 301; CWA 304; CWA 306; CWA 501

CFR Citation:

Not Yet Determined

Legal Deadline:

Other, Judicial, December 1, 2007, Data collection, identification of best options, and development of cost–benefit models completed.

NPRM, Judicial, December 1, 2008, FR Publication by 12/1/2008 as per 12/5/2006 Court Order.

Final, Judicial, December 1, 2009, FR Publication by 12/1/2009 as per 12/5/2006 Court Order.

Abstract:

This rulemaking will establish effluent limitations guidelines (ELG) and new source performance standards (NSPS) for stormwater discharges associated with construction and development activities. This rulemaking and its schedule respond to a court order that requires the Agency to promulgate final regulations by December 2009. The ELGs and NSPSs will control the discharge of pollutants such as sediment in stormwater discharges from construction and development activities and will be implemented through the issuance of NPDES permits.

Statement of Need:

Despite substantial improvements in the nation's water quality since the inception of the Clean Water Act, 45 percent of assessed river and stream miles, 47 percent of assessed lake acres, and 32 percent of assessed square miles of estuaries show impairments from a wide range of sources. Improper control of stormwater discharges from construction activity is among the many contributors to remaining water quality problems throughout the United States. Sediment is the primary pollutant that causes water quality impairment for streams and rivers. Construction generates significantly higher loads of sediment per acre than other sources. The rulemaking would constitute the nationally applicable, technology-based ELGs and NSPS applicable to all dischargers required to obtain a National Pollutant Discharge Elimination System (NPDES) permit.

Summary of Legal Basis:

The Clean Water Act authorizes EPA to establish ELGs and NSPS to limit the pollutants discharged from point sources. In addition, EPA is bound by the district court decision, in NRDC v. EPA, 437 F.Supp.2d 1137, (C.D. Cal.2006), to propose ELGs and NSPS for the construction and development industry by December 1, 2008 and to promulgate ELGs and NSPS as soon as practicable, but in no event later than December 1, 2009.

Alternatives:

The Clean Water Act directs EPA to establish a technology basis for the ELGs and NSPS, which are based on the performance of specific technology levels, such as the best available technology economically achievable. EPA is considering a range of pollution control approaches and technologies, and is also considering waivers based on construction site size, rainfall, and soil erosivity to reduce the impact on small dischargers.

Anticipated Cost and Benefits:

The annualized social costs of the rulemaking are estimated to range from $141 million to $3.8 billion, and the annualized monetized benefits are estimated to range from $11 million to $327 million. The costs include compliance costs, administrative costs, and partial equilibrium estimates of quantity effects and deadweight loss to society. The monetized benefit categories include avoided costs of dredging for navigation and water storage, avoided costs of drinking water treatment, and monetizable water quality benefits.

Risks:

Sediment is currently one of the major pollutants that causes water quality impairment for streams and rivers, and presents a risk to aquatic life. The ELGs and NSPS are expected to result in a reduction of the discharge of pollutants to surface waters, primarily as sediment and turbidity.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

Additional Information:

SAN No. 5119

URL For More Information:

www.epa.gov/guide/construction

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RIN: 2040–AE91

EPA

FINAL RULE STAGE

106. PREVENTION OF SIGNIFICANT DETERIORATION AND NONATTAINMENT NEW SOURCE REVIEW: EMISSION INCREASES FOR ELECTRIC GENERATING UNITS

Priority:

Other Significant

Legal Authority:

Clean Air Act, Title I Parts C and D and Section 111(a)(4)

CFR Citation:

40 CFR Part 51; 40 CFR Part 52

Legal Deadline:

None

Abstract:

This rulemaking would revise the emissions test for existing electric generating units (EGUs) that are subject to the regulations governing the Prevention of Significant Deterioration

(PSD) and nonattainment major New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). The existing emissions test compares actual emissions to either potential emissions or projected actual emissions. Under this rulemaking's revised NSR emissions test (a maximum hourly test like that used in the NSPS program), we would compare the EGU's maximum hourly emissions (considering controls) before the change for the past 5 years to the maximum hourly emissions after the change. The maximum hourly emissions test will be based either on maximum achieved or maximum achievable hourly emissions, measured on an input or an output basis. One proposed option provides that the maximum hourly emissions increase test would be followed by the annual emissions increase test in the current rules.

Statement of Need:

Utilization of this rulemaking's alternative NSR applicability test for existing EGUs would encourage increased utilization at the more efficient units by displacing energy production at less efficient ones.

Summary of Legal Basis:

Parts C and D of title I of the Clean Air Act; CAA section 111(a)(4)

Alternatives:

The proposed basis for the applicability test is a comparison of maximum hourly emissions, which will enhance the implementation and environmental benefits for existing EGUs.

Anticipated Cost and Benefits:

We are not able to provide quantitative estimates of the costs and benefits of this rule because of the difficulty in identifying the quantity and locations of sources that will utilize this rulemaking in the future, and the difficulty in specifically quantifying the difference in environmental outcomes that would result with and without the rule. Qualitatively, our analysis indicates that we anticipate a reduction in recordkeeping and reporting - and therefore a decrease in cost - and we expect that the environmental benefits of the program would not significantly change and may improve as a result of the positive impact on the safety, reliability, and efficiency of EGUs as a result of this rulemaking.

Risks:

We are not able to provide quantitative risk information because of the difficulty in identifying the quantity and locations of sources that will utilize this rulemaking in the future, and the difficulty in specifically quantifying the difference in environmental outcomes that would result with and without the rule.

Timetable:

Action	Date	FR Cite
NPRM	10/20/05	70 FR 61081
Supplemental NPRM	05/08/07	72 FR 26202
Notice of public hearing	06/07/07	72 FR 31491
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4794.2; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-AIR/2005/October/Day-20/a20983.htm; Split from RIN 2060-AM95.; EPA Docket information: EPA-HQ-OAR-2005-0163

URL For More Information:

www.epa.gov/nsr

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RIN: 2060–AN28

EPA

107. HAZARDOUS WASTE MANIFEST REVISIONS — STANDARDS AND PROCEDURES FOR ELECTRONIC MANIFESTS

Priority:

Other Significant

Legal Authority:

42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6926; PL 105–277

CFR Citation:

40 CFR 260; 40 CFR 262; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 271

Legal Deadline:

None

Abstract:

This action is aimed at finalizing the development of EPA's Resource Conservation and Recovery Act (RCRA) regulatory standards and procedures that will govern the initiation, signing, transmittal, and retention of hazardous waste manifests using electronic documents and systems. There are 2.4 million Federal-defined RCRA hazardous waste paper manifests processed each year, and a total of 5.1 million manifests processed each year including State-defined hazardous waste paper manifests. EPA proposed electronic manifest standards in May 2001 as part of a more general manifest revision action that also addressed standardizing the paper manifest form's data elements and procedures for its use across all states (EPA Form 8700-22). The manifest form revisions were decoupled from action on the electronic manifest, and the Final Form Revisions Rule was published on June 16, 2005. The May 2001 proposed rule included: (1) Electronic file formats for the manifest data elements; (2) electronic signature options; and (3) computer security controls aimed at ensuring data integrity and reliable commercial e-manifest systems. However, since publication of the 2001 proposed rule, EPA found that there is a broad consensus in favor of a single national ''eManifest'' system sponsored by EPA, rather than assorted de-centralized commercial systems. Subsequently in May 2004, EPA conducted a manifest stakeholder meeting to collect additional stakeholder views on the future direction of eManifest. Based on public comment on the 2001 proposed electronic standards and stakeholder feedback at the May 2004 meeting, EPA published a Notice of Data Availability (NODA) on 18 April 2006 announcing EPA's preferred approach to develop a centralized web-based eManifest system to be hosted on EPA's Central Data Exchange (CDX) computer hub. To that end, in Autumn 2006 EPA provided technical assistance to the US Senate for drafting S.3871 which would have authorized the CDX-based solution, as well as authorized EPA to charge and retain user fees to fund a ''share-in-

revenue'' contracting approach to build and operate eManifest. EPA's ability to publish a final rule in 2009 that will recognize this system as a compliant voluntary alternative to the current paper manifest form, and to pursue this centralized eManifest design and funding solution will depend on new Congressional authority for EPA to collect user fees.

Statement of Need:

This revision of the RCRA regulation is necessary to establish the standards and procedures under which hazardous waste handlers will be authorized to use electronic manifests in lieu of the existing paper manifest form (EPA Form 8700-22). EPA's current RCRA regulations only allow the use of the paper manifest form which must be carried physically with the waste shipment, signed by hand with each change of custody, and filed among each waste handler's operating records for three years. This revision to the RCRA manifest regulation will specify the conditions under which electronic manifests may be obtained, completed, electronically signed, and transmitted, so that the electronic manifests may be used and accepted as the legal equivalent of the current paper manifest form.

Summary of Legal Basis:

There is currently not in place a statue or court order that requires EPA to revise the RCRA manifest regulations to adopt the electronic manifest regulation. However, on September 7, 2006 the U.S. Senate introduced S.3871 that would mandate the development of an electronic manifest system by EPA. The U.S. Senate also introduced a similiar bill S.3109 on June 10, 2008. In addition to authorizing EPA to collect user fees to build and annually operate and maintain the e-manifest information technology (IT) system using a novel share-in-revenue contracting approach, this new bill, also authorizes the collection of user fees to process paper manifests, should EPA require their collection and provides for the tracking of state regulated hazardous wastes. The bill also clarifies what state governments would not be subject to the user fees authorized by the bill. If enacted by the Congress, the bill could include a deadline to EPA for promulgating revisions to the RCRA manifest regulations to authorize the voluntary use of electronic manifests. Whether or not there is such a statutory mandate, EPA could develop a regulation prescribing the conditions for electronic manifesting under the authority of RCRA Section 3002(a)(5), which authorizes EPA to promulgate regulations establishing standards for generators of hazardous waste, including standards on ''the use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in and arrives at'' permitted facilities.

Alternatives:

Based on public comments submitted on EPA's 2001 electronic manifest proposed rule, and additional manifest stakeholder input received at EPA's 2004 public meeting on eManifest, EPA's preferred alternative is now the development of a centralized national eManifest system that EPA would develop and operate under a share-in-revenue contract funded by user fees, and hosted on EPA's Central Data Exchange (CDX) computer hub. Other alternatives include (1) a national system that would be developed entirely commercially and operated by the NGO; (2) a decentralized option like the one suggested in the EPA's 2001 proposed rule, under which various private entities would develop numerous eManifest systems adhering to standards announced by EPA; and a no action alternative, under which all manifesting would continue only with paper manifests. Although too early for EPA to evaluate as of 2007, the 2006-2009 electronic manifesting pilot project hosted by the Michigan state government may provide a new alternative for EPA to consider scaling-up to become the national eManifest system.

Anticipated Cost and Benefits:

As initially estimated by an EPA contractor in 2002, the first-year start-up (i.e., design, build, and installation) costs to EPA for a centralized national eManifest system to be hosted on EPA's CDX computer hub, are projected to be in the range of $2 million to $7 million. EPA's annual operation and maintenance (O&M) costs for such a system are projected in the range $1.6 million to $3.2 million. EPA updates and refines the system cost estimates but refrains from making them publicly available because they constitute EPA's confidential independent government cost estimate (IGCE) which EPA will use as a benchmark to evaluate contractor bids to procure the system. In addition to EPA system costs, (a) the regulated community consisting of 227,000 industrial facilities involved in shipping hazardous wastes every year, may voluntarily need to purchase $60 million to $69 million in computer equipment and services to connect to eManifest, and (b) state governments may voluntary need to spend around $3 million to integrate with the eManifest system, although EPA's over $100 million in grants the past few years to integrate state governments with EPA's CDX via EPA's National Environmental Information Exchange Network (NEIEN) has nearly provided integration for all state governments and many large industrial facilities with CDX via NEIEN nodes. National economic benefits from eManifest are expected to provide 45% reduction in paperwork burden costs to manifest useres and to RCRA-authorized state government agencies of up to $233 million per year (relative to a baseline national cost for paper manifest burden of $513 million per year), assuming that 75% of manifests can be completed electronically. These projected savings can also be expressed as a net unit paperwork burden savings of $23 to $40 per manifest. Other expected benefits of eManifest include: (1) better quality and more timely waste shipment data; (2) nearly real time shipment tracking capabilities for users and public safety agencies (rather than a 30-day wait); (3) enhanced inspection and compliance monitoring capabilities for regulators; (4) more rapid notification and response to problems or discrepancies with waste shipments; (5) more efficient or ''one-stop'' submission of manifest data to States; and (6) new possibilities to manage manifest data and to simplify or consolidate existing systems for reporting and tracking manifest and RCRA Biennial Report hazardous waste shipment data.

Risks:

This action addresses administrative requirements for tracking hazardous waste shipments and does not involve the control of ''risks'' in the sense that RCRA regulations typically address environmental, human health, and public safety risks posed by the possible mis-management of hazardous wastes. Consequently, EPA has developed a CPIC Exhibit 300 business case ''Risk Management Plan'' for this action, rather than a hazardous waste chemical exposure risk analysis. Since the e-manifest regulation could authorize the voluntary use of an information technology (IT) system that would be developed to create and transmit electronic manifests, there would be information system

management risks and information security risks associated with developing and operating such an IT system. EPA is assessing and managing these IT risks as part of OMB's annual Capital Planning and Investment Control (CPIC) process that governs the management of EPA's IT investments.

Timetable:

Action	Date	FR Cite
NPRM Original	05/22/01	66 FR 28240
Notice of Public Meeting	04/01/04	69 FR 17145
NODA	04/18/06	71 FR 19842
NODA #2	02/26/08	73 FR 10204
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 3147.1; EPA publication information: NPRM Original - http://www.gpo.gov/su__docs/aces/fr-cont.html; Split from RIN 2050-AE21.; EPA Docket information: EPA-HQ-RCRA-2001-0032

Sectors Affected:

325 Chemical Manufacturing; 2211 Electric Power Generation, Transmission and Distribution; 332 Fabricated Metal Product Manufacturing; 2122 Metal Ore Mining; 2111 Oil and Gas Extraction; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 323 Printing and Related Support Activities; 3221 Pulp, Paper, and Paperboard Mills; 482 Rail Transportation; 484 Truck Transportation; 5621 Waste Collection; 56221 Waste Treatment and Disposal; 483 Water Transportation

URL For More Information:

www.epa.gov/epaoswer/hazwaste/gener/manifest/

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RIN: 2050–AG20

EPA

108. CERCLA—ADMINISTRATIVE REPORTING EXEMPTION FOR AIR RELEASES OF HAZARDOUS SUBSTANCES FROM ANIMAL WASTE AT FARMS

Priority:

Other Significant

Legal Authority:

42 USC 9603; 42 USC 11004

CFR Citation:

40 CFR 302; 40 CFR 355

Legal Deadline:

None

Abstract:

EPA is considering finalizing an administrative reporting exemption from particular notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This exemption would apply to releases of hazardous substances to the air that meet or exceed their reportable quantity where the source of those hazardous substances is animal waste at farms. The proposed rule also included a parallel administrative reporting exemption (also for the release of hazardous substances to the air that meet or exceed their reportable quantity from animal waste at farms) from the Emergency Planning and Community Right-to-Know Act (EPCRA). EPA is not making a final decision on this part of the proposed rule at this time. Persons still have an obligation to file reports under EPCRA, as appropriate, until EPA makes a final decision and amends the section 304 requirements. Nothing in the rule will change the notification requirements if hazardous substances are released to the air from any other source other than animal waste at farms (i.e., ammonia tanks), as well as releases of any hazardous substances from animal waste to any other environmental media, (i.e., soil, ground water, surface water) when the release of those hazardous substances is at or above its reportable quantity. This administrative reporting exemption is protective of human health and the environment and consistent with the Agency's goal to reduce reporting burden where there would likely be no Federal response to such release reports. Eliminating such reporting will allow response officials to better focus on releases where EPA is more likely to take a response action. The administrative reporting exemption from the notification requirements under CERCLA section 103(a) will not limit any of its authorities under CERCLA sections 104 (response authorities), 106 (abatement actions), 107 (liability), or any other provisions of CERCLA.

Statement of Need:

Under this action, the Agency is considering the primary purpose of CERCLA and EPCRA notification requirements and is considering an exemption based on the likelihood of whether there would or would not be a governmental response to those notifications.

Summary of Legal Basis:

This action is not required by statute or court order. This action is being done at the discretion of the Agency.

Alternatives:

Not applicable.

Anticipated Cost and Benefits:

If finalized, it is estimated that the rule will reduce burden on farms associated with making modifications under CERCLA section 103 by approximately 3,408,000 hours over the ten-year period beginning in 2009 and associated costs by approximately $155,313,000 over the same period.

Risks:

Not estimated.

Timetable:

Action	Date	FR Cite
NPRM	12/28/07	72 FR 73700
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

SAN No. 5117; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-AIR/2007/December/Day-28/a25231.pdf; EPA Docket information: EPA-HQ-SFUND-2007-0469

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RIN: 2050–AG37

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission or agency) is to ensure equality of opportunity in employment by vigorously enforcing six federal statutes. These statutes are: Title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex, religion, or national origin); the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967 (ADEA), as amended; Title I of the Americans with Disabilities Act of 1990, as amended, and sections 501 and 505 of the Rehabilitation Act of 1973, as amended (disability); and the Government Employee Rights Act of 1991, which extends protections against employment discrimination to certain Federal employees who were not previously covered.

The first item in this Regulatory Plan is titled ''Disparate Impact Under the Age Discrimination in Employment Act.'' In *Smith v. City of Jackson*, 544 U.S. 228 (2005), the United States Supreme Court affirmed that disparate impact is a cognizable theory of discrimination under the Age Discrimination in Employment Act (''ADEA'') but indicated that ''reasonable factors other than age'' (''RFOA'') is the appropriate model for the employers' defense against an impact claim.

Current EEOC regulations interpret the ADEA as prohibiting an employment practice that has a disparate impact on individuals within the protected age group unless it is justified as a business necessity. The Supreme Court's holding in *Smith v. City of Jackson* validated the Commission's position that disparate impact analysis applies in ADEA cases. The holding, however, differed from the Commission's position that the business necessity test was the appropriate standard for determining the lawfulness of a practice that had an age-based disparate impact. The EEOC is revising its regulation to reflect the *Smith* decision.

The second item in this Regulatory Plan is titled the ''Genetic Information Nondiscrimination Act'' and involves the use of genetic information in the workplace. On May 21, 2008, the President signed into law the Genetic Information Nondiscrimination Act of 2008 (GINA) in light of achievements in the field of genetics such as decoding the human genome and using genomic medicine. Many genetic tests now exist that can inform individuals whether they may be at risk for developing specific diseases or disorders.

Congress enacted GINA to address public concerns regarding discrimination and misuse of genetic information. GINA prohibits employment discrimination based on genetic information and restricts acquisition and disclosure of such information. In particular, Title II of the Act protects job applicants, current and former employees, labor union members, and apprentices and trainees, from discrimination based on their genetic information, whether acquired through genetic testing or from an individual's family medical history. It also places strict limits on the acquisition or disclosure of genetic information and requires that information that is acquired be maintained in a confidential medical file, separate and apart from personnel information.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chair of the Agency. The statement has not been reviewed or approved by the other members of the Commission.

EEOC

PROPOSED RULE STAGE

109. ● GENETIC INFORMATION NONDISCRIMINATION ACT

Priority:

Other Significant

Legal Authority:

42 USC section 2000ff–10

CFR Citation:

29 CFR 1635

Legal Deadline:

Final, Statutory, May 21, 2009, As set forth in section 211 of the Genetic Information Nondiscrimination Act.

Abstract:

Section 211 of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. section 2000ff-10, requires the Equal Employment Opportunity Commission to issue regulations implementing Title II of the Act. Title II prohibits the use of genetic information in making employment decisions and limits employer access to genetic information. The Act also imposes confidentiality obligations on employers and other covered entities (employment agencies, labor unions, and training programs) that possess genetic information.

Statement of Need:

On May 21, 2008, the President signed into law the Genetic Information Nondiscrimination Act of 2008(GINA). Congress enacted GINA in recognition of, among many achievements in the field of genetics, the decoding of the human genome and the creation and increased use of genomic medicine. Many genetic tests now exist that can inform individuals whether they may be at risk for developing a specific disease or disorder. Congress enacted GINA to address public concerns regarding the potential for misuse of genetic information.

GINA prohibits discrimination based on genetic information and restricting acquisition and disclosure of such information. In particular, Title II of the Act protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA prohibits use of, and limits acquisition and disclosure of, genetic information, whether acquired through genetic testing or from an individual's family medical history. It also places strict limits on the acquisition or disclosure of genetic information and requires that such information that is acquired be maintained in a confidential medical file, separate and apart from personnel information.

Summary of Legal Basis:

GINA section 211, 42 U.S.C. section 2000ff-10, requires the EEOC to issue regulations implementing Title II of the Act within one year of its enactment.

Alternatives:

None: Congress mandated issuance of regulations.

Anticipated Cost and Benefits:

The Commission does not anticipate that the rule will impose additional costs to employers. The Genetic Information Nondiscrimination Act does not impose any new employer reporting obligations or record keeping obligations.

Risks:

The proposed rule imposes no new or additional risks to employers. This

proposal does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/09	
NPRM Comment Period End	03/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

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EEOC

FINAL RULE STAGE

110. DISPARATE IMPACT UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625.7(d)

Legal Deadline:

None

Abstract:

In Smith v. City of Jackson, 544 U.S. 228 (2005), the U.S. Supreme Court affirmed that disparate impact is a cognizable theory of discrimination under the Age Discrimination in Employment Act (''ADEA'') but indicated that ''reasonable factors other than age'' (''RFOA''), not ''business necessity,'' is the appropriate model for the employers' defense against an impact claim. Accordingly, the Commission intends to revise its regulation on disparate impact, currently codified at 29 CFR section 1625.7(d).

Statement of Need:

Current EEOC regulations interpret the ADEA as prohibiting an employment practice that has a disparate impact on individuals within the protected age group unless it is justified as a business necessity. The Supreme Court's holding in Smith v. City of Jackson validated the Commission's position that disparate impact analysis applies in ADEA cases. The holding, however, differed from the Commission's position that the business necessity test was the appropriate standard for determining the lawfulness of a practice that had an age-based disparate impact. The EEOC is revising its regulation to reflect the Smith decision.

Summary of Legal Basis:

Section 9 of the ADEA authorizes the EEOC ''to issue such rules and regulations it may consider necessary or appropriate for carrying out this chapter . . ..'' 29 U.S.C. section 628.

Alternatives:

The Commission will consider all alternatives offered by the public commenters.

Anticipated Cost and Benefits:

The proposed rule, which makes no change to covered entities' compliance obligations under the ADEA, brings the Commission's regulations into conformity with a recent Supreme Court interpretation of the statute. This revision to EEOC's regulation, informed by the comments of stakeholders, will be beneficial to courts, employers, and employees seeking to interpret, understand, and comply with the ADEA.

Risks:

The proposed regulation will reduce the risks of liability for noncompliance with the statute by clarifying the rights and responsiblities of job applicants, employees, and covered entities. The proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/31/08	73 FR 16807
NPRM Comment Period End	05/30/08	
Final Action	05/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local

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BILLING CODE 6570–01–S

GENERAL SERVICES ADMINISTRATION (GSA)

Statement of Regulatory and Deregulatory Priorities

The General Services Administration (GSA) establishes agency acquisition rules and guidance through the General Services Acquisition Regulation (GSAR), which contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

GSA's fiscal year 2009 regulatory priority is to continue with the complete rewrite of the GSAR. GSA is rewriting the GSAR to maintain consistency with the Federal Acquisition Regulation (FAR), and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships.

GSA will clarify the GSAR to—

- Provide consistency with the FAR;
- Eliminate coverage which duplicates the FAR or creates inconsistencies within the GSAR;
- Correct inappropriate references listed to indicate the basis for the regulation;
- Rewrite sections which have become irrelevant because of changes in technology or business processes, or which place unnecessary administrative burdens on contractors and the Government;
- Streamline or simplify the regulation;
- Roll up coverage from the services and regions/zones which should be in the GSAR;
- Provide new and/or augmented coverage; and
- Delete unnecessary burdens on small businesses.

BILLING CODE 6820–34–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

NASA's Mission, as stated in its 2006 Strategic Plan, is ''To pioneer the future in space exploration, scientific discovery, and aeronautics research.'' In the 50 years since Congress enacted the National Aeronautics and Space Act of 1958, NASA has challenged its scientific and engineering capabilities in pursuing its mission, generating tremendous results, and benefits for all of humankind.

In the NASA Authorization Act of 2005, Congress endorsed the Vision for Space Exploration and provided additional guidance for implementation. NASA is committed to achieving this Vision through the six Strategic Goals articulated in the 2006 Strategic Plan:

1. Fly the Shuttle as safely as possible until its retirement, not later than 2010.
2. Complete the International Space Station in a manner consistent with NASA's International Partner commitments and the needs of human exploration.
3. Develop a balanced program of science, exploration, and aeronautics consistent with the Agency's new exploration focus.
4. Bring a new Crew Exploration Vehicle into service as soon as possible after Shuttle retirement.
5. Encourage the pursuit of appropriate partnerships with the emerging commercial space sector.
6. Establish a lunar return program having the maximum possible utility for later missions to Mars and other destinations.

In embracing a vision and mission for space exploration, and continued scientific discovery and aeronautics research, NASA pledges to continue the American tradition of pioneering. In pursuit of these activities, NASA is increasing internal collaboration, leveraging personnel and facilities, developing strong, healthy Centers, and fostering a safe environment of respect and open communication. We also will ensure clear accountability and solid program management and reporting practices. Effective regulation supports NASA activities related to its Vision, mission, and goals. The following are narrative descriptions of the most important regulations being planned for publication in the Federal Register during fiscal year (FY) 2009.

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 NFS revisions are not expected in FY 2008, except to conform to the FAR implementation of Earned Value Management, the revision of FAR Part 45, Government Property, and the revision of FAR Part 27, Patents, Data, and Copyrights. In a continuing effort to keep the NFS current with NASA initiatives and Federal procurement policy, minor revisions to the NFS will be published.

NASA is planning on adding a subpart to its regulations that will list NASA's procedures for service of process on the Agency, including subpoenas, summons, and complaints. NASA will be cancelling Subpart 5 to 14 CFR 1245 and will be providing notice of such cancellation in the Federal Register. NASA will be revising 14 CFR Part 1240 Inventions and Contributions. Such revisions will be not be substantive in nature.

BILLING CODE 7510–13–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

Overview

The National Archives and Records Administration (NARA) issues regulations directed to other Federal agencies and to the public. Records management regulations directed to Federal agencies concern the proper management and disposition of Federal records. Through the Information Security Oversight Office (ISOO), NARA also issues Governmentwide regulations concerning information security classification and declassification programs. NARA regulations directed to the public address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA has one regulatory priority for fiscal year 2009, which is included in The Regulatory Plan. We are revising and updating our records management regulations in 36 CFR ch. XII, subchapter B. We began work on this priority in fiscal year 2004 with a proposal for a new organizational framework for the records management regulations to make them easier to use. The proposed rule to revise subchapter B was published in the Federal Register on August 4, 2008 (73 FR 45274).

Regulations with International Effects or Interest

None in fiscal year 2009.

NARA

FINAL RULE STAGE

111. FEDERAL RECORDS MANAGEMENT

Priority:

Other Significant

Legal Authority:

44 USC 2104(a); 44 USC ch 21; 44 USC ch 29; 44 USC ch 33

CFR Citation:

36 CFR 1220 to 1238

Legal Deadline:

None

Abstract:

As part of its initiative to redesign Federal records management, NARA is revising its records management regulations in 36 CFR ch. XII, subchapter B to ensure that the regulations are appropriate, effective, and clear.

Statement of Need:

NARA's records management program was developed in the 20th century in a paper environment. This program has not kept up with a Federal Government that creates and uses most of its records electronically. Today's Federal records environment requires different management strategies and techniques.

The revision of NARA's records disposition policies, processes, and tools is necessary to meet a strategic goal identified in our Strategic Plan: ''As the nation's record keeper, we will ensure the continuity and effective operation of Federal programs by expanding our leadership and services in managing the Government's records.'' Effective records management ensures: That records are created and managed for agencies' business needs; protection of citizens' rights; accountability; and the ability to preserve and make available records of archival value.

Summary of Legal Basis:

Under the Federal Records Act, the Archivist of the United States is responsible for: 1) Providing guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition (44 USC 2904); 2) approving the disposition of Federal records (44 USC 33); and 3) preserving and making available the Federal records of continuing value that have been transferred to the National Archives of the United States (44 USC 21).

The Federal Records Act also makes the heads of Federal agencies responsible for making and preserving records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and is designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 USC 3101). Agency heads must also have an active, continuing records management program (44 USC 3102).

Alternatives:

None.

Anticipated Cost and Benefits:

The revision of NARA's records disposition policies and processes is intended to reduce the burden on agencies and NARA in the area of records management and disposition activities.

Risks:

None.

Timetable:

Action	Date	FR Cite
Begin Review	09/17/02	
ANPRM	03/15/04	69 FR 12100
ANPRM Comment Period End	05/14/04	
NPRM	08/04/08	73 FR 45274
NPRM Comment Period End	10/03/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

URL For More Information:

www.archives.gov/records-mgmt/initiatives/rm-redesign-project.html

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 3095–AB05, Related to 3095–AB41, Related to 3095–AB43, Related to 3095–AB39

RIN: 3095–AB16

BILLING CODE 7515–01–S

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Statement of Regulatory Priorities

The Office of Personnel Management's mission is to ensure the Federal Government has an effective civilian workforce. OPM fulfills that mission by, among other things, providing human capital advice and leadership for the President and Federal agencies; delivering human resources policies, products, and services; and holding agencies accountable for their human capital practices. OPM's 2008 regulatory priorities are designed to support these activities.

Adverse Actions

The Office of Personnel Management (OPM) proposes to amend its regulations governing Federal adverse actions. The proposed amendments would clarify the adverse action rules regarding reductions in pay and indefinite suspension. In addition, OPM proposes to remove unnecessary subparts pertaining to statutory requirements, make a number of technical corrections, and utilize consistent language for similar regulatory requirements. OPM also proposes various revisions to make the regulations more readable.

Suitability and National Security

OPM is participating in a review of the Federal Government's requirements for access to classified information and for suitability for employment. This review covers relevant statutes, executive orders, and Governmentwide regulations and is intended to determine whether a reengineered system that is cohesive, simplified, and equitable as possible can be developed. In particular, a reengineered system may require adjustments to the following Government-wide regulations within OPM's jurisdiction: (1) Suitability, 5 CFR part 731; (2) National Security Positions, 5 CFR part 732; and (3) Personnel Investigations, 5 CFR part 736. OPM expects this review process and any potential modifications of these regulations to be made by the end of FY 2008.

Training; Supervisory, Management, Executive Development

On October 30, 2004, the President signed the Federal Workforce Flexibility Act of 2004 (Act), Public Law 108-411, into law. The Act makes several significant changes in the law governing the training and development of Federal employees, supervisors, managers, and executives. It requires each agency to evaluate, on a regular basis, its training programs and plans to ensure that its training activities are linked to the accomplishment of its specific performance plans and strategic goals, and to modify its training plans and programs as needed to accomplish the agency's performance and strategic goals. Another change requires agencies to work with OPM to establish comprehensive management succession programs designed to develop future mangers for the agency. It also requires agencies, in consultation with OPM, to establish programs to provide training to managers regarding how to relate to employees with unacceptable performance, mentor employees, use various actions, options and strategies to improve employee performance and productivity, and conduct employee performance appraisals. Our proposed revision to the OPM regulations at parts 410 and 412 of 5 CFR have been designed to address the changes, and in general to increase the emphasis on employee and executive development in the Federal Government. These proposed regulations were approved by OMB in August 2008 and published in the Federal Register in September 2008. Public comments have been received, and OPM is targeting 2009 for publication of the final rule.

Leave for Employees Affected by a Pandemic Health Crisis or Other Emergencies

In FY 2009, OPM will continue efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disasters or emergencies as declared by the President. Under current law and regulations, in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct OPM to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other agencies who are adversely affected by such disaster or emergency. OPM anticipates issuing regulations that will enhance the emergency leave transfer program by—

- Allowing donated annual leave in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency. OPM's regulations currently permit a leave bank to donate annual leave to an emergency leave transfer program administered by the leave bank's employing agency. We believe a broader authority, which several agencies requested in the aftermath of Hurricane Katrina, would have provided an immediate benefit to employees adversely affected by Hurricane Katrina and could benefit employees adversely affected by future major disasters or emergencies.
- Incorporating the inclusion of Judicial branch employees as eligible participants in any emergency leave transfer program as provided by Public Law 109-229, now codified at 5 U.S.C. 6391(f)).
- Clarifying the rules for returning unused donated annual leave to emergency leave donors, which includes leave banks.

Pay Flexibilities and Entitlements

In FY 2009, OPM will continue to enhance pay flexibilities and entitlements to help Federal agencies better meet their strategic human capital needs. OPM anticipates finalizing interim regulations that implemented statutory changes dealing with pay setting for General Schedule employees. These statutory and regulatory changes made the pay setting rules more rational, consistent, and equitable. Also, OPM anticipates finalizing proposed regulations governing student loan repayment benefits, which agencies may offer to current Federal employees or candidates for Federal jobs when necessary to recruit or retain highly qualified personnel. These revisions will include certain policy changes and clarifications to assist agencies in taking full advantage of the Federal student loan repayment program.

BILLING CODE 6325–44–S

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

The Pension Benefit Guaranty Corporation (PBGC) protects the pensions of over 44 million working men and women in about 30,500 private defined benefit plans. PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC issues regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, reporting and disclosure, and assessment and collection of employer liability. The Corporation is committed to issuing simple, understandable, and timely regulations to help affected parties do business.

PBGC's intent is to issue regulations that implement the law in ways that do not impede the maintenance of existing defined benefit plans or the establishment of new plans. Thus, the focus is to avoid placing burdens on plans, employers, and participants, wherever possible. PBGC also seeks to ease and simplify employer compliance whenever possible.

PBGC Insurance Programs

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.

- *Single-Employer Program*. Under the single-employer program, PBGC pays guaranteed and certain other pension benefits to participants and beneficiaries if their plan terminates with insufficient assets (distress and involuntary terminations). The single-employer program had a $13.1 billion deficit at the end of fiscal year 2007.
- *Multiemployer Program*. The smaller multiemployer program covers about 1500 collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (in the form of a loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are less than single-employer guaranteed benefits. The multiemployer program, which is separately funded from the single-employer program, had a $955 million deficit at the end of fiscal year 2007.

Recent Legislation

Early in 2005, the Administration proposed reforms to improve funding of plans and restore the financial health of the insurance program, which had a $233.billion deficit at the end of fiscal year 2004. Legislation signed into law in 2006 — the Deficit Reduction Act of 2005 (DRA 2005) and the Pension Protection Act of 2006 (PPA 2006) — contain various provisions intended to improve plan funding, enhance pension-related reporting and disclosure, and strengthen the insurance programs.

Regulatory Objectives and Priorities

PBGC's current regulatory objectives and priorities are to continue implementation of the PPA 2006 changes by issuing simple, understandable, and timely regulations that do not impose undue burdens that could impede maintenance or establishment of defined benefit plans. (PBGC has completed its implementation of DRA 2005.) These regulatory objectives and priorities are developed in the context of the Corporation's statutory purposes:

- To encourage voluntary private pension plans;
- To provide for the timely and uninterrupted payment of pension benefits; and
- To keep premiums at the lowest possible levels.

PBGC also attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, and provide relief for small businesses. As mentioned below, the first set of rulemakings concerns premiums, disclosure of termination information, annual financial and actuarial reporting, treatment of bankruptcy filing date as termination date for certain purposes, multiemployer plan withdrawal liability, and missing participants.

The Corporation seeks to improve transparency of information to plan participants, investors, and PBGC, in order to better inform them and to encourage more responsible funding of pension plans. PPA 2006 contains provisions for disclosure of certain information to participants regarding the termination of their underfunded plan. PBGC published a proposed regulation on this disclosure of termination information in December 2007 and expects to publish a final regulation in October 2008.

PPA 2006 also makes changes to the plan actuarial and employer financial information required under section 4010 of ERISA to be reported to PBGC by employers with large amounts of pension underfunding. PBGC published a proposed regulation implementing those changes in February 2008 and expects to publish a final regulation in October 2008.

PBGC also seeks to simplify filing with PBGC by increasing use of electronic filing. Electronic filing of premium information has been mandatory for all plans for plan years beginning on or after January 1, 2007. Filers have a choice of using private-sector software that meets PBGC's published standards or using PBGC's software. Electronic premium filing simplifies filers' paperwork, improves accuracy of PBGC's premium records and database, and enables more prompt payment of premium refunds.

In December 2007 and March 2008, PBGC published final rules implementing most of the premium changes under PPA 2006. The Corporation has incorporated the changes to the flat-rate and variable-rate premiums into software so that it will be easy to comply with the premium changes under the new law.

Plan actuarial and employer financial information required under section 4010 of ERISA to be reported to PBGC by employers with large amounts of pension underfunding is required to be filed electronically. Electronic filing reduces the filing burden, improves accuracy, and better enables PBGC to monitor and manage risks posed by these plans. PBGC is incorporating the PPA 2006 changes to this reporting into software so that it will be easy to comply with the reporting changes under the new law.

In July 2008, PBGC published a proposed rule that would implement a PPA 2006 provision that treats the bankruptcy filing date as the plan termination date for purposes of determining the amount of benefits PBGC guarantees and the amount of assets allocated to participants who retired or have been retirement-eligible for three years. The provision applies to plans that terminate in a distress or involuntary termination while the sponsor is a bankruptcy proceeding that was initiated on or after September 16,

2006. PBGC expects to publish a final rule in 2009.

PPA 2006 provides for changes in the allocation of unfunded vested benefits to withdrawing employers from a multiemployer pension plan and requires adjustments in determining an employer's withdrawal liability when a multiemployer plan is in critical status. In March 2008, PBGC published a proposed rule to implement these provisions. The proposed rule also would provide new modifications to the statutory methods for determining an employer's allocable share of unfunded vested benefits and improve the process of fully allocating a plan's total unfunded vested benefits among liable employers in a plan terminated by mass withdrawal. PBGC expects to issue a final rule in October 2008.

PBGC gives consideration to the special needs and concerns of small businesses in making policy. A large percentage of the plans insured by PBGC are small or maintained by small employers. The first proposed rule PBGC published under PPA 2006 implemented the cap on the variable-rate premium for plans of small employers. In 2009, the Corporation expects to issue a proposed regulation implementing the expanded missing participants program under PPA 2006, which will also benefit small businesses.

PBGC will continue to look for ways to further improve its regulations.

BILLING CODE 7709–01–S

SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

Overview

The Small Business Administration's (SBA) mission is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses and by assisting in economic recovery of communities after disasters. In order to accomplish this mission, SBA focuses on improving the economic and regulatory environment for small businesses, especially those in areas that have significantly higher unemployment and lower income levels than the Nation's averages and those in traditionally underserved markets. The agency also focuses on providing timely, effective financial assistance to businesses, including non-profit organizations, homeowners, and renters affected by disasters.

SBA is committed to:

- Working with its financial partners to improve small businesses' access to capital through SBA's loan and venture capital programs;
- Providing technical assistance to small businesses through its resource partners;
- Increasing contracting and business opportunities for small businesses;
- Providing affordable, timely and easily accessible financial assistance to businesses, homeowners and renters after a disaster; and
- Measuring outcomes, such as revenue growth, job creation, business longevity, and recovery rate after a disaster, to ensure that SBA's programs and services are delivered efficiently and effectively.

SBA's regulatory actions reflect the goals and objectives of the agency and are designed to provide the small business and residential communities with the information and guidance they need to succeed as entrepreneurs and restore their homes or other property after a disaster. In the coming year, SBA's regulatory priorities will focus on strengthening SBA's management of its business loan programs, including issuing a final rule that would support lender oversight and improve lender performance. This final rule would further the President's priority of improved financial performance in government, and financial institutions would benefit from performance feedback to the extent it can assist them in improving their SBA operations and minimizing losses. The estimated cost of the changes incorporated into this final rule is $1.5 million.

SBA

FINAL RULE STAGE

112. LENDER OVERSIGHT PROGRAM

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6),(b)(7),(b)(14),(h), and note; 687(f),697(e)(c)(8), and 650.

CFR Citation:

13 CFR 120

Legal Deadline:

None

Abstract:

This rule would implement the Small Business Administration's (SBA) statutory authority under the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) to regulate Small Business Lending Companies (SBLCs) and non-federally regulated lenders (NFRLs). It also would conform SBA rules to various changes in the section 7(a) Business Loan Program and the Certified Development Company (CDC) Program.

In particular, this rule would: (1) Define SBLCs and NFRLs; (2) clarify SBA's authority to regulate SBLCs and NFRLs; (3) authorize SBA to set certain minimum capital standards for SBLCs, to issue cease and desist orders, and revoke or suspend lending authority of SBLCs and NFRLs; (4) establish the Bureau of Premier Certified Lender Program Oversight in the Office of Credit Risk management; (5) transfer existing SBA enforcement authority over CDCs from the Office of Financial Assistance to the appropriate official in the Office of Capital Access; and (6) define SBA's oversight and enforcement authorities relative to all SBA lenders participating in the 7(a) and CDC programs and intermediaries in the Microloan program.

Statement of Need:

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.'' Presently, SBA guarantees loans through approximately 5,000 lenders. Of these lenders, about 14 are SBLCs that are not otherwise regulated by Federal or State chartering/licensing agencies. SBA examines these SBLCs periodically. Congressional and Administration policy to delegate lending responsibilities to SBLCs and other SBA lenders requires that SBA increase its lender oversight. To that end, SBA has drafted regulations that strengthen the Agency's management of its business loan and lender oversight programs.

Summary of Legal Basis:

Small Business Act, section 5(b)(6)(7),(14),(h) and note 650.

Small Business Investment Act section 308(f) and 508(c)(8).

Alternatives:

This rulemaking amends and expands SBA's existing regulations on the SBLC and lender oversight programs.

Anticipated Cost and Benefits:

This rulemaking is designed to strengthen SBA's regulations regarding the SBLC Program and business loan and lender oversight programs. Some additional costs associated with additional reporting by the SBLCs, NFRLs, and other SBA lenders to the SBA are anticipated.

Risks:

This regulation poses no risks to the public health and safety or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	10/31/07	72 FR 61752
NPRM Comment Period Extended	12/20/07	72 FR 72264
NPRM Comment Period End	02/29/08	
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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BILLING CODE 8025–01–S

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), the Supplemental Security Income (SSI) program under title XVI of the Act and the Special Veterans Benefits under title XVIII of the Act. As directed by Congress, we also assist in administering portions of the Medicare program. Our regulations codify the requirements for eligibility and entitlement to benefits under these programs. Generally, SSA's regulations do not impose burdens on the private sector or on State or local governments.

The 14 entries in SSA's Regulatory Plan represent the issues of major importance to the Agency in the retirement, survivors, disability, SSI, and Medicare programs. Several of these regulatory priorities reflect recently enacted statutory provisions, including the Social Security Protection Act of 2004 (Pub. L. 108-203). We describe the individual initiatives more fully in the attached Regulatory Plan.

Improving the Disability Process

Because the continued improvement of the disability program is of vital concern to SSA, we have 10 initiatives in the Plan addressing disability-related issues. They include:

- A proposed rule providing that SSA identify claimants with serious medical conditions as soon as possible, allowing the Agency to grant benefits expeditiously to those claimants who meet SSA disability standards;
- A proposed rule clarifying that the agency may set the time and place for a hearing before an administrative law judge (ALJ).
- A proposed rule allowing casualty reports prepared by the United States armed forces to serve as statement of intent to claim benefits and preserving filing dates for all benefits.
- A proposed rule eliminating the Disability Service Initiative processes in place in our Boston Region;
- A proposed rule clarifying when previously decided claims or issues are barred from further consideration to ensure consistency of decisions at different levels of adjudication and in different locations in the country; and,
- Six initiatives updating the medical listings used to determine disability—two final rules evaluating hearing loss and malignant neoplastic diseases, and four proposed rules on evaluating respiratory system disorders, mental disorders, hematological disorders and immune (HIV) system disorders

Improved Stewardship

Also included in the Plan is a proposed rule that will strengthen our stewardship and program integrity activities by specifying the requirements certain non-citizen workers must meet to establish entitlement to benefits under title II, as provided in the Social Security Protection Act of 2004.

Enhanced Public Service

We are proposing to revise our rules concerning the representation of claimants before the Social Security Administration. These proposed rules include adding new language recognizing law firms and other entities as claimant representatives, allowing representatives in certain situations to charge and receive their fees from third parties, and modifying our rules on fee agreement and representative sanctions.

SSA

PROPOSED RULE STAGE

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113. REVISED MEDICAL CRITERIA FOR EVALUATING RESPIRATORY SYSTEM DISORDERS (859P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 3.00 and 103.00, Respiratory System, of appendix 1 subpart P of part 404 of our regulations describe respiratory system disorders that are considered severe enough to prevent an individual from doing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitations. We are proposing revisions to these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These regulations are necessary to update the respiratory system listings to reflect advances in medical knowledge, treatment, and methods of evaluating respiratory disorders. The changes will ensure that determinations of disability have a sound medical basis and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating respiratory diseases and because of our adjudicative experience.

Anticipated Cost and Benefits:

Estimated costs - low.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	04/13/05	70 FR 19358
ANPRM Comment Period End	06/13/05	
NPRM	03/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

114. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)

Priority:

Other Significant

Legal Authority:

42 USC 401(j); 42 USC 402; 42 USC 404(f); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 405(j); 42 USC 416(i); 42 USC 421; 42 USC 421(a); 42 USC 421(i); 42 USC 421(m); 42 USC 422(c); 42 USC 423; 42 USC 423(i); 42 USC 425; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382(c); 42 USC 1382(h); 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d); 42 USC 1383(i); 42 USC 1383(p); 42 USC 1383b

CFR Citation:

20 CFR 404.941; 20 CFR 404.1500, app 1; 20 CFR 404.1503; 20 CFR 404.1520 to 404.1520a; 20 CFR 404.1528; 20 CFR 404.1615; 20 CFR 416.903; 20 CFR 416.920a; 20 CFR 416.928; 20 CFR 416.1015; 20 CFR 416.1441

Legal Deadline:

None

Abstract:

We propose to update and revise the rules that we use to evaluate mental disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income payments based on disability under title XVI of the Social Security Act. The rules we plan on revising are sections 12.00 and 112.00 in appendix 1 to subpart P of part 404 of our regulations (the listings). These listings include such impairments as affective disorders, schizophrenic disorders, intellectual disabilities, and autistic disorders.

Statement of Need:

These regulations are necessary to update the listings for evaluating mental disorders to reflect advances in medical knowledge, treatment, and methods of evaluating these diseases. The changes ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that individuals who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings or making only minor technical changes. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of diseases. We have not comprehensively revised the current listings in over 15 years. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

Anticipated Cost and Benefits:

Savings estimates for fiscal years 2010 - 2018: (in millions of dollars) OASDI - 315, SSI - 370.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/03	68 FR 12639
ANPRM Comment Period End	06/16/03	
NPRM	11/00/08	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

115. REVISED MEDICAL CRITERIA FOR EVALUATING HEMATOLOGICAL DISORDERS (974P)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)5)

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 7.00 and 107.00 (hematological disorders) of appendix 1 to subpart P of part 404 of our regulations describe hematological disorders that are considered severe enough to prevent a person from performing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitation. We are proposing to revise these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These regulations are necessary to update the hematological listings to reflect advances in medical knowledge, treatment, and methods of evaluating hematological disorders. The changes ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment

through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of impairments.

Anticipated Cost and Benefits:

Estimated savings - low.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	02/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

116. ADDITIONAL INSURED STATUS REQUIREMENTS FOR CERTAIN ALIEN WORKERS (2882P)

Priority:

Other Significant

Legal Authority:

42 USC 414(c); 42 USC 423(a)(1)(C); PL 108–203, sec 211

CFR Citation:

20 CFR 404.110; 20 CFR 404.120; 20 CFR 404.130; 20 CFR 404.315; 20 CFR 404.1912; 20 CFR 404.1931

Legal Deadline:

None

Abstract:

The proposed rule will revise our regulations on insured status to include an additional requirement under section 211 of Public Law 108-203 - the Social Security Protection Act of 2004 (SSPA).

An alien worker to whom we did not assign a Social Security Number (SSN) before January 1, 2004, must meet one of two additional requirements in order to be found entitled to title II benefits based on that alien's earnings record. One is assignment of an SSN and authorization to work in the United States. Alternatively, the work at issue must have been performed while the alien was admitted to the United States as a visitor for business (Department of Homeland Security (DHS) nonimmigrant classification ''B-1'') or as a crewman on a vessel or aircraft (DHS nonimmigrant classification ''D-1'' or ''D-2''), and the business engaged in or service performed as a crewman was within the scope of the terms of such individual's admission to the United States.

If an alien worker whose SSN was originally assigned on or after January 1, 2004, does not meet either of these requirements, then he or she is not fully or currently insured and is not entitled to benefits even if the alien worker appears to have the required number of quarters of coverage in accordance with the other insured status provisions. This additional insured status requirement affects the entitlement of certain alien workers and any person seeking a benefit on the record of an alien who is subject to this law.

An alien worker who was properly assigned an SSN before January 1, 2004, is not subject to section 211 of the SSPA.

Statement of Need:

By incorporating the changes mandated by the law in our regulations, our program rules and operating instructions will be consistent with the statute.

Summary of Legal Basis:

The proposed revisions to our regulations will reflect the Social Security Act, as amended by section 211 of the SSPA.

Alternatives:

None

Anticipated Cost and Benefits:

Administrative start-up costs will be nominal since we have implemented the law via operating instructions. No systems changes are needed. Benefits include savings to the title II Trust Funds and in administrative enumeration costs since some claimants who are denied under this law will not be able to get an SSN card for non-work purposes. We estimate that costs will be less than $500,000 per year and total roughly $2,000,000 over a 10 year period.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	
Final Action	10/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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RIN: 0960–AG22

SSA

117. REVISIONS TO RULES ON REPRESENTATION OF PARTIES (3396F)

Priority:

Other Significant

Legal Authority:

42 USC 405(a); 42 USC 406(a)(1); 42 USC 810(a); 42 USC 902(a)(5); 42 USC 1010; 42 USC 1383(d)

CFR Citation:

20 CFR 404.612; 20 CFR 404.901; 20 CFR 404.903; 20 CFR 404.909; 20 CFR 404.910; 20 CFR 404.933; 20 CFR 404.934; 20 CFR 404.1700 to 404.1799; 20 CFR 408.1101; 20 CFR 416.315; 20 CFR 416.1401; 20 CFR 416.1403; 20 CFR 416.1409; 20 CFR 416.1410; 20 CFR 416.1433; 20 CFR 416.1434; 20 CFR 416.1500 to 416.1599; 20 CFR 422.203; 20 CFR 422.515

Legal Deadline:

None

Abstract:

We are proposing several revisions to our rules on representation of parties in parts 404, 408, 416, and 422 to reflect changes in representatives' business practices, beneficiaries' use of the Internet, and to become more efficient in processing claims for benefits. These rules propose to:

o Recognize entities as representatives;

o Mandate the use of Form SSA-1696 to appoint a representative or revoke or withdraw an appointment of a representative;

o Mandate the use of Form SSA-1696 to waive a fee or direct payment of the fee;

o Define the roles of a principal representative and a professional representative;

o Require professional representatives to use our electronic services as they become available;

o Authorize principal representatives to sign and file a claim for benefits for a claimant with us;

o Require professional representatives to submit certain requests for reconsideration and hearings before an administrative law judge electronically;

o Require a representative to keep paper copies of certain documents that we may require;

o Add new definitions or revise existing definitions for: ''disqualify,'' ''electronic media,'' ''Federal agency,'' ''Federal program,'' ''fee petition,'' ''initial disability claim,'' ''person,'' ''principal representative,'' ''professional representative,'' and ''representative;''

o Add new affirmative duties and prohibited actions for representatives; and

o Change references in the representative sanctions rules to reflect a recent delegation of authority and a recent agency reorganization.

Statement of Need:

We are proposing these revisions to reflect changes in representatives' business practices and to improve our efficiency by enhancing use of the Internet.

Summary of Legal Basis:

Section 206 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA) and section 302 and 4303 of the Social Security Protection Act of 2004 (SSPA) Public Law 108-203.

Alternatives:

None.

Anticipated Cost and Benefits:

Negligible.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/08/08	73 FR 51963
NPRM Comment Period End	11/07/08	
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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RIN: 0960–AG56

SSA

118. SETTING THE TIME AND PLACE FOR A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE (3481P)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 401(j); 42 USC 404(f); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 405 note; 42 USC 421; 42 USC 421 note; 42 USC 423(i); 42 USC 425; 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1383; 42 USC 1383b

CFR Citation:

20 CFR 404.932; 20 CFR 404.936; 20 CFR 404.938; 20 CFR 404.950; 20 CFR 416.1436; 20 CFR 416.1438; 20 CFR 416.1450(b)

Legal Deadline:

None

Abstract:

We propose to amend our rules to clarify that the agency is responsible for setting the time and place for a hearing before an administrative law judge (ALJ). Consistent with our regulations at other levels of the administrative process, we propose to use ''we'' or ''us'' in the rules addressing the scheduling of hearings. These changes will ensure greater flexibility in scheduling both in person and video teleconference hearings, increase efficiency in the hearing process, and reduce the number of pending hearings. The number of cases awaiting a hearing has reached historic

proportions, and efforts toward greater efficiency are critical to addressing this problem.

Statement of Need:

SSA currently faces a considerable challenge in processing a large backlog of requests for hearings at resource levels that have not kept pace with the rising level of receipts. Our proposed rulemaking will promote greater efficiency at the hearing level.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

Undetermined at this time.

Anticipated Cost and Benefits:

Program benefit costs are estimated to increase for fiscal years 2008 - 2018 by $1.2 billion for OASDI and SSI.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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RIN: 0960–AG61

SSA

119. REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE (HIV) SYSTEM DISORDERS (3466P)

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 14.00 and 114.00, Immune System, of appendix 1 subpart P of part 404 of our regulations describe immune system diseases that are considered severe enough to prevent an individual from doing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitations. With this ANPRM, we are soliciting input on how best to update and revise listing sections 14.00 and 114.00 to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

This regulation is necessary in order to update the HIV evaluation listings to reflect advances in medical knowledge, treatment, and evaluation methods. It ensures that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that individuals who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

Undetermined at this time.

Anticipated Cost and Benefits:

Cost/Savings estimate - negligible.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
ANPRM	03/18/08	73 FR 14409
ANPRM Comment Period End	05/19/08	
NPRM	09/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

URL For Public Comments:

www.regulations.gov

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SSA

120. AMENDMENTS TO APPLICATION FILING DATE REQUIREMENTS FOR CERTAIN MILITARY MEMBERS OF THE UNIFORMED SERVICE (3474P)

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 402(i); 42 USC 402(j); 42 USC 402(o); 42 USC 402(p); 42 USC 402(r); 42 USC 405(a); 42 USC 416(i)(2); 42 USC 423(b); 42 USC 428(a); 42 USC 902(a)(5); 42 USCC 1382; 42 USC 1383(a); 42 USC 1383(d); 42 USC 1383(e)

CFR Citation:

20 CFR 404.340; 20 CFR 404.370; 20 CFR 404.621; 20 CFR 404.630; 20 CFR 404.802

Legal Deadline:

None

Abstract:

These proposed rules will allow casualty reports prepared by the United States armed forces to serve as statements of intent to claim benefits and preserve filing dates for all benefits. The changes to sections 404.630 and 416.340 shall apply to all servicemembers entitled to receive benefits. These changes would simplify the benefits determination process and ensure that veterans receive those benefits to which they are entitled. Additionally, these rules provide a technical correction replacing the Soldiers' and Sailors' Civil Relief Act of 1940 with the Servicemembers' Civil Relief Act where applicable. This proposed change would update our regulations to reflect legislative changes.

Statement of Need:

Military servicemembers serving in today's armed forces face unique obstacles due to the nature of their casualties. Unlike physical wounds, cognitive and neurological disorders such as Traumatic Brain Injury and Post Traumatic Stress Disorder dramatically affect the emotional, psychological, and physical well being of servicemembers and can have delayed onset. These effects often result in delayed benefit applications and loss of benefits. It is important to consider the full spectrum of issues related to disabilities and accommodate their effects. This regulation would ensure that servicemembers, veterans, and their families or survivors receive the full and timely benefits to which they are entitled or eligible. Additionally, these rules would update references to the Soldiers' and Sailors' Civil Relief Act of 1940 with its predecessor, the Servicemembers' Civil Relief Act.

Summary of Legal Basis:

Administrative - not required by statute or court order.

Alternatives:

None.

Anticipated Cost and Benefits:

To be determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

121. REESTABLISHING APPEALS COUNCIL LEVEL PROVISIONS IN THE BOSTON REGION (3502P)

Priority:

Other Significant

Legal Authority:

42 USC 401(j); 42 USC 402; 42 USC 404(f); 42 USC 405; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d)–(h); 42 USC 405(j); 42 USC 405(s); 42 USC 405 note; 42 USC 416(i); 42 USC 421; 42 USC 421(a); 42 USC 421(i); 42 USC 421(m); 42 USC 421 note; 42 USC 422(c); 42 USC 423; 42 USC 423(i); 42 USC 423 note; 42 USC 425; 42 USC 432; 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1320b–1; 42 USC 1320b–13; 42 USC 1381; 42 USC 1381a; 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

CFR Citation:

20 CFR 404.970; 20 CFR 404.976; 20 CFR 404.1502; 20 CFR 404.1512; 20 CFR 404.1513; 20 CFR 404.1519k; 20 CFR 404.1519s; 20 CFR 404.1520a; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1601; 20 CFR 404.1624; 20 CFR 405.1; 20 CFR 405.5; 20 CFR 405.20; 20 CFR 405.240; 20 CFR 405.360; 20 CFR 405.371; 20 CFR 405.372; 20 CFR 405.373; 20 CFR 405.381; 20 CFR 405.382; 20 CFR 405.383; 20 CFR 405.401; 20 CFR 405.405; 20 CFR 405.410; 20 CFR 405.415; 20 CFR 405.420; 20 CFR 405.425; 20 CFR 405.427; 20 CFR 405.430; 20 CFR 405.440; 20 CFR 405.445; 20 CFR 405.450; 20 CFR 405.501; 20 CFR 405.505; 20 CFR 405.510; 20 CFR 405.515; 20 CFR 416.902; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.919k; 20 CFR 416.919s; 20 CFR 416.920a; 20 CFR 416.924; 20 CFR 416.926; 20 CFR 416.926a; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1001; 20 CFR 416.1024; 20 CFR 416.1470; 20 CFR 416.1476; 20 CFR 422.130; 20 CFR 422.201

Legal Deadline:

None

Abstract:

We propose to eliminate the Decision Review Board (DRB) portion of part 405 of our rules, which we now use for initial disability claims arising in our Boston region. Instead, we propose to allow claimants in the Boston region who are dissatisfied with the decision of the administrative law judge (ALJ) to request Appeals Council review, and, if dissatisfied with the Appeals Council's action, to file a civil action in Federal court. We will apply the existing provisions in parts 404 and 416 of our rules to provide for these steps in the appellate process where those rules are directly applicable. We intend to make the process for Appeals Council review of cases in the Boston region parallel to the Appeals Council process in the rest of the country to the greatest extent possible.

Statement of Need:

To provide more consistent processing of appeals level claims for all regions.

Summary of Legal Basis:

Administrative - not required by statute or court order.

Alternatives:

Continue existing process.

Anticipated Cost and Benefits:

Cost estimates for fiscal year 2009 - 2018: (in millions of dollars) OASDI - 55, SSI - 7.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

122. ● DISABILITY DETERMINATIONS BY STATE AGENCY DISABILITY EXAMINERS (3510P)

Priority:

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

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421; 42 USC 421 note; 42 USC 421(a); 42 USC 421(i); 42 USC 421(m); 42 USC 422(c); 42 USC 423; 42 USC 423 note; 42 USC 425; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

CFR Citation:

20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1615; 20 CFR 404.1619; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1015; 20 CFR 416.1019

Legal Deadline:

None

Abstract:

We propose to amend our rules to permit disability examiners in our State agencies to make fully favorable determinations without requiring the input of a medical or psychological consultant in certain claims for disability benefits under title II (Social Security Disability Insurance) and title XVI (Supplemental Security Income) of the Social Security Act.

Statement of Need:

This proposal would allow us to improve service to a vulnerable section of the public by processing very specific disability claims faster.

Summary of Legal Basis:

Administrative - not required by statute or court order.

Alternatives:

None.

Anticipated Cost and Benefits:

To be determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

URL For Public Comments:

www.regulations.gov

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SSA

123. ● AMENDMENTS TO RULES ON FEE PAYMENTS AND SANCTIONS (3513P)

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

These proposed rules would modify our rules on fee payment, fee agreements, and fee petitions. We plan to clarify how bankruptcy proceedings and fee waivers affect claims. We also propose to strengthen our sanctions process and to consolidate our rules on Representation of Parties to make it easier for the public to understand and use them.

Statement of Need:

We are proposing these revisions to reflect changes in our policies on fees and to strengthen our sanctions process.

Summary of Legal Basis:

Section 206 of the Social Security Act, as amended by the Omnibus Reconciliation Act of 1990 (OBRA) and Section 302 and 4303 of the Social Security Protection Act of 2004 (SSPA) Pub. L. 108-203.

Alternatives:

None.

Anticipated Cost and Benefits:

Negligible

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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FINAL RULE STAGE

124. REVISED MEDICAL CRITERIA FOR EVALUATING HEARING LOSS (2862F)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 2.00 and 102.00, Special Senses and Speech, of appendix 1 subpart P of part 404 of our regulations describe hearing loss that is considered severe enough to prevent a person from doing any gainful activity, or for a child claiming Supplemental Security Income (SSI) payments under title XVI, that causes marked and severe functional limitations. We are revising these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These regulations are necessary to update the hearing loss listings to reflect advances in medical knowledge, treatment, and methods of evaluating hearing impairments. The changes ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of impairments. The current listings are now over 15 years old. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

Anticipated Cost and Benefits:

Cost estimates for fiscal years 2008 - 2018: (in millions of dollars) OASDI - 105, SSI - 10.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	04/13/05	70 FR 19353
ANPRM Comment Period End	06/13/05	
NPRM	08/13/08	73 FR 47103
NPRM Comment Period End	10/14/08	
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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125. REVISED MEDICAL CRITERIA FOR MALIGNANT NEOPLASTIC DISEASES (3429F)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 13.00 and 113.00, Malignant Neoplastic Diseases, of appendix 1 in part 404, subpart P of our regulations describe malignant neoplastic diseases that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitations. We are revising these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These final regulations are necessary to update the Malignant Neoplastic Diseases listings to reflect advances in medical knowledge, treatment, and methods of evaluating Malignant Neoplastic Diseases Impairments. They ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment

through the use of specific criteria, and that individuals who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising selected criteria of the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that these revisions are preferable because of the medical advances that have been made in treating and evaluating these types of impairments. The current listings are three years old. It was our intention to monitor these listings and to update the criteria as the need arose. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

Anticipated Cost and Benefits:

Savings estimates for fiscal years 2009 - 2018: (in millions of dollars) OASDI - 46, SSI - 8.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	04/28/08	73 FR 22871
NPRM Comment Period End	06/27/08	
Final Action	04/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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126. • AUTHORIZATION OF REPRESENTATIVE FEES (3508F)

Priority:

Other Significant

Legal Authority:

42 USC 405(a); 42 USC 406(a)(1); 42 USC 902(a)(5); 42 USC 1383(d)

CFR Citation:

20 CFR 404.1703; 20 CFR 404.1720; 20 CFR 416.1503; 20 CFR 416.1520

Legal Deadline:

None

Abstract:

We are proposing to revise our rules regarding payment of representative fees to allow representatives, in certain cases, to charge and receive a fee for their services from third parties without requiring our approval. We are also proposing to eliminate the requirement that we approve fees for legal guardians or court-appointed representatives providing representational services in claims before us if a court has already authorized their fees. Lastly, we propose to define ''legal guardians or court-appointed representatives.''

Statement of Need:

We are proposing these revisions to reflect changes in representatives' business practices, the ways in which claimants obtain representation, and how we process representative fees. Specifically, we propose to revise our rules regarding payment of representative fees to allow representatives to charge and receive a fee from third parties without requiring our authorization in certain instances. We also propose to eliminate the requirement that we authorize fees for legal guardians or court-appointed representatives who provide representational services before us if a court has already authorized their fees.

Summary of Legal Basis:

Section 206 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA) and section 302 and 303 of the Social Security Protection Act of 2004 (SSPA) Public Law 108-203.

Alternatives:

None.

Anticipated Cost and Benefits:

Negligible.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/26/08	73 FR 50260
NPRM Comment Period End	09/25/08	
Final Action	09/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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BILLING CODE 4191–02–S

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, the Commission:

- develops mandatory product safety standards or banning rules when other, less restrictive, efforts are inadequate to address a safety hazard;
- obtains repair, replacement, or refund of the purchase price for defective products that present a substantial product hazard;
- develops information and education campaigns about the safety of consumer products; and
- staff participates in the development or revision of voluntary product safety standards.

When deciding which of these approaches to take in any specific case, the Commission gathers and analyzes the best available data about the nature and extent of the risk presented by the product. The Commission's rules require the Commission to consider, among other factors, the following criteria when deciding the level of priority for any particular project:

- frequency and severity of injury;
- causality of injury;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- unforeseen nature of the risk;
- vulnerability of the population at risk;
- 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.

In fiscal year 2009, the Commission will continue rulemaking activity to address risks of fire associated with upholstered furniture. This rulemaking may be economically significant, both domestically and with respect to impact on international trade and investment. Pending reauthorization legislation, the Consumer Product Safety Improvement Act of 2008, will also have a significant impact on the Commission's regulatory activities in fiscal year 2009.

CPSC

FINAL RULE STAGE

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127. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

15 USC 1193, Flammable Fabrics Act; 5 USC 801

CFR Citation:

16 CFR 1640

Legal Deadline:

None

Abstract:

On October 23, 2003, the Commission issued an ANPRM to expand the scope of the ongoing upholstered furniture flammability proceeding to include both cigarette and small open flame-ignited fires. The staff developed a draft standard addressing both cigarette and small open flame ignition, and held public meetings in 2004 and 2005 to present and discuss the draft. In January, 2006, the staff sent a briefing package containing a revised draft standard and describing regulatory options to the Commission and provided follow-up status reports on various technical research efforts in November 2006 and December 2006. The staff forwarded another options package to the Commission in November 2007. The Commission voted to propose a rule based on the 2007 draft standard. The Commission's proposed standard would not require FR chemicals in fabrics or fillings.

Statement of Need:

For 2001-2003, an annual average of approximately 4,000 residential fires in which upholstered furniture was the first item to ignite resulted in an estimated 330 deaths, 580 civilian injuries, and about $115 million in property damage that could be addressed by a flammability standard. The total annual societal cost attributable to these upholstered furniture fire losses was approximately $1.9 billion. This total includes fires ignited by small open-flame sources and cigarettes.

Summary of Legal Basis:

Section 4 of the Flammable Fabrics Act (FFA) (15 U.S.C. 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.'' 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:

(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; (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; and (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.

Anticipated Cost and Benefits:

The estimated annual cost of imposing a mandatory standard to address ignition of upholstered furniture will depend upon the test requirements imposed by the standard and the steps manufacturers take to meet those requirements. Again, depending upon the test requirements, a standard may reduce cigarette and small open flame-ignited fire losses, the annual societal cost of which was $1.9 billion for 2001-2003. Thus, the potential benefits of a mandatory standard to address the risk of ignition of upholstered furniture could be significant, even if the standard did not prevent all such fires.

Risks:

The estimated average annual cost to society from all residential fires associated with upholstered furniture was $1.9 billion for 2001-2003. 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
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame Retardant Chemicals	03/17/98	63 FR 13017
Meeting Notice	03/20/02	67 FR 12916
Notice of September 24 Public Meeting	08/27/03	68 FR 51564
ANPRM	10/23/03	68 FR 60629
ANPRM Comment Period End	12/22/03	
Staff Held Public Meeting	10/28/04	
Staff Held Public Meeting	05/18/05	
Staff Sends Status Report to Commission	01/31/06	
Staff Sends Status Report to Commission	11/03/06	
Staff Sends Status Report to Commission	12/28/06	
Staff Sends Options Package to Commission	12/22/07	
Commission Votes to Direct Staff to Prepare Draft NPRM	12/27/07	
Staff Sends Draft NPRM to Commission	01/22/08	
Commission Decision to Publish NPRM	02/01/08	
NPRM	03/04/08	73 FR 11702
NPRM Comment Period Ends	05/19/08	
Staff Sends Final Rule Briefing Package to Commission	05/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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BILLING CODE 6355–01–S

FEDERAL MARITIME COMMISSION (FMC)

Statement of Regulatory and Deregulatory Priorities

The Federal Maritime Commission's (''Commission'') regulatory objectives are guided by the Agency's vision statement. The Commission's vision is to administer the shipping statutes as effectively as possible to provide fairness and efficiency in the United States foreign maritime commerce. The Commission's regulations are designed to implement each of the statutes the Agency administers in a manner consistent with this vision in a way that minimizes regulatory costs and fosters economic efficiencies.

The Commission recently finalized its Strategic Plan for Fiscal Years 2010 through 2015. As a result of the strategic planning process, the Commission's mission statement, strategic goals and performance measures have been refined to better focus the Agency's efforts in achieving its mission and promote efficiency in the Commission's business processes. Also during this process, the Commission strengthened the link between its budgetary process and Agency performance, consistent with the *Government Performance and Results Act of 1993* and Executive Order 13450 - *Improving Government Program Performance*. In working toward these objectives, the Commission may determine to initiate rulemakings to address changing industry conditions or to implement technological advancements to minimize regulatory costs.

The Commission is in the process of reviewing its regulations to ensure alignment with emerging industry trends and business practices, particularly as they relate to ocean transportation intermediaries, marine terminal operators and vessel-operating common carriers. The Commission also oversees the financial responsibility of passenger vessel operators to indemnify passengers and other persons in cases of death or injury and to indemnify passengers for nonperformance of voyages. The Commission is presently evaluating the passenger vessel operator program, particularly with regard to passenger vessel financial responsibility requirements.

The principal priority of the Agency's current regulatory plan will be to continue to assess major existing regulations for ongoing need, burden on the regulated industry, and clarity. The Commission receives requests from segments of the shipping industry with regard to their tariff obligations under the Commission's regulations. The Commission invites comments on such requests and evaluates those comments. If the Commission determines to act favorably on the requests, it is possible that there could be specific rulemaking proposals presented for the Commission's consideration.

The Commission's review of existing regulations exemplifies its objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866.

Description of the Most Significant Regulatory Actions

The Commission currently has no actions under consideration that constitute ''significant regulatory actions'' under the definition in Executive Order 12866.

BILLING CODE 6732–01–S

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I. 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 bring the best products at the lowest prices for consumers, spur efficiency and innovation, and strengthen the economy.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. Fraud and deception injure both consumers and honest competitors alike and undermine competitive markets. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Pursuant to the FTC Act, for example, the Commission currently has in place sixteen 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.

Industry Self-Regulation and Compliance Partnerships With Industry

The Commission vigorously protects consumers through a variety of tools including both regulatory and non-regulatory approaches. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate. The Commission has held workshops and issued reports that encourage industry self-regulation and compliance partnerships in several areas. As detailed below, consumer credit and finance, privacy, information security, information sharing, and the evolving nature of technology continue to be at the forefront of the Commission's consumer protection and competition programs:

On July 29-30, 2008, the Commission held a Roundtable on ''FTC at 100: Into Our Second Century.'' The sessions were composed of a series of panels designed to examine 1) the FTC's Mission, Structure, and Resources, 2) the Deployment of Agency Resources in the Enforcement Area, 3) the Deployment of Agency Resources in the Policy Research and Development Areas, 4) the Agency's External Relationships, 5) Characteristics of a Successful Government Agency, 6) the Effectiveness of the FTC's Competition Mission, 7) the Effectiveness of the FTC's Consumer Protection Mission, and 8) How to Measure the Welfare Effects of the FTC's Competition and Consumer Protection Efforts.

Other workshops and conferences concerning the FTC's mission are listed below:

(a) The Commission staff held a workshop on September 25, 2008, to explore the growth of the for-profit debt settlement industry and to analyze how its model is affecting consumers and businesses. The workshop assembled consumer advocates, industry representatives, both state and federal regulators, and others with pertinent expertise to discuss a wide range of topics, including regulation and legal developments, advertising and marketing of debt relief services, role of third party lead generators and other service providers, the history and development of the industry and consumer education.

(b) The Commission also held three workshops or conferences following its November 2006 hearings, ''Protecting Consumers in the next Tech-Ade,'' which examined key technological and business developments that will shape consumers' experiences over the next ten years.

— On July 24, 2008, the Commission staff and the Technology Law and Public Policy Clinic at the University of Washington hosted a Town Hall meeting to explore the growth of contactless payment systems and their implications for consumer protection policy.

—The Commission hosted a Town Hall meeting, titled ''Beyond Voice: Mapping the Mobile Marketplace,'' on May 6-7, 2008, to explore the evolving mobile commerce (M-commerce) marketplace and its implications for consumer protection policy.

— On November 1-2, 2007, the Commission hosted a Town Hall entitled ''Behavioral Advertising: Tracking, Targeting, and Technology.'' The event brought together consumer advocates, industry representatives, technology experts, and academics to address consumer protection issues raised by the practice of tracking consumers' activities online to target advertising — or ''behavioral advertising.''

(c) The Commission held three public workshops relating to its review of the Guides for the Use of Environmental Marketing Claims (16 CFR Part 260) which the FTC previously announced in a Federal Register Notice on November 27, 2007. 72 FR 66094.

— On July 15, 2008, the FTC hosted a workshop to examine developments in green building and textiles claims and consumer perception of such claims.

— The Commission held a public workshop on April 30, 2008, to examine developments in green packaging claims and consumer perception of these claims.

— On January 8, 2008, the Commission held a public workshop to examine the emerging market for carbon offsets (i.e., greenhouse gas emission reduction products) and renewable energy certificates (RECs), and related advertising claims. The workshop focused on consumer protection issues in these markets, such as consumer perception of carbon offset and REC advertising claims and substantiation for such claims.

(d) The FTC's Bureau of Economics hosted a conference on ''Consumer Information & the Mortgage Market'' on May 29, 2008. The conference assessed

the role of consumer information in the current mortgage crisis from an economic perspective. Experts on real estate economics, information economics, consumer behavior, and consumer information policy examined why mortgage products and markets have changed over time, and the effect of consumer information — and information regulation — on mortgage choices and mortgage market outcomes.

(e) The Commission held a one-day public workshop on May 29, 2008, to examine developments in the health care sector relating to ''clinical integration'' among health care providers. Clinical integration is a term used to describe certain types of collaborations among otherwise independent health care providers to improve quality and contain costs. The 1996 joint FTC/Department of Justice Statements of Antitrust Enforcement Policy in Health Care expressly recognize the relevance of such integration to the antitrust analysis of health care provider networks that seek to collectively negotiate contracts with payers on behalf of their members.

(f) The Commission, the International Association of Privacy Professionals, and the Northwestern University School of Law co-hosted a one-day public workshop on how businesses can secure the personal information of consumers and employees on April 15, 2008. The workshop featured business people, attorneys, government officials, privacy officers, and other experts discussing data security in general, best practices for developing an appropriate data security program, and how businesses can respond to security problems, including data breaches.

(g) The FTC also assists newer competition authorities in foreign countries to learn about and conform to international best practices in competition policy and enforcement through our technical assistance program and, along with consumer protection, through the U.S. SAFE WEB Fellows Program. On February 6, 2008, the Commission and the Department of Justice hosted a workshop on international technical assistance. During this workshop, Commission and Department of Justice officials described how their programs have worked and discuss ideas for maximizing their future effectiveness. Through interactive panels, the agencies also obtained the perspectives of other aid providers in the field, academics, and private practitioners, with a view toward making improvements and charting a course for the future.

(h) The Commission hosted a public workshop on February 12, 2008, to examine the application of unilateral effects theory to mergers of firms that sell competing, but differentiated products. ''Unilateral effects'' as a formal theory of competitive harm was added to the joint FTC/DOJ Horizontal Merger Guidelines in 1992. The theory recognizes that, in some instances, mergers may create or enhance market power by allowing the merged firm to profitably raise prices, without accommodation of other rival market incumbents. While section 2.2 of the Guidelines explains that unilateral competitive effects can arise in a variety of different settings, the most common application of the theory is in differentiated product markets, where the products sold by different market participants are imperfect substitutes for one another.

(i) On December 10-11, 2007, the Commission hosted a public workshop, ''Security in Numbers: SSNs and ID Theft,'' to explore the uses of Social Security numbers (SSNs) in the private sector and the role of SSNs in identity theft. This workshop continues the work of the President's Identity Theft Task Force, and, in particular, its recommendation to explore ways to reduce unnecessary uses of the SSN. The workshop provided a forum for public-sector, private-sector, and consumer representatives to discuss the various uses of SSNs by the private sector, the necessity of those uses, alternatives available, the challenges faced by the private sector in moving away from using SSNs, and how SSNs are obtained and used by identity thieves.

(j) On October 25, 2007, national advertising experts gathered in Houston for Green Lights & Red Flags: FTC-BBB Rules of the Road for Advertisers, a ''back to basics'' workshop about complying with federal and state truth-in-advertising standards. The workshop was sponsored by the Better Business Bureau of Metropolitan Houston, Inc. and the Federal Trade Commission, in partnership with Houston Bar Association and the American Advertising Federation Houston.

(k) The Federal Trade Commission staff held a workshop October 10-11, 2007, to explore changes in the debt collection industry and examine their impact on consumers and businesses. The event brought together consumer advocates, industry representatives, state and federal regulators, and others with relevant expertise to provide information on a range of issues, including the effects of technological, economic, and legal changes on the debt collection industry and whether the Fair Debt Collection Practices Act (FDCPA) and other laws have kept pace with the developments.

In other areas, like the entertainment industry, the Commission has encouraged industry groups to improve their self-regulatory programs to discourage the marketing to children of violent R-rated movies, Mature-rated electronic games, and music labeled with a parental advisory. The motion picture, electronic game and music industries have each established self-regulatory systems that rate or label products in an effort to help parents seeking to limit their children's exposure to violent materials. Since 1999, the Commission has issued six reports on these three industries, examining the industries' compliance with their own voluntary marketing guidelines.

In April 2007, the Commission issued the latest of a series of reports on entertainment industry practices. Although the Commission found that violent R-rated movies and M-rated games were still being advertised on television shows and Web sites with large teen audiences, the Commission's review revealed that these industries continue to comply, for the most part, with their self-regulatory limits on ad placement. Because the music labeling system is not age-based, the industry has no specific restrictions on advertising explicit-content labeled music in media popular with children. In addition, the FTC found that while video game retailers have made significant progress in limiting sales of M-rated games to children, movie and music retailers have made only modest progress limiting sales.

For the first time, the Commission tracked trends in viral marketing, including social networking sites such as MySpace, and viral video sites like YouTube. The report also flagged a new trend in gaming, mobile phone games, and noted several challenges they pose. The report recommended that all three industries consider adopting new, or tightening existing, target marketing standards. It also suggested retailers further implement and enforce point-of-sale policies restricting sales of rated or labeled material to children under 17. In particular, the report suggested the movie industry examine whether marketing and selling of unrated or ''Director's Cut'' DVD versions of R-rated movies, which may contain content that could warrant an even more

restrictive rating, undermines the current self-regulatory system.

The report also suggested that the music industry provide more information on packaging and in advertising about why certain recordings receive a Parental Advisory. Finally, the report recommended that the video game industry place content descriptors on the front of product packaging and conduct research on why many parents believe that the system could do a better job of informing them about the level of violence in some games. See *Federal Trade Commission, Marketing Violent Entertainment to Children: A Fifth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries A Report to Congress* (April 2007), available at: www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf. Following a reasonable period of monitoring industry practices and consumer concerns, the Commission plans to issue another report.

In May 2008, the Commission released the results of its latest nationwide undercover shop of movie theaters and movie, music, and video game retailers. The survey found that 20 percent of underage teenage shoppers were able to buy M-rated video games, a major improvement from all prior surveys; roughly half were able to purchase R-rated and Unrated movie DVDs and PAL music CDs; and 35 percent were able to buy tickets to R-rated movies, demonstrating no statistically significant improvement in ratings enforcement since 2003.

Staff is currently working on the development of a mall intercept study of parental awareness and use of rating information on movie DVDs and on a telephone survey on parental awareness and attitudes toward the marketing and sale of Unrated ''Director's Cut'' DVDs. The results of this research will be reported in the Commission's seventh media violence report, with an anticipated release in the Fall of 2009.

Regarding advertising for alcoholic products, the Commission issued its third report on June 26, 2008, titled *Self Regulation in the Alcohol Industry: Report of the Federal Trade Commission* (June 2008), available at http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf. This report is based on data provided by 12 major alcohol suppliers in response to FTC Special Orders, is the first to present detailed information about how alcohol companies allocate their promotional dollars. It finds that about 42 percent of such expenditures are used for traditional television, radio, print and outdoor advertising; about 40 percent are used to help wholesalers and retailers promote alcohol; about 16 percent are used for sponsorships; and two percent are directed to other efforts, such as Internet and digital advertising.[1]

With regard to advertising placement, the FTC's 2003 report announced that the alcohol industry had agreed to obtain audience data before placing ads, and agreed to require that at least 70 percent of the audience for print, radio, and television ads consist of adults over the age of 21. The 2008 FTC report found that more that 92 percent of radio, television and print ads disseminated by the 12 suppliers met the 70 percent standard. Further, all three segments of the alcohol industry have now adopted systems for third-party review of advertising complaints. In addition, the report found that the industry has adopted the 70 percent standard for Internet advertising at the agency's request. The report recommends that the industry adopt the 70 percent standard for event sponsorships, and that self-regulatory boards accept complaints from competitors and anonymous complainants. Finally, the report announces a new monitoring system to help the agency assess the industry's efforts on a continuing basis.

The 2008 report also provided an update on the FTC's ''We Don't Serve Teens'' alcohol consumer education program. In 2007, ''We Don't Serve Teens'' public service announcements (PSAs) generated more than 1.1 billion advertising impressions, with a market value of over $9 million. In October 2006, the Commission also launched an alcohol consumer education program, www.dontserveteens.gov. The program communicates the message that responsible adults do not serve alcohol to teens because it is unsafe, irresponsible, and illegal. It includes a website, television and radio public service announcements and print material to be posted in alcohol retail outlets. The Commission has joined with public and private partners to spread this message. The week of September 10, 2007 was ''We Don't Serve Teens Week.'' It featured a variety of events held nationwide to focus attention on this important message.

To address concerns about the nation's growing childhood obesity problem, the Commission and the Department of Health and Human Services (HHS) held a one-day forum on food marketing self-regulation. See *Weighing In: A Check-Up on Marketing, Self-Regulation, & Childhood Obesity* (July 2007) (materials available at http://www.ftc.gov/bcp/workshops/childobesity/index.shtml). The forum allowed members of the food and media industries and self-regulatory groups to report on their progress in implementing initiatives addressing food and beverage marketing to children that respond to the agencies' recommendations in a 2006 joint report titled *Perspectives on Marketing, Self-Regulation and Childhood Obesity*. Following up, the Commission released on July 29, 2008, a Report to Congress on *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* (found at *http://www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf).* The 2008 report was prepared at the request of Congress [2] and was based on the responses of 44 members of the food and beverage industry to Special Orders issued by the Commission on July 31, 2007, under Section 6(b) of the FTC Act. The 2006 data presented in the Report describe food and beverage marketing early in the development of industry self-regulatory activities designed to reduce the profile of such marketing to children. The Report contains information not previously assembled or available to the research community. The Report also assesses the status of self-regulatory initiatives and makes additional recommendations for both food and entertainment industry members, as well as the organizations leading self-regulatory efforts.

Additionally, in the industry self-regulation area, the Commission continues to apply the Textile Corporate

[1] The Commission has previously encouraged three alcohol industry trade associations; the Distilled Spirits Council of the United States, the Beer Institute, and the Wine Institute; to develop and implement voluntary advertising codes governing the placement and content of alcohol advertising. In particular, the Commission encourages self-regulatory efforts that reduce the likelihood that beverage alcohol advertising will be directed, by its content or placement, at youth. In its report, *Federal Trade Commission, Alcohol Marketing and Advertising A Report to Congress* (Sept. 2003), available at: http://www.ftc.gov/os/2003/09/alcohol08report.pdf, the Commission announced that industry had adopted a new advertising placement standard, and the Commission made additional recommendations about efforts to facilitate code compliance.

[2] Conference Report (H. Rep. No. 109-272 (2005) for the Commission's Fiscal 2006 appropriation legislation (Pub. L. No. 109-108) incorporated by reference language from the Senate Report directing the FTC to submit a report to the Committee regarding ''marketing activities and expenditures of the food industry targeted toward children and adolescents.'' (S. Rep. No. 109-88 (2005) at 108).

Leniency Policy Statement for minor and inadvertent violations of the Textile or Wool Rules that are self-reported by the company. 67 FR 71566 (Dec. 2, 2002). Generally, the purpose of the Textile Corporate Leniency Policy is to help increase overall compliance with the rules while also minimizing the burden on business of correcting (through relabeling) inadvertent labeling errors that are not likely to cause injury to consumers. Since the Textile Corporate Leniency Program was announced, 142 companies have been granted ''leniency'' for self-reported minor violations of FTC textile regulations.

Finally, the Commission also has engaged industry in compliance partnerships in at least two areas involving the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR 453, so that they can meet the rule's disclosure requirements. Approximately 273 funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program is designed to assist franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR 436, in complying with the rule. Violations involving fraud or other section 5 violations are not candidates for referral to the program. The IFA teaches the franchisor how to comply with the rule and monitors its business for a period of years. Where appropriate, the program offers franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, twenty-one companies have agreed to participate in the program.

Rulemakings That Have International Effects

This year, OMB has requested that agencies discuss the international effects of their rulemakings in the regulatory plan narrative. The Commission has statutory authority and implementing regulatory authority to prevent unfair or deceptive acts or practices in commerce among the states or with foreign nations. The Commission's Rules apply to foreign-based corporations doing business in the United States. As explained below, to the extent that foreign companies do business in the United States or their conduct from outside causes or is likely to cause reasonably foreseeable injury within the United States, these foreign entities are required to comply with the applicable statutes and rules.

The Commission enforces Section 5(a) of the FTC Act, which provides that ''unfair or deceptive acts or practices in or affecting commerce...are...declared unlawful.'' (15 USC 45(a)(1)). Recently, the ''Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006'' (or the ''U.S. SAFE WEB Act of 2006'' or ''SAFE WEB'') (Pub. L. No. 109-455, codified to the FTC Act, 15 USC 41 *et seq.*) amended Sec. 5(a)'s ''unfair or deceptive acts or practices'' to include such acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. This amendment expressly confirmed the FTC's authority to redress harm in the United States caused by foreign actors and harm abroad caused by U.S. actors. This also clarified the factors for Commission consideration in establishing Trade Regulation Rules to remedy unfair or deceptive acts or practices that occur on an industry-wide basis. Under Section 18 of the FTC Act, 15 USC 57a, the Commission is authorized to prescribe ''rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce'' within the meaning of Section 5(a)(1) of the Act.

Turning to specific rules and rulemakings and their international effects or of potential international interest, the Premerger Notification Rules, 16 CFR 801-803, for example, apply to mergers or acquisitions reaching a certain size threshold and where one or both parties are of a certain size. In addition, the Energy Independence and Security Act of 2007 provided the Commission with authority to promulgate a rule addressing manipulation of wholesale prices for petroleum products and authorizes rule provisions prohibiting persons from supplying misleading or deceptive information or data to certain entities. As discussed within *Rulemakings and Studies Required by Statute* below, the Commission has issued an NPRM for this rule. 73 FR 48317 (Aug. 19, 2008).

For the Commission's consumer protection mission, some of the rules currently being reviewed may have effects on international companies doing business in the United States or on U.S. businesses regarding their dealings with foreigners. These include, among other things, the rules mandated by the Energy Independence and Security Act of 2007 concerning biodiesel fuels and blends and provisions concerning two types of lighting contained in the Appliance Labeling Rule, 16 CFR 305. Other rules that are pending or under review and that may have an effect on international commerce include: Rules adopted pursuant to the provisions of the Telemarketing Sales Act, which prohibit calls to persons listed on the Do-Not-Call list (16 CFR 310); Rules Implementing the CAN-SPAM Act of 2003 (16 CFR 316) regarding sending unsolicited e-mails; Trade Regulation Rules adopted pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (900 Number Rule) (16 CFR 308); Power Output Claims for Amplifiers Used in Home Entertainment Systems; Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (16 CFR 307); the Trade Regulation Rule on Mail or Telephone Order Merchandise, which covers purchases on the Internet (16 CFR 435); the Rules adopted pursuant to the textile acts requiring content labeling of clothing and fabric and furs sold in the U.S. (16 CFR 300, 301, and 303); and the Trade Regulation Rule requiring Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended (16 CFR 423).

In addition, many of the FTC Guides also apply to foreign entities doing business in the United States or are of interest to such foreign entities. These include among others: Guides for the Jewelry, Precious Metals, and Pewter Industries 16 CFR 23; Guides Concerning Fuel Economy Advertising for New Automobiles, 16 CFR 259; Labeling Requirements for Alternative Fueled Vehicles and Alternative Fuels, 16 CFR 309; and the Guides for the Use of Environmental Marketing Claims, 16 CFR 260. The FTC also issued and applies an Enforcement Statement on the use of Made in USA and other U.S. origin claims in advertising and labeling. *See* http://www.ftc.gov/os/statutes/usajump.shtm. The principles set forth in this enforcement policy statement apply to U.S. origin claims included in labeling, advertising, other promotional materials, and all other forms of marketing, including marketing through

digital or electronic means such as the Internet or electronic mail.[3]

Rulemakings and Studies Required by Statute

The Congress has enacted several laws requiring the Commission to undertake rulemakings and studies. These include at least 14 new rulemakings and eight studies required by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159 (FACTA or the FACT Act); additional rulemakings and reports required by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187 (CAN-Spam Act); the rulemaking pursuant to the Federal Deposit Insurance Corporation Improvements Act of 1991, Pub. L. No. 102-242 (FDICIA); model privacy notices under the Gramm-Leach-Bliley Act; a report assessing the impact of laws on competition between the United States Postal Service and private competitors as required by Postal Accountability and Enhancement Act, Pub. L. 109-435; and the rulemakings concerning gas price manipulation and labeling requirements for bio-mass based diesel, biodiesel bio-mass diesel and biodiesel blends required or authorized by the Energy Security and Independence Act of 2007, Pub. L. No. 110-140. The *Final Actions* section below describes any final actions taken on the rulemakings and studies.

The Commission has already issued nearly all of the rules required by FACTA. These rules are codified in several parts of 16 CFR 600 *et seq.* The active FACTA rulemakings include the following:

Credit Bureau Charge for Credit Scores-The Commission was required to determine a fair and reasonable fee to be charged by a consumer reporting agency for providing the credit score information required under FACTA. On November 8, 2004, the Commission issued an NPRM on reasonable fees for credit scores. 69 FR 64698. The comment period ended on January 5, 2005. Staff has reviewed comments and is considering what action is appropriate.

Furnisher Rules-The Commission is required, in coordination with the banking agencies and National Credit Union Administration, to issue guidelines and rules concerning the accuracy of information furnished to consumer reporting agencies, and rules relating to the ability of consumers to dispute information directly with furnishers of information. The Commission and the other agencies issued an ANPRM for public comment on March 22, 2006 (71 FR 14419) and an NPRM on December 10, 2007 (72 FR 69279). The agencies are reviewing the comments and anticipate publishing final rules by the end of 2008.

Risk Based Pricing Rule-The Commission jointly with the Federal Reserve published a risk-based pricing proposal for comment on May 19, 2008. (73 FR 28966). The comment period ended on August 18, 2008. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. This statutorily-required rulemaking would address the form, content, time, manner, definitions, exceptions, and model of a risk-based pricing notice. The agencies anticipate issuing a final rule in spring 2009.

During July 2007, the Federal Trade Commission released a FACTA-required report presenting the results of a study concerning credit-based insurance scores and automobile insurance. *See Credit Based Insurance Scores: Impacts on Consumers of Automobile Insurance: A Report to Congress By the Federal Trade Commission* (July 2007) available at:
http://www.ftc.gov/opa/2007/07/facta.shtm. The study found that these scores are effective predictors of the claims that consumers will file. It also determined that, as a group, African-Americans and Hispanics tend to have lower scores than non-Hispanic whites and Asians. Therefore, the use of scores likely leads to African-Americans and Hispanics paying relatively more for automobile insurance than non-Hispanic whites and Asians. Credit-based insurance scores are calculated based on a consumer's credit history information. Insurance companies use them to predict the claims that consumers are likely to file, and to determine the premiums they are charged.

On May 19, 2008, pursuant to the requirement of FACTA Section 215, the Commission issued a compulsory process resolution regarding the Federal Trade Commission Study of the Effects of the Use of Credit Scores and Credit-Based Insurance Scores on the Availability and Affordability of A Range of Consumer Financial Products and Services: Draft Model Order to File a Special Report and Compulsory Process. Orders issued pursuant to this resolution would require certain insurance companies to produce information for a study on the use and effect of credit-based insurance scores on consumers of homeowner's insurance. Following a public comment period which expired on June 18, 2008, the Commission intends to serve orders on the nine largest private providers of homeowners insurance that represent roughly 60 percent of the homeowners insurance market.

The FDICIA assigns to the Commission responsibilities for certain non-federally insured depository institutions (''DIs'') and private deposit insurers of such DIs. The FTC is required to prescribe by regulation or order, the manner and content of certain disclosures required of DIs that lack federal deposit insurance. From 1993-2003, the Commission was statutorily barred on an annual basis from appropriating funds for purposes of complying with FDICIA. The Consolidated Appropriations Act of 2004 and subsequent yearly appropriations have not imposed the same funding prohibition and the Commission issued an NPRM on March 16, 2005. 70 FR 12823. The comment period closed on June 15, 2005. Staff is reviewing comments and expects to forward a recommendation to the Commission by the end of 2008.

Pursuant to Section 728 of the Financial Services Relief Act of 2006, P. L. No. 109-351, which added section 503(e) to the Gramm-Leach-Bliley Act (or GLB Act), the Commission together with seven other federal agencies[4] is directed to propose a model form that may be used at the option of financial institutions for the privacy notices required under GLB. The 2006 amendment provided that the agencies must propose the model form within 280 days after enactment, or by April 11, 2007. On March 29, 2007, the GLB agencies issued an NPRM proposing as the model form the prototype privacy notice developed during the consumer testing research project undertaken by first six, and then seven of these agencies. (72 FR 14940). Staff of the agencies are reviewing the comments

[3] The Made in USA Enforcement Statement does not cover products specifically subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act, the Wool Products Labeling Act, the Fur Products Labeling Act, or the American Automobile Labeling Act.

[4] The agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Corporation.

and expect to take action by spring 2009.

The Energy Security and Independence Act of 2007, Pub. L. No. 110-140, requires, among other things, that the Commission promulgate rules concerning gas price manipulation and labeling requirements for bio-mass based diesel, biodiesel bio-mass diesel and biodiesel blends as well as energy labeling requirements for certain appliances including light bulbs.

Section 811 of this Act prohibits any manipulative or deceptive device or contrivance in connection with the wholesale purchase, or sale of crude oil, gasoline, or other petroleum distillate in contravention of rules or regulations the Commission may prescribe. Section 813 specifies the methods of enforcing such a rule. On May 1, 2008, the Commission announced an ANPRM requesting comments on the manner in which it should carry out its responsibilities to promulgate regulations under this section. 73 FR 25614 (May 7, 2008). The extended comment period ended on June 23, 2008. 73 FR 32259 (June 6, 2008). After considering the comments, the Commission issued an NPRM on August 19, 2008 73 FR 48317. Staff anticipates making a recommendation to the Commission by the end of 2008.

Section 321 of the Energy Independence and Security Act of 2007 requires the Commission to conduct a rulemaking to consider the effectiveness of current energy labeling for lamps (commonly referred to as ''light bulbs'') and to consider alternative labeling approaches. In response to that directive, the Commission issued an ANPRM on July 17, 2008, seeking comments on the effectiveness of current labeling requirements for lamp packages and possible alternatives to those requirements. 73 FR 40988. As part of this effort, the Commission held a public roundtable meeting on September 15, 2008. The comment period ended on September 29, 2008, and, after considering the comments, staff plans to forward its recommendation to the Commission by late fall 2008.

Ten-Year Review Program

In 1992, the Commission implemented a program to review its rules and guides regularly. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 USC 601-612. Under the Commission's program, rules have been reviewed on a ten-year schedule as resources permit. For many rules, this has resulted in more frequent reviews than is generally required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, 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.'' 5 USC 610. The program's goal is to ensure that all of the Commission's rules and guides remain in the public interest. It complies with the Small Business Regulatory Enforcement Act of 1996, Pub. L. No. 104-121. This program is consistent with the Administration's ''smart'' regulation agenda to streamline regulations and reporting requirements and Section 5(a) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993).

As part of its continuing ten-year review plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews may lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary nor in the public interest. As a result of the review program, the Commission has repealed 48 percent of its trade regulation rules and 57 percent of its guides since 1992.

Calendar Year 2007-08 Reviews

Most of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. On March 4, 2008, the Commission announced its ten-year schedule of review and that it would initiate the review of two rules and one guide during 2008: (1) the Rule Concerning Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the Amplifier Rule), 16 CFR 432, (2) the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (the Cooling-Off Rule), 16 CFR 429 and (3) the Guides Concerning the Use of Environmental Marketing Claims (the Green Guides), 16 CFR 260. 73 FR 11844 (Mar. 5, 2008).

The Amplifier Rule, 16 CFR 432, promulgated in 1974 and last reviewed within the last five years, assists consumers in purchasing by standardizing the measurement and disclosure of various performance attributes of power amplification equipment for home entertainment purposes. The Rule makes it an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purposes to fail to disclose certain performance information in connection with direct or indirect representations of power output, power band, frequency or distortion characteristics. The Rule also sets out standard test conditions for performing the measurements that support the required performance disclosures. Further, the Rule prohibits representations of performance characteristics if they are not obtainable when the equipment is operated by the consumer in the usual and ordinary manner without the use of extraneous aids. On February 27, 2008, the Commission published a request for comments including a number of specific issues related to changes in technology and products. 73 FR 10403. The comment period ended on May 12, 2008, and staff anticipates sending a recommendation to the Commission by the end of 2008.

The Cooling-Off Rule, 16 CFR 429, was last revised in 1995. The Cooling-Off Rule requires that a consumer be given a three-day right to cancel certain sales greater than $25.00 that occur at a place other than a seller's place of business. The Rule also requires a seller to notify buyers orally of the right to cancel; to provide buyers with a dated receipt or copy of the contract containing the name and address of the seller and notice of cancellation rights; and to provide buyers with forms which buyers may use to cancel the contract. Staff anticipates forwarding a recommendation for an ANPRM concerning the review of this rule in December 2008.

On November 26, 2007, the Commission announced that it would review the Green Guides, 16 CFR 260. 73 FR 66091 (Nov. 27, 2007). The Commission has held three workshops described above and is continuing the review of the Green Guides. Staff anticipates forwarding a recommendation to the Commission concerning these Guides in Spring 2009. Please see subsection (c) under *Industry Self-Regulation and Compliance*

Partnerships With Industry for further information about each workshop.

Ongoing Reviews

(a) Rules

The Commission staff is continuing its review of several rules and guides.

First, for the Mail Order Rule, 16 CFR 435, the Commission plans to issue a Federal Register notice during the Fall of 2008 requesting comments on whether to retain or amend the Rule. Issued in 1975, and last amended in 1995, the rule requires that, when sellers advertise merchandise, they must have a reasonable basis for stating or implying that they can ship within a certain time. The Commission also plans to seek comments about non-substantive changes to the rule to bring it into conformity with changing conditions; including consumers' usage of means other than the telephone to access the Internet when ordering, consumers paying for merchandise by demand draft or debit card, and merchants using alternative methods to make prompt rule-required refunds.

Second, the proposed Business Opportunity Rule stems from the recently concluded review of the Franchise Rule, where staff recommended that the Franchise Rule be split into two parts; one part addressing franchise issues and another part addressing business opportunity issues. Thereafter, the Commission published an NPRM seeking comments on the proposed Business Opportunity Rule. 71 FR 19054 (Apr. 12, 2006). This proposed rule would address fraud in the offer and sale of business opportunity ventures by requiring business opportunity sellers to furnish specific pre-sale disclosures to prospective purchasers, as well as prohibiting specific conduct that the rulemaking record and the Commission's law enforcement experience show are prevalent problems. The NPRM comment period ended on July 17, 2006, and the rebuttal comment period was extended to September 29, 2006. After reviewing the comments, the Commission issued a revised NPRM on March 26, 2008, that would require business opportunity sellers to furnish prospective purchasers with specific information that is material to the consumer's decision as to whether to purchase a business opportunity and which should help the purchaser identify fraudulent offerings. 73 Fed. Reg. 16110. The NPRM comment period ended on May 27, 2008, and the rebuttal comment period ended on June 16, 2008. Staff plans to forward a recommendation to the Commission on the need for hearings or workshops on the proposed amendments to the Business Opportunity Rule by the end of 2008.

Third, for the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), 16 CFR 801-803, Bureau of Competition staff is continuing to review various HSR Rule provisions. Staff is also reviewing the HSR Form and anticipates sending a recommendation to the Commission during 2009.

Fourth, for the Used Motor Vehicle Trade Regulation Rule (Used Car Rule), 16 CFR 455, the Commission published a notice seeking public comments on the effectiveness and impact of the Rule. 73 FR 42285 (July 21, 2008). The notice seeks comments on a range of issues including, among others, whether a bilingual Buyers Guide would be useful or practicable, as well as what form such a Buyers Guide should take. Second, the notice seeks comments on possible changes to the Buyers Guide that reflect new warranty products such as certified used car warranties, that have become increasingly popular since the Rule was last reviewed. Finally, the notice seeks comments on other issues including the continuing need for the Rule and its economic impact, the effect of the Rule on deception in the used car market, and the rule's interaction with other regulations. Effective in 1985 and last reviewed in 1995, this Rule sets out the general duties of a used vehicle dealer, requiring that a completed Buyers Guide be posted at all times on the side window of each used car a dealer offers for sale. Dealers must disclose on the Buyers Guide whether the vehicle is covered by a warranty, and if so, the type and duration of the warranty coverage, or whether the vehicle is being sold ''as is - no warranty.'' The information in the Buyers Guide also becomes part of the sales contract, and overrides any contrary provisions contained in the contract, under the FTC rule. The rule also prohibits the used vehicle dealer from making statements contrary to those on the label. The comment period, as extended, ended on November 19, 2008, and staff anticipates sending its recommendation to the Commission by spring 2009.

Fifth, the Commission's review of the Pay-Per-Call Rule, 16 CFR 308, is continuing. The Commission has held workshops to discuss proposed amendments to this rule, including provisions to combat telephone bill ''cramming''—inserting unauthorized charges on consumers' phone bills—and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone based information and entertainment services. The most recent workshop focused on discussions of the use of 800 and other toll-free numbers to offer pay-per-call services, the scope of the rule, the dispute resolution process, the requirements for a pre-subscription agreement, and the need for obtaining express authorization from consumers before placing charges on their telephone bills. The review record has remained open to encourage additional comments on questions related to expansion of the rule's coverage. Staff anticipates forwarding its recommendation to the Commission by the end of 2009.

Finally, the Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Regulations), 16 CFR 307, is ongoing. The Smokeless Regulations govern the format and display of statutorily-mandated health warnings on all packages and advertisements for smokeless tobacco. In fiscal year 2000, the Commission undertook its periodic review of the Smokeless Regulations to determine whether the Regulations continue to effectively meet the goals of the Act and to seek information concerning the Regulations' economic impact in order to decide whether they should be amended. Staff is currently assessing the public comments and anticipates forwarding its recommendations to the Commission in late 2009.

(b) Guides

For the Fuel Economy Guide for new automobiles, 16 CFR 259, the Commission issued a request for comments on May 9, 2007, on whether to retain or amend the Guide. 72 FR 72328. The Fuel Economy Guide was adopted in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising. The Commission sought comments on, among other things, whether there is a continuing need for the Guide and, if so, what changes should be made to it, if any, in light of the recent Environmental Protection Agency amendments to fuel economy labeling requirements for automobiles. Comments were accepted through July 23, 2007. Staff anticipates sending a recommendation to the Commission by late 2008.

After issuing a staff advisory opinion indicating that the Commission's current Guides for Jewelry, Precious Metals and Pewter Industries, 16 CFR 23, did not address descriptions of new platinum alloy products, the Commission issued a Request for Public Comments on whether the platinum section of the Guides for Jewelry, Precious Metals and Pewter Industries, should be amended to provide guidance on how to non-deceptively mark or describe products containing between 500 and 850 parts per thousand pure platinum and no other platinum group metals. 70 FR 38834 (July 6, 2005). After an extension, the comment period closed on October 12, 2005. On February 26, 2008, the Commission issued a notice seeking comment on proposals to amend the platinum section of the Guides to address the new platinum alloys. 73 FR 10190. The extended comment period ended August 25, 2008. 73 FR 22848 (Apr. 28, 2008). Staff anticipates sending a recommendation to the Commission by the end of 2008.

On January 16, 2007, the Commission requested public comment on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR 255, as part of the agency's systematic review of all current regulations and guides. The Commission also released consumer research it commissioned regarding the messages conveyed by consumer endorsements, and sought comment both on this research and upon several other specific endorsement-related issues. 72 FR 2214 (Jan. 18, 2007). The initial comment period ended on March 19, 2007, but was subsequently extended to June 18, 2007. 72 FR 13051 (Mar. 20, 2007). In 2008, the Commission may seek comment on proposed revisions or updates to the Guides.

Finally, the Commission anticipates issuing a notice requesting comments on the Statement of General Policy or Interpretations under the Fair Credit Reporting Act (also known as FCRA Commentary) by October 2009.

Final Actions

Since publication of the 2007 Regulatory Plan, the Commission has taken final actions on several rulemakings and guides. First of all, section 205 of the Energy Independence and Security Act of 2007 requires the Commission to promulgate biodiesel labeling requirements for two categories of biomass-based diesel, ''biodiesel,'' ''biomass-based diesel'' and ''biodiesel blends'' (collectively ''biodiesel fuels''). On March 11, 2008, the Commission published an NPRM (73 FR 12916) that would amend the Commission's Octane Rule, 16 CFR part 306. On June 16, 2008, the Commission published the final rule on biodiesel fuels. (73 FR 40154). The rule is effective January 1, 2009.

Second, for the Telemarketing Sales Rule (TSR), 16 CFR 310, the Commission issued a revised NPRM on October 4, 2006, proposing to make explicit that the TSR's call abandonment prohibition bars sellers and telemarketers from delivering a prerecorded message when a person answers a telemarketing call, except in the very limited circumstances permitted in the call abandonment safe harbor and when a consumer has consented, in writing, to receive such calls. The revised NPRM also proposes to change the method for measuring the maximum allowable call abandonment rate in the call abandonment safe harbor provision from ''3 percent per day per calling campaign'' to ''3 percent per 30-day period per calling campaign.'' The Commission also announced it would not create a new safe harbor for prerecorded messages and would end its previously announced forbearance policy permitting such messages effective January 2, 2007. 71 FR 65762 (Oct. 4, 2006) (revised NPRM); 69 FR 67287 (Nov. 17, 2004) (initial NPRM). Then, in response to four petitions requesting an extension of the forbearance policy, the Commission announced that the forbearance policy would remain in effect until the conclusion of the prerecorded call amendment proceeding. 71 FR 77634 (Dec. 27, 2006). On August 29, 2008, the Commission issued two final rule amendments. 73 FR 51164 (Aug. 29, 2008). The amendments make explicit a prohibition on telemarketing calls that deliver prerecorded messages without express written consent from a consumer to receive such calls and modify the method for measuring the TSR's call abandonment safe harbor. 73 FR 51164. Finally, pursuant to the Do-Not-Call Registry Fee Extension Act of 2007, Pub. L. No. 110-188, the Commission revised the Final Amended Fee Rule, 16 CFR 310.8(c), to incorporate the statutory changes to the fee structure and provides fee increases pursuant to the Consumer Price Index (CPI). 73 FR 43354 (July 25, 2008). The Act also provides that DNC registrations will be permanent rather than expiring after five years.

Third, for the Rules on the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act Rules), the Commission announced a final rule on May 12, 2008, that included: (1) a definition of the term ''person,'' a term used repeatedly throughout the Act but not defined there; (2) modifying the definition of ''sender'' to make it easier to determine which of multiple parties advertising in a single e-mail message will be responsible for complying with the Act's ''opt-out'' requirements; (3) clarifying that a sender may comply with section 7704(a)(5(A)(iii) of the Act by including in a commercial email message a post office box or private mailbox established pursuant to United States Postal Service regulations; and (4) clarifying that to submit a valid opt-out request, a recipient cannot be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page. 73 FR 29654 (May 21, 2008). The final rules were effective July 7, 2008. The Statement of Basis and Purpose also explains the Commission's rationale for not adopting other proposals contained in the Commission's May 12, 2005, Notice of Proposed Rulemaking. 70 FR 25426.

The Commission completed its regulatory review of certain aspects of the Funeral Industry Practices Rule (Funeral Rule), 16 CFR 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 state prices and descriptions and also contain specific disclosures. The rule enables consumers to select and purchase only the goods and services they want, except for those that 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 review examined whether changes in the funeral industry warrant broadening the scope of the rule to include non-traditional providers of funeral goods or services and revising or clarifying certain prohibitions in the rule. 64 FR 24250 (May 5, 1999). A public workshop conference was subsequently held to explore issues raised in the comments submitted. After additional review, the Commission announced that it is retaining the rule without any amendments. 73 FR 13740

(Mar. 14, 2008). The Commission also announced that it would continue to accept written comments and data to further the Commission's understanding of the industry.

Since fall 2007 the Commission published two final rules mandated by FACTA. The Commission jointly promulgated with the banking agencies and the NCUA identity theft ''red flag'' guidelines and rules to implement these guidelines (the ''ID theft red flag rule'') and an address change rule (the ''address change rule''). The ID theft red flag rule, among other things, requires card issuers to investigate requests for card changes. The address change rule requires credit report users to investigate when the address on a credit report differs from the address on a credit application. The agencies jointly published proposed rules on July 18, 2006. (71 FR 40786). The comment period closed on September 18, 2006. After reviewing the comments the agencies issued final rules on November 9, 2007. (72 FR 63718).

Under FACTA, the Commission also published the final Affiliate Marketing Rule. The Commission, along with the banking agencies, the NCUA, and the Securities and Exchange Commission (SEC), was required to issue rules to implement the Act's provisions allowing consumers to opt out of marketing by affiliates. The Commission issued an NPRM on June 15, 2004 (69 FR 33324). The extended comment period closed on August 16, 2004. The final rule was published on October 30, 2007. (72 FR 28966).

The Energy Policy Act of 2005 required the Commission to complete two rulemakings while authorizing other discretionary rulemaking actions. The statute directed the Commission to issue labeling requirements within 18 months of enactment for ceiling fans concerning the electricity used by the fans to circulate air in a room. After notice and comment, the Commission published a final rule of ceiling fan labeling on December 28, 2006, to be effective on January 1, 2009. 71 FR 78057. The statute also mandated that the Commission initiate a rulemaking examining the effectiveness of the energy efficiency related consumer product labeling program (also known as the appliance labeling effectiveness rulemaking). Further, the Commission was required to complete this rulemaking within two years of enactment. After notice and comment, the Commission announced a final rule for appliance labeling effectiveness on August 7, 2007. 72 FR 49947 (Aug. 29, 2007).

As required by The Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3189 (Dec. 20, 2006), codified at 39 USC 101 *et seq.*, the Commission issued a report on January 16, 2008, titled ''Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors'' which can be found at http://www.ftc.gov/os/2008/01/080116postal.pdf. The report identifies and quantifies - to the extent possible - the Postal Service's economic burdens and advantages that exist due to its status as a federal government entity, as well as those benefits resulting from its postal and mailbox monopolies. The report also examines the net economic effect of the relevant laws governing the United States Postal Service (USPS) and its private competitors, concluding that the USPS's burdens and benefits both create marketplace distortions: legal constraints increase the USPS's costs, disadvantaging it as a competitor; implicit subsidies that the USPS enjoys partially mask the USPS's higher costs from consumers, creating incentives for consumers to purchase more competitive mail products from the USPS than they otherwise would.

Finally, on May 30, 2008, the Commission announced that it was retaining the agency's Guides for Select Leather and Imitation Leather Products, commonly known as the Leather Guides, 16 CFR 24, in their current form. 73 FR 34626 (June 18, 2008). On May 23, 2007, the Commission published a Federal Register notice soliciting comments on the Leather Guides, which were adopted in 1996. 72 FR 28906. The Leather Guides address misrepresentations regarding the composition and characteristics of certain leather and imitation leather products, and state that disclosure of non-leather content should be made for material that appears to be leather but is not leather.

Summary

In both content and process, the FTC's ongoing and proposed regulatory actions are consistent with the President's priorities. The actions under consideration inform and protect consumers and reduce the regulatory burdens on businesses. 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 section 5(a) of E.O. 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 final rules issued by the Commission continue to be consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*, required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

The Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions, and to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. In sum, the Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of ''private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' E.O. 12866, section 1.

Rulemakings that Respond to Public Regulatory Reform Nominations

During March 2002, OMB requested public nominations for regulatory reforms. The Office of Information and Regulatory Affairs (OIRA) conducted a preliminary review of the public comments received and found five FTC activities that one or more commenters had nominated for reform. In a March 7, 2003 letter, the FTC responded that the agency systematically reviews all regulations and guides on a ten-year basis and explained how the agency had already reviewed or was about to review the activity at issue or why some of the other activities were not good candidates for reform as contemplated by the Smarter Regulations Report. In 2004, OIRA requested recommendations for reform in the manufacturing sector. OIRA received two nominations for FTC action but determined not to include them in the Report to Congress on agency responses to reform nominations in the manufacturing sector.[5]

II. REGULATORY ACTIONS

The Commission has no proposed rules that would be a ''significant regulatory action'' under the definition in Executive Order 12866.[6]

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[5]The two nominations were 1) a comment concerning the DOE and FTC requirements for reporting water usage (the FTC's response indicated that the agencies have accepted the requested data based on third party reports since 1993); and 2) a comment that the DOE, FTC and EPA should work with industry to streamline duplicative energy labels (the FTC's response noted that since 2000, where appropriate, manufacturers have been allowed to place the Energy Star logo on EnergyGuide Labels and noted that the two labels provide different information to the consumer).

[6]Section 3(f) of the Executive Order defines a regulatory action to be ''significant'' if it is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC). The stated purpose of the NIGC 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 NIGC's intention to provide regulation of Indian gaming to adequately shield it from organized crime and other corrupting influences, to ensure that each Indian tribe is the primary beneficiary of its gaming operation(s), and to assure that gaming is conducted fairly and honestly by both the operator and players.

Gaming technology and regulatory structures continue to evolve rapidly in Indian gaming. These changes bring new risks and require a distinction between the control standards for class II and class III gaming. To that end, the NIGC is undertaking a review and revision of its minimum internal control standards to ensure that they remain relevant and continue to adequately minimize the risks associated with the new technology.

The NIGC has been innovative in using active outreach efforts to inform its policy development and its rulemaking efforts. For example, the NIGC has had great success in using regional meetings, both formal and informal, with tribal governments to gather views on current and proposed NIGC initiatives. The NIGC anticipates that these consultations with regulated tribes will continue to play an important role in the development of the NIGC's rulemaking efforts.

NIGC

FINAL RULE STAGE

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128. TECHNICAL STANDARDS FOR GAMING MACHINES AND GAMING SYSTEMS

Priority:

Other Significant

Legal Authority:

25 USC 2706(b)(10)

CFR Citation:

25 CFR 547

Legal Deadline:

None

Abstract:

It is necessary for the National Indian Gaming Commission (NIGC) to promulgate regulations establishing technical standards in order to assure the integrity of electronic equipment used with the play of class II games. Technical standards will address actual operation of gaming machines and systems and the equipment related to their operation.

Statement of Need:

Technical standards are needed to assure machine games are operated in a manner that ensures uniformity and integrity in tribal gaming.

Summary of Legal Basis:

It is the goal of NIGC to provide regulation of Indian gaming to shield it from organized crime and other corrupting influences as well as assuring that gaming is conducted fairly and honestly. (25 U.S.C. 2702). The Commission is charged with the responsibility of monitoring gaming conducted on Indian lands. (25 U.S.C. 2706(b)(1)). The Indian Gaming Regulatory Act 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 these sections of the statute to authorize the promulgation of technical standards for gaming machines to ensure uniformity and integrity in tribal gaming.

Alternatives:

If the Commission does not issue a rule establishing technical standards for gaming machines, tribal gaming will not have the benefit of a standard that can help promote the integrity of the equipment in class II gaming.

Anticipated Cost and Benefits:

The development of technical standards will reduce the cost of regulation to the Federal Government. Additionally, technical standards will aid tribal governments in the regulation of their gaming activities as well as prevent loss associated with defective or substandard gaming devices. Anticipated costs will be to gaming machine manufacturers and tribes.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	08/11/06	71 FR 46336
NPRM Withdrawn	02/09/07	72 FR 7360
NPRM	10/24/07	72 FR 60508
NPRM Comment Period End	03/09/08	73 FR 3224
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Tribal

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POSTAL REGULATORY COMMISSION (PRC)

Statement of Regulatory Priorities

The Postal Accountability and Enhancement Act (PAEA) was signed into law on December 20, 2006. This law gives the Postal Service additional tools to meet the challenges of changing markets, and a new authority to price its own products. It reaffirms the Postal Service's role as a government service whose primary mission remains providing universal postal services at affordable rates. Among other things, the PAEA re-established the Postal Rate Commission as the Postal Regulatory Commission (PRC or Commission). The PAEA gave the Commission enhanced responsibilities and authority to meet the challenges of the new law. It is the intention of the Commission to use its enhanced authority to ensure accountability and transparency of the Postal Service to the public it serves.

In fiscal year 2009, the Commission continues its comprehensive review of its current regulations to ensure alignment with the PAEA. Toward that end, many of its regulations will be rewritten to comply with the mandates of the PAEA. The Commission's principal regulatory priorities for fiscal year 2009 are (1) to develop and establish periodic reporting requirements to support annual reports; (2) to develop and establish regulations related to commercially sensitive documents submitted to the Commission; (3) to develop revised procedural rules for handling complaints; and (4) to develop rules establishing the accounting practices and principles to govern the operation of the Postal Service's Competitive Products Fund and for determining the assumed Federal Income Tax on competitive products' income. The Commission, in connection with the Postal Service's stakeholders, has begun meeting these challenges and will continue to do so well into fiscal year 2009.

PRC

FINAL RULE STAGE

129. ACCOUNTING PRACTICES AND PRINCIPLES

Priority:

Economically Significant

Legal Authority:

39 USC 2011(h)(2)

CFR Citation:

39 CFR part 3060

Legal Deadline:

Final, Statutory, December 18, 2008, Statutory deadline for issuance unless extended by agreement of Postal Service.

Pursuant to section 2011(h)(2)(B)(ii), the final regulations are to be issued within 12 months of the date Treasury submitted its recommendations or such later date as agreed to by the Commission and the Postal Service. Treasury submitted its report on December 19, 2007.

Abstract:

Section 401 of the Postal Accountability and Enhancement Act requires the Secretary of the Treasury to develop recommendations for accounting practices and principles that will govern the operation of the Postal Service's Competitive Products Fund and the determination of an assumed Federal income tax to be imposed on competitive products' income. On December 19, 2007, the Secretary of the Treasury submitted the report and its recommendations to the Postal Regulatory Commission concerning accounting principles and practices for the operation of the Postal Service's Competitive Products Fund and the determination of an assumed Federal income tax to be imposed on competitive products' income. Title 39 U.S.C. § 2011(h) requires the Commission to give the public the opportunity to comment on that report and tasks it with the responsibility to develop regulations to establish the accounting practices and principles to govern the operation of the Competitive Products Fund and rules for determining the assumed Federal income tax on competitive products' income. This regulation will fulfill the Commission's statutory responsibility to prescribe rules and regulations concerning accounting principles and practices for the operation of the Competitive Products Fund and the determination of an assumed Federal income tax on competitive products' income.

Statement of Need:

Establishing the accounting practices and principles to govern the operation of the Postal Service's Competitive Products Fund and determining the assumed income tax on competitive products' income is required by the Postal Accountability and Enhancement Act. Congress tasked the Postal Regulatory Commission with the job of implementing those practices and principles. These regulations are the Commission's implementation of that Congressional directive.

Summary of Legal Basis:

Title 39 U.S.C. 2011(h)(2) requires the Postal Regulatory Commission to issue regulations to establish (1) the accounting practices and principles to be followed by the Postal Service relating to the operation of the Competitive Products Fund, and (2) rules for determining the assumed Federal income tax on competitive products' income.

Alternatives:

There are no alternative methods of complying with the requirements of 39 U.S.C. 2011(h)(2) other than by issuing regulations.

Anticipated Cost and Benefits:

The accounting practices and principles and the determination of an assumed Federal income tax on competitive products' income are expected to help ensure that a level playing field exists for the Postal Service and its competitors with respect to competitive products.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	02/01/08	73 FR 6081
ANPRM Comment Period End	04/01/08	
ANPRM Reply Comment Period End	05/01/08	
NPRM	09/19/08	73 FR 54468
NPRM Comment Period End	10/20/08	
NPRM Reply Comment Period End	11/03/08	
Final Action	12/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

URL For More Information:

www.prc.gov

URL For Public Comments:

www.prc.gov

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