Federal Register
Vol. 72, No. 236
Monday, December 10, 2007

The Regulatory Plan

INTRODUCTION TO THE FALL 2007 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, environmental protection, educational quality, food safety, transportation 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 that agencies expect to undertake in the coming year. An accessible regulatory process enables citizen centered service, which is a vital part of the President's Management Agenda.

Federal Regulatory Policy

The Bush Administration supports Federal regulations that are sensible and based on sound science, economics, and the law. Accordingly, the Administration is striving for a regulatory process that adopts new rules when markets fail to serve the public interest, simplifies and modifies existing rules to make them more effective or less costly or less intrusive, and rescinds outmoded rules whose benefits do not justify their costs. In pursuing this agenda, OIRA 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 begins with the authority granted under the law. Within the discretion available to the regulating agency by 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 ends in the most efficient way. This means 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, as sometimes economic and scientific information may point in very different directions, and therefore designing regulations does not mean just the rote application of quantified data to reach policy decisions. In making regulatory decisions, we expect agencies to consider not only benefit and cost items 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 fairness and privacy. However, 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.

In pursuing this goal of establishing an effective, results-oriented regulatory system, the Bush Administration has increased the level of public involvement and transparency in the development of regulations, including in OMB's review of new and existing regulations.

The Administration's e-rulemaking initiative is designed to improve the public's ability to get involved in the rulemaking process. Visitors to the website, http://www.regulations.gov, can view and comment electronically on regulations proposed by Federal departments and agencies. Starting with this edition, the Regulatory Plan and Unified Agenda are available electronically in searchable database format at http://reginfo.gov. Additionally, beginning in early 2008, prior editions of the Regulatory Plan and Unified Agenda will also be made available in searchable format at http://reginfo.gov.

For new rulemakings and programs, OIRA has enhanced the transparency of OMB's regulatory review process. OIRA's website now enables the public to find which rules are formally under review at OMB and which rules have recently been cleared or have been returned to agencies for reconsideration. OIRA has also 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 clearance letters,'' as well as the Administrator's memorandum to the President's Management Council (September 20, 2001) on presidential review of agency rulemaking by OIRA.

For existing rulemakings, OIRA has initiated a modest series of calls for reform nominations in 2001, 2002, and 2004. In the draft 2001 annual Report to Congress on the Costs and Benefits of Federal Regulation, OMB asked for suggestions from the public about specific regulations that should be modified in order to increase net benefits to the public. We received suggestions regarding 71 regulations, 23 of which OMB designated as high priorities. After a similar call for reforms in the 2002 draft Report, OMB received recommendations on 316 distinct rules, guidance documents, and paperwork requirements from over 1,700 commenters. Many of the nominations involved rules and guidance documents that were recently issued or already under review by the agencies, or involved independent agency rules or guidance documents. OMB determined that the remaining 122 rules and 34 guidance documents were not under active review, and referred them to the agencies for their evaluation as possible reforms. Finally, in the 2004 draft Report, OMB requested public nominations of promising regulatory reforms relevant to the manufacturing sector. In particular, 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 of the 189 nominations have potential merit and justify further action. For further information, all of these Reports are available on OIRA's website at http://www.whitehouse.gov/omb/inforeg/regpol.html.

The Bush Administration has also moved aggressively to establish basic quality performance goals for all information disseminated by Federal agencies, including information disseminated in support of proposed and final regulations. The Federal agencies issued guidelines on October 1, 2002 under the Information Quality Act to ensure the ''quality, objectivity, utility, and integrity'' of all information disseminated by Federal agencies. Under these guidelines, Federal agencies are taking appropriate steps to incorporate the information quality performance standards into agency information dissemination practices, and developing pre-dissemination review procedures to substantiate the quality of information before it is disseminated. Under the

agency information quality guidelines, ''affected persons'' can request that the agencies correct information if they believe that scientific, technical, economic, statistical or other information disseminated does not meet the agency and OMB standards. If the requestor is dissatisfied with the initial agency response to a correction request, an appeal opportunity is provided by the agencies. With the implementation of these guidelines, agencies are now aware that ensuring the high quality of government information dissemination is a high priority of the Administration. Further information on OIRA's activities implementing the Information Quality Act is available on OIRA's website at http://www.whitehouse.gov/omb/inforeg/infopoltech.html.

As part of its efforts to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal agencies, on December 16, 2004, OMB issued a Final Information Quality Bulletin for Peer Review. This Bulletin establishes government-wide guidance aimed at enhancing the practice of peer review of government science documents. The Bulletin describes minimum standards for when peer review is required and how intensive the peer review should be for different information. The Bulletin requires the most rigorous form of peer review for highly influential scientific assessments. Further information on peer review is available on OIRA's website at http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf.

Recognizing the importance of agency interpretations of existing regulations, OIRA recently changed its policies concerning the development and review of agency ''guidance documents.'' On January 18, 2007, the President issued Executive Order 13422, ''Amendment to Executive Order 12866 for Regulatory Planning and Review.'' On that same day, OMB issued its Bulletin on Agency Good Guidance Practices. The primary focus of the Executive Order and the Good Guidance Bulletin is to increase the quality, transparency, and accountability of guidance documents.

The Good Guidance Bulletin, which OMB issued after seeking public comment on a proposed version, established policies and procedures for agencies to apply in their development and issuance of ''significant'' and ''economically significant'' guidance documents. This Bulletin will ensure that guidance documents are of high quality, developed with appropriate agency review and public participation, and readily accessible by the public.

The principal change to E.O. 12866 is a new process that will provide an opportunity for interagency coordination and review of significant guidance documents prior to their issuance. E.O. 12866 was amended in several other ways. For example, to ensure appropriate accountability, the E.O. modifies the procedures for an agency's adoption of its annual Regulatory Plan and requires that an agency's Regulatory Policy Officer be a Presidential appointee. The E.O. also updates the Principles of Regulation in E.O. 12866 to reflect the guidance-coordination provisions in pre-existing OMB guidance.

In addition to increasing the level of public involvement and transparency in its review of regulations, the Bush Administration has sought to enhance the role of analysis in the development of effective regulations. On September 17, 2003, OMB issued revised guidance to agencies on regulatory analysis.[1] Key features of the revised guidance include more emphasis on cost-effectiveness, more careful evaluation of qualitative and intangible values, and a greater emphasis on considering the uncertainty inherent in estimates of impact. OIRA was very interested in updating the guidance in light of these and other innovations now commonplace in the research community.

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[1] See Circular A-4, ''Regulatory Analysis,'' published as part of OMB's 2003 Report to Congress on the Costs and Benefits of Federal Regulations. The report is available on OMB's website at http://www.whitehouse.gov/omb/inforeg/2003__cost-ben__final__rpt.pdf

Further, in 2007 OMB and the Office of Science and Technology Policy (OSTP) issued an updated memorandum outlining principles for conducting analyses of health, safety, and environmental risk. The memorandum reaffirms risk analysis principles previously released by OMB in 1995 and reinforces them with more recent guidance from the scientific community, Congress, and the Executive Branch. The 2007 Regulatory Plan continues OIRA's effort to ensure coordination across Federal agencies in pursuing analytically sound regulatory policies.

The Administration's 2007 Regulatory Priorities

With regard to Federal regulation, the Bush Administration's objective is quality, not quantity. Those rules that are adopted promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack. The Regulatory Plan is integral to enhancing the quality of Federal regulations, and OMB seeks to ensure that the public is provided with the information needed to understand and comment on the Federal regulatory agenda. Accordingly, the 2007 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 that are of particular concern to small businesses.
- Regulations that respond to public nominations submitted to OMB in 2001 or 2002.
- Regulations that address 2004 nominations for promising regulatory reforms in the manufacturing sector.

Conclusion

Smarter regulatory policies, created through public participation, transparency, and cooperation across Federal agencies, are a key Administration objective. 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.

DEPARTMENT OF AGRICULTURE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
1	National Organic Program: Add Standards for the Organic Certification of Wild Captured Aquatic Animals (TM-01-08)	0581–AB97	Prerule Stage
2	Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Fish, Perishable Agricultural Commodities, and Peanuts (LS-03-04)	0581–AC26	Final Rule Stage
3	Mandatory Reporting for Dairy Programs (DA-06-07)	0581–AC66	Final Rule Stage
4	Livestock Mandatory Reporting: Revise Reporting Regulation for Swine, Cattle, Lamb, and Boxed Beef (LS-07-01)	0581–AC67	Final Rule Stage
5	Regulation of Genetically Engineered Animals	0579–AC37	Prerule Stage
6	Animal Welfare; Regulations and Standards for Birds	0579–AC02	Proposed Rule Stage
7	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
8	Introduction of Organisms and Products Altered or Produced Through Genetic Engineering	0579–AC31	Proposed Rule Stage
9	Nutrition Standards in the National School Lunch and School Breakfast Programs	0584–AD59	Proposed Rule Stage
10	Child and Adult Care Food Program: Improving Management and Program Integrity	0584–AC24	Final Rule Stage
11	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002	0584–AD30	Final Rule Stage
12	Quality Control Provisions of Title IV of Public Law 107-171	0584–AD31	Final Rule Stage
13	Special Nutrition Programs: Fluid Milk Substitutions	0584–AD58	Final Rule Stage
14	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
15	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): WIC Vendor Cost Containment	0584–AD71	Final Rule Stage
16	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages	0584–AD77	Final Rule Stage
17	Egg Products Inspection Regulations	0583–AC58	Proposed Rule Stage
18	Changes to Regulatory Jurisdiction Over Certain Food Products Containing Meat and Poultry	0583–AD28	Proposed Rule Stage
19	Public Health-Based Poultry Slaughter Inspection	0583–AD32	Proposed Rule Stage
20	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
21	Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products	0583–AC60	Final Rule Stage
22	Availability of Lists of Retail Consignees During Meat or Poultry Product Recalls	0583–AD10	Final Rule Stage
23	Forest Service National Environmental Policy Act Procedures	0596–AC49	Proposed Rule Stage
24	Special Areas; State-Specific Inventoried Roadless Area Management: Idaho	0596–AC62	Proposed Rule Stage
25	Special Areas; State-Specific Inventoried Roadless Area Management: Colorado	0596–AC74	Proposed Rule Stage
26	Planning Subpart A - National Forest System Land Management Planning	0596–AC70	Final Rule Stage
27	Delivery Enhancement for Guaranteed Loans	0570–AA65	Final Rule Stage
28	Rural Broadband Access Loans and Loan Guarantees	0572–AC06	Final Rule Stage

DEPARTMENT OF COMMERCE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
29	Provide Guidance for the Limited Access Privilege Program Provisions of the Magnuson-Stevens Fishery Conservation Reauthorization Act of 2006	0648–AV48	Proposed Rule Stage
30	Certification of Nations Whose Fishing Vessels Are Engaged in IUU Fishing or Bycatch of Protected Living Marine Resources	0648–AV51	Proposed Rule Stage

DEPARTMENT OF COMMERCE (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
31	Guidance for Annual Catch Limits (ACLs) and Accountability Measures (AMs) To End Overfishing	0648–AV60	Proposed Rule Stage
32	Right Whale Ship Strike Reduction	0648–AS36	Final Rule Stage

DEPARTMENT OF EDUCATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
33	Title IV of the Higher Education Act of 1965, as Amended	1840–AC93	Proposed Rule Stage

DEPARTMENT OF ENERGY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
34	Energy Conservation Standards for Residential Electric and Gas Ranges and Ovens and Microwave Ovens, Dishwashers, Dehumidifiers, and Commercial Clothes Washers	1904–AB49	Prerule Stage
35	Energy Efficiency Standards for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps	1904–AB44	Proposed Rule Stage
36	Energy Efficiency Standards for Commercial Refrigeration Equipment	1904–AB59	Proposed Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
37	Control of Communicable Diseases, Interstate and Foreign Quarantine	0920–AA12	Final Rule Stage
38	Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics	0910–AC52	Proposed Rule Stage
39	Content and Format of Labeling for Human Prescription Drugs and Biologics; Requirements for Pregnancy and Lactation Labeling	0910–AF11	Proposed Rule Stage
40	Label Requirement for Food That Has Been Refused Admission Into the United States	0910–AF61	Proposed Rule Stage
41	Medical Device Reporting; Electronic Submission Requirements	0910–AF86	Proposed Rule Stage
42	Electronic Registration and Listing for Devices	0910–AF88	Proposed Rule Stage
43	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements	0910–AB88	Final Rule Stage
44	Prevention of Salmonella Enteritidis in Shell Eggs	0910–AC14	Final Rule Stage
45	Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002	0910–AC41	Final Rule Stage
46	Expanded Access to Investigational Drugs for Treatment Use	0910–AF14	Final Rule Stage
47	Standards for E-Prescribing Under Medicare Part D (CMS-0016-P)	0938–AO66	Proposed Rule Stage
48	Application of Certain Appeals Provisions to the Medicare Prescription Drug Appeals Process (CMS-4127-P)	0938–AO87	Proposed Rule Stage
49	Medicare Supplemental Policies (CMS-4084-P)	0938–AP10	Proposed Rule Stage
50	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2009 (CMS-1404-P)	0938–AP17	Proposed Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
51	Revisions to Payment Policies Under the Physician Fee Schedule and Ambulance Fee Schedule for CY 2009 (CMS-1403-P)	0938–AP18	Proposed Rule Stage
52	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-F)	0938–AG82	Final Rule Stage
53	Hospice Care Conditions of Participation (CMS-3844-F)	0938–AH27	Final Rule Stage
54	Health Coverage Portability: Tolling Certain Time Periods and Interactions With Family and Medical Leave Act (CMS-2158-F)	0938–AL88	Final Rule Stage

DEPARTMENT OF HOMELAND SECURITY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
55	Implementation of the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT); Biometric Requirements for Exit at Air and Sea Ports	1601–AA34	Proposed Rule Stage
56	Minimum Standards for Driver's Licenses and Identification Cards Acceptable to Federal Agencies for Official Purposes	1601–AA37	Final Rule Stage
57	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements	1615–AA01	Proposed Rule Stage
58	Special Immigrant and Nonimmigrant Religious Workers	1615–AA16	Final Rule Stage
59	Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status	1615–AA60	Final Rule Stage
60	Changes to Requirements Affecting H-2A Nonimmigrants	1615–AB65	Final Rule Stage
61	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
62	Commercial Fishing Industry Vessels (USCG-2003-16158)	1625–AA77	Proposed Rule Stage
63	Navigation Equipment; SOLAS Chapter V Amendments and Electronic Chart System (USCG-2004-19588)	1625–AA91	Proposed Rule Stage
64	Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System (USCG-2005-21869)	1625–AA99	Proposed Rule Stage
65	Increasing Passenger Weight Standard for Passenger Vessels (USCG 2005-22732)	1625–AB20	Proposed Rule Stage
66	Transportation Worker Identification Credential (TWIC); Card Reader Requirements (USCG-2007-28915)	1625–AB21	Proposed Rule Stage
67	Outer Continental Shelf Activities (USCG-1998-3868)	1625–AA18	Final Rule Stage
68	Advance Information on Private Aircraft Arriving and Departing the United States	1651–AA41	Proposed Rule Stage
69	Importer Security Filing and Additional Carrier Requirements	1651–AA70	Proposed Rule Stage
70	Documents Required for Travelers Entering the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere	1651–AA69	Final Rule Stage
71	Aircraft Repair Station Security	1652–AA38	Proposed Rule Stage
72	Secure Flight Program	1652–AA45	Proposed Rule Stage
73	Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program	1652–AA53	Proposed Rule Stage
74	Public Transportation—Security Plan	1652–AA56	Proposed Rule Stage
75	Railroads-Security Training of Employees	1652–AA57	Proposed Rule Stage

DEPARTMENT OF HOMELAND SECURITY (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
76	Railroads—Vulnerability Assessment and Security Plan	1652–AA58	Proposed Rule Stage
77	Over-the-Road Buses—Security Training of Employees	1652–AA59	Proposed Rule Stage
78	Over-the-Road Buses—Vulnerability Assessment and Security Plan	1652–AA60	Proposed Rule Stage
79	Security Threat Assessments of Certain Transportation Personnel	1652–AA61	Proposed Rule Stage
80	Rail Transportation Security	1652–AA51	Final Rule Stage
81	Public Transportation-Security Training of Employees	1652–AA55	Final Rule Stage
82	Special Community Disaster Loans Program	1660–AA44	Proposed Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
83	HUD's Regulation of Fannie Mae and Freddie Mac: Housing Goals (FR-4960)	2501–AD12	Proposed Rule Stage
84	Real Estate Settlement Procedures Act (RESPA); To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Costs (FR-5180)	2502–AI61	Proposed Rule Stage
85	Capital Fund Program (FR-4880)	2577–AC50	Proposed Rule Stage

DEPARTMENT OF THE INTERIOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
86	Placement of Excess Spoil	1029–AC04	Proposed Rule Stage
87	Oil Shale Leasing and Operations	1004–AD90	Proposed Rule Stage

DEPARTMENT OF JUSTICE

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

DEPARTMENT OF LABOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
90	Family and Medical Leave Act of 1993; Conform to the Supreme Court's Ragsdale Decision	1215–AB35	Proposed Rule Stage
91	Senior Community Service Employment Program	1205–AB48	Proposed Rule Stage
92	YouthBuild Program	1205–AB49	Proposed Rule Stage

DEPARTMENT OF LABOR (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
93	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations	1205–AB50	Proposed Rule Stage
94	Federal-State Unemployment Compensation Program; Interstate Arrangement for Combining Employment and Wages	1205–AB51	Proposed Rule Stage
95	Senior Community Service Employment Program; Performance Accountability	1205–AB47	Final Rule Stage
96	Fee and Expense Disclosures to Participants in Individual Account Plans	1210–AB07	Proposed Rule Stage
97	Amendment of Standards Applicable to General Statutory Exemption for Services	1210–AB08	Proposed Rule Stage
98	Prohibited Transaction Exemption for Provision of Investment Advice to Participants in Individual Account Plans	1210–AB13	Proposed Rule Stage
99	Periodic Pension Benefit Statements	1210–AB20	Proposed Rule Stage
100	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996	1210–AA54	Final Rule Stage
101	Section 404 Regulation—Default Investment Alternatives Under Participant Directed Individual Account Plans	1210–AB10	Final Rule Stage
102	Continuous Personal Dust Monitors	1219–AB48	Prerule Stage
103	Diesel Particulate Matter: Conversion Factor From Total Carbon to Elemental Carbon	1219–AB55	Proposed Rule Stage
104	Asbestos Exposure Limit	1219–AB24	Final Rule Stage
105	Sealing of Abandoned Areas	1219–AB52	Final Rule Stage
106	Mine Rescue Teams	1219–AB53	Final Rule Stage
107	Occupational Exposure to Crystalline Silica	1218–AB70	Prerule Stage
108	Cranes and Derricks	1218–AC01	Proposed Rule Stage
109	Hazard Communication	1218–AC20	Proposed Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
110	Nondiscrimination on the Basis of Disability in Air Travel	2105–AC97	Final Rule Stage
111	Automatic Dependent Surveillance—Broadcast (ADS-B) Equipage Mandate To Support Air Traffic Control Service	2120–AI92	Proposed Rule Stage
112	Pilot Age Limit	2120–AJ01	Proposed Rule Stage
113	Aging Aircraft Program (Widespread Fatigue Damage)	2120–AI05	Final Rule Stage
114	Transport Airplane Fuel Tank Flammability Reduction	2120–AI23	Final Rule Stage
115	National Registry of Certified Medical Examiners	2126–AA97	Proposed Rule Stage
116	Commercial Driver's License Testing and Commercial Learner's Permit Standards	2126–AB02	Proposed Rule Stage
117	Medical Certification Requirements as Part of the Commercial Driver's License	2126–AA10	Final Rule Stage
118	New Entrant Safety Assurance Process	2126–AA59	Final Rule Stage
119	Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment	2126–AA86	Final Rule Stage
120	Electronic On-Board Recorders for Hours-of-Service Compliance	2126–AA89	Final Rule Stage
121	Roof Crush Resistance	2127–AG51	Proposed Rule Stage
122	Light Truck Corporate Average Fuel Economy Standards, Model Years 2012 and Beyond	2127–AK08	Proposed Rule Stage
123	Reduced Stopping Distance Requirements for Truck Tractors	2127–AJ37	Final Rule Stage
124	Regulatory Relief for Electronically Controlled Pneumatic Brake System Implementation	2130–AB84	Proposed Rule Stage

DEPARTMENT OF TRANSPORTATION (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
125	Major Capital Investment Projects—New/Small Starts	2132–AA81	Proposed Rule Stage
126	Pipeline Safety: Distribution Integrity Management	2137–AE15	Proposed Rule Stage
127	Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments	2137–AE02	Final Rule Stage

DEPARTMENT OF THE TREASURY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
128	Implementation of a Revised Basel Capital Accord (Basel II)	1557–AC91	Final Rule Stage
129	Implementation of a Revised Basel Capital Accord (Basel II)	1550–AB56	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
130	Review of the National Ambient Air Quality Standards for Lead	2060–AN83	Prerule Stage
131	Endocrine Disruptor Screening Program (EDSP); Implementing the Screening and Testing Phase	2070–AD61	Prerule Stage
132	Nanoscale Materials Under TSCA	2070–AJ30	Prerule Stage
133	Implementing Periodic Monitoring in Federal and State Operating Permit Programs	2060–AN00	Proposed Rule Stage
134	Revisions to the Definition of Potential to Emit (PTE)	2060–AN65	Proposed Rule Stage
135	Risk and Technology Review Phase II Group 2	2060–AN85	Proposed Rule Stage
136	Rulemaking To Address Greenhouse Gas Emissions From Motor Vehicles	2060–AO56	Proposed Rule Stage
137	Test Rule; Testing of Certain High Production Volume (HPV) Chemicals	2070–AD16	Proposed Rule Stage
138	Pesticides; Data Requirements for Antimicrobials	2070–AD30	Proposed Rule Stage
139	Pesticides; Competency Standards for Occupational Users	2070–AJ20	Proposed Rule Stage
140	Pesticides; Agricultural Worker Protection Standard Revisions	2070–AJ22	Proposed Rule Stage
141	Pesticides; Data Requirements for Plant-Incorporated Protectants (PIPs)	2070–AJ27	Proposed Rule Stage
142	Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule	2050–AG16	Proposed Rule Stage
143	Revisions to Land Disposal Restrictions Treatment Standards and Amendments to Recycling Requirements for Spent Petroleum Refining Hydrotreating and Hydrorefining Catalysts	2050–AG34	Proposed Rule Stage
144	NPDES Vessel Vacatur	2040–AE93	Proposed Rule Stage
145	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation and Project Netting	2060–AL75	Final Rule Stage
146	Control of Emissions from New Locomotives and New Marine Diesel Engines Less Than 30 Liters per Cylinder	2060–AM06	Final Rule Stage
147	Control of Emissions From Nonroad Spark-Ignition Engines and Equipment	2060–AM34	Final Rule Stage
148	Amendment of the Standards for Radioactive Waste Disposal in Yucca Mountain, Nevada	2060–AN15	Final Rule Stage
149	Review of the National Ambient Air Quality Standards for Ozone	2060–AN24	Final Rule Stage
150	Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units	2060–AN28	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
151	Final Rule for Implementation of the New Source Review (NSR) Program for PM2.5	2060–AN86	Final Rule Stage
152	Lead-Based Paint; Amendments for Renovation, Repair and Painting	2070–AC83	Final Rule Stage
153	Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas	2050–AE78	Final Rule Stage
154	Expanding the Comparable Fuels Exclusion Under RCRA	2050–AG24	Final Rule Stage
155	Definition of Solid Wastes Revisions	2050–AG31	Final Rule Stage
156	NPDES Permit Requirements for Peak Wet Weather Discharges From Publicly Owned Treatment Work Treatment Plants Serving Sanitary Sewer Collection Systems Policy	2040–AD87	Final Rule Stage
157	Concentrated Animal Feeding Operation Rule	2040–AE80	Final Rule Stage
158	Water Transfers Rule	2040–AE86	Final Rule Stage
159	Implementation Guidance for Mercury Water Quality Criteria	2040–AE87	Final Rule Stage

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
160	Coordination of Retiree Health Benefits With Medicare and State Health Benefits	3046–AA72	Final Rule Stage

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
161	Federal Records Management	3095–AB16	Proposed Rule Stage

SMALL BUSINESS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
162	Small Business Lending Company and Lender Oversight Regulations	3245–AE14	Proposed Rule Stage

SOCIAL SECURITY ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
163	Revised Medical Criteria for Evaluating Immune (HIV) System Disorders	0960–AG71	Prerule Stage
164	Revised Medical Criteria for Evaluating Mental Disorders (886P)	0960–AF69	Proposed Rule Stage
165	Revised Medical Criteria for Evaluating Hearing Loss (2862P)	0960–AG20	Proposed Rule Stage
166	Additional Insured Status Requirements for Certain Alien Workers (2882P)	0960–AG22	Proposed Rule Stage
167	Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels (3401P)	0960–AG52	Proposed Rule Stage
168	Representation of Claimants (3396P)	0960–AG56	Proposed Rule Stage
169	Revised Medical Criteria for Malignant Neoplastic Diseases (3429P)	0960–AG57	Proposed Rule Stage
170	Amendments and Clarifications to the Adjudicatory Process (3431P)	0960–AG58	Proposed Rule Stage

SOCIAL SECURITY ADMINISTRATION (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
171	Requirement That Professional Representatives File Requests for Reconsideration and Administrative Law Judge Hearings Via the Internet (3432P)	0960–AG59	Proposed Rule Stage
172	Amendments to Hearings Level Adjudication (3434P)	0960–AG61	Proposed Rule Stage
173	Updates to Medical-Vocational Guidelines	0960–AG68	Proposed Rule Stage
174	Clarify Applicability of Res Judicata	0960–AG69	Proposed Rule Stage
175	Eliminate Re-interviewing of Representative Payees	0960–AG70	Proposed Rule Stage
176	Revised Medical Criteria for Evaluating Immune System Disorders (804F)	0960–AF33	Final Rule Stage
177	Amendments to the Ticket To Work and Self-Sufficiency Program (967F)	0960–AF89	Final Rule Stage
178	Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public (2562F)	0960–AG14	Final Rule Stage
179	Consultative Examination—Annual Onsite Review of Medical Examiners (3338F)	0960–AG41	Final Rule Stage
180	Suspension of New Claims to the Federal Reviewing Official Review Level (3394F)	0960–AG53	Final Rule Stage
181	Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators (2222F)	0960–AG55	Final Rule Stage

CONSUMER PRODUCT SAFETY COMMISSION

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

FEDERAL TRADE COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
183	Fair and Accurate Credit Transactions Act of 2003	3084–AA94	Proposed Rule Stage

NATIONAL INDIAN GAMING COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
184	Technical Standards for Gaming Machines and Gaming Systems	3141–AA29	Proposed Rule Stage
185	Game Classification Standards	3141–AA31	Proposed Rule Stage

POSTAL REGULATORY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
186	System of Rate Regulation for Market Dominant Products	3211–AA02	Final Rule Stage
187	Competitive Products	3211–AA03	Final Rule Stage

[FR Doc. 07–05122 Filed 12–07–07; 8:45 am]

BILLING CODE 6820–27–S

DEPARTMENT OF AGRICULTURE (USDA)

Statement of Regulatory Priorities

USDA's regulations 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. Significant focus is being placed on efficiencies that can be achieved through eGov activities, the migration to efficient electronic services and capabilities, and the implementation of focused, efficient information collections necessary to support effective program management. Important areas of activity include the following:

- Legislation covering major farm, trade, conservation, rural development, nutrition assistance and other programs (''Farm Bill'') expires at the end of fiscal year 2007. Regulations will need to be promulgated to implement any new or modified programs reauthorized included in the new Farm Bill that is now under development. It is anticipated that a number of high priority regulations will be developed during FY 2008 to implement the Farm Bill, but additional details are not available for inclusion in this plan.
- 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, and 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. 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 2008, 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, and to consolidate and streamline its regulations relating to the delivery of its guaranteed loan programs.
- 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 intends to 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 2008, USDA anticipates implementing a new 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 2008:

Food and Nutrition Service

Mission: The Food and Nutrition Service (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 2007 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 propose regulations updating nutrition standards in the school meals programs, and 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. FNS will also publish an interim final rule making improvements in food packages in the WIC program to reflect current dietary guidance, based on recommendations made by an Institute of Medicine expert panel.

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, and egg products in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

Priorities: FSIS is committed to developing and issuing science-based regulations intended to ensure that meat, poultry, and egg 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.

In February 2001, FSIS proposed a rule to establish food safety performance standards for all processed ready-to-eat (RTE) meat and poultry products and for partially heat-treated meat and poultry products that are not ready-to-eat. The proposal also contained provisions addressing post-lethality contamination of RTE products with *Listeria monocytogenes*. In June 2003, FSIS published an interim final rule requiring establishments to prevent *Listeria 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 also is 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 amend the poultry products inspection regulations to provide for a new inspection system for young poultry slaughter establishments that would facilitate public health-based inspection. Although this new system would be available initially only to young chicken slaughter, 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. This proposed rule will be designed based on some data from the HACCP-based Inspection Models (HIMP) pilot and will reflect FSIS' and establishments' experience under HIMP, which began in 1997. The proposed rule will also reflect information FSIS has gathered at public meetings on risk-based inspection for processing and slaughter this past year.

In the same regulations that propose to establish a public-health based poultry products inspection system, FSIS intends to replace, with a performance standard, the requirement for ready-to-cook poultry products to be chilled to 40 °F or below within certain time limits according to the weight of the dressed carcasses. Under the performance standard, poultry establishments would have to carry out slaughtering, 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 existing time/temperature chilling regulations would remain available for use by establishments as a ''safe harbor'' for compliance with the new standard.

FSIS proposed on March 7, 2006, to amend the Federal meat and poultry product inspection regulations to provide that the Agency would make available to individual consumers lists of the retail consignees of meat and poultry products that a federally inspected meat or poultry products establishment has voluntarily recalled. FSIS believes this action will improve public health by making available more information on where recalled products were sold. With this information, consumers will be more likely to identify and dispose of the products or return them to the stores that sold them.

FSIS is collaborating with the FDA in an effort to rationalize the division of food protection responsibilities between the two agencies and eliminate

confusion over which agency has jurisdiction over which kinds of products. The agencies are taking an approach that involves considering how the meat or poultry ingredients contribute to the characteristics and basic identity of food products. Thus, FSIS plans to propose amending its regulations to exclude from its jurisdiction 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 reaction/process flavors; pizza with meat or poultry; and salad dressings prepared with less than 50 percent meat or poultry from the requirements. FSIS also plans to clarify that bagel dogs, natural casings, and close-faced meat or poultry sandwiches are subject to the requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

FSIS also is planning to propose requirements for federally inspected egg product plants to develop and implement HACCP systems and sanitation standard operating procedures. The Agency will be proposing pathogen reduction performance standards for egg products. Further, the Agency will be proposing to remove requirements for FSIS approval of egg-product plant drawings, specifications, and equipment before their use, and to end the system for pre-marketing approval of labeling for egg products.

Small business implications. The great majority of businesses regulated by FSIS are small businesses. With the possible exception of the planned poultry inspection system regulations, the regulations listed above substantially affect small businesses. 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.

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 that will result in a revision of its regulations concerning the introduction of organisms and products altered or produced through genetic engineering. This work consists of two parts. The first is to amend the existing plant-related regulations to reflect new consolidated authorities under the Plant Protection Act. The second is to begin with an advance notice of proposed rulemaking to consider regulatory approaches for transgenic animals. These regulatory changes are needed to ensure that USDA regulations for plant and animal health keep pace with advances in technology. APHIS also plans to propose changes to the regulations for importing nursery stock that will enhance our ability to protect plant health. The Agency also plans to propose changes to its regulations concerning bovine spongiform encephalopathy (BSE) to provide a more comprehensive framework for the importation of certain animals and products. With regard to animal welfare, APHIS 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 would continue work in several areas. The July 3, 2007, interim final rule establishing a Dairy Product Mandatory Reporting Program requires dairy product manufacturers to report to the National Agricultural Statistics Service (NASS) information on price, quantity, and moisture content of products sold. Information must also be reported about the amount of dairy product stored, per statute. AMS has implemented a program to audit information reported to NASS. Provisions of the interim final rule will expire 12 months from the date of publication unless further regulatory action is taken; AMS intends to finalize the rule. Under the August 8, 2007, proposed rule to implement the Livestock Mandatory Reporting Act, AMS would collect information about the marketing of cattle, swine, lambs, and related products. AMS intends to finalize the rule.

By statute, country of origin labeling requirements will apply to all covered commodities on September 30, 2008. Covered commodities include beef, lamb and pork, fish and shellfish, perishable agricultural commodities, and peanuts. The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. AMS intends to finalize rulemaking to meet the statutory deadline.

AMS Program Rulemaking Pages: All of AMS's 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.

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, grant and technical assistance for rural housing,

community facilities, business and industry, and electric and telecommunication facilities.

Priorities: Current priorities include strengthening the regulations for the rural broadband access program to address infrastructure and services deployment issues. Another priority is to consolidate and streamline regulations relating to enhancing delivery of loan guarantees through a unified regulation on common provisions.

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: The Forest Service's priorities for fall 2007 are to publish a proposed regulation to a proposed rule for National Forest System land management planning, and then adopting a final rule at 36 CFR 219, subpart A. This rulemaking is the result of a U.S. district court order dated March 30, 2007, which enjoined the United States Department of Agriculture from implementation and utilization of the land management planning rule published in 2005 (70 FR1023) until it complies with the court's order regarding the National Environmental Policy Act, the Endangered Species Act, and the Administrative Procedure Act (*Citizens for Better Forestry et al. v. USDA,* C.A. C05-1144 (N. D. Cal.)).

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 State of Idaho and the State of Colorado have 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 in their respective States.

The Forest Service is proposing to move existing agency NEPA procedures, required by the Council on Environmental Quality (CEQ) and codified at 40 CFR 1507.3, from the internal Forest Service Environmental Policy and Procedures Handbook (FSH) 1909.15 to the Code of Federal Regulations (CFR) at 36 CFR part 220. New procedures would be added and existing procedures would be revised where clarity is needed to incorporate CEQ guidance and align agency NEPA procedures with agency decision processes.

Office of the Chief Economist

Mission: The mission of the Office of the Chief Economist (OCE) is to advise the Secretary of Agriculture on the economic implications of USDA policies, programs, and proposed legislation; to ensure the public has consistent, objective, and reliable agricultural forecasts; and to promote effective and efficient rules governing USDA programs.

Priorities: The regulatory priority for OCE is to continue implementing the BioPreferred Program (formerly the Federal Biobased Product Preferred Procurement Program) authorized under section 9002 of the 2002 Farm Bill (Public Law 107-171). 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, OCE 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 the amendments to E.O. 12866, we are providing an aggregate estimate of costs and benefits of final regulations included in the Regulatory Plan that will be made effective in calendar year 2008. However, 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 the type of regulatory costs and benefits considered. In addition, aggregation omits benefits and costs that cannot be reliably quantified, such as improved health resulting from increased access to more nutritious foods and higher levels of food safety and increased quality of life derived from investments in rural infrastructure. Some benefits and costs associated with rules listed in the Regulatory Plan cannot currently be quantified as the rules are still being formulated. With these caveats noted, USDA anticipates aggregate annual monetized benefits to range from $1.1 billion to $1.5 billion. Aggregate annual monetized costs are anticipated to be approximately $0.5 billion.

USDA—Agricultural Marketing Service (AMS)

PRERULE STAGE

1. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR THE ORGANIC CERTIFICATION OF WILD CAPTURED AQUATIC ANIMALS (TM–01–08)

Priority:

Other Significant

Legal Authority:

7 USC 6501 through 6522

CFR Citation:

7 CFR 205

Legal Deadline:

None

Abstract:

The Agricultural Marketing Service (AMS) is revising regulations pertaining to labeling of agricultural products as organically produced and handled (7 CFR part 205). The term ''aquatic animal'' will be incorporated in the definition of livestock to establish production and handling standards for operations that capture aquatic animals from the wild. Production standards for operations producing aquatic animals will incorporate requirements for livestock origin, feed ration, health care, living conditions, and recordkeeping. Handling standards for such operations will address prevention of commingling of organically produced commodities and prevention of contact between organically produced and prohibited substances.

Statement of Need:

This amendment to the National Organic Program is intended to

facilitate interstate commerce and marketing of fresh and processed aquatic animals that are organically produced and to assure consumers that such products meet consistent, uniform standards. Also, this amendment will establish national standards for the production and handling of organically produced aquatic animals and products, including a national list of substances approved and prohibited for use in organic production and handling.

Summary of Legal Basis:

This amendment is proposed under the Organic Foods Production Act of 1990 (OFPA). OFPA includes fish for food in its definition of livestock. Additionally, on April 12, 2003, Congress amended OFPA section 2107 (7 U.S.C. 6506) to authorize certification of wild seafood.

Alternatives:

AMS is fulfilling a congressional mandate to proceed with rulemaking for the establishment of national standards for the organic production and handling of aquatic animals.

Other options are to do nothing or to propose regulations prohibiting the labeling of aquatic animals as organically produced. Neither alternative is viable inasmuch as Congress has amended OFPA to authorize certification of wild seafood.

Anticipated Costs and Benefits:

Potential benefits to consumers include more information on organic aquatic animals and protection from false and misleading organic claims. This proposal will address the problem of existing certifying agents using different standards. This proposal will also resolve the issue of whether aquatic animals can be labeled as organically produced.

The costs of this proposed regulation are the direct costs to comply with the specific standards. USDA-accredited certifying agents potentially will incur additional costs of accreditation should they opt to certify producers and handlers of aquatic animals. New applicants for accreditation to certify producers and handlers of aquatic animals under the National Organic Program will incur fees for accreditation. Producers and handlers of organically produced and handled aquatic animals will incur costs for certification levied by USDA-accredited certifying agents. USDA would not levy any fees on the certified operations. Producers and handlers will face numerous provisions that will regulate their production and handling methods. Retailers would not be directly regulated but would be subject to the same requirements for organic animals and products as they are currently for other foods under the NOP. AMS believes this action will have a minimal impact on retailers. Certified handlers will have to comply with requirements regarding the approved use of labels. The USDA, States operating State programs, and certifying agents will incur costs for enforcement of these new organic standards. Certifying agents, producers, and handlers would incur costs for reporting and recordkeeping. Certifying agents will be required to file reports and documents with the USDA and to maintain records regarding their accreditation and the certification of their clients. Certified operations will be required to develop and annually update an organic system plan and to maintain records regarding their certification and the administration of their operation.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	08/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State, Tribal

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USDA—AMS

FINAL RULE STAGE

2. MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS–03–04)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

7 USC 1621 through 1627, Agricultural Marketing Act of 1946

CFR Citation:

7 CFR 60

Legal Deadline:

Final, Statutory, September 30, 2008.

Abstract:

The Farm Security and Rural Investment Act of 2002 (Farm Bill) (Pub. L. 107-171) and the 2002 Supplemental Appropriations Act (2002 Appropriations) (Pub. L. 107-206) amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 et seq.) to require retailers to notify their customers of the country of origin of covered commodities beginning September 30, 2004. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts. The FY 2004 Consolidated Appropriations bill (2004 Appropriations) (Pub. L. 108-199) delayed implementation of mandatory Country of Origin Labeling (COOL) for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The FY 2006 Agriculture Appropriations Bill further delayed the implementation date for other covered commodities until September 30, 2008.

Statement of Need:

Under current Federal laws and regulations, country of origin labeling is not universally required for the covered commodities. In particular, labeling of U.S. origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances. This intent of the law is to provide consumers with additional information

on which to base their purchasing decisions.

Summary of Legal Basis:

Section 10816 of Public Law 107-171 amended the Agricultural Marketing Act of 1946 to require retailers to inform consumers of the country of origin for covered commodities beginning September 30, 2004. The 2004 Appropriations delayed the implementation of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The FY 2006 Agriculture Appropriations Bill further delayed the implementation date for the other covered commodities until September 30, 2008.

Alternatives:

The October 30, 2004, proposed rule specifically invited comment on several alternatives including alternative definitions for ''processed food item,'' alternative labeling of mixed origin, and alternatives to using ''slaughtered'' on the label. In addition, the October 5, 2004, interim final rule contained an impact analysis which included an analysis of alternative approaches. The interim final rule also invited comment on several key issues including the definition of a processed food item.

Anticipated Costs and Benefits:

USDA has examined the economic impact of the rule as required by Executive Order 12866. The estimated benefits associated with this rule are likely to be small. The estimated 1st-year incremental cost for directly affected firms are estimated at $89 million for fish and shellfish only. The estimated cost to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment are estimated at $6.2 million. A final cost benefit assessment for the other covered commodities will be completed in the final rule.

Risks:

AMS has not identified any risks at this time.

Timetable:

Action	Date	FR Cite
NPRM	10/30/03	68 FR 61944
NPRM Comment Period End	12/29/03	
Interim Final Rule	10/05/04	69 FR 59708
Interim Final Rule Comment Period End	01/03/05	
Interim Final Rule Effective	04/04/05	
Comment Period Extended	11/27/06	71 FR 68431
Comment Period End	02/26/07	
Comment Period Extended	06/20/07	72 FR 33851
Comment Period End	08/20/07	
Final Action	09/00/08	

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.

Additional Information:

The U.S. Department of Agriculture issued an interim final rule with request for comments for the labeling of fish and shellfish covered commodities that became effective on April 4, 2005. A final regulatory action for all covered commodities will be issued by September 30, 2008.

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USDA—AMS

3. MANDATORY REPORTING FOR DAIRY PROGRAMS (DA–06–07)

Priority:

Other Significant

Legal Authority:

PL 106–532

CFR Citation:

7 USC 1621 through 1677

Legal Deadline:

None

Abstract:

The Agricultural Marketing Service is proposing to establish a Dairy Product Mandatory Reporting Program. The program would: (1) Require persons engaged in manufacturing dairy products to provide the Department of Agriculture certain information including price, quantity, and moisture content of dairy products sold by the manufacturer and (2) require manufacturers and other persons storing dairy products to report to USDA information on the quantity of dairy products stored.

Statement of Need:

The Department and industry must be confident in the accuracy of dairy product prices and inventories that are reported to the Department. This is especially so, given that the information collected on manufactured dairy products is used by the Secretary to establish minimum prices for Class III and Class IV milk under Federal milk marketing orders. As mandated by the Dairy Market Enhancement Act of 2000 and the Farm Security and Rural Investment Act of 2002, this rule establishes the Dairy Product Mandatory Reporting Program (DMRP). Implementation of this program will result in timely, accurate, and reliable market information to facilitate more informed marketing decisions.

Summary of Legal Basis:

This program is mandated by the Agricultural Marketing Act of 1946 as amended by the Dairy Market Enhancement Act of 2000 and the Farm Security and Rural Investment Act of 2002.

Alternatives:

The Agricultural Marketing Service is fulfilling a congressional mandate to proceed with rulemaking to establish the DMRP and to implement a plan to verify the price information submitted by various dairy product manufacturing plants. Several alternatives to this program were initially identified, but were not considered due to the specific language contained in the Dairy Market Enhancement Act of 2000. These alternatives included: (1) the use of non-mandatory surveys, (2) the use of alternative data sources such as the Chicago Mercantile Exchange, and (3) collecting data less frequently.

Anticipated Costs and Benefits:

Impact on Dairy Farmers

It is in the industry's best interest that NASS-reported prices be as accurate as possible for calculating milk prices. Although dairy farmers under the Federal milk marketing order program account for 61 percent (approximately 103 billion pounds of milk in 2004) of U.S. milk production, all U.S. dairy

farmers are affected to some degree by the Federal order pricing.

Imprecise price information can be costly. For example, a 1 cent per pound error in the May 2005 cheese price would cause a 9.65 cent per hundredweight error in the Class III price and a 3.76 cent per hundredweight error in the all market uniform or blend price (price paid to dairy farmers). Multiplying the price error (3.76 cents) times the quantity of milk marketed in Federal milk marketing order system indicates that either producers would have received $4 million less for their milk in the month of May 2005, than they did, or that manufacturers would have paid $4 million more for milk in May 2005, than they did.

Impact on Dairy Manufacturers

The cost to the dairy manufacturers and cold storage facilities of completing the survey is assumed to be comparable to the hourly rate of those collecting the data. Manufacturers must submit products prices 52 times a year and it is estimated that each report takes 20 minutes to complete. Cold storage facilities must report their inventories 12 times a year and it is estimated that each report takes 30 minutes to complete. The salary for employees completing the survey is estimated at $22 per hour. Therefore, the annual cost to a manufacturer reporting product prices is estimated at $381.26 and the annual cost to cold storage facilities completing reports is $132.

Most manufacturers subject to reporting under the Dairy Product Mandatory Reporting Program already report this information to NASS. Therefore, the incremental cost of implementing the program will be for those manufacturers who do not already report to NASS.

When the mandatory reporting program is implemented an additional 25 manufacturing plants will be required to submit product price reports. Therefore, the incremental cost to the industry of implementing the mandatory pricing program is estimated to be $9,531.50. It is estimated that 110 cold storage facilities meet the mandatory reporting requirements. Thus, the annual total incremental cost to cold storage facilities is estimated to be $14,520. The total incremental cost borne by dairy manufacturers and warehouses is approximately $24,000. With respect to total annual costs, the costs to cold storage facilities completing reports is $132 per facility for a total annual cost of $14,520. The cost to manufacturers reporting product prices is estimated at $381.26 per plant for a total annual cost of $37,363. Thus, the total annual cost for submitting information under the mandatory program is $51,883.48.

Impact on Government Costs

Background: In 2005, NASS collected prices information from 98 plants that were submitted on 71 reports from 60 unique locations. Reports generally are filed via fax with the appropriate State NASS office. Some reports are sent via fax directly to the NASS headquarters office in Washington, DC. Some reports are filed via NASS' electronic data reporting (EDR) system. In all cases, the reports are keyed into NASS' Dairy Product Prices (DPP) system (a SAS) database. The headquarters NASS staffer who is responsible for the published report, queries the DPP to generate various reports. Among these reports is the data listing which has individual report information. For the AMS prices verification program, NASS will generate a report from the data listing matching AMS' requirements.

Assumptions for Incremental Cost Estimates: As stated in the preliminary cost-benefit analysis, for the first year of all of the 60 reporting entities will be visited and the information contained in each of the 71 reports will be verified for a specific review period. Sales transaction records for all of the 98 plants will be analyzed. The review period will be four weeks in the same month, with the selected month varying according to the Verification Plan. It will take 4 hours to analyze the sales transactions for one week; two full days per plant. The hourly salary for the verifier is $40 with a 30-percent benefits rate. The travel cost per location is $100; per diem cost is $75. In the subsequent years, those reporting locations that account for top 80 percent of the reported volume will be visited each year, as well as one-third of the reporting locations that account for the remaining 20 percent of reported volume. Reporting locations in the latter category will be visited at least once every three years. The other assumptions concerning review period, length of time to analyze records, and cost figures apply the same as for the first year.

First Year Incremental Cost Estimate: $102,236

Travel — $6,000 (60 locations X $100)

Per Diem — $14,700 (98 plants X 2 days X $75/day)

Salary/Benefits — $81,536 (98 plants X 16 hours (2 days) X $52/hour)

Second & Subsequent Years Incremental Cost Estimate: $69,594

Travel — $3,800 (38 locations X $100)

Per Diem — $10,050 (67 plants X 16 hours (2 days) X $52/hour)

Salary/Benefits — $55,744 (67 plants X16 hours (2 days) X $52/hour)

Benefits. The major benefit of mandatory price reporting is to assure accurate price reporting by dairy manufacturers. The total incremental cost of implementing the program is estimated to be $126,287.50 in the first year and $93,645.50 in subsequent years. The incremental benefit of the program cannot be quantified; therefore, net benefits cannot be quantified.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/07	72 FR 36341
Interim Final Rule Effective	08/02/07	
Final Action	06/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—AMS

4. LIVESTOCK MANDATORY REPORTING: REVISE REPORTING REGULATION FOR SWINE, CATTLE, LAMB, AND BOXED BEEF (LS–07–01)

Priority:

Other Significant

Legal Authority:

7 USC 1621

CFR Citation:

7 CFR 59

Legal Deadline:

None

Abstract:

This rule is necessary to re-establish the regulatory authority for the Livestock Mandatory Reporting Program's continued operation and to implement the changes to the swine reporting provision made to the Act, as well as other changes to enhance the program's overall operation and efficiency based on AMS' experience in the administration of the program over the last 5 years.

Statement of Need:

This rulemaking is necessary to re-establish the regulatory authority for the program's continued operation and incorporate the swine reporting changes contained within the Reauthorization Act as well as make other changes to enhance the program's overall effectiveness and efficiency based on AMS' experience in the administration of the program over the last 6-years.

Summary of Legal Basis:

On April 2, 2001, the Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The statutory authority for the program lapsed on September 30, 2005. In October 2006, legislation was enacted to reauthorize the 1999 Act until September 30, 2010, and to amend the swine reporting requirements of the 1999 Act (Pub. Law 109-296) (Reauthorization Act.)

Alternatives:

AMS is fulfilling a Congressional mandate to proceed with rulemaking to reestablish and revise the mandatory reporting regulation for swine, cattle, lamb, and boxed beef.

Other options are to do nothing or to propose regulations for voluntary reporting of market information for swine, cattle, lamb, and boxed beef. Neither alternative is viable given that the Livestock Mandatory Reporting Act was reauthorized to require mandatory reporting of market information by certain livestock processing plants and directs the USDA to promulgate regulations to implement the law.

Anticipated Costs and Benefits:

The proposed rule facilitates open, transparent price discovery and provides all market participants, both large and small, with comparable levels of market information. The proposed rule is expected to reduce the time and resources that market participants would otherwise expend to assess current market conditions and reduce risk and uncertainty. This proposed rule is strictly an informational measure and does not impose any restrictions on the form, timing, or location of procurement and sales arrangements in which subject packers and importers may engage. Therefore, costs of the proposed rule are simply the costs associated with the system development and maintenance, data submission, and recordkeeping activities of the packers and importers required to report information under this proposed rule, plus costs to the Federal Government for operation of the program. However, most of the entities that would be required to report under this proposed rule already reported information prior to expiration of the 1999 Act on September 30, 2005, and have since continued to do so voluntarily. As a result, incremental costs for implementation of this proposed rule are negligible relative to total costs associated with the program.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/08/07	72 FR 44672
NPRM Comment Period End	09/07/07	
Final Action	05/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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USDA—Animal and Plant Health Inspection Service (APHIS)

PRERULE STAGE

5. REGULATION OF GENETICALLY ENGINEERED ANIMALS

Priority:

Other Significant

Legal Authority:

7 USC 8301 to 8317

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

APHIS is considering the need to regulate the movement (which includes importation, containment, and field release) of genetically engineered animals to ensure that the genetically engineered traits do not present a health risk to livestock. Biotechnology research and development have resulted in genetically engineered animals and animal products that are ready for commercialization. Although these applications may provide significant agricultural, human/animal health, and societal benefits, there are also potential risks, concerns, and environmental impacts associated with the technology that may require Federal oversight.

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.'' In consultation with other Federal agencies, APHIS is beginning to develop a regulatory framework for transgenic animals and other organisms to address animal health issues such as pest and disease risks to livestock. Biotechnology research and development have resulted in genetically-engineered (GE) animals and animal products that are ready for commercialization. Although these applications may provide significant agricultural, human/animal health and societal benefits, there are also

potential risks, concerns, and environmental impacts associated with the technology that requires Federal oversight.

Summary of Legal Basis:

The primary authority is provided by the Animal Health Protection Act, which authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, and interstate movement of any article if necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. Such articles may include genetically engineered products.

Alternatives:

To be identified.

Anticipated Costs and Benefits:

To be determined.

Risks:

Animals and other organisms may be genetically engineered to exhibit a trait that could present an animal health risk. The purpose of this rulemaking is to address animal health risks, such as disease and pest risks to livestock, that may be presented by these organisms.

Timetable:

Action	Date	FR Cite
ANPRM	01/00/08	
ANPRM Comment Period End	03/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal

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

PROPOSED RULE STAGE

6. 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 Costs and Benefits:

To be determined.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	03/00/08	
NPRM Comment Period End	06/00/08	

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

7. 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 USC 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 Costs 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	06/00/08	
NPRM Comment Period End	08/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Additional Information:

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

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USDA—APHIS

8. 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:

APHIS is considering changes to its regulations regarding the importation, interstate movement, and environmental release of genetically engineered organisms. We are seeking public comment on the regulatory alternatives we have identified through scoping and on the draft environmental impact statement (DEIS) we have prepared relative to those alternatives. This notice reflects the Agency's current thinking on policy and program design issues affecting our biotechnology programs. The DEIS evaluates the alternatives we have identified so far in terms of their potential effects on the human environment compared to our current regulatory program.

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 Costs 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	05/00/08	
NPRM Comment Period End	07/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

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

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RIN: 0579–AC31

USDA—Food and Nutrition Service (FNS)

PROPOSED RULE STAGE

9. NUTRITION STANDARDS IN THE NATIONAL SCHOOL LUNCH AND SCHOOL BREAKFAST PROGRAMS

Priority:

Other Significant

Legal Authority:

PL 108–265, sec 103

CFR Citation:

7 CFR 210; 7 CFR 220

Legal Deadline:

None

Abstract:

Public Law 108-265 requires the Secretary to issue regulations that reflect specific recommendations for increased consumption of foods and food ingredients in school nutrition programs based on the most recent Dietary Guidelines for Americans.

The current regulations require that reimbursable meals offered by schools meet the applicable recommendations of the Dietary Guidelines for Americans. This proposed rule would revise the regulations on meal patterns and nutrition standards to ensure that school meals reflect the 2005 Dietary Guidelines for Americans. (04-017)

Statement of Need:

This action is needed to update the NSLP and SBP requirements to promote the consumption of fruits, vegetables, whole grains, and low-fat and fat-free milk consistent with the 2005 Dietary Guidelines for Americans. This action is also needed to update the nutrient and calorie requirements to reflect the Dietary Reference Intakes.

Summary of Legal Basis:

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

Alternatives:

FNS considered several options to implement the 2005 Dietary Guidelines in the school meal programs in the most effective and least burdensome manner. Several alternatives were discussed to update the age/grade groups, calorie requirements, and menu planning approaches.

Anticipated Costs and Benefits:

This proposed rule would allow USDA's school meal programs to deliver wholesome and nutrient-dense meals that reflect the latest nutrition science, as stated in the 2005 Dietary Guidelines for Americans and the Dietary Reference Intakes. Implementation of this proposal would support the Federal government's efforts to reduce the proportion of children and adolescents who are overweight or obese to five percent by the year 2010, which is one of the objectives in the report ''Healthy People 2010''. This proposed rule would not result in an increase in Federal spending.

Risks:

Failure to update the NSLP and SBP regulations as proposed by this action would jeopardize the ability of these nutrition programs to safeguard the health and well-being of children, as intended by the National School Lunch Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	
NPRM Comment Period End	03/00/08	
Final Action	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Local, State

Federalism:

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

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USDA—FNS

FINAL RULE STAGE

10. 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 Costs 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	09/01/04	69 FR 53502
Interim Final Rule Effective	10/01/04	
Interim Final Rule Comment Period End	09/01/05	
Final Action	03/00/08	

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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USDA—FNS

11. 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 Costs 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	04/00/08	
Final Action Effective	08/00/08	

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

12. QUALITY CONTROL PROVISIONS OF TITLE IV OF PUBLIC LAW 107–171

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 Public Law 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 Costs 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	06/00/08	

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

13. SPECIAL NUTRITION PROGRAMS: FLUID MILK SUBSTITUTIONS

Priority:

Other Significant

Legal Authority:

PL 108–265, sec 102

CFR Citation:

7 CFR 210; 7 CFR 220

Legal Deadline:

None

Abstract:

Currently, by regulation, schools must make substitutions for fluid milk for students with a disability when the request is authorized by a licensed physician and may make substitutions for students with medical or other dietary needs if requested by recognized medical authority. These regulatory provisions were included in Public Law 108-265 which amended the Richard B. Russell National School Lunch Act. Public Law 108-265 also amended the current law to allow schools to substitute non-dairy beverages nutritionally equivalent (as established by the Secretary) to fluid milk for medical or other special dietary needs at the request of a parent/guardian. In response to Public Law 108-265, the National School Lunch Program and School Breakfast Program regulations will be revised to add these provisions. (04-016)

Statement of Need:

The changes made to the Richard B. Russell National School Lunch Act concerning substitutions for fluid milk are intended to assist children who cannot consume milk due to medical reasons. This regulation allows schools to make substitutions at the request of a parent or guardian, which assists families that are unable to obtain a doctor's statement. However, the Secretary must develop criteria to limit

the substitutions for milk to nutritionally equivalent beverages. The determination of nutritionally equivalent beverages will require careful research and consultation.

Summary of Legal Basis:

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

Alternatives:

USDA worked with other Federal agencies to develop criteria for nutritionally equivalent substitutes for fluid milk as well as conducting research. USDA issued a proposed rule on November 9, 2006, and received 107 public comments.

Anticipated Costs and Benefits:

Schools may incur additional costs in obtaining and offering substitute beverages. However, children who cannot consume milk will now have a beverage nutritionally equivalent to milk.

Risks:

USDA must be diligent in making any determinations of nutritional equivalency to milk.

Timetable:

Action	Date	FR Cite
NPRM	11/09/06	71 FR 65753
NPRM Comment Period End	01/08/07	
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Local, State

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USDA—FNS

14. 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 Costs 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	12/00/07	
Interim Final Rule Comment Period End	12/00/08	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Local, State

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Related RIN: Merged with 0584–AD62

RIN: 0584–AD60

USDA—FNS

15. 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 Costs 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	02/00/08	
Final Action Effective	03/00/08	

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—FNS

16. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

Final, Statutory, November 2006.

CN and WIC Reauthorization Act of 2004 (Public Law 108-265) requires issuance of final rule within 18 months of release of IOM Report.

Abstract:

This interim final rule implements the first comprehensive revisions to the WIC food packages since 1980. These revised food packages were developed to better reflect current nutrition science and dietary recommendations than do current food packages, within the parameters of current program costs. This interim final rule revises regulations governing the WIC food packages to align the WIC food packages with the Dietary Guidelines for Americans (DGA) (1) and current infant feeding practice guidelines of the American Academy of Pediatrics, better promote and support the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of food, and provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences. (05-006)

Statement of Need:

As the population served by WIC has grown and become more diverse over the last 20 years, the nutritional risks faced by participants have changed, and though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. A rule is needed to implement recommended changes to the WIC food packages based on the current nutritional needs of WIC participants and advances in nutrition science.

Summary of Legal Basis:

The Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004, requires the Department to issue a final rule within 18 months of receiving the Institute of Medicine's report on revisions to the WIC food packages. This report was published and released to the public on April 27, 2005.

Alternatives:

FNS is in the process of developing a regulatory impact analysis that will address a variety of alternatives that are considered in the interim final rulemaking. A regulatory impact analysis will be published as an appendix to the interim final rulemaking.

Anticipated Costs and Benefits:

The regulatory impact analysis for the proposed rule provides a reasonable estimate of the anticipated effects of the interim final rule. This analysis estimated that the provisions of the proposed rule would have a minimal impact on the costs of overall operations of the WIC Program over 5 years. The regulatory impact analysis was published as an appendix.

Risks:

The proposed rule to revise regulations pertaining to the supplemental foods provided through the WIC Program was published in the Federal Register on August 7, 2006 (71 FR 44784), with a 90-day comment period. The regulatory impact analysis was published as an appendix. A total of 46,502 comment letters were received on the proposed rule. The interim final rule also provides a comment period. Opportunities for training on and discussion of the revised WIC food packages will be offered to State agencies and other entities as necessary.

Timetable:

Action	Date	FR Cite
NPRM	08/07/06	71 FR 44784
NPRM Comment Period End	11/06/06	
Interim Final Rule	12/00/07	
Interim Final Rule Effective	02/00/08	
Interim Final Rule Comment Period End	02/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Local, State, Tribal

URL For More Information:

www.fns.usda.gov/wic

URL For Public Comments:

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RIN: 0584–AD77

USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

17. EGG PRODUCTS INSPECTION REGULATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 1031 to 1056

CFR Citation:

9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411; 9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; . . .

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to require egg

products plants and establishments that pasteurize shell eggs to develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation Standard Operating Procedures (SOPs). FSIS also is proposing pathogen reduction performance standards that would be applicable to egg products and pasteurized shell eggs. FSIS is proposing to amend the Federal egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products. This proposal will not encompass shell egg packers. In the near future, FSIS will initiate non-regulatory outreach efforts for shell egg packers that will provide information intended to help them to safely process shell eggs intended for human consumption or further processing.

Statement of Need:

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

This proposal is directly related to FSIS' PR/HACCP initiative.

Summary of Legal Basis:

This proposed rule is authorized under the Egg Products Inspection Act (21 U.S.C. 1031 to 1056). It is not the result of any specific mandate by the Congress or a Federal court.

Alternatives:

A team of FSIS economists and food technologists is conducting a cost-benefit analysis to evaluate the potential economic impacts of several alternatives on the public, egg products industry, and FSIS. These alternatives include: (1) Taking no regulatory action; (2) requiring all inspected egg products plants to develop, adopt, and implement written sanitation SOPs and HACCP plans; and (3) converting to a lethality-based pathogen reduction performance standard many of the current highly prescriptive egg products processing requirements. The team will consider the effects of a uniform, across-the-board standard for all egg products; a performance standard based on the relative risk of different classes of egg products; and a performance standard based on the relative risks to public health of different production processes.

Anticipated Costs and Benefits:

FSIS is analyzing the potential costs of this proposed rulemaking to industry, FSIS and other Federal agencies, State and local governments, small entities, and foreign countries. The expected costs to industry will depend on a number of factors. These costs include the required lethality, or level of pathogen reduction, and the cost of HACCP plan and sanitation SOP development, implementation, and associated employee training. The pathogen reduction costs will depend on the amount of reduction sought and on the classes of product, product formulations, or processes.

Relative enforcement costs to FSIS and Food and Drug Administration may change because the two agencies share responsibility for inspection and oversight of the egg industry and a common farm-to-table approach for shell egg and egg products food safety. Other Federal agencies and local governments are not likely to be affected.

Egg and egg product inspection systems of foreign countries wishing to export eggs and egg products to the U.S. must be equivalent to the U.S. system. FSIS will consult with these countries, as needed, if and when this proposal becomes effective.

This proposal is not likely to have a significant impact on small entities. The entities that would be directly affected by this proposal would be the approximately 80 federally inspected egg products plants, most of which are small businesses, according to Small Business Administration criteria. If necessary, FSIS will develop compliance guides to assist these small firms in implementing the proposed requirements.

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

Human health benefits from this rulemaking are likely to be small because of the low level of (chiefly post-processing) contamination of pasteurized egg products. In light of recent scientific studies that raise questions about the efficacy of current regulations, however, it is likely that measurable reductions will be achieved in the risk of foodborne illness.

The preliminary anticipated annualized costs of the proposed action are approximately $7.0 million. The preliminary anticipated benefits of the proposed action are approximately $90.0 million per year.

Risks:

FSIS believes that this regulatory action may result in a further reduction in the risks associated with egg products. The development of a lethality-based pathogen reduction performance standard for egg products, replacing command-and-control regulations, will remove unnecessary regulatory obstacles to, and provide incentives for, innovation to improve the safety of egg products.

To assess the potential risk-reduction impacts of this rulemaking on the public, an intra-Agency group of scientific and technical experts is conducting a risk management analysis. The group has been charged with identifying the lethality requirement sufficient to ensure the safety of egg products and the alternative methods for implementing the requirement. FSIS has developed new risk assessments for SE in eggs and for Salmonella spp. in liquid egg products to evaluate the risk associated with the regulatory alternatives.

Timetable:

Action	Date	FR Cite
NPRM	07/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State

Federalism:

Undetermined

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RIN: 0583–AC58

USDA—FSIS

18. • 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 U.S.C. 601(j); 21 U.S.C. 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 jurisdiction over nine products or product categories for which there has historically been confusion concerning 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% meat or poultry; breads, rolls and buns prepared with less than 50% meat or poultry; dried poultry soup mixes; flavor bases and flavors; pizza with meat or poultry; and salad dressings prepared with less than 50% 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 2004-2005 by a working group of FSIS and FDA representatives highlighted that some of the decisions do not appear to be fully consistent with other product decisions and that the reasoning behind various determinations were not fully articulated or supported.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470), 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 Costs and Benefits:

FSIS estimates that the net costs of the rule would be approximately $12 million. This consists of approximately $18 million of one-time and annual costs for establishments producing product that will transfer to FSIS jurisdiction and net savings of $6 million for establishments producing time product that will transfer to FDA jurisdiction.

FSIS' preliminary estimate of total benefits of the rule is approximately $15 million. Benefits would accrue to FSIS and FDA for personnel time saved and to industry for personnel saved.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0583–AD28

USDA—FSIS

19. ● PUBLIC HEALTH–BASED POULTRY SLAUGHTER INSPECTION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 U.S.C. 451, et seq.

CFR Citation:

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

Legal Deadline:

None

Abstract:

FSIS is proposing a new inspection system for young poultry slaughter establishments that would facilitate public health-based inspection. This new system would be available initially only to young chicken 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 Costs 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	05/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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USDA—FSIS

FINAL RULE STAGE

20. 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 Costs 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 from $500 to $700 million, with annual costs at $98.7 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. 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 somewhat 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

Action	Date	FR Cite
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	03/00/08	
Final Action	08/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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USDA—FSIS

21. NUTRITION LABELING OF SINGLE–INGREDIENT PRODUCTS AND GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 601 et seq; 21 USC 451 et seq

CFR Citation:

9 CFR 317; 9 CFR 381

Legal Deadline:

None

Abstract:

FSIS has proposed to amend the Federal meat and poultry products inspection regulations to require nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase, unless an exemption applies. FSIS also proposed to require nutrition information on the label of ground or chopped meat and poultry products, unless an exemption applies. The requirements for ground or chopped products will be consistent with those for multi-ingredient products.

FSIS also proposed to amend the nutrition labeling regulations to provide that when a ground or chopped product does not meet the regulatory criteria to be labeled ''low fat,'' a lean percentage claim may be included on the label or in labeling, as long as a statement of the fat percentage also is displayed on the label or in labeling.

Statement of Need:

The Agency will require that nutrition information be provided for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase, because during the most recent surveys of retailers, the Agency did not find significant participation in the voluntary nutrition labeling program for single-ingredient, raw meat and poultry products. Ground or chopped products are similar to multi-ingredient products. This rule is necessary so that consumers can have the information they need to construct healthy diets.

Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Products Inspection Act (21 U.S.C. 451 to 470).

Alternatives:

No action; nutrition labels required on all single-ingredient, raw products (major cuts and non-major cuts) and all ground or chopped products; nutrition labels required on all major cuts of single-ingredient, raw products (but not non-major cuts) and all ground or chopped products; nutrition information at the point-of-purchase required for all single-ingredient, raw products (major and non-major cuts) and for all ground or chopped products.

Anticipated Costs and Benefits:

Costs will include the equipment for making labels, labor, and materials used for labels for ground or chopped products. The cost of providing nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products should not be significant, because retail establishments would have the option of providing nutrition information through point-of-purchase materials.

Benefits of the nutrition labeling rule would result if consumers modify their diets in response to new nutrition information concerning ground or chopped products and the major cuts of single-ingredient, raw products. Reductions in consumption of fat and cholesterol are associated with reduced incidence of cancer and coronary heart disease.

FSIS has concluded that the quantitative benefits will exceed the quantitative costs of the rule. FSIS estimates that the discounted annual benefits of the rule will range from approximately $200 to $250 million using a 7% discount rate. FSIS estimates that the discounted annual costs will be approximately $30 million, using a 7% discount rate.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4970
NPRM Comment Period End	04/18/01	
Extension of Comment Period	04/20/01	66 FR 20213
NPRM Comment Period End	07/17/01	
Final Action	08/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

22. AVAILABILITY OF LISTS OF RETAIL CONSIGNEES DURING MEAT OR POULTRY PRODUCT RECALLS

Priority:

Other Significant

Legal Authority:

5 USC 301, 552

CFR Citation:

9 CFR 390

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) has proposed to amend the federal meat and poultry products inspection regulations to provide that the Agency will make available to the public lists of the retail consignees of meat and poultry products that have been voluntarily recalled by a federally inspected meat or poultry products establishment. FSIS has proposed this action because it believes that making this information available will be of significant value to consumers and the industry. It will clarify what products should be removed from commerce and from consumers' possession because there is reason to believe they are adulterated or misbranded.

Statement of Need:

This regulatory action is necessary to provide important information to help consumers identify recalled products.

Consumer activists and States have increasingly demanded the public release of information on where recalled meat and poultry products have been shipped. The States have requested this information be provided without the limitations imposed by FSIS's regulations. Consumer groups have claimed that the public needs this information to fully protect itself. In response to these requests, FSIS is proposing to make available to the public the names of likely retail consignees of recalled meat and poultry products.

Summary of Legal Basis:

This regulatory action is authorized under 5 U.S.C. 301, Departmental regulations, and 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings. It is not the result of any specific mandate by the Congress or a Federal court.

Alternatives:

FSIS has prepared a regulatory impact analysis to evaluate the potential economic impacts of several alternatives on the public, the meat and poultry industry, and FSIS. These alternatives include: (1) Including local health departments as entities that could receive recall distribution lists; (2) making available to the general public recall distribution lists only in response to a Freedom of Information request; and (3) making lists available to State agencies with agreements with FSIS under 9 CFR 390.9.

Anticipated Costs and Benefits:

FSIS is analyzing the potential costs of this proposed rulemaking.

This regulatory action would provide information to consumers about meat and poultry products sold at retail establishments that are believed to be adulterated or misbranded and are therefore subject to being recalled. The consumption of such products may cause food borne illness and other adverse health consequences, including death.

If consumers use retail consignee information and are better able to identify and return recalled meat and poultry products to the stores where they purchased them, the recall process will be more timely and effective. Potential benefits of the proposal are expected as a result of making more information available to consumers regarding the location of meat and poultry products subject to recall. The Agency does not expect the benefits to be significant. There is no research or empirical evidence upon which to quantify potential benefits.

Risks:

N/A

Timetable:

Action	Date	FR Cite
NPRM	03/07/06	71 FR 11326
NPRM Comment Period End	06/11/06	71 FR 27211
Final Action	07/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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USDA—Forest Service (FS)

PROPOSED RULE STAGE

23. FOREST SERVICE NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

Priority:

Other Significant

Legal Authority:

40 CFR 1507.3

CFR Citation:

36 CFR 220

Legal Deadline:

None

Abstract:

The Forest Service is proposing to move existing Agency NEPA procedures required by 40 CFR 1507.3 from Forest Service Handbook 1909.15 to the CFR, add new procedures, and edit some existing procedures. Presently, Forest Service procedures are combined with Agency guidance in FSH 1909.15 along with quotations from the Council on Environmental Quality regulations. Having Agency NEPA procedures in regulations, separate from guidance, will make it easier for the Forest Service to provide guidance through the agency directive system. Agency internal processes will continue to reside in FSH 1909.15 with references to both CEQ and Forest Service NEPA procedures.

Statement of Need:

The Forest Service is proposing to move existing agency NEPA procedures, required by the Council on Environmental Quality (CEQ) and codified at 40 CFR 1507.3, from the internal Forest Service Environmental Policy and Procedures Handbook (FSH) 1909.15 to the Code of Federal Regulations. New procedures would be added and existing procedures would be revised where clarity is needed to incorporate CEQ guidance and align agency NEPA procedures with agency decision processes.

Presently, the Forest Service NEPA procedures are combined with Agency guidance in FSH 1909.15 along with quotations from the CEQ regulations. This handbook contains general guidance such as how to select an interdisciplinary team, thereby associating guidance with NEPA procedures. Guidance and quotes from the CEQ regulations are important to

internal Agency work, but bear little similarity to the Agency procedures contemplated in the CEQ regulations (40 CFR 1507.3(b)). Changes to Agency guidance in FSH 1909.15 currently involve consultation with CEQ because the handbook does not differentiate between NEPA guidance and ''procedures.'' This makes it more difficult to update simple guidance.

Summary of Legal Basis:

The Council on Environmental Quality (CEQ) regulations (40 CFR 1507.3) direct Federal agencies to develop NEPA procedures to supplement the CEQ regulations. The CEQ regulations require agencies to provide for public notice and comment and CEQ consultation when developing and revising Agency NEPA procedures.

Alternatives:

A possible alternative would be to have the CEQ revise its regulations or seek legislative changes.

Anticipated Costs and Benefits:

Codifying agency NEPA procedures in regulation, separate from guidance, would make it easier for the Forest Service to provide guidance through the agency directive system. General guidance and internal processes would reside in the FSH 1909.15 handbook with references to both CEQ and Forest Service NEPA procedures set out in the CFR. This will make future revisions to internal agency guidance more responsive to new ideas and information. Having the agency NEPA procedures at the same level as the CEQ regulations would also give them equal status in court.

New procedures and revisions to existing procedures would further define how the agency must comply with NEPA where the CEQ regulations lack clarity, when additional CEQ guidance has been issued, or when there are more efficient or applicable procedures appropriate to Agency decisionmaking. With more flexibility in how NEPA documents are prepared, the NEPA process is expected to be more efficient and responsive to decision maker needs.

Risks:

More NEPA procedural requirements could be added which would add to the present processes. Also, given that some of the proposed procedures would allow more flexibility and options to comply with NEPA, the results could be a more complex set of regulations for the field to understand.

Timetable:

Action	Date	FR Cite
NPRM	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—FS

24. SPECIAL AREAS; STATE–SPECIFIC INVENTORIED ROADLESS AREA MANAGEMENT: IDAHO

Priority:

Other Significant

Legal Authority:

5 USC 553(e); 7 CFR 1.28

CFR Citation:

36 CFR 294

Legal Deadline:

None

Abstract:

On October 5, 2006, the Governor of Idaho 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 management of 9.3 million acres of inventoried roadless areas within the State. 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 the roadless areas in Idaho. The proposed rulemaking would manage Idaho's inventoried roadless areas under four main themes listed from most restrictive to least: Wildland Recreation (1.4 million acres), Primitive (1.7 million acres), Backcountry (5.5 million acres), and General Forest (0.5 million acres). The proposed rulemaking also will establish three important tribal and historical sites as ''Special Areas'' (0.2 million acres). Road construction and reconstruction plus timber harvesting would be prohibited in certain inventoried roadless areas on the Boise, Caribou-Targhee, Clearwater, Idaho Panhandle, Kootenai (portions), Nez Perce, Payette, Salmon-Challis, Sawtooth, and Wallowa-Whitman (portions) National Forests in Idaho. Exceptions to the prohibitions would be allowed for certain health, safety, valid existing rights, resource protection, and ecological management needs.

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. In 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 RACR. In an effort to again re-enjoin the RACR, the State of Wyoming filed a second lawsuit in the Federal district court for Wyoming on January 12, 2007. Oral hearing for this lawsuit is schedule for October 19. With the reinstatement of RACR, the Under Secretary announced that interested States could still petition the Secretary pursuant to 5 U.S.C. §553(e) and 7 C.F.R. §1.28.

On October 5, 2006, Idaho Governor James Risch resubmitted his petition under these authorities. The RACNAC reviewed the petition and made recommendations to the Secretary on December 19, 2006. On December 22, 2006, the Secretary directed the Forest Service to begin the rulemaking process with the State.

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 (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. The State of Idaho 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 in that State.

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 Costs and Benefits:

Three alternatives have been analyzed for benefits, costs, and distributional effects are: 2001 Roadless Rule, existing forest plan, and the proposed rule are analyzed. A range of baseline conditions, represented by the 2001 Rule and existing forest plans alternatives, are adopted to characterize the mix of goods and services provided by National Forests and Grasslands in the near future in the absence of the proposed rule. The proposed rule is programmatic in nature, consisting of direction for road construction, road reconstruction, timber harvesting, and discretionary mineral activities, which would be applied to future management activities on inventoried roadless areas in Idaho. In general, the proposed rule does not affect the efficiency of individual operations or activities (e.g., individual timber sale) associated with forest resources and/or services, but may instead affect the number or extent of opportunities as a function of activities permitted on National Forest system lands. Because the proposed rule does not prescribe site-specific activities, it is difficult to quantify the benefits under the different alternatives.

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	12/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Tribal

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Related RIN: Related to 0596–AC58, Related to 0596–AC59, Related to 0596–AC60

RIN: 0596–AC62

USDA—FS

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

Priority:

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

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.

The goal of the Department is to have the State-Specific Rule for Inventoried Roadless Areas in Colorado in place by September 2008.

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. In 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 is schedule for October 19. With the reinstatement of roadless rule, the Under Secretary announced that interested States could still petition the Secretary pursuant to 5 U.S.C. §553(e) and 7 C.F.R. §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. §553(e) and 7 C.F.R. §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 Costs and Benefits:

It is anticipated that this proposed rule will not be an economically significant rule, and will not have an annual effect of $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
Proposed Rule	03/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State, Tribal

URL For More Information:

http://www.roadless.fs.fed.us.

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USDA—FS

FINAL RULE STAGE

26. ● PLANNING SUBPART A – NATIONAL FOREST SYSTEM LAND MANAGEMENT PLANNING

Priority:

Other Significant

Legal Authority:

5 USC 301; 16 USC 1604, 1614

CFR Citation:

36 CFR Part 219

Legal Deadline:

None

Abstract:

The Forest Service is proposing to provide notice and seek comment from the public on the 2005 planning rule (70 FR 1022) as published in the Federal Register on January 5, 2005. This action responds to an order dated March 30, 2007 by Phyllis J. Hamilton, United States District Court Judge in Citizens for Better Forestry et al. v. US DA (N.D. Calif.)). The judge enjoined the USDA from implementation and utilization of the 2005 planning rule until it provides notice and comment and complies with APA, ESA, and NEPA. The rule, cost benefit analysis, and civil rights impact analysis have been cleared by the Department and OMB as documented in the January 5, 2005 Federal Register notice.

This action is a continuation of the 2005 planning rule that describes the National Forest System land management planning framework; establishes requirements for sustainability of social, economic, and ecological systems and developing, amending, revising, and monitoring land management plans; and clarifies that land management plans under this final rule, absent extraordinary circumstances, are strategic in nature and are one stage in an adaptive cycle of planning for management of National Forest System lands.

Statement of Need:

The Forest Service is providing notice and opportunity for comment on a proposed rule for National Forest System land management planning, and then adopting a final rule at 36 CFR 219, subpart A. This rulemaking is the result of a U.S. district court order dated March 30, 2007, which enjoined the United States Department of Agriculture from implementation and utilization of the land management planning rule published in 2005 (70 FR1023) until it complies with the court's order regarding the National Environmental Policy Act, the Endangered Species Act, and the Administrative Procedure Act (Citizens for Better Forestry et al. v. USDA, C.A. C05-1144 (N. D. Cal.)). The purpose of this rulemaking is to respond to the court's ruling about notice and comment requirements under the Administrative Procedure Act by publishing the 2005 rule as a proposed rule. In addition, the Agency is preparing an environmental impact statement under the National Environmental Policy Act and will comply with the court's order regarding the Endangered Species Act.

The Agency is committed to transparent rulemaking and public participation, and provided a notice and comment period for the proposed 2005 rule (December 6, 2002, 67 FR 72770). In the final 2005 rule, the Agency changed the provisions for timber management requirements, changed the provisions for making changes to the monitoring program, and added provisions for environmental management system (EMS). The Environmental Management System provisions require the Agency to define a structure and system of organizational activities, responsibilities, practices, and procedures for carrying out the Agency environmental policy. The court found that the proposed rule did not provide sufficient notice to the public of these changes to the final rule such that the final rule was not the logical outgrowth of the proposed rule. Therefore, the Agency is providing notice and seeking comment on a proposed rule that is essentially identical to the 2005 final rule, including the changes made to the final 2005 planning rule.

Regarding NEPA, the court further found that the 2005 planning rule did not fit the Agency's categorical exclusion for servicewide administrative procedures. That categorical exclusion, developed with public participation, is a recognized method of NEPA compliance. Under the court's order, however, further environmental analysis under NEPA is required. The Agency published a Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register on May 11, 2007 (72 FR 26775), to start the public involvement process pursuant to NEPA.

Summary of Legal Basis:

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 et seq.), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 et seq.), requires the Secretary to promulgate regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 that set out the process for the development and revision of land management plans (16 U.S.C. 1604(g)).

Alternatives:

The draft environmental impact statement accompanying the proposed rule documents detailed analysis of the proposed rule and four other alternatives. Those other alternatives are the 2000 planning rule, the 1982 planning rule, and two variations of the 2005 planning rule.

Anticipated Costs and Benefits:

Annualized costs of implementing the proposed rule (2005 rule) have been estimated and discounted at three percent and seven percent discount rates for the period 2008 to 2022. Those discounted costs are $99 million at three percent and $99.2 million at seven percent. This represents an estimated annualized savings over the 2000 rule of $30 million at three percent and $28 million at seven percent.

Numerous non-quantifiable benefits are expected to result from the final planning rule. The overall goal of the proposed rule is more clearly based on the Multiple-Use Sustained-Yield Act (MUSYA) and better describes the relationship of the MUSYA to sustainability. This feature more clearly defines Agency responsibilities to weigh and balance uses of NFS lands for the benefit of the American people. The proposed rule is based on a stronger emphasis on working with the public, other Federal agencies, federally recognized Indian Tribes, and others, and should result in more social satisfaction with Agency efforts and

management. The incorporation of ecologically-based management principles, improved monitoring and evaluation, and consideration of science in planning, should result in a flexible process that reduces the burden on both the public and the Agency. An efficient planning process that addresses public concerns and leads to improved health of public lands has value beyond the cost savings estimated in the analysis. Therefore, it is highly likely that the proposed rule is beneficial to the public interest.

Risks:

The Forest Service is responsible for managing the lands and resources of the National Forest System (NFS), which include 193 million acres in 44 states, Puerto Rico, and the Virgin Islands. The NFS is composed of 155 national forests, 20 national grasslands, one national prairie, and other miscellaneous lands under the jurisdiction of the Secretary of Agriculture (the Secretary). The planning rule would establish administrative procedures whereby land management plans for NFS units are developed, revised, and amended.

The 2005 planning rule was developed to take advantage of the experience gained from 25 years of implementing the National Forest Management Act. The rule improves on both the 1982 and 2000 planning rules. The findings from two reviews of the 2000 planning rule can be summarized as follows: it has both definitions and analytical requirements that are very complex, unclear, and, therefore, subject to inconsistent implementation across the Agency; compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible, to accomplish; and, the complexity of the 2000 rule makes it difficult and expensive to implement. This newest planning rule is intended to provide a planning process that is readily understood, is within the Agency's capability to implement, is consistent with the capabilities of National Forest System lands, recognizes the strategic programmatic nature of planning, and meets the intent of the National Forest Management Act (NFMA) while making cost effective and efficient use of resources allocated to the Agency for land management planning. Absent this rule, the Agency would have to continue to use the 2000 rule with all of its identified deficiencies.

Timetable:

Action	Date	FR Cite
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—Rural Business-Cooperative Service (RBS)

FINAL RULE STAGE

27. DELIVERY ENHANCEMENT FOR GUARANTEED LOANS

Priority:

Other Significant

Legal Authority:

5 USC 301; 7 USC 1926(a)(1); 7 USC 1932(a); 7 USC 8106

CFR Citation:

7 CFR 4279, subpart A; 7 CFR 4279, subpart B; 7 CFR 4287, subpart B; 7 CFR 4280, subpart B; 7 CFR 3575, subpart A

Legal Deadline:

None

Abstract:

Rural Development is proposing a unified guaranteed loan platform for enhanced delivery of four existing Rural Development guaranteed loan programs—Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects. The proposed rulemaking would eliminate the existing loan guarantee regulations for these four programs and consolidate them under a new, single part.

Statement of Need:

The proposed rule will consolidate certain provisions of the existing regulations for guaranteed loans under the community facilities, water and waste disposal, business and industry, and renewable energy systems and energy efficiency improvement programs. The consolidation will result in greater consistency among common program provisions, as well as, increased management efficiency while reducing program losses.

Summary of Legal Basis:

Consolidated Farm and Rural Development Act, as amended, and section 9006 of the farm Security and Rural investment Act of 2002 (107 Pub. L. 171)

Alternatives:

Leave the existing regulations supporting the four Rural Development guaranteed loan programs intact and unconsolidated, which requires lenders and borrowers to be separately determined eligible and approved for each of the four programs, and to be adept and knowledgeable of each programs separate regulations and forms.

Anticipated Costs and Benefits:

The Agency's benefit cost analysis indicates that the benefits derived from the rule are reduced paper work and risk of loss to the Government. The benefit cost analysis estimates that the consolidation and streamlining program delivery will reduce paperwork costs by 30 percent for a savings of $1.3 million for lenders and borrowers. The Government will benefit from reduced losses resulting from improved program management and there could be some modest administrative cost savings.

Risks:

The proposed rule would reduce project risk by implementing new requirements for determining minimum project eligibility, including certain debt coverage and loan to value ratio requirements.

The proposed rule would reduce institutional risk by establishing criteria for approved and preferred lenders. With more stringent eligibility requirements, including specific experience requirements, the agency expects to benefit from preferred lenders seeking guarantees on higher quality loans.

The proposed rule would reduce agency risk exposure by allowing approved lenders to submit a low

documentation application, if the borrower meets increased financial requirements for debt coverage and loan to value ratios and has a credit score comparable to private commercial lending practices. The maximum loan guarantee will be reduced by 10 percent when approved lenders submit low documentation applications under $5 million.

Timetable:

Action	Date	FR Cite
NPRM	09/14/07	72 FR 52618
NPRM Comment Period End	11/13/07	
Final Action	06/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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Related RIN: Merged with 0570–AA41

RIN: 0570–AA65

USDA—Rural Utilities Service (RUS)

FINAL RULE STAGE

28. RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Priority:

Other Significant

Legal Authority:

PL 107–171; 7 USC 901 et seq

CFR Citation:

7 CFR 1738

Legal Deadline:

None

Abstract:

There has been more than $1.1 billion in loans for broadband deployment with more than 1,000 rural communities that will receive broadband services. Even with this level of success, the program needs to be adjusted to better serve unserved or underserved communities. In response, we are revising the broadband rule to address this and other critical issues, and further facilitate the deployment of broadband service in rural America as directed by Congress by: (1) Clearly defining served, underserved markets based on service availability and existing competitors and target unserved an underserved areas; (2) Providing potential applicants with a clear definition of which communities are eligible for funding; (3) Establishing a minimum data transmission rate that the facilities financed must be able to deliver to the consumer; (4) Establishing equity requirements that mitigate risks; (5) Modifying market survey requirements based on service territories and existing availability of service; and (6) Imposing new time limits for build-out and deployment to ensure prudent use of loan funds and timely delivery services to rural customers.

Statement of Need:

Since the Broadband Loan Program's inception, the Agency has faced and continues to face significant challenges in administering the program, including the fierce competitive nature of the broadband market, the fact that many companies proposing to offer broadband service are start-up organizations with limited resources, continually evolving technology, and economic factors such as the higher cost of serving rural communities. Because of these challenges, the Agency has been reviewing the characteristics of the Broadband Loan Program and has determined that modifications are required to accelerate the deployment of broadband service to the rural areas of the country.

The Broadband Loan Program is important to the revitalization of our rural communities and their economies. A lack of private capital has been cited as a reason for slow broadband deployment. However, an adequate supply of investment capital alone may not be sufficient to universally deploy broadband facilities in rural America—primarily due to the high cost of deployment outside of more densely populated areas. Due to market uncertainties and risks associated with startup ventures, non-federal sources of funding are restricting and raising the cost of capital, particularly in costly rural markets. Better access to low cost capital is a primary initiative of this program in facilitating as increase in the rate of rural broadband deployment.

Summary of Legal Basis:

On May 13, 2002, the Farm Security and Rural Investment Act of 2002, Public Law 107-171 (''Farm Bill'') was signed into law. Title VI of the Farm Bill authorized the Agency to approve loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.

Anticipated Costs and Benefits:

The program costs associated with lending activity are relatively low. The average subsidy rate since the programs inception is 2.4 percent, or $24,000 in appropriated budget authority for every $1 million in loans. The residents and businesses of rural communities are the beneficiaries. Rural Development is responsible for helping rural America transition from an agricultural base economy to a platform for new business and economic opportunity. Rural Development seeks to leverage its financial resources with private investment to facilitate the development of the changing rural economy. The Broadband Loan Program provides rural America with the platform on which to achieve these goals. With access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, state and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America. The Agency is committed to ensuring that rural America will have access to affordable, reliable, broadband services, and to provide a healthy, safe and prosperous place to live and work.

Risks:

Building broadband infrastructure in sparsely populated rural communities is very capital intensive. The Broadband Loan Program continues to face risk factors that pose challenges in ensuring that proposed projects can and do deliver robust, affordable broadband services to rural consumers. These factors include the sometimes competitive nature of the broadband market, the fact that many companies

proposing to offer broadband service are start-up organizations with limited resources, rapidly evolving technology, and economic factors such as the higher cost of serving rural communities. While many of the smallest rural communities understand the importance of broadband infrastructure to their economic development, they often have difficulty attracting service providers to their communities.

Timetable:

Action	Date	FR Cite
NPRM	05/11/07	72 FR 26742
NPRM Comment Period End	07/10/07	
Final Action	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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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 action for fiscal year 2008. During the next year, NOAA plans to publish four 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 US 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 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 of marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: modernizing the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Magnuson-Stevens 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. 3- to 200-mile Exclusive Economic Zone. Among the several hundred rulemakings that NOAA plans to issue in fiscal year 2008, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NMFS by which it must exercise its rulemaking responsibilities.

The Magnuson-Stevens Act, which is the primary legal authority for federal regulation to conserve and manage fishery resources, establishes eight regional FMCs, responsible for preparing FMPs and FMP amendments. NMFS issues regulations to implement FMPs and FMP amendments. FMPs address a variety of issues including maximizing fishing opportunities on health 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 allocating the resource through individual transferable quotas, which can be sold on the open market to other participants

or those wishing access. Quotas set on sound scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds, and establishing seasonal and area closures to protect fishery stocks.

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

The Magnuson-Stevens Act contains ten national standards against which fishery management measures are judged. NMFS has supplemented the standards with guidelines interpreting each standard, and 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 17, 2007, the President signed into law the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). This important new law is 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 provision in 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 four 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 provisions of the Magnuson-Steven Reauthorization Act (MSRA), and are summarized below:

''Provide Guidance for the Limited Access Privilege Program Provisions of the Magnuson-Stevens Fishery Conservation Reauthorization Act of 2006'' — This action would provide regions with interpretive 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 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 annual catch limits (ACLs), including regulations and annual specifications, at a level such that overfishing does not occur in a fishery. In addition, this action would implement measures to ensure accountability.

''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.

In addition to actions related to the Magnuson-Stevens Reauthorization Act, NMFS is developing one action under the authority of the ESA entitled ''Endangered Fish and Wildlife; Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales.'' In this action, NMFS proposes to impose speed restrictions on ships in certain areas during certain times of the year in an attempt to reduce mortalities to North Atlantic right whales as a result of collisions with vessels, which account for more confirmed right whale deaths than any other human-related activity. The strategy addresses the lack of recovery of the endangered North Atlantic right whale by reducing the likelihood of ship strike mortalities to the species. NMFS has developed a framework of proposed, new operational measures for the shipping industry as an element of this strategy, including consideration of routing and speed restrictions. These operational measures would be limited to areas and times when North Atlantic right whales and ships overlap to reduce the likelihood of ship strikes to the extent practicable.

NOAA's four 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; support the goal to use market-based systems for fisheries management by using dedicated access privileges as fishery management tools; and support the President's overall goal of enhancing conservation of marine mammals, sharks and sea turtles, which are species that are of special concern and that face a variety of threats from human actives.

At this time, NOAA is unable to determine the aggregate cost of the identified Regulatory Plan actions as the majority of these actions are currently under development. For the one action where an economic analysis has been completed (right whale ship collision rule), NOAA anticipates the costs associated with the rule could be as much as $116 million.

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

29. PROVIDE GUIDANCE FOR THE LIMITED ACCESS PRIVILEGE PROGRAM PROVISIONS OF THE MAGNUSON–STEVENS FISHERY CONSERVATION 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 NMFS regional offices in developing and implementing LAPPS.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) intends to proposed 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 develop 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 Costs 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 LAPP programs 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. Among other things, reducing capacity; and promote fishing safety, fishery conservation and management, and social and economic benefits. Without guidance, LAPP programs may be developed that do not meet these requirements. 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	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DOC—NOAA

30. ● 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:

NPRM, Statutory, January 12, 2009, Identification of nations whose vessels are engaged (or have been engaged in) illegal, unreported or unregulated fishing.

Abstract:

The National Marine Fisheries Service (NMFS) 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's National Marine Fisheries Service (NMFS) proposes regulations to set forth identification and certification procedures for nations whose vessels engage in illgeal, 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 the 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-k), 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 Costs 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	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DOC—NOAA

31. ● GUIDANCE FOR ANNUAL CATCH LIMITS (ACLS) AND ACCOUNTABILITY MEASURES (AMS) 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 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 National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) is developing guidance for ending overfishing and rebuilding overfished fish stocks. NMFS takes this action to ensure that fish stocks managed by Federal fishery management plans (FMPs) under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) implement annual catch limits (ACLs) and accountability measures (AMs) to ensure that overfishing is prevented. ACLs and AMs are required by fishing year 2010, for all stocks undergoing overfishing, and by 2011, for all stocks.

Summary of Legal Basis:

NOAA is proposing these regulations pursuant to the MSRA of 2006 (P.L. 109-479). This includes a new required provision that any FMP 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.'' Provisions and guidance related to overfishing best fit under the current National Standard 1 which states: ''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.''

Alternatives:

NMFS is currently in the process of developing alternatives, and will provide more complete information at a later date. Preliminary alternatives outlined in the Notice of Intent to prepare an Environmental Impact Statement include no action, developing performance standards that ACLs and AMs must meet but do not provide guidance on specific mechanisms, and finally develop ACL and AM guidelines that provide performance standards that ACLs must meet.

Anticipated Costs and Benefits:

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. Specific benefits and costs from having ACL and AM mechanisms and actual ACLs and AMs for various fisheries will not be known until ACLs and AMs are implemented in 2010, for stocks undergoing overfishing, and by 2011, for all stocks. Regional Fishery Management Councils, and NMFS, in the case of Atlantic highly migratory species, will perform environmental and socioeconomic analyses to describe specific effects for their fisheries once they determine what ACLs and AMs are needed for each stock. In general, ending overfishing immediately, rather than allowing it to continue would reduce short-term revenues for a brief period, but increase revenues at a sustainable level for the fishery earlier.

Risks:

Overfishing still occurs at various levels in 48 fisheries in U.S. waters, although NMFS and the Regional Fishery Management Councils have made significant improvements in recent years. A priority in the MSRA is to strengthen the Act to ensure an end to overfishing. Without this rulemaking, there is a risk that there will be more instances of overfishing, which would delay rebuilding. By implementing ACLs and AMs, mechanisms will be in place to address overfishing more quickly, thus ensuring the timely rebuilding of overfished stocks.

Timetable:

Action	Date	FR Cite
NPRM	11/00/07	
NPRM Comment Period End	12/00/07	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOC—NOAA

FINAL RULE STAGE

32. RIGHT WHALE SHIP STRIKE REDUCTION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

16 USC 1361

CFR Citation:

50 CFR 224

Legal Deadline:

None

Abstract:

These regulations would establish speed restrictions to reduce the likelihood of North Atlantic right whale mortality as a result of collisions with vessels. Restrictions would be limited to areas and times when North Atlantic right whales and ships overlap to reduce the likelihood of ship strikes to the extent practicable.

Statement of Need:

The North Atlantic right whale population is depleted from past levels. Collisions with vessels are the greatest known human threat to right whales. NMFS is required under the ESA and MMPA to develop actions to recover this species. The National Oceanic and Atmospheric Administration (NOAA) proposed to establish speed restrictions on vessels 65 ft (19.8m) or greater in overall length in certain locations and at certain times of the year along the East Coast of the United States to reduce this threat. The purpose of these proposed regulatory measures is to reduce the likelihood of deaths and serious injuries to endangered North Atlantic right whales that result from collisions with ships.

Summary of Legal Basis:

NOAA proposed these regulations pursuant to its rulemaking authority under Marine Mammal Protection Act (MMPA) section 112(a) (16 U.S.C. 1382(a)), and Endangered Species Act (ESA) section 11(f) (16 U.S.C. 1540(f)). These proposed regulations also are consistent with the purpose of the ESA ''to provide a program for the conservation of [. . .] endangered species'' and ''the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species [. . .] and shall utilize their authorities in furtherance of the purposes of [the ESA].'' 16 U.S.C. 1531(b),(c).

Alternatives:

NMFS identified five alternatives to the proposed action. Alternative 1 is No Action (Status Quo) in which NMFS would continue to implement existing measures and programs, largely nonregulatory, to reduce the likelihood of mortality from ship strikes. Alternative 2 includes all elements of Alternative 1 and involves use of Dynamically Managed Areas (DMA), which consists of certain vessel speed restrictions applying only when and where right whale sightings occur. Alternative 3 is vessel speed restrictions in designated areas. It includes all elements of Alternative 1 and implements large scale speed restrictions throughout the range of North Atlantic right whales. Alternative 4 is the use of recommended shipping routes. It includes all the elements of Alternative 1 and relies on altering some current vessel patterns to move vessels away from areas where whales are known to congregate. Alternative 5 is a combination that includes all elements of Alternatives 1 to 4. Alternative 6 (the proposed alternative) includes a combination of operational measures (routing measures and speed restrictions). The principal difference between Alternatives 5 and 6 is that Alternative 6 does not include large scale speed restrictions (as identified in Alternative 3) but instead relies on speed restrictions in much smaller Seasonally Managed Areas.

Anticipated Costs and Benefits:

Benefits:

The benefits of effective measures to reduce the risk of right whale mortality caused by ship strikes are expected to be considerable. Because ship strikes are the human activity that pose the greatest known threat to right whales, adopting effective measures to reduce the incidences of ship strikes will aid in the recovery of this highly endangered species. However, monetary estimates of these benefits are currently unavailable; therefore, the discussion of these benefits specific to right whales is descriptive.

Costs:

The estimated costs associated with the speed restrictions are being analyzed and will be provided in the Final Environmental Impact Statement and in the accompanying Economic Analysis.

Risks:

The North Atlantic right whale is in danger of extinction. Absent effective action to reduce fatal ship strikes and other sources of mortality and injuries caused by human activity, the North Atlantic right whale population faces a risk of continued decline.

Timetable:

Action	Date	FR Cite
ANPRM	06/01/04	69 FR 30857
ANPRM Comment Period Extended	07/09/04	69 FR 41446
ANPRM Comment Period Extended	09/13/04	69 FR 55135
NPRM	06/26/06	71 FR 36299
Comment Period Extended	08/14/06	71 FR 46440
NPRM Comment Period End	08/25/06	
Comment Period End	10/05/06	
Final Action	12/00/07	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Public Compliance Cost:

Initial Cost: $0
Yearly Recurring Cost: $116,000,000
Base Year for Dollar Estimates: 2005

URL For More Information:

www.nmfs.noaa.gov/pr/pr2

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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), 9 Unified Combatant Commands, 17 Defense Agencies, and 11 DoD Field Activities. It has over 1,365,000 military personnel and 637,000 civilians assigned as of May 31, 2007, 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 regulating 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 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 it must react to the contradictory pressures of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, 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:

- Direct use of electronic subcontracting and reporting system for both the summary and individual subcontract reporting, in conjunction with and as part of the integration with Federal Procurement Data System (FPDS).
- Require the processing of all invoices and acceptance reports and other supporting payment documentation electronically through Wide Area Workflow.
- Require contractors to provide item unique identification (IUID) data electronically in the IUID Registry for all DoD personal property in possession of the contractor. Simplify other Defense Federal Acquisition Regulation Supplement (DFARS) regulations relating to acquisition of Government property, consistent with the recent significant revisions to the Federal Acquisition Regulation (FAR) Part 45.
- Simplify and clarify the DFARS coverage of multi-year acquisitions.
- Simplify and clarify the DFARS regulations on patents, data and copyrights, dramatically reducing the amount of regulatory text and the number of required clauses.
- Waive specialty metals restrictions at 10 U.S.C. 2533b for the acquisition of commercially available off-the-shelf items.

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.
- Implement the Small Business Administration regulation requiring re-representation of size status under certain circumstances.
- Provide an increased claim threshold for small business concerns to appeal a contracting officer's decision under small claim procedures of the agency board of contract appeals, in accordance with Section 857 of the Fiscal Year 2007 National Defense Authorization Act.
- Amend the FAR to implement changes in the HUBZone Program, in accordance with Small Business Administration regulations.

3. 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. The Department does not anticipate promulgating any economically significant regulations.

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

Compensatory Mitigation in the Army Regulatory Program

Section 314 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) requires the Secretary of the Army, acting through the Chief of Engineers, to issue regulations that establish performance standards and criteria for the use of compensatory mitigation for wetland functions lost as a result of activities authorized by Department of the Army (DA) permits. The statute also requires the regulation to contain provisions for the application of equivalent standards and criteria to each type of compensatory mitigation.

The proposed rule was published for public comment on March 28, 2006 (71 FR 15520). The comment period expired on June 30, 2006 (71 FR 29604). The proposed regulation was developed by considering concepts in current Federal compensatory mitigation guidance documents, and updating and modifying those concepts to improve compensatory mitigation decision-making and processes. The proposed rule takes a watershed approach to compensatory mitigation for permitted impacts to wetlands, streams, and other aquatic resources. Although the statute refers only to wetlands, the proposed rule is broader in scope, and addresses compensatory mitigation requirements for impacts to other aquatic resources, such as streams, in addition to wetlands. Comments received in response to the proposed rule have been evaluated, and a final rule is being prepared.

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:

- Improve the DFARS to enhance the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce flexibility to innovate. The DFARS contains only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant impact on contractors, offerors, and/or the public.
- Establish a new restriction on acquisition of specialty metals under 10 U.S.C. 2533b, with new exception for commercially available electronic components and a one-time waiver for items produced, manufactured, or assembled in the U.S. prior to November 16, 2006. Also provides an exception for nonavailability if the specialty metal cannot be obtained when needed and in the required form.
- Revise the uniform treatment of contractor personnel who are authorized to accompany the U.S. Armed Forces deployed outside the United States in contingency operations, humanitarian or peacekeeping operations, other military operations, or training exercises designated by the combatant commander, to implement the new DoD Instruction and respond to public comments. Implement the DoD Law of War Program, requiring contractors to report violations.
- Coordinate with the Department of State to finalize a FAR rule to address uniform treatment of other contractor personnel who are performing outside the United States in a theater of operations during contingency operations; humanitarian or peacekeeping operations; other military operations; military exercises designated by the combatant commander; or at a diplomatic or consular mission, when designated by the chief of mission.
- Provide incentives for development and deployment of anti-terrorism technologies, in accordance with the DHS regulations on the Safety Act.
- Prohibit trafficking in persons by contractors, contractor employees, and subcontractors.
- Inform potential offerors that export control regulations apply to performance of certain contracts, and the contractor is responsible for compliance with those regulations.
- Improve debt collection by evaluating existing FAR controls and procedures for ensuring contract debts are identified and recovered in a timely manner, properly accounted for in each agency's books and records, and properly coordinated with the appropriate Government officials.
- Exempt certain contracts from coverage under the Service Contract Act if certain conditions are met, as specified by the Department of Labor.
- Evaluate the continued need for provisional award fee payments.
- Address quality control in the procurement of ship critical safety items, as required by Section 130 of the Fiscal Year 2007 National Defense Authorization Act.
- Provide criteria for the release of supplies by the contractor based on complexity and criticality.
- Require contractors to establish a code of ethics and business conduct, and establish on-going training program and internal control system commensurate with the size of the business.
- Authorize set-asides for awards based on specific geographic areas under the

Robert T. Stafford Disaster Relief and Emergency Assistance Act, in order to implement the Local Community Recovery Act of 2006.

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 healthcare 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 concerning Certain Survivors of Deceased Active Duty Members and Adoption Intermediaries. The rule addresses two provisions of the National Defense Authorization Act for Fiscal Year 2006 (NDAA-06), Pub. L. 109-163. For certain dependents of Active Duty Service Members (ADSM) who die while on active duty for more than 30 days, Section 715 of the NDAA-06 extends the time frame for which they shall receive TRICARE medical benefits at active duty dependent payment rates. Second, Section 592 modifies the requirement for intermediaries who provide adoption placements. The economic impact of this rule is estimated to be less than $100 million. The interim final rule was published January 19, 2007 (72 FR 2444). Comment period ended March 20, 2007.
- Proposed 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 economic impact of this rule is estimated to be less than $100 million.
- It is anticipated that an interim final rule will be required to be promulgated in order to implement a provision of the National Defense Authorization Act for Fiscal Year 2007 to expand the TRICARE Reserve Select program to allow all members of the Selected Reserve to purchase their health care through the Military Health System at the same low cost, regardless of the member's duty status. The economic impact of this rule is estimated to be less than $100 million.

4. National Security Personnel System, Department of Defense

On November 1, 2005 (70 FR 66115-66164), the Department of Defense (DoD) and the Office of Personnel Management (OPM) issued final regulations to establish the National Security Personnel System, a DoD human resources management system 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 litigation and potential legislation present the possibility that the NSPS regulation will require revision in the upcoming year. DoD and OPM will consider several alternative approaches to address the final outcomes by either the courts or new legislation. A proposed rule may be published within 90 days of the final court decision or enactment of legislation. This could result in publication as early as January 2008.

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 to help 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; monitoring and enforcing the implementation of Federal civil rights laws in programs and activities that receive Federal financial assistance; supporting research, evaluation, and dissemination of findings to improve the quality of education; and assisting students in their pursuit of postsecondary education.

We administer programs that affect nearly every American during his or her life. For the 2007-2008 school year, we expect about 50 million students to attend some 97,000 elementary and secondary schools in approximately 14,000 public school districts, and about 17.9 million students to 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. The major principles of No Child Left Behind are: the establishment of meaningful State academic content and academic achievement standards and aligned assessments to measure progress toward meeting these standards; school and district accountability for meeting the standards; having every child performing at or above grade level by 2014; conducting annual assessments and disaggregating data to identify and close the achievement gap; having highly qualified teachers provide instruction in core academic subjects in every classroom; and providing options for parents of students in schools that do not make progress in meeting State standards, including public school choice and free tutoring. The Administration will continue to work with Congress to give educators, policymakers, and parents the tools to get the job done, without straying from these core principles.

To make No Child Left Behind even more effective, we are proposing greater flexibility and other improvements that will help each State meet the goal of having all children at grade-level proficiency, as defined by the State. To ensure students' success, we will build on the results of No Child Left Behind by promoting a stronger effort to close the achievement gap through high State standards and accountability, by giving States flexibility and new tools to measure achievement more accurately and to restructure chronically underperforming schools, and by giving families more options. We also will promote greater use of growth models in State accountability systems as one way to provide better measurement. Growth models allow States to measure individual students' progress over time, giving schools credit for improvement from year to year and providing another way to show whether achievement gaps are closing.

Additionally, our goals for No Child Left Behind are: (1) to give States and districts assistance in bringing about meaningful high school reform; and (2) to assist States in improving the quality of secondary education and ensuring that every student not only graduates from high school on time, but also graduates prepared to enter college or the 21st-century workforce with the skills vital for success. Our proposals include a more accurate graduation rate calculation; the development by 2010-11 of course-level academic standards for two years of high school English and math, and by 2012-13 of assessments aligned with these standards; the promotion of rigorous high school coursework; increased funding for high schools that serve low-income students; and meeting the need for additional teachers of math, science, and other subjects through a new Adjunct Teacher Corps.

As necessary, we intend to amend current regulations to accommodate these efforts to strengthen No Child Left Behind.

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. 108-446) made substantial changes to the Individuals with Disabilities Education Act (IDEA). In addition to final regulations designed to improve implementation of the education of children with disabilities program (including preschool services) under part B of IDEA that were published in August 2006 (71 FR

46540), we plan to issue later this year a notice of proposed rulemaking that would address issues in part B that were not covered by those final regulations. Also, in May 2007 we issued proposed regulations to implement changes to the part C program—the early intervention program for infants and toddlers with disabilities. We hope to publish final regulations for this program in the third quarter of 2008.

Higher Education

This fall, the Department published final regulations affecting the Federal student aid programs, including regulations for the Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant programs, the Federal Family Education Loan (FFEL) program, the Federal Perkins Loan program, and the William D. Ford Federal Direct Loan (Direct Loan) program. These final regulations will take effect on July 1, 2008, and accordingly we will be working over the next year toward their implementation.

The recently-enacted College Cost Reduction and Access Act of 2007 (CCRAA), Pub. L. 110-84, amended certain provisions of the Higher Education Act of 1965 (HEA) on which the Department plans to regulate in 2008. The areas for regulation would include the new Teacher Education Assistance for College and Higher Education (TEACH) Grant program and issues pertaining to the FFEL and Direct Loan programs. We also note that there are other bills pending in Congress to reauthorize or otherwise amend the HEA. Any regulatory activity resulting from amendments to the HEA would need to balance reduction in burden on program participants, especially students, with the need to adequately safeguard taxpayers' funds. The HEA also authorizes other important programs, and changes to regulations may be necessary to improve the implementation of the teacher-quality-enhancement programs under title II, the institutional-assistance programs under titles III and V, the international and foreign language studies programs under title VI, and the graduate education and postsecondary education improvement programs under title VII.

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.
- Establish performance objectives rather than specify compliance behavior to the extent possible.
- 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 OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Priority:

Other Significant

Legal Authority:

20 USC 1098a

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Secretary proposes regulations to implement provisions of the recently-enacted College Cost Reduction and Access Act of 2007 (CCRAA), Pub. L. 110-84, which amended the Higher Education Act of 1965. These regulations would address issues relating to the new TEACH Grant program created by the CCRAA and regulatory changes to the Federal Family Education Loan Program and William D. Ford Direct Loan Program resulting from the CCRAA.

Statement of Need:

These regulations are needed to implement the provisions of the College Cost Reduction and Access Act of 2007, Pub. L. 110-84, which amended the Higher Education Act of 1965.

Summary of Legal Basis:

These regulations are proposed to implement provisions of the College Cost Reduction and Access Act of 2007, Pub L. 110-84.

Alternatives:

To be identified.

Anticipated Costs and Benefits:

To be determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	06/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

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 and the Unified Agenda contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy conservation standards and related test procedures. The Regulatory Plan and Unified Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public.

Energy Efficiency Program for Consumer Products and Commercial Equipment

On January 31, 2006, the Department released a schedule for setting new appliance efficiency standards that will save American consumers billions of dollars in energy costs. The five-year plan outlines how DOE will address the appliance standards rulemaking backlog and meet the statutory requirements established in the Energy Policy and Conservation Act (EPCA) and the Energy Policy Act of 2005 (EPACT 2005). EPCA requires DOE to set appliance efficiency standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 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.

The five-year plan, which was developed considering the public comments received on the appliance standards program, provides for the issuance of one rulemaking for each of the 18 products in the backlog. The plan also provides for setting appliance standards for products required under EPACT 2005. The Department is aggressively implementing process improvements to speed up the development and issuance of appliance standards rules.

The overall plan for implementing the schedule is contained in the Report to Congress under section 141 of EPACT 2005, which was released January 31, 2006. The report is posted at: http://www.eere.energy.gov/buildings/appliance__standards/2006__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.*). It also describes the reasons for such delays and the Department's plan for expeditiously prescribing new or amended standards. The latest semi-annual update to the report was released in August 2007. Information and timetables concerning these actions can also be found in the Department's Regulatory Agenda, which is posted online at: www.reginfo.gov.

Estimate of Combined Aggregate Costs and Benefits

All of the regulatory actions included in this Regulatory Plan are 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.

DOE—Energy Efficiency and Renewable Energy (EE)

PRERULE STAGE

34. ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL ELECTRIC AND GAS RANGES AND OVENS AND MICROWAVE OVENS, DISHWASHERS, DEHUMIDIFIERS, 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

Legal Deadline:

Final, Judicial, March 31, 2009.

Abstract:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for most types of major residential appliances, as well as certain commercial appliances. The statute generally requires DOE to undertake two subsequent rulemakings to determine whether the existing 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 dishwashers. The Department is also considering establishing initial energy efficiency standards for dehumidifiers and commercial clothes washers, as required by the Energy Policy Act of 2005, which further amended EPCA.

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 established energy efficiency standards 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 set standards for energy (and water, where appropriate) used in the operation of dehumidifiers and commercial clothes washers.

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 Costs and Benefits:

The specific costs and benefits for this rulemaking have not been established because the Department is still in the early stages of rulemaking and has not yet determined candidate standard levels for these products. As a general matter, in setting any efficiency standard different than those set by statute, the Secretary must first determine that such standard is both technologically feasible and economically justified.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/07	
NPRM	07/00/08	
Final Action	03/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State

Additional Information:

Merged dishwashers from RIN 1904-AA89 and added residential dehumidifiers and commercial clothes washers.

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Related RIN: Merged with 1904–AA89

RIN: 1904–AB49

DOE—EE

PROPOSED RULE STAGE

35. ENERGY EFFICIENCY STANDARDS FOR PACKAGED TERMINAL AIR CONDITIONERS AND PACKAGED TERMINAL HEAT PUMPS

Priority:

Other Significant

Legal Authority:

42 USC 6313(a)(6)(A)

CFR Citation:

10 CFR 431

Legal Deadline:

Final, Judicial, September 30, 2008.

Abstract:

The Energy Policy and Conservation Act (EPCA) provides that if the energy efficiency levels in ASHRAE/IESNA Standard 90.1 for certain commercial and industrial equipment are amended after specified dates, the Department of Energy (DOE) must establish an amended uniform national standard for such equipment at the new minimum level in Standard 90.1, unless the Secretary determines that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. This rulemaking was initiated to consider whether DOE should adopt amended ASHRAE/IESNA efficiency levels for certain commercial air conditioners and heat pumps. On March 7, 2007, DOE published a final rule addressing standards for five categories of products, but decided to consider if evidence supported higher standards for packaged terminal air conditioners and heat pumps (PTAC/PTHP). As required by EPCA, DOE has undertaken this further rulemaking to determine standards for packaged terminal air conditioners and heat pumps.

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 Energy Policy and Conservation Act (EPCA) provides that if the energy efficiency levels in ASHRAE/IESNA Standard 90.1 for certain commercial and industrial equipment are amended after specified dates, the Department of Energy (DOE) must establish an amended uniform national standard for such equipment at the new minimum level in Standard 90.1, unless the Secretary determines that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. This rulemaking was initiated to consider whether DOE should adopt amended ASHRAE/IESNA efficiency levels for certain commercial air conditioners and heat pumps. On March 7, 2007, DOE published a final rule addressing standards for five categories of products, but decided to consider if evidence supported higher standards for packaged terminal air conditioners and heat pumps. As required by EPCA, DOE has undertaken this further rulemaking to determine standards for packaged terminal air conditioners and heat pumps.

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 Costs and Benefits:

The specific costs and benefits for this rulemaking have not been established because the Department is still in the early stages of rulemaking and has not yet determined candidate standard levels for these products. As a general matter, in setting any efficiency standard different than those set by statute, the Secretary must first determine that such standard is both technologically feasible and economically justified.

Timetable:

Action	Date	FR Cite
Notice of Availabilitiy	03/13/06	71 FR 12634
Comment Period End	04/27/06	
Final Rule (except PTAC/PTHP)	03/07/07	72 FR 10038
NPRM (PTAC/PTHP)	01/00/08	
Final Action	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

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Related RIN: Merged with 1904–AB16, Merged with 1904–AB17

RIN: 1904–AB44

DOE—EE

36. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL REFRIGERATION EQUIPMENT

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6313(c)

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 Costs and Benefits:

The specific costs and benefits for this rulemaking have not been established because the Department is still in the early stages of rulemaking and has not yet determined candidate standard levels for these products. As a general matter, in setting any efficiency standard different than those set by statute, the Secretary must first determine that such standard is both technologically feasible and economically justified.

Timetable:

Action	Date	FR Cite
ANPRM	07/26/07	72 FR 41162
ANPRM Comment Period End	10/09/07	
NPRM	05/00/08	
Final Action	01/00/09	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State

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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) conducts a broad range of programs mandated by Congress to protect and promote the health and well-being of all Americans, but focused especially on those least able to help themselves. 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, Head Start, services to older Americans, and direct health services delivery.

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.html*. The regulatory actions noted below reflect this policy framework.

Health Information Technology

The Secretary's strategy for promoting improvements in the Nation's health sector stresses maximum use of electronic information technology. The FY 2008 Regulatory Plan accordingly includes a notice of proposed rulemaking to require that clinical study data be provided to the Food and Drug Administration (FDA) in electronic format, using standard data structures, terminology, and code sets. The change would further increase the efficiency of the agency's review processes, speeding up the availability of new therapies. Additionally, the Plan includes: proposed actions to require medical-device firms to register electronically with the FDA, as well as to report post-marketing information to the agency electronically; and a proposal for the adoption of final standards for the electronic transmission of basic prescription drug data.

Medicare Modernization

The Secretary's statement of priorities includes a focus on Medicare modernization. The Regulatory Plan, accordingly, highlights:

- final rules to update the requirements that end-stage-renal disease and hospice facilities must meet to participate in the Medicare program;
- final rules establishing annual adjustments in payment amounts under Medicare for physicians' services and for hospital outpatient services for calendar year 2009.

Medicare Part D

The Secretary believes that every senior must have access to affordable prescription drugs, and that a reinforced regulatory framework for implementing the Medicare prescription drug benefit can further connect beneficiaries with the Part D program. The Plan accordingly includes a proposal to establish additional guidance for expediting the program's appeal processes.

Disease Prevention

Also included among the Secretary's priorities is an emphasis on disease prevention and the need for individual responsibility for personal wellness. Three actions in the Plan reflect this concern:

- a final rule clarifying an exemptions process for the recently established good manufacturing practices for the dietary-supplement products favored by many Americans;
- a proposal to modify prescription drug labeling so that health care providers may better understand and communicate to their patients the risks and benefits associated with the use of prescribed medicines during pregnancy and lactation, and
- a proposal to amend existing regulations governing investigational new drugs — the rule would delineate new avenues of access for patients to obtain investigational drugs for treatment use.

Food Safety

The Secretary recently chaired the Interagency Working Group on Import Safety, established by a July 2007 Executive Order requiring that the Executive branch take all appropriate steps to promote the safety of imported products. Reflecting the importance of this subject, the Regulatory Plan includes:

- a proposal to require owners or consignees to label imported food that has previously been refused entry into the United States. This action would prevent the introduction of unsafe food and facilitate the examination of imported food; and
- 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.

HHS—Centers for Disease Control and Prevention (CDC)

FINAL RULE STAGE

37. CONTROL OF COMMUNICABLE DISEASES, INTERSTATE AND 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 to 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. The Secretary has delegated the authority to prevent the introduction of diseases from foreign countries to the Director, CDC. 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 reemergent 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 Costs 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	07/00/08	

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. ELECTRONIC SUBMISSION OF DATA FROM STUDIES EVALUATING HUMAN DRUGS AND BIOLOGICS

Priority:

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

Legal Authority:

21 USC 355; 21 USC 371; 42 USC 262

CFR Citation:

21 CFR 314.50; 21 CFR 601.12; 21 CFR 314.94; 21 CFR 314.96

Legal Deadline:

None

Abstract:

The Food and Drug Administration is proposing to amend the regulations governing the format in which clinical study data and bioequivalence data are required to be submitted for new drug applications (NDAs), biological license applications (BLAs), and abbreviated new drug applications (ANDAs). The proposal would revise our regulations to require that data submitted for NDAs, BLAs, and ANDAs, and their supplements and amendments, be provided in an electronic format that FDA can process, review, and archive. The proposal would also require that FDA periodically issue guidance on the use of standardized data structure, terminology, and code sets (e.g., the Study Data Tabulation Model (SDTM) developed by the Clinical Data Interchange Standards Consortium) to allow for more efficient and comprehensive data review.

Statement of Need:

Before a drug is approved for marketing, FDA must determine that the drug is safe and effective for its intended use. This determination is based in part on clinical study data and bioequivalence data that are submitted as part of the marketing application. Study data submitted to FDA in electronic format have generally been more efficient to process and review.

FDA's proposed rule would require the submission of study data in a standardized electronic format, and it provides that the specific format will be announced in FDA guidance. Electronic submission of study data would improve patient safety and

enhance health care delivery by enabling FDA to process, review, and archive data more efficiently. Standardization would also enhance the ability to share study data and communicate results. Investigators and industry would benefit from the use of standards throughout the lifecycle of a study—in data collection, reporting, and analysis. The proposal would work in concert with ongoing agency and national initiatives to support increased use of electronic technology as a means to improve patient safety and enhance health care delivery.

Summary of Legal Basis:

Our legal authority to amend our regulations governing the submission and format of clinical study data and bioequivalence data for human drugs and biologics derives from sections 505 and 701 of the act (U.S.C. 355 and 371) and section 351 of the Public Health Service Act (42 U.S.C. 262).

Alternatives:

FDA considered issuing a guidance document outlining the electronic submission and the standardization of study data, but not requiring electronic submission of the data in the standardized format. This alternative was rejected because the agency would not fully benefit from standardization until it became the industry standard, which could take up to 20 years.

We also considered a number of different implementation scenarios, from shorter to longer time-periods. The 2-year time-period was selected because the agency believes it would provide ample time for applicants to comply without too long a delay in the effective date. A longer time-period would delay the benefit from the increased efficiencies, such as standardization of review tools across applications, and the incremental cost savings to industry would be small.

Anticipated Costs and Benefits:

Standardization of clinical data structure, terminology, and code sets will increase the efficiency of the agency review process. FDA estimates that the costs to industry resulting from the proposal would include some one-time costs and possibly some annual recurring costs. One-time costs would include, among other things, the cost of converting data to standard structures, terminology, and cost sets (i.e., purchase of software to convert data); the cost of submitting electronic data (i.e., purchase of file transfer programs); and the cost of installing and validating the software and training personnel. Additional annual recurring costs may result from software purchases and licensing agreements for use of proprietary terminologies.

The proposal could result in many long-term benefits for industry, including improved patient safety through faster, more efficient, comprehensive, and accurate data review, as well as enhanced communication among sponsors and clinicians.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—FDA

39. CONTENT AND FORMAT OF LABELING FOR HUMAN PRESCRIPTION DRUGS AND BIOLOGICS; REQUIREMENTS FOR PREGNANCY AND LACTATION LABELING

Priority:

Other Significant

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation:

21 CFR 201.56; 21 CFR 201.57; 21 CFR 201.80

Legal Deadline:

None

Abstract:

To amend the regulations governing the format and content of labeling for human prescription drugs and biological products (21 CFR part 201.56, 201.57, and 201.80).

Statement of Need:

Under FDA's current regulations, labeling concerning the use of prescription drugs in pregnancy uses letter categories (A, B, C, D, X) to characterize the risk to the fetus of using the drug during pregnancy. Dissatisfaction with the category system has been expressed by health care providers, medical organizations, experts in the study of birth defects, women's health researchers, and women of childbearing age. These stakeholders have expressed the view that the current categories are confusing and overly simplistic and thus are not adequate to communicate risks effectively. One of the deficiencies of the category system is that drugs may be assigned to the same category when the severity, incidence, and types of risk are quite different.

Stakeholders consulted through a public hearing, several focus groups, and several advisory committees have recommended that FDA replace the category system with a concise narrative summarizing a product's risks to pregnant women and to women of childbearing age. It has also been strongly recommended that pregnancy labeling address the situation where a woman has taken drugs before she realizes she is pregnant. The labeling that would be required under the proposed rule would be responsive to the concerns discussed above, and others that have been expressed by critics of the current category system.

Summary of Legal Basis:

FDA has broad authority under sections 201, 301, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 321, 331, 351 to 353, 355, and 371) and section 351 of the Public Health Service Act (42 U.S.C. 262) to help ensure that prescription drugs (including biological products that are regulated as drugs) are safe and effective for their intended uses. A major part of FDA's efforts concerning the safe and effective use of drug products involves review, approval, and monitoring of drug labeling. Under section 502(f)(1) of the Act, a drug is misbranded unless its

labeling bears ''adequate directions for use'' or it is exempted from this requirement by regulation. Under section 201.100 (21 CFR part 201.100), a prescription drug is exempted from the requirement in section 502(f)(1) of the Act only if, among other things, it contains the information required and in the format specified by sections 201.56 and 201.57.

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

These statutory provisions, combined with section 701(a) of the Act and section 351 of the Public Health Service Act, clearly authorize FDA to publish a proposed rule designed to help ensure that practitioners prescribing drugs (including biological products) to pregnant women and women of childbearing age would receive information essential to the safe and effective use of these drugs.

Alternatives:

The alternatives to the proposal include not amending our existing regulation governing the format and content of labeling for human prescription drugs and biological products. This alternative is inconsistent with widespread stakeholder dissatisfaction with the pregnancy labeling provided pursuant to the current regulation.

Anticipated Costs and Benefits:

The proposed rule would impose one-time costs for firms to modify drug product labeling and annual costs to print longer labeling. The extent of these modifications would depend on whether a product's labeling is affected by the physician labeling final rule (PLR) and on the scope of the implementation.

The revised format and the information provided in the labeling would make it easier for health care providers to understand the risks and benefits of drug use during pregnancy and lactation. A better understanding of risks and benefits would help women and their health care providers make informed decisions about whether or not to use drugs during pregnancy and lactation. Labeling under the rule would also provide information geared to women who took drugs before they knew they were pregnant. Such information may often be reassuring to women and their health care providers.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/08	

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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HHS—FDA

40. LABEL REQUIREMENT FOR FOOD THAT HAS BEEN REFUSED ADMISSION INTO THE UNITED STATES

Priority:

Other Significant

Legal Authority:

15 USC 1453 to 1455 ; 21 USC 321; 21 USC 342; 21 USC 343; 21 USC 371; 21 USC 374; 21 USC 381; 42 USC 216; 42 USC 264

CFR Citation:

21 CFR 1.98

Legal Deadline:

None

Abstract:

The proposed rule would require owners or consignees to label imported food that is refused entry into the United States. The label would read, ''UNITED STATES: REFUSED ENTRY.'' The proposal would describe the label's characteristics (such as its size) and processes for verifying that the label has been affixed properly. We are taking this action to prevent the introduction of unsafe food into the United States, to facilitate the examination of imported food, and to implement section 308 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107-188).

Statement of Need:

In 1998, the General Accounting Office issued a report titled, ''Food Safety: Federal Efforts to Ensure the Safety of Imported Foods Are Inconsistent and Unreliable.'' The report stated that some food importers evade import controls and are able to introduce contaminated, adulterated, or unsafe food into the United States even after FDA refused to admit the food and the Customs Service ordered the food to be reexported or destroyed.

Additionally, in 1998, the Senate Permanent Subcommittee on Investigations conducted hearings on the safety of food imports. The subcommittee heard testimony about reimporting refused foods through another port (a practice known as ''port shopping''). On July 3, 1999, then-President Clinton issued a memorandum to the Secretary of Health and Human Services and the Secretary of the Treasury directing them, in part, to take all actions available to ''prohibit the reimportation of food that has been previously refused admission and has not been brought into compliance with United States laws and regulations'' by requiring the marking of shipping containers and/or papers of imported food that is refused admission for safety reasons.

Consequently, on January 22, 2001, FDA and the Department of the Treasury jointly issued a proposed rule (66 FR 6502) that would have required that imported food that has been refused admission for safety reasons be marked as ''UNITED STATES: REFUSED ENTRY.'' The mark would make it easier to detect previously refused food and reduce, if not

eliminate, ''port shopping.'' However, on June 12, 2002, before FDA and Treasury could prescribe a final rule, the Bioterrorism Act became law. Section 308(a) of the Bioterrorism Act created a new section 801(n) of the Federal Food, Drug, and Cosmetic Act (the act) to clarify FDA's authority to require the owner or consignee of a food that had been refused admission into the United States to ''affix to the container of the food a label that clearly and conspicuously bears the statement: 'UNITED STATES: REFUSED ENTRY'.'' Although section 308(c) of the Bioterrorism Act stated that ''nothing in this section shall be construed to limit the authority of the Secretary of Health and Human Services or the Secretary of the Treasury to require the marking of refused articles of food under any other provision of law,'' the new statutory provision differed from the January 22, 2001, proposed rule and prompted FDA to withdraw the proposal on August 21, 2002 (67 FR 54138).

The new proposal would describe the label requirements for imported food that has been refused admission into the United States.

Summary of Legal Basis:

Section 801(a) of the act authorizes FDA to refuse to admit imported food if the food has been manufactured, processed, or packed under insanitary conditions, is forbidden or restricted in sale in the country in which it was produced, or is adulterated or misbranded. Additionally, as explained earlier, section 801(n) of the act gives FDA express authority to require the owner or consignee of a food that had been refused admission into the United States to ''affix to the container of the food a label that clearly and conspicuously bears the statement: 'UNITED STATES: REFUSED ENTRY'.''

Sections 402 and 403 of the act describe when a food is adulterated or misbranded, respectively. Section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the Act, while section 701(b) of the act authorizes FDA and the Department of the Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the act.

The proposed rule is within FDA's authority at sections 402, 403, 701, and 801 of the act. In general, unsafe food is often adulterated under section 402 of the act and may also be misbranded under section 403 of the act. Requiring a label on refused foods that have been so refused will make it easier for FDA to refuse to admit previously refused, adulterated, or misbranded food imports into the United States.

Additionally, section 301 of the Public Health Service Act (PHS act) authorizes FDA to ''render assistance'' to appropriate health authorities in the conduct of or to promote coordination of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of disease. Section 361 of the PHS act authorizes FDA to issue regulations to prevent the introduction, transmission, or spread of communicable diseases into the United States. Affixing a label would alert foreign officials to previously refused food and help prevent the introduction, transmission, or spread of communicable diseases into the United States by making it more difficult for unsafe food to reenter the United States.

Alternatives:

FDA considered exempting small businesses from the rule, but, because most importers and consignees would qualify as small businesses, this would negate the rule's purpose.

The agency also considered ordering the destruction of all refused food imports, but this would not be feasible because it would divert Federal resources to supervising or otherwise ensuring that the refused food imports are stored until they can be destroyed and that they are destroyed.

FDA also rejected affixing the label on some, but not all, imported food refused entry for safety reasons. While this alternative would be less costly, it would also be less efficient because some refused food imports would be able to reenter the United States and because a previously refused, but unlabeled, food would be difficult to detect compared to a previously refused and labeled food. This alternative would also result in arguments as to the criteria to be applied and whether a particular food should be labeled.

Anticipated Costs and Benefits:

Importers and consignees would bear the costs associated with affixing the label to refused food imports. The rule's costs would, therefore, consist of labor costs (to affix the label) and equipment costs (the label equipment used). FDA will estimate these costs in the proposed rule.

The rule's principal benefit would be a reduction in the number of illnesses and injuries caused by unsafe imported food. The Agency is unable to quantify the amount of illegal importation of previously refused foods, so it cannot accurately predict the value of reduced illnesses and injury.

Risks:

There is a possible risk previously refused, unpackaged food (such as loose grain in a railroad car) would be able to enter the United States because the food itself cannot be labeled, although the proposed rule would require the importer or consignee to affix a label on papers accompanying the product.

Timetable:

Action	Date	FR Cite
NPRM	07/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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HHS—FDA

41. 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 reports submitted to the Agency by persons subject to mandatory reporting requirements be transmitted electronically in a form 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 send medical device adverse event reports electronically 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 electronically instead of using a hard copy form.

Alternatives:

The alternatives to this rulemaking include not updating the medical device reporting requirements and not requiring electronic submission of this information. 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 Costs and Benefits:

The principal benefit would be to public health because the increased speed in the processing and analysis of the 100,000 medical device reports currently submitted in 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 $8.9 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	09/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—FDA

42. ELECTRONIC REGISTRATION AND LISTING FOR DEVICES

Priority:

Other Significant

Legal Authority:

PL 107–188, sec 321; 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 new 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, which was added by section 207 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). 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 the registration and listing process to a paperless process. 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.

Statement of Need:

FDA is proposing to amend the medical device establishment registration and listing requirements under 21 CFR part 807 to reflect the new requirements in section 321 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (BT Act) and section 207 of MDUFMA. 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 Federal Food, Drug, and Cosmetic 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 Costs 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	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—FDA

FINAL RULE STAGE

43. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS

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 343; 21 USC 348; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 393; 42 USC 264

CFR Citation:

21 CFR 111

Legal Deadline:

None

Abstract:

The Food and Drug Administration published a final rule in the Federal Register of June 25, 2007 (72 FR 34572), on current good manufacturing practice (CGMP) regulations for dietary supplements. The final rule (the CGMP rule) was published to establish the minimum CGMPs necessary to ensure that, if firms engage in activities related to manufacturing, packaging, labeling or holding dietary supplements, they do so in a manner that will ensure the quality of the dietary supplements — i.e., to ensure that the dietary supplement consistently meets the established specifications for identity, purity, strength, and composition, and limits on contaminants, and has been manufactured, packaged, labeled, and held under conditions to prevent adulteration under section 402(a)(1), (a)(2), (a)(3), and (a)(4) of the act.

FDA also published an interim final rule (IFR) in the June 25, 2007 Federal Register (72 FR 34959) that sets forth a procedure for requesting an exemption from the requirement in the final rule described above that the manufacturer conduct at least one appropriate test or examination to verify the identity of any component that is a dietary ingredient. This IFR allows for submission to, and review by, FDA of an alternative to the required 100 percent identity testing of components that are dietary ingredients, provided certain conditions are met. This IFR also establishes a requirement for retention of records relating to the FDA's response to an exemption request.

Statement of Need:

FDA published the CGMP rule for dietary supplements because FDA is concerned that some firms may not be taking appropriate steps during the manufacture of dietary supplements to ensure the quality of dietary supplement. FDA is aware of products that contain potentially harmful contaminants because of apparently inadequate manufacturing controls and quality control procedures. There also have been cases of misidentified ingredients harming consumers using dietary supplements. The Agency believes that a system of CGMPs is the most effective and efficient way to ensure the quality of dietary supplements.

With respect to the specific requirement for 100 percent identity testing of dietary ingredients, FDA recognizes that it may be possible for a manufacturer to demonstrate, through various methods and processes in use over time for its particular operation, that a system of less than 100 percent identity testing would result in no material diminution of assurance of the identity of the dietary ingredient as compared to the assurance provided by 100 percent identity testing. To provide an opportunity for a manufacturer to make such a showing and reduce the frequency of identity testing of components that are dietary ingredients from 100 percent to some lower frequency, FDA is adding to the CGMP rule an exemption from the requirement of 100 percent identity testing when a manufacturer petitions the agency for such an exemption to 100 percent identity testing and the agency grants such exemption. Such a procedure would be consistent with FDA's stated goal, as described in the CGMP final rule, of providing flexibility in the CGMP requirements. FDA is providing an opportunity for interested persons to comment on whether this exemption procedure should be modified, and if so, whether there is any additional information that may be helpful to articulate with respect to what a petition needs to show that may inform future guidance.

Summary of Legal Basis:

Under the CGMP rule, failure to manufacture, pack, label or hold dietary supplements under CGMPs renders the dietary supplement adulterated under section 402(g) of the Act.

Alternatives:

The two principal alternatives to comprehensive CGMPs are end product testing and Hazard Analysis Critical Control Points (HACCP). The Agency asked whether different approaches may be better able to address the needs of the broad spectrum of firms that conduct one or more distinct operations, such as the manufacture of finished products, or solely the distribution and sale of finished products at the wholesale or retail level.

Anticipated Costs and Benefits:

The costs of the CGMP rule will include the value of resources devoted to increased sanitation, process monitoring and controls, testing, and written records. The benefits of the CGMP rule are to improve product quality. We estimate that the regulation will reduce the number of sporadic human illnesses and rare catastrophic illnesses from contaminated products. The current quality of these products is highly variable. The CGMP rule will have a significant impact on a substantial number of small businesses, so it is significant under the Regulatory Flexibility Act. We anticipate that small

businesses will bear a proportionately larger cost than large businesses.

The IFR, as one piece of the CGMP rule, is not an economically significant regulatory action as defined under Executive Order 12866. FDA has identified 1,460 establishments that may apply to FDA for an exemption from dietary ingredient identity testing as provided for by this IFR. FDA expects some cost savings from reduced dietary ingredient identity testing depending on the number of firms that successfully apply to FDA for exemption. The IFR provisions will cause no net change in the benefits of dietary supplement current good manufacturing practices as outlined in the final rule.

Risks:

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

If an incorrect dietary ingredient is added to a dietary supplement, consumers could be exposed to a biologically active substance without their knowledge. For example, FDA is aware of a case in which Digitalis lanata was misidentified as plantain and, as a result, a young woman experienced a life-threatening abnormal heart function after consuming a dietary supplement containing D. lanata in lieu of plantain. Manufacturers who petition FDA for an exemption from the requirement for 100 percent identity testing would be required to show that a system of less than 100 percent identity testing would result in no material diminution of assurance of the identity of the dietary ingredient as compared to the assurance provided by 100 percent identity testing.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/97	62 FR 5700
ANPRM Comment Period End	06/06/97	
NPRM	03/13/03	68 FR 12157
NPRM Comment Period End	08/11/03	
Final Action	06/25/07	72 FR 34752
Interim Final Rule	06/25/07	72 FR 34959
Interim Final Rule Comment Period End	10/24/07	
Final Action	06/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 0910–AB88

HHS—FDA

44. 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 Costs 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	04/00/08	

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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HHS—FDA

45. PRIOR NOTICE OF IMPORTED FOOD UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Priority:

Other Significant

Legal Authority:

PL 107–188, sec 307

CFR Citation:

21 CFR 1.276 et seq

Legal Deadline:

Final, Statutory, December 12, 2003.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, section 307, directs the Secretary, through FDA, to issue final regulations establishing prior notice requirements for all imported food by December 12, 2003. If FDA fails to issue final regulations by this date, the statute is self-executing on this date, and requires FDA to receive prior notice of not less than eight hours, nor

more than five days, until final regulations are issued.

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 801(m) of the Federal Food, Drug, and Cosmetic Act (the act), which was added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), requires notification to FDA prior to the entry of imported food. The regulation explains the information that the prior notice is required to contain, the method of submission of the notice, and the minimum and maximum period of advance notice required. Section 307 also states that if FDA does not receive prior notice or receives inadequate prior notice, the imported food shall be refused admission and held at the port of entry until proper notice is provided.

Section 307 authorizes the Secretary, through FDA, to promulgate final regulations by December 12, 2003. FDA and the Bureau of Customs and Border Protection (CBP) issued an interim final rule (IFR) on October 10, 2003 (68 FR 58974). The IFR originally provided a 75-day comment period to ensure that those that comment on the IFR have the benefit of our outreach and educational efforts and have the experience with the systems, timeframes, and data elements. We reopened the comment period for an additional 90 days in April through July 2004, to allow for additional comment on the industry's experience with the prior notice system, and comment on the Joint FDA-CBP Plan for Increasing Integration and Assessing the Coordination of Prior Notice Timeframes. The final rule currently is under development, and it will confirm or amend the IFR, as appropriate. This final rule is not expected to have a significant impact on a substantial number of small entities.

Statement of Need:

This final rule is needed to complete the rulemaking process to implement section 307 of the Bioterrorism Act. The proposed rule was published on February 3, 2003, (68 FR 5428) and the interim final rule on October 10, 2003 (68 FR 58974).

Summary of Legal Basis:

Section 307 of the Bioterrorism Act amended the act by adding section 801(m), which authorizes the Secretary through FDA to establish by regulation requirements for the notification to FDA prior to the entry of imported food. In addition, section 307 of the Bioterrorism Act also amends section 301 of the act by making the offering of a food for import or the importing of a food without prior notification, as required by the new regulations, a prohibited act.

Alternatives:

An alternative is to leave the IFR in place and not to issue a final rule. However, we received numerous comments in response to the IFR that require a response. Finalizing this rule will assist industry and the public in better understanding and complying with the prior notice requirements.

Anticipated Costs and Benefits:

The final rule will amend the interim final rule already in place. We do not expect the changes from the interim final rule to be economically significant.

This final rule will require that FDA be notified prior to the arrival of the food.

Having prior notice of imported food will help deter deliberate and accidental contamination of food shipments. Knowledge of when, where, and how imported food will enter the United States will help mitigate the effects of any potential food contamination issues.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism and other public health threats would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the FDA's ability to address bioterrorism events and public-health threats associated with imported food.

Timetable:

Action	Date	FR Cite
NPRM	02/03/03	68 FR 5428
Interim Final Rule	10/10/03	68 FR 58974
Interim Final Rule Comment Period Reopened	04/14/04	69 FR 19763
Interim Final Rule Comment Period Reopened End	07/13/04	
Final Rule	04/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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HHS—FDA

46. 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 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 proposed 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 proposed 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 Costs and Benefits:

FDA expects that the total one-time costs of the rule will be negligible. The agency expects that the annual and annualized costs of the rule will range from a low of about $130,000 to $260,000 in the first year following publication of a final rule based on the proposal, to a high of about $350,000 to $690,000 in the fourth and fifth years. These estimates suggest that total annual and annualized costs for the rule would be between $1.4 million and $2.7 million for the 5-year period following implementation of any final rule based on the proposal. 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	09/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Organizations

Government Levels Affected:

None

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HHS—Centers for Medicare & Medicaid Services (CMS)

PROPOSED RULE STAGE

47. STANDARDS FOR E–PRESCRIBING UNDER MEDICARE PART D (CMS–0016–P)

Priority:

Other Significant

Unfunded Mandates:

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

Legal Authority:

42 USC 1395

CFR Citation:

42 CFR 423

Legal Deadline:

Final, Statutory, April 1, 2008.

Abstract:

This rule proposes standards for electronic prescribing (e-prescribing) under Medicare Part D. This rule would require Medicare Part D and Medicare Advantage plans to support electronic transmission of basic prescription data to and from doctors and pharmacies and to adopt final standards for e-prescribing as required by section 101 of the MMA.

Statement of Need:

This rule would implement section 101 of the MMA, which includes the requirement that the Secretary promulgate final uniform standards for the electronic transmission of prescriptions and certain other information for covered Part D drugs prescribed for Part D eligible individuals.

Summary of Legal Basis:

Section 101 of the MMA requires that the Secretary promulgate final uniform standards for the electronic transmission of prescriptions and certain other information for covered Part D drugs prescribed for Part D eligible individuals by no later than April 1, 2008.

Alternatives:

This is a statutory requirement.

Anticipated Costs and Benefits:

All Medicare drug plans would be required to implement the standards. We expect that the standards would include transactions for communicating medication history and formulary information to prescribers, which would result in fewer adverse drug events and increased formulary compliance.

Risks:

If this regulation is not published timely, plans may not be aware of the uniform standards.

Timetable:

Action	Date	FR Cite
NPRM	11/16/07	72 FR 64900
NPRM Comment Period End	01/15/08	
Final Action	04/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State

Federalism:

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

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HHS—CMS

48. APPLICATION OF CERTAIN APPEALS PROVISIONS TO THE MEDICARE PRESCRIPTION DRUG APPEALS PROCESS (CMS–4127–P)

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

sec 1102, 1860D–1 to 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 to 1395w–152, and 1395hh)

CFR Citation:

42 CFR 560 to 638

Legal Deadline:

None

Abstract:

The voluntary prescription drug benefit program was enacted into law by section 101 of title 1 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). The implementing regulations for the Part D program were published in a final rule on January 28, 2005, and became effective March 22, 2005. These regulations provide that the Medicare Advantage (MA) rules regarding appeals and reopenings will apply to the Part D appeals process to the extent they are appropriate. The MA regulations in turn apply the fee-for-service (FFS) appeals regulations (concerning the administrative review and hearing processes and representation of parties under titles II and XVIII of the Act) to the extent they are appropriate.

Based on this regulatory framework, we noted in the January 28, 2005, rule that differences in the appeals procedures for Part D enrollees would be addressed in a future Part D rulemaking document. The purpose of the proposed rule is to provide additional guidance on the differences in appeals procedures for Part D enrollees by proposing more detailed regulations governing Part D appeals at the ALJ, MAC, and Federal district court levels and reopenings of determinations and decisions that follow the Part A and Part B procedures set forth in the part 405 rule, as appropriate.

Statement of Need:

This rule proposes the procedures that the Department of Health and Human Services would follow at the Administrative Law Judge (ALJ) and Medicare Appeals Council (MAC) levels in deciding appeals brought by individuals who have enrolled in the Medicare prescription drug benefit program and the reopening procedures that would be followed at all levels of appeal.

Summary of Legal Basis:

The voluntary prescription drug benefit program (''Part D'') was enacted into law by Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The MMA specified that the prescription drug benefit would become available on January 1, 2006 for individuals entitled to benefits under Medicare Part A or enrolled under Medicare Part B. The implementing regulations for the Part D program were published in a final rule on January 28, 2005, and became effective March 22, 2005.

Alternatives:

In addition to developing regulations, the agency also considered providing this guidance through a CMS Ruling. Similarly, we also weighed the option of not issuing any additional guidance, and allowing individual adjudicators to determine how the provisions apply to part D appeals and reopenings.

Anticipated Costs and Benefits:

In the current Part D appeals process, there are no explicit procedures for processing appeal requests at the ALJ, MAC, or Federal court levels or for processing reopening requests. The absence of clear and efficient procedures for upper level appeals and reopenings may delay beneficiary access and/or delay the actual processing of appeals at these levels and reopenings. The costs associated with these outcomes are likely to be increased costs for beneficiaries.

Beneficiaries who have difficulty accessing the appeals or reopenings processes or who cannot access these processes, may elect to pay for their medications out-of-pocket. Similarly, beneficiaries who experience delays in receiving appeals decisions, may choose to pay for their medications while awaiting a decision. Finally, beneficiaries who are without their medications for extended periods of time because they experience long delays in processing appeals may experience adverse health consequences, including additional hospitalizations.

Risks:

Under the current regulatory framework, the absence of specific rules governing the adjudication of upper level Part D appeals requires each adjudicator to make his/her own determination about how the provisions apply to the Part D appeals and reopenings processes. Relying on individual adjudicators could result in inconsistencies in the process for beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Federalism:

Undetermined

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HHS—CMS

49. ● MEDICARE SUPPLEMENTAL POLICIES (CMS–4084–P)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Sec. 1882 of the Social Security Act

CFR Citation:

42 CFR 403.200 et seq

Legal Deadline:

None

Abstract:

The regulation outlines procedures for the States and for CMS to certify the Medigap policies of private issuers. This rule is authorized under the Medigap program.

Statement of Need:

The current regulation was initially published in 1982 as an interim final rule, but was never finalized. Section 902 of the MMA requires that proposed or interim final rules be finalized within 3 years of the initial publication or the rule will sunset; therefore, CMS is publishing this update as a proposed rule.

These regulations outline the requirements for States and CMS to develop a process to certify Medigap policies of health insurance issuers. Since 1982 there have been several legislative enactments (including OBRA '90 and the MMA) that have changed the process and these changes must be incorporated into the rules.

We believe there will be a positive reaction to the proposed rule since it will be incorporating the certification process that has been updated by statute.

Summary of Legal Basis:

Section 1882 of the Social Security Act.

Alternatives:

We considered not publishing an update because most of the provisions are in the statute, but we did not want to leave the current regulation in an outdated status.

Anticipated Costs and Benefits:

Since States have incorporated the updated certification process, there should be no cost in complying with the proposed rules.

Risks:

This rule addresses the risk of having an outdated regulation create confusion with the certification process for Medigap policies.

Timetable:

Action	Date	FR Cite
NPRM	08/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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RIN: 0938–AP10

HHS—CMS

50. ● CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEM FOR CY 2009 (CMS–1404–P)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

BBA; PPRA; BIPA; MMA; 42 USC 1302 et al.

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, November 1, 2008.

Abstract:

This rule would revise the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from 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 final 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 2009 OPPS at least 60 days before January 1, 2009.

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, 2009.

Alternatives:

None. This is a statutory requirement.

Anticipated Costs and Benefits:

Total expenditures will be adjusted for CY 2009.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	07/00/08	

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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HHS—CMS

51. ● REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE AND AMBULANCE FEE SCHEDULE FOR CY 2009 (CMS–1403–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, 2008.

Abstract:

This major proposed rule would make changes affecting Medicare Part B payment to physicians and other Part B suppliers. It also updates the ambulance fee schedule.

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. It also updates the ambulance fee schedule.

The final rule has a statutory publication date of November 1, 2008, and implementation of January 1, 2009.

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 Costs and Benefits:

Total expenditures will be adjusted for CY 2009.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	07/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—CMS

FINAL RULE STAGE

52. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (CMS–3818–F) (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

42 USC 1395rr et al

CFR Citation:

42 CFR 405; 42 CFR 410; 42 CFR 413 to 414; 42 CFR 488; 42 CFR 494

Legal Deadline:

Final, Statutory, February 4, 2008, MMA sec. 902.

Abstract:

This final rule revises the requirements that end stage renal disease (ESRD) facilities must meet to be certified under the Medicare program.

Statement of Need:

This rule finalizes the February 4, 2005 proposed rule entitled ''Medicare Program; Conditions for Coverage for End Stage Renal Disease Facilities.'' The requirements were last revised in their entirety in 1976. The final rule establishes new conditions for coverage that dialysis facilities must meet to be certified under the Medicare program. This final rule focuses on the results of care provided to the patient, establishes performance expectations for facilities, encourages patients to participate in their plan of care and treatment, eliminates some procedural requirements, and preserves strong process measures when necessary to promote patient safety and well being, and continuous quality improvement. This final rule implements current professional standards of practice, provides a structure for internal facility quality improvement, and a framework for external oversight.

Summary of Legal Basis:

The Social Security Act (the Act) authorizes benefits for individuals who have been determined to have end stage renal disease. The Act authorizes payments on behalf of such individuals to providers of services and renal dialysis facilities ''which meet requirements as the Secretary shall by regulation prescribe.'' ESRD conditions for coverage may be revised as needed under the Secretary's rulemaking authority.

Alternatives:

Retain the current conditions and rely upon the various quality improvement initiatives (e.g., the Dialysis Facility Compare website and the CMS Clinical Performance Measures Project) that have improved beneficiaries' quality of care.

Anticipated Costs and Benefits:

We expect some Medicare savings resulting from this final rule due to an increase in the number of patients who will be exposed to the advantages of obtaining an arteriovenous fistula (AVF), and an increase in the number of patients choosing the option of self-care (home) dialysis as a result of it being discussed and explained to them.

Risks:

The final rule must be published by February 4, 2008 in order to comply with section 902 of the Medicare Modernization Act. In addition, failure to update the requirements would result in outdated ESRD conditions for coverage that are over 31 years old and do not reflect current medical practices or scientific advances in the field.

Timetable:

Action	Date	FR Cite
NPRM	02/04/05	70 FR 6184
Final Action	02/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0938–AG82

HHS—CMS

53. HOSPICE CARE CONDITIONS OF PARTICIPATION (CMS–3844–F) (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

42 USC 1302; 42 USC 1395hh

CFR Citation:

42 CFR 418

Legal Deadline:

Final, Statutory, May 27, 2008, MMA sec. 902.

Abstract:

This final rule is a regulatory reform initiative that revises existing conditions of participation that hospices must meet to participate in the Medicare and Medicaid programs. The requirements focus on the actual care delivered to patients and patients' families by hospices and the results of that care, reflect an interdisciplinary view of patient care, and allow hospices greater flexibility in meeting quality standards. These changes are an integral part of our efforts to achieve broad-based improvements and measurements of the quality of care furnished through Federal programs while at the same time reducing procedural burdens on providers.

Statement of Need:

This final rule revises and reorganizes the existing conditions of participation (CoPs) for Medicare participating hospice providers first published in 1983. The final rule focuses on the care delivered to patients and patients' families by hospices and the outcomes of that care. The requirements continue to reflect an interdisciplinary view of patient care and allow hospices flexibility in meeting quality standards. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of health care furnished through the Medicare and Medicaid programs. This rule codifies hospice language in the Balanced Budget Act of 1997 and the Medicare Modernization Act of 2003.

Summary of Legal Basis:

The Social Security Act (the Act) provides the statutory qualifications and requirements that a hospice must meet to receive payment for hospice care given to Medicare beneficiaries who elect the hospice benefit under the Medicare and Medicaid programs. This section gives the Secretary broad authority to establish standards for hospices. Under this authority, the Secretary established conditions of participation (CoPs) for hospices.

In addition, the Act gives the Secretary the authority to make and publish such rules and regulations as may be necessary to the efficient administration of the functions with which he is charged under the Act. This section of the Act gives the Secretary broad authority to establish requirements for

hospices that are necessary for the efficient administration of the Medicare program.

Alternatives:

Rely on the current CoPs: We concluded that this was not a reasonable option because the current CoPs are not patient-focused but rather problem-focused, an approach that has inherent limits. Trying to ensure quality through the enforcement of prescriptive health and safety standards, rather than trying to improve quality of care for all patients, adversely affects agency improvement efforts and does not stimulate broad-based quality of care initiatives. On the other hand, revising the current CoPs would take advantage of continuing advances in health care delivery.

Increase prescriptive requirements relative to patient rights, drugs and durable medical equipment, and personnel qualifications: We decided not to pursue this approach because the additional burden that would be placed on hospices would outweigh any potential benefits.

Exclude the revisions to the comprehensive assessment and interdisciplinary group requirements: Since these areas represent two of the most frequently cited deficiencies noted during hospice surveys and have a great impact on patient care, we decided that these sections did, in fact, need to be strengthened.

Anticipated Costs and Benefits:

Provisions within the final rule may require that some hospices provide patient care and patient care related services that they are not currently providing. These services will most likely require a cost outlay. Since these rules have not been revised for over 20 years, we believe that many of the improvements that are being made are already being implemented in whole or in part by a portion of hospices.

Risks:

This final rule must be published by May 26, 2008 in order to comply with section 902 of the Medicare Modernization Act. In addition, failure to update these outdated regulations will not address the needs of patients or providers.

Timetable:

Action	Date	FR Cite
NPRM	05/27/05	70 FR 30840
Final Action	05/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0938–AH27

HHS—CMS

54. HEALTH COVERAGE PORTABILITY: TOLLING CERTAIN TIME PERIODS AND INTERACTIONS WITH FAMILY AND MEDICAL LEAVE ACT (CMS–2158–F)

Priority:

Other Significant

Legal Authority:

42 USC 300gg; PL 104–191

CFR Citation:

45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.120; 45 CFR 146.145

Legal Deadline:

None

Abstract:

This final rule will clarify certain portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. It also implements changes made to the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act enacted as part of the Health Insurance Portability and Accountability Act of 1996.

Statement of Need:

This rule is needed to implement certain portability provisions of the Public Health Service Act as it pertains to private health plans and issuers. Specifically, it addresses the tolling of the 63-day break in creditable coverage when notices are not received, interactions of the law with the Family Medical and Leave Act, and special enrollment provisions.

Summary of Legal Basis:

The Public Health Service Act provides the authority to implement this rule.

Alternatives:

Since this is a statutory requirement, no alternatives were considered.

Anticipated Costs and Benefits:

Promulgation of this rule will make it easier for individuals to transfer from one group health plan to another group health plan in the event of the loss of a job, a job transfer, the loss of spouse, or a divorce.

Risks:

This rule addresses the risk of individuals not being able to obtain health insurance because they did not receive proper notification that their prior coverage had been terminated. The tolling of the permitted 63-day break in coverage, when an individual does not receive notice of termination of prior coverage, will provide those individuals additional time to obtain coverage through another health plan without being subject to pre-existing condition exclusions.

Timetable:

Action	Date	FR Cite
NPRM	12/30/04	69 FR 78800
Final Action	08/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Federal, Local, State

Federalism:

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

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BILLING CODE 4150–24–S

DEPARTMENT OF HOMELAND SECURITY (DHS)

Statement of Regulatory Priorities

The Department of Homeland Security (DHS or the Department) was created in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107-296. DHS is comprised of 22 Federal agencies brought together for the common mission of preventing terrorist attacks in the United States, reducing the vulnerability of the United States to terrorist attacks, and minimizing damage and assisting in recovery from acts of terrorism, natural disasters, or other emergencies that might occur in the United States. The Department's Strategic Plan governs the development of DHS' strategies, programs and projects, and ultimately is reflected in the Department's budget and regulatory agenda. DHS' Strategic Plan is posted on the Department's Web site: http://www.dhs.gov/xabout/strategicplan.

DHS' Strategic Goals are:

AWARENESS- Identify and understand threats, assess vulnerabilities, determine potential impacts, and disseminate timely information to our homeland security partners and the American public.

PREVENTION - Detect, deter, and mitigate threats to our homeland.

PROTECTION- Safeguard our people and their freedoms, critical infrastructure, property, and the economy of our Nation from acts of terrorism, natural disasters, or other emergencies.

RESPONSE- Lead, manage, and coordinate the national response to acts of terrorism, natural disasters, or other emergencies.

RECOVERY - Lead national, state, local, and private sector efforts to restore services and rebuild communities after acts of terrorism, natural disasters, or other emergencies.

SERVICE - Serve the public effectively by facilitating lawful trade, travel, and immigration.

ORGANIZATIONAL EXCELLENCE - Value our most important resource, our people. Create a culture that promotes a common identity, innovation, mutual respect, accountability, and teamwork to achieve efficiency, effectiveness, and operational synergies.

In 2005, the Secretary of Homeland Security announced a six-point agenda to ensure that the Department's policies, operations, and structures are aligned in the best way to address the potential threats that face our nation. The Secretary's six-point agenda is intended to:

- Increase overall preparedness, particularly for catastrophic events;
- Create better transportation security systems to move people and cargo more securely and efficiently;
- Strengthen border security and interior enforcement and reform immigration processes;
- Enhance information sharing with our partners;
- Improve DHS financial management, human resource development, procurement and information technology; and
- Realign the DHS organization to maximize mission performance.

The regulations summarized in the Department's 2007 Fall Regulatory Program and in the Unified Agenda support the Department's Strategic Goals and the Secretary's six-point agenda and will improve the Department's ability to accomplish its primary missions.

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 also is committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to protect civil rights and civil liberties, integrate our actions, build coalitions and partnerships, develop human resources, innovate and be accountable to the American public. 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 better understanding of regulations and increased public participation in the Department's rulemakings.

The Fall 2007 Regulatory Plan for DHS includes regulations issued by the Office of the Secretary of Homeland Security, as well as the Department's major divisions or directorates, Science and Technology Directorate and the Management Directorate. Further, effective March 21, 2007, the former-Preparedness Directorate was reorganized and moved under FEMA in accordance with the Post-Katrina Emergency Management Reform Act of 2006 (P.L. 109-296)(PKEMRA). Accordingly, active regulatory matters previously issued as Office of the Secretary rules by the former Preparedness Directorate, will now be identified as FEMA regulatory actions. In addition, DHS also established the National Protection and Programs Directorate (NPPD). NPPD, which houses such offices as the Office of Cyber Security, the Office of Infrastructure Protection and US-VISIT, is responsible for several regulatory actions set forth in this Agenda.

DHS also has several components that have active regulatory programs, including the U.S. Coast Guard (Coast Guard), the U.S. Secret Service, the Transportation Security Administration (TSA), the Federal Emergency Management Administration (FEMA), U.S. Citizenship and Immigration Services (USCIS), the U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). The Fall 2007 Regulatory Plans for the Office of the Secretary and those DHS regulatory components with submissions for the 2007 Plan are discussed below.

Office of the Secretary

REAL ID

During the Fall of 2007, DHS will be issuing a final rule to establish minimum standards for State-issued driver's licenses and identification cards that Federal agencies would accept for official purposes as required under the REAL ID Act of 2005. The REAL ID Act, prohibits Federal agencies, effective May 11, 2008, from accepting a driver's license or personal identification card (license) for an ''official purpose'' unless it has been issued by a State that has certified to, and been determined by DHS to meet, the requirements of the Act. The Act sets forth minimum document requirements, minimum issuance standards, and other requirements, including the following:

- Information and features that must appear on the face of the license, and inclusion of a common machine readable portion of a driver's license or identification card;
- Presentation and verification of information an applicant must

provide before a license may be issued, including evidence that the applicant is a U.S. citizen or has lawful status in the United States;

- Physical security of locations where licenses are produced, the security of document materials and papers from which licenses are produced, and the background check of certain employees involved in the manufacture and production of licenses, and;
- Physical security of the licenses to prevent tampering, counterfeiting, and duplication of the documents for a fraudulent purpose.

On March 9, 2007, DHS issued a Notice of Proposed Rulemaking (NPRM) in this action. The Department received over 21, 000 comments on this rulemaking action.

Section 205(b) of the Act authorizes DHS to grant extensions of the time requirements under the Act to States who provide adequate justification for their inability to comply. In the March 9 NPRM, DHS indicated that any State that requested an extension no later than February 10, 2008, will be granted an extension until December 31, 2009. In the final rule, we are moving the deadline for submission of requests for extensions until April 10, 2008. In addition, DHS is providing States with the opportunity to request a second extension beyond December 31, 2009, upon demonstrating that the State has achieved certain core benchmarks towards full compliance.

DHS is issuing this rule in consultation with the Department of Transportation, other representatives of the Federal Government, and representatives from many States, as required under the Act.

US-VISIT

United States 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 the 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. DHS will be issuing an NPRM by the end of 2007 to propose an exit program to collect biometric information from aliens departing the United States at all air and sea ports of departure. The exit system proposed under this rule also implements the requirements of the Secure Travel and Counterterrorism Partnership act of 2007.

DHS also expects to issue a final rule expanding the classes of aliens that will be subject to US-VISIT requirements to cover all aliens, including lawful permanent residents, with certain limited exceptions. This regulatory program supports the Department's Strategic Goals of awareness, prevention, and protection by securing our borders against terrorists who intend to harm the United States.

United States Citizenship and Immigration Services

The mission of the 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.

Based on a comprehensive review of the USCIS planned regulatory agenda, several rulemakings will be promulgated to directly support the aforementioned core priorities as delineated below.

National Security

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. To further our national security objectives, USCIS is pursuing regulatory initiatives that will disallow the granting of immigration benefits while an applicant has an ongoing investigation. These regulatory initiatives include the following:

''Designation of Acceptable Documents for Employment Verification'' (''I-9 Reduction Rule''). This rulemaking action will reduce the number of documents acceptable for Employment Verification, or Form I-9, purposes. The current employment verification process uses a very dated list of acceptable documents and a revised Form I-9 has been approved. However, the entire list of documents needs to be shortened and the Form I-9 reissued in conjunction with a shorter list of more highly secure documents.

''Special Immigrant and Nonimmigrant Religious Workers.'' This final rule amends USCIS regulations regarding the special immigrant and nonimmigrant religious worker visa classifications. This rule clarifies several substantive and procedural issues that have arisen since the religious worker category was created, and provides new definitions that describe more clearly the regulatory requirements, as well as add specific evidentiary requirements for petitioning employers and prospective religious workers. This rule also addresses concerns about the integrity of the religious worker program by establishing a petition requirement for religious organizations seeking to classify an alien as an immigrant or nonimmigrant religious worker. Finally, this rule includes an on-site inspection requirement for religious organizations to ensure the legitimacy of petitioner organizations and employment offers made by such organizations.

Customer Service

USCIS strives to provide efficient, courteous, accurate and responsive services to those who seek and qualify for admission into our country as well as providing seamless, transparent and dedicated customer support services within the agency. To improve our customer service goals, USCIS is pursuing regulatory initiatives that will make immigration procedures consistent with new laws, improve interpretive services, standardize adjudication and filing procedures, and modernize application processing to facilitate effective data collection and reporting.

These regulatory initiatives include:

''Petition to Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Alien Spouses and Children.'' This rulemaking action would implement provisions of the Battered Immigrant Women Protection Act of 2000 and the Violence Against Women and Department of Justice Reauthorization Act of 2005. Those provisions amend the Immigration and Naturalization Act provisions that allow battered spouses,

children and parents of U.S. citizens and lawful permanent residents to petition for immigrant classification without the assistance or consent of the abuser.

USCIS also is restructuring its entire business processes to implement new procedures for the filing, processing, and adjudication of all benefit applications and petitions. USCIS is moving toward complete electronic filing and adjudication of benefits to streamline processing, modernize adjudications, and facilitate efficient and effective data collection and reporting. USCIS will be issuing a rulemaking action ''New Electronic Account, Adjudication, and Reporting System; New Procedures for Filing and Processing of Fiscal Year 2007 H-1B Petitions Subject to Annual Cap'' as part of this business restructuring process.

United States Coast Guard

The United States Coast Guard (Coast Guard) is a military, multi-mission, and maritime agency. Our statutory responsibilities 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 goal 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. The rulemaking projects identified for the Coast Guard in the Unified Agenda, and the seven rules appearing in the Fall 2007 Regulatory Plan below, support these strategic goals and reflect our regulatory policies. Further, although the Coast Guard has placed an emphasis on maritime security and national defense since September 11, 2001, our regulatory responsibilities in the maritime safety area remain vital. The Coast Guard has issued many rules reflecting our maritime safety and environmental protection missions as indicated by the wide range of topics covered in its 60 rulemaking projects in this Unified Agenda.

''Transportation Worker Identification Credential (TWIC); Card Reader Requirements'' continues the Department's work in the important area of implementing the transportation security card requirements found in 46 USC 70105. Under a final rule issued on January 25, 2007, certain workers in the maritime sector are now required to undergo security threat assessments and obtain TWICs. Under this rule, these cards are used as visual identity badges, and 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 new regulatory action proposes to 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. This is 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. It is also necessary under the provisions of the Safety and Accountability For Every Port Act of 2006 (Pub. Law 109-347). This rulemaking supports the Commandant's strategic goal of maritime security.

''Vessel Requirements for Notices of Arrival and Departure and Automatic Identification System'' is a regulatory action of particular importance to the Coast Guard in the Department's Fall 2007 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 plans to issue an NPRM proposing 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 our ability to identify and track vessels, detect anomalies, improve navigation safety, and heighten our 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 Commandant's strategic goals of maritime safety and maritime security.

''Commercial Fishing Industry Vessels'' (USCG-2003-16158) is the first substantive revision in over a decade to Coast Guard regulations under the Commercial Fishing Vessel Safety Act of 1988. Although statistics show an impressive decline in casualties since we issued our first fishing vessel regulations in 1991, commercial fishing remains one of the deadliest industries in America. Vessels often operate in rough weather or cold seas. Straining nets and full holds mean financial success for vessel operators and crews, but also put a vessel's ability to weather harsh conditions at risk. Vessel losses are generally due to a complex interplay of factors such as loss of stability, flooding, or equipment malfunctions, and precise identification of a single cause is virtually impossible. Therefore, the Coast Guard tries to foster, through its regulations, a culture of safety in which operators and crewmembers reduce the risks of a disaster occurring, and increase the odds of each crewmember's surviving any disaster that might occur. This rulemaking proposes new regulations to improve vessel stability, watertight integrity, and maintenance. It proposes additional safety equipment including expanded immersion suit requirements, adds new crew training and drill requirements, and calls for better documentation of regulatory compliance. This rulemaking supports the Commandant's strategic goal of maritime safety.

''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. We have also identified the need for additional changes to the interim rule issued in 1997. This rulemaking has been amended to address the training and assessments necessary to obtain merchant mariner credentials, to propose streamlined regulations for the mariner credential issuance process, and to make several minor editorial and clarification changes throughout Title 46 CFR parts 10, 11, 12, and 15. This project supports the Coast Guard's strategic goal of maritime safety.

''Increasing Passenger Weight Standards on Passenger Vessels,'' 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's strategic goal of maritime safety.

''Navigation Equipment; SOLAS Chapter V Amendments and Electronic Chart System.'' As a contracting government to the International Maritime Organization (IMO) International Convention for the Safety of Life at Sea, 1978 (SOLAS), the United States has an obligation to implement SOLAS regulations. This rulemaking is intended to implement amendments to SOLAS Chapter V safety of navigation regulations. These new regulations would provide for specific type-approval procedures and quality assurance processes, respectively, to require uniform function and capability of equipment across a myriad of manufacturers. They would also impose carriage requirements and reconcile existing domestic safety of navigation regulations with SOLAS Chapter V navigation safety regulations amended in 2000. Additionally, the rule would introduce regulations for electronic charts to meet Congress' mandate in section 410 of the Coast Guard and Maritime Transportation Act of 2004. This rulemaking supports the Commandant's strategic goals of maritime safety and maritime mobility.

''Outer Continental Shelf Activities'' (USCG-1998-3868) would revise the regulations on resource exploration, development and production on the Outer Continental Shelf (OCS). The new rule would: 1) Add new requirements for fixed OCS facilities for lifesaving, fire protection, training, hazardous materials used as stores, and accommodation spaces; 2) require foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged; 3) allow all mobile inland drilling units to operate on the OCS out to a defined boundary line if they meet requirements for lifesaving, firefighting, and operations similar to those for fixed OCS facilities; and 4) add a Congressionally mandated component for notices of arrivals of foreign vessels on the OCS. Section 109 of the Safety and Accountability For Every Port Act (Pub. Law 109-347) requires promulgation of notice of arrival regulations governing foreign vessels to improve maritime security on the OCS. This project would affect the owners and operators of facilities and vessels engaged in offshore activities associated with the exploration for, development of, or production of the resources of the OCS. It supports the Coast Guard's strategic goals of marine safety, security, and environmental protection.

As of the publication date of this Regulatory Plan, the preliminary annualized (monetized) cost, adjusted for planned implementation dates and other factors, for all planned rulemakings in the Coast Guard's Regulatory Plan is approximately $189.3 million with a three percent interest rate and $196.4 million with a seven percent interest rate. The preliminary annualized (monetized) benefit is approximately $2.5 million rounded at three or seven percent interest rates. The anticipated qualitative benefits from the planned rulemakings in the Regulatory Plan are increased port security and marine safety in U.S. waters, including improved safety for commercial fishing and passengers.

United States 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 also is 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 U.S.; maintaining export controls; and protecting American businesses from theft of their intellectual property.

''Western Hemisphere Travel Initiative.'' In carrying out its priority mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security. During the past fiscal year, consistent with its primary mission of homeland security, CBP issued a proposed rule announcing the second phase of a joint Department of Homeland Security and Department of State plan, known as the Western Hemisphere Travel Initiative (WHTI). This rule proposed the specific documents that, as early as January 2008, and no sooner than 60 days from publication of the final rule, U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico would be required to present when entering the United States at sea and land ports-of-entry from Western Hemisphere countries. CBP intends to finalize this rule before the end of 2007. 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.

On September 18, 2007, CBP published an NPRM ''Advance Information on Private Aircraft Arriving and Departing the United States,'' proposing 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. Transmission would be made by an electronic data interchange system approved by CBP. CBP intends to publish a final rule in 2008. These regulations would assist CBP in

adequately and accurately assessing potential security threats by private aircraft entering and departing the United States.

CBP also plans to issue before the end of 2007, a proposed rule ''Importer Security Filing and Additional Carrier Requirements,'' seeking to 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. 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.

All the rules discussed above foster DHS' Strategic Goals of awareness and prevention.

Under section 403(1) of the HSA, the former-U.S. Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs Service inspection and trade functions were combined with the immigration and agricultural inspection functions and the Border Patrol and transferred into U.S. Customs and Border Protection (CBP). It is noted that certain regulatory authority of the United States Customs Service relating to customs revenue functions was retained by the Department of the Treasury (see the Department of the Treasury Regulatory Plan). In addition to its plans to continue issuing regulations to enhance border security, CBP, during fiscal year 2008, expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. Discussion of CBP regulations regarding the customs revenue function is contained in the regulatory plan of the Department of the Treasury.

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 2008, ICE will be pursuing rulemaking actions to implement major components of the President's and Department's strategic goals. Rulemaking actions will focus on three critical areas: strengthening requirements that persons working in the United States are permitted to be employed; ensuring that foreign students studying in educational institutions comply with the terms and conditions of their visas; and tightening processes within the justice system to ensure better control of aliens under judicial supervision.

ICE will continue its efforts to improve the Student Exchange Visitor Information Program (SEVP) and SEVP's Student and Exchange Visitor Information System (SEVIS) by issuing a proposed rule ''Adjustment of the Student and Exchange Visitor Program I-901 SEVIS Fee and School Certification Fee, and Establishment of a School Recertification Fee.'' This rule documents performance of a legally-mandated review of the fees collected by the Student and Exchange Visitor Program as they are levied upon prospective F, M, and J nonimmigrant classifications and upon the schools that either have been or seek to be certified by the Department of Homeland Security to enroll F and M nonimmigrants as students. The rule proposes an increase in the fees currently collected from prospective F, M, and J students and exchange visitors, as well as the fees collected from schools seeking certification. These adjustments are based upon actual operating expenses that the Student and Exchange Visitor Program has experienced since the fees were first approved. The rule also proposes a fee for biennial recertification of certified schools to ensure their continued eligibility for certification and their compliance with recordkeeping, retention, and reporting requirements. The proposed fee adjustments and new fee will support the continuing operations of the Student and Exchange Visitor Program and U.S. Immigration and Customs Enforcement related to: School certification, oversight, and recertification; tracking and monitoring of students and exchange visitors; and compliance enforcement.

Federal Emergency Management Agency

FEMA's 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 2008, FEMA will continue to promote the Department of Homeland Security's Strategic Goals of awareness, prevention, protection, response, and recovery. As a result of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (Public Law 109-295, October 4, 2006), FEMA underwent an agency-wide reorganization on March 31, 2007 which included, among other things, the transfer of portions of the former Directorate of Preparedness from the Department to FEMA.

In furtherance of the Department and agency's goals, in the upcoming fiscal year, FEMA will be working on regulations to implement provisions of PKEMRA. The first of these four rules will update the current interim rule entitled ''Disaster Assistance; Federal Assistance to Individuals and Households.'' This rulemaking project revises 44 CFR part 206, subparts D, E and F (the Individuals and Households Program (IHP)). Among other things, it will implement section 686 of PKEMRA to remove the IHP sub-caps; section 685 changes regarding semi-permanent and permanent housing construction eligibility; revise FEMA's regulations pursuant to sections 689, 689a, and 689e regarding individuals with disabilities, and individuals with limited English proficiency; 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.

The agency will also work to revise 44 CFR part 206 subparts G & H. This new rulemaking project would update 44 CFR part 206 subparts G and H, regarding Public Assistance to reflect PKEMRA and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Public Law 109-347, October 13, 2006) and to make other corrections/revisions. Among other corrections/revisions, the proposed changes will expand eligibility to include performing arts

and community arts facilities pursuant to section 688 of PKEMRA; include educational facilities in the list of critical services that for private nonprofit facility eligibility for restoration funding per section 689h of PKEMRA; change the funding levels for alternate projects for public facilities repairs per section 609 of the SAFE Port Act; and include household pets and service animals in essential assistance pursuant to section 689 of PKEMRA.

FEMA also is working on a case management program that would provide case management services to individuals and households, including financial assistance to government agencies or qualified private organizations to address unmet needs, pursuant to section 689f of PKEMRA. FEMA is also working to implement the transportation assistance authority provided in section 689f of PKEMRA, which authorizes transportation assistance to relocate individuals displaced from their pre-disaster primary residence, to and from alternate locations for short or long-term accommodations.

In the upcoming fiscal year FEMA expects to publish a Special Community Disaster Loans regulation which would insert a cancellation provision pursuant to section 4502 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28, May 25, 2007). Finally, FEMA has distributed all funds and resolved all appeals related to the 9/11 Heroes Stamp Act of 2001, which distributed the proceeds to families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the September 11, 2001 terrorist attacks. Because this program is now complete, FEMA is working to finalize this rulemaking project and remove the existing interim regulatory text.

Transportation Security Administration

The Transportation Security Administration 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 2008, TSA will promote 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 to the transportation system, while facilitating the efficient movement of the traveling public, transportation workers, and cargo.

In furtherance of this goal, on August 23, 2007, TSA issued an NPRM ''Secure Flight Program,'' to begin implementation of the Secure Flight program, in accordance with Sec. 4012(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108-458, 118 Stat. 3638, 3714, Dec. 17, 2004). Under the Secure Flight program, TSA will begin to assume from aircraft operators the function of comparing passenger information to Federal Government watch lists and to more effectively and consistently prevent certain known or suspected terrorists from boarding aircraft where they may jeopardize the lives of passengers and others. The program is also designed to better focus enhanced passenger screening efforts on individuals likely to pose a threat to civil aviation. The Secure Flight program is also intended to facilitate the secure and efficient travel of the vast majority of the traveling public by distinguishing them from individuals on the watch list.

In addition, TSA plans to issue an NPRM ''Large Aircraft Security Programs,'' proposing to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements and by adding new requirements for certain large aircraft operators and airports serving those aircraft. 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 general aviation (GA) aircraft are more vulnerable and may view them as attractive targets. This rule will enhance aviation security by requiring operators of aircraft with a maximum certificated takeoff weight (MTOW) 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.

In addition, TSA plans to issue a rule that will finalize a Notice of Proposed Rulemaking published on December 21, 2006, that will enhance security in the rail transportation mode by imposing requirements on freight and passenger railroads and on facilities with rail connections that ship certain hazardous materials. The rulemaking will augment regulations issued by the Department of Transportation.

TSA also will issue several regulations to enhance the security of non-aviation modes of transportation as required under the recently enacted Implementing Regulations of the 9/11 Commission Act of 2007 (9/11 Commission Act)(Aug. 3, 2007). Pursuant to the requirements of the 911 Commission Act, TSA will require high-risk public transportation agencies, railroads and over-the-road buses to develop and implement security plans to deter security threats. In addition, TSA will impose general requirements for security training of certain employees of public transportation agencies, railroads, and over-the-road buses. Finally, TSA will issue regulations to conduct security threat assessments and collect user fees for certain transportation personnel.

DHS Regulatory Plan for Fiscal Year 2008

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

DHS—Office of the Secretary (OS)

PROPOSED RULE STAGE

55. IMPLEMENTATION OF THE UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (US–VISIT); BIOMETRIC REQUIREMENTS FOR EXIT AT AIR AND SEA PORTS

Priority:

Other Significant

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

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 proposed rule would establish procedures for collection of biometrics on air and sea departures by aliens. 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 those aliens required 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 proposes to establish an exit system at all air and sea ports of departure in the United States. This rule proposes to require 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. The rule further proposes to require commercial air and vessel carriers to collect and transmit the biometric information to DHS.

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Previously reported as 1650–AA04

RIN: 1601–AA34

DHS—OS

FINAL RULE STAGE

56. MINIMUM STANDARDS FOR DRIVER'S LICENSES AND IDENTIFICATION CARDS ACCEPTABLE TO FEDERAL AGENCIES FOR OFFICIAL PURPOSES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Division B—REAL ID Act of 2005; The Emergency Supplemental Appropriations Act for Defense; The Global War on Terror and Tsunami Relief, 2005; PL 109–13, 119 Stat 231, 302 (May 11, 2005) (codified at 49 USC 30301 note)

CFR Citation:

6 CFR 37, et seq (New)

Legal Deadline:

Final, Statutory, May 11, 2008.

Abstract:

The Department of Homeland Security is establishing minimum standards for State-issued driver's licenses and identification cards that Federal agencies would accept for official purposes on or after May 11, 2008, in accordance with the REAL ID Act of 2005. This rule establishes standards to meet the minimum requirements of the REAL ID Act of 2005, including: information and security features that must be incorporated into each card; application information to establish the identity and immigration status of an applicant before a card can be issued; and physical security standards for locations where driver's licenses and applicable identification cards are issued.

Statement of Need:

- Information and features that must appear on the face of the license, and inclusion of a common machine readable portion of a driver's license or identification card;
- Presentation and verification of information an applicant must provide before a license may be issued, including evidence that the applicant is a U.S. citizen or has lawful status in the United States;
- Physical security of locations where licenses are produced, the security of document materials and papers from which licenses are produced, and the background check of certain employees involved in the manufacture and production of licenses; and
- Physical security of the licenses to prevent tampering, counterfeiting, and duplication of the documents for a fraudulent purpose.

DHS is issuing this rule in consultation with the Department of Transportation, other representatives of the Federal government, and representatives from many States, as required under the Act.

Summary of Legal Basis:

This regulation is needed to assist the Department of Homeland Security in meeting its statutory obligation, under section 202 of the Act, to certify that States are meeting minimum document requirements and issuance standards when issuing driver's licenses and identification cards for official federal purposes.

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	03/09/07	72 FR 10820
NPRM Comment Period End	05/08/07	
Final Rule	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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

PROPOSED RULE STAGE

57. REDUCTION OF THE NUMBER OF ACCEPTABLE DOCUMENTS AND OTHER CHANGES TO EMPLOYMENT VERIFICATION REQUIREMENTS

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

8 USC 1324a; PL 104–208

CFR Citation:

8 CFR 274a

Legal Deadline:

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

Abstract:

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted. Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Section 412(d) clarifies the applicability of section 274A to the Federal Government. Section 610 of the Regulatory Flexibility Act requires Agencies to review rules that have a significant economic impact on a substantial number of small entities every 10 years. The Department is conducting this review in conjunction with IIRIRA implementation.

Statement of Need:

The Immigration Reform and Control Act of 1986 amended the Immigration and Nationality Act (INA) to require employers to hire only persons who are eligible to work in the United States and to verify the work eligibility of all new hires. Form I-9 was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. In its third review of employer sanctions regulations, the GAO reported that employer confusion over the ''multiplicity'' of acceptable documents contributed to discrimination against authorized workers. See GAO/GGD Report No. 90-62, dated March 29, 1990. Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Implementation of these provisions, along with other simplifications and clarifications, will reduce adverse consequences potentially stemming from misapplication of the verification requirements.

Summary of Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. Parts of this regulatory action are required by IIRIRA.

Alternatives:

The lists of documents for employment verification have been controversial throughout the 20 years that employer sanctions have been in effect. When the Department of Justice (DOJ) first published implementing regulations in 1987, the supplementary information noted that the list of identity documents had been expanded in response to public comment. When the law was new, a consensus emerged that an inclusive list of documents would ensure that all persons who are eligible to work could easily meet the requirements. As early as 1990, there was evidence that some employers found the list confusing. As noted in the ''Statement of Need,'' GAO linked employer confusion over the ''multiplicity'' of acceptable documents to discrimination against authorized workers. DOJ took steps to address this criticism. In July 1988, DOJ committed to the establishment of a uniform employment authorization policy. First, DOJ limited the number and types of ''paper'' documents on which employment could be authorized. Second, a standardized Employment Authorization Document (EAD) I-688B was introduced in 1989. In February 1997, a more secure EAD Form (I-766) was produced with state-of-the-art technology.

Anticipated Costs and Benefits:

Employment is often the magnet that attracts individuals to come to or stay in the United States illegally. The employer sanctions provisions help reduce the strength of this magnet by requiring employers to hire only those individuals who may legally work in the United States. By reducing the number of documents that are acceptable for employment eligibility verification purposes and clarifying other requirements, this rule will reduce confusion on the part of employers. This, in turn, will increase employer compliance, preserving jobs for persons who are eligible to work in the United States.

Risks:

An employment eligibility verification system that relies on a wide range of documents may result in 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 (No. 1399 Comment Period End 12/23/93)	11/23/93	58 FR 61846
NPRM (No. 1339S Comment Period End 07/24/95)	06/22/95	60 FR 32472
Notice (No. 1713 Applications Due 01/29/96)	11/30/95	60 FR 61630
Appl. Extension Through 3/8/96; Notice Pilot Demonstration Program (No. 1713)	02/06/96	61 FR 4378
Final Rule (No. 1399E)	09/04/96	61 FR 46534
Interim Final Rule (No. 1818)	09/30/97	62 FR 51001
NPRM (No. 1890–97 Comment Period End 04/03/98)	02/02/98	63 FR 5287
NPRM	04/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

The deadline for implementing section 412(a) of IIRIRA was extended to March 31, 1998, by Public Law 105-54. This rulemaking has been delayed by the need to coordinate implementation with other provisions of IIRIRA, by several complex policy and regulatory issues that have taken time to resolve, and by the review required by section 610 of the Regulatory Flexibility Act, and by the need to coordinate policy issues with the Border Security Act of 2002 and, more generally, the post-September 11th environment in which document security is of a paramount concern.

Docket No. 1890-97; Public Law 104-208, title 4.

Nos. 1399 and 1399S-94, Control of Employment of Aliens, Supplemental Rule; Action for Nos. 1399 and 1399S is canceled as a result of IIRIRA requirements.

Docket No. 1399E is an extracted portion of No. 1399, published separately to allow for the production of a new, more secure Employment Authorization Document.

Docket No. 1713-95, Demonstration Project for Electronic I-9.

Interim Rule No. 1818 was published on September 30, 1997, at 62 FR 51001 to maintain the status quo as much as possible until the Agency completes the more comprehensive document reduction initiative designated by No. 1890-97.

CIS 2416-07,NPRM -Employment Verification Document Reduction

Transferred from RIN 1115-AB73

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RIN: 1615–AA01

DHS—USCIS

FINAL RULE STAGE

58. SPECIAL IMMIGRANT AND NONIMMIGRANT RELIGIOUS WORKERS

Priority:

Other Significant

Legal Authority:

8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153 to 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255

CFR Citation:

8 CFR 204

Legal Deadline:

None

Abstract:

This rule amends U.S. Citizenship and Immigration Services (USCIS) regulations regarding the special immigrant and nonimmigrant religious worker visa classifications. This rule addresses concerns about the integrity of the religious worker program by proposing a petition requirement for religious organizations seeking to classify an alien as an immigrant or nonimmigrant religious worker. This rule also proposes including an on-site inspection for religious organizations to ensure the legitimacy of petitioner organizations and employment offers made by such organizations.

This rule would also clarify several substantive and procedural issues that have arisen since the religious worker category was created. This rule proposes new definitions that describe more clearly the regulatory requirements, as well as add specific evidentiary requirements for petitioning employers and prospective religious workers.

Finally, this rule also proposes to amend how USCIS regulations reference the sunset date, the statutory deadline by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence, so that regular updates to the regulations are not required each time Congress extends the sunset date.

Statement of Need:

This rule is needed to implement the recommendations contained in the GAO report Issues Concerning the Religious Worker Visa Program, Report GAO/NSIAD-99-67 (March 26, 1999). Finally, USCIS wishes to make the nonimmigrant religious worker regulations consistent with the rules governing the immigrant religious worker category to the extent possible, and this rule is necessary to achieve that objective.

The changes proposed in this rule, if implemented, would decrease the opportunity for fraud in the religious worker program. Moreover, this rulemaking will further enhance the Department's efforts in deterring fraud and domestic security.

Summary of Legal Basis:

While this action revises the regulations to reflect Congressional extension of this program, this action is not required in order to give effect to that extension.

Alternatives:

None, because the Department has agreed to implement the recommendations contained in the aforementioned GAO report. Also the risk section below provides further reasons why there are no alternatives.

Anticipated Costs and Benefits:

Currently, there is no petition requirement for religious organizations or bona fide affiliated organizations initially seeking a nonimmigrant religious worker. The rule would add a petition requirement and DHS projects that approximately 15,637 individual organizations will seek religious workers each fiscal year. DHS estimates that there will be approximately 12,407 Form I-129 filings for the nonimmigrant religious worker, and 3,230 for the Form I-360.

The current fees for the Form I-129, Petition for Nonimmigrant Worker, and the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant are $190. USCIS is proposing to modify these fees in a separate rule. USCIS already has an approved information collection for the Form I-129, OMB 1615-0009, and Form I-360, OMB 1615-0020. The rule proposes to require petitioning organizations to submit additional initial evidence related to their tax-exempt status and an attestation regarding the potential religious worker's qualifications and duties, etc. Information collection costs, therefore, are increased by these requirements, which would increase the existing information collection burden by roughly 15 minutes per respondent for the new attestation for both the Form I-129 and the Form I-

360. If there are 15,637 respondents, this increases the information collection burden by approximately 3,908 hours, which at $16 per hour increases public costs by $62,528. DHS estimates that the Form I-129 will have 12,407 of the 15,637 estimates filings which would be an increase in information collection burden by approximately 3,101 hours for the attestation which at $16 per hour increases the public costs for the Form I-129 by $49,616. DHS estimates that the Form I-360 will have 3,230 of the 15,637 estimates filings (based on the FY05 filings stated earlier) which would be an increase in information collection burden by approximately 807 hours which at $16 per hour increases the public costs for the Form I-360 by 12,912. The total cost of petitioning under this proposed rule is estimated to be $6,510,103. ($5,165,373 for the Form I-129 and $1,344,730 for the Form I-360). In addition, changes in filing requirements will increase the frequency of filings for extensions or changes of status over a five-year period, increasing the total costs to the public to $6,665,503.

In addition, several respondents are expected to pay the fee required under Internal Revenue Regulations of ($750) for obtaining a section 501(c)(3) status determination letter from that agency. Since this is a new requirement, USCIS has no data on which to base an estimate of how many will be required to resort to this course of action. Nonetheless, even assuming that all 15,637 religious worker petitions expected to be received per year are required to pay this fee, the total cost of such requests would be under $12 million.

Together the total cost of these proposed changes are estimated to be $18,393,253.

The cost of the proposed rule's increased information collection is outweighed by the overall benefit to the public of an improved system for processing religious workers.

The proposed rule is a vital tool in furthering the protection of the public by (1) more clearly defining the requirements and process by which religious workers may gain admission to the United States, and (2) increasing the ability of DHS to deter or detect fraudulent petitions and to investigate and refer matters for prosecution. The benefits of decreased fraud and increased national security tend to be intangible, thus, the benefits of such reduction in the high level of fraud in this program are difficult to quantify. On the other hand, the lack of such protections become quite tangible as soon as the lack of protections such as those proposed in this rule are manifested in the tangible economic or societal damage caused by a recipient of a fraudulent religious worker visa.

This rule amends requirementsfor the special immigrant and nonimmigrant religious worker visa classifications. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions or temporarily visit based on a nonimmigrant visa petition. This rule is intended to benefit the public by clarifying definitions associated with the religious worker classifications, acceptable evidence, and specific religious worker qualification requirements. Balanced against the costs and the requirements to collect information, the burden imposed by the proposed rule appears to USCIS to be justified by the benefits.

Risks:

Failure to promulgate this rule change leaves the religious worker program vulnerable to fraud and compromises DHS and USCIS national security goals.

Timetable:

Action	Date	FR Cite
NPRM (CIS No. 1436–94)	04/25/07	72 FR 20442
NPRM Comment Period End	06/25/07	
NPRM Comment Period Extended	11/01/07	72 FR 61821
NPRM Comment Period End	11/16/07	
Final Rule	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS No. 1436-94

Transferred from RIN 1115-AF12

URL For More Information:

www.regulations.gov

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RIN: 1615–AA16

DHS—USCIS

59. ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT FOR ALIENS IN T AND U NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105; . . .

CFR Citation:

8 CFR 204; 8 CFR 214; 8 CFR 245

Legal Deadline:

Other, Statutory, January 5, 2006, Regulations need to be promulgated by July 5, 2006.

Abstract:

This rule sets forth measures by which certain victims of severe forms of trafficking who have been granted T nonimmigrant status and victims of certain criminal activity who have been granted U nonimmigrant status may apply for adjustment to permanent resident status in accordance with Public Law 106-386, Victims of Trafficking and Violence Protection Act of 2000, and Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005.

Statement of Need:

This rule is necessary to establish how an eligible alien with T nonimmigrant status can adjust his or her status to that of lawful permanent resident. Those with T nonimmigrant status are eligible to be granted lawful permanent residency if they can demonstrate they have complied with any reasonable

request for assistance in the investigation or prosecution of acts of trafficking or that they will face extreme hardship involving unusual and severe harm if they were removed from the United States. Those with U nonimmigrant status are eligible to be granted lawful permanent residence if they can demonstrate continued compliance with law enforcement in a criminal investigation or prosecution and continuous presence in the United States.

Summary of Legal Basis:

Public Law 106-386, Victims of Trafficking and Violence Protection Act of 2000.

Alternatives:

None.

Anticipated Costs and Benefits:

While there is no precise formula for determining anticipated costs, there will be additional costs for adjudicating applications and investigating cases deemed fraudulent. There may be applications that will not be approved for a variety of reasons, including failure to meet basic adjustment of status requirements. All applications will be reviewed and some will require extensive investigation both here and abroad to determine whether the applicant has complied with any reasonable request for assistance in the investigation and prosecution of the acts of trafficking.

The anticipated benefits of these expenditures include: Continued assistance to trafficked victims and their families, increased investigation and prosecution of traffickers in persons, and the elimination of abuses caused by trafficking activities.

Benefits that may be attributed to the implementation of this rule are expected to be:

(1) an increase in the number of cases brought forward for investigation and/or prosecution;

(2) heightened awareness of trafficking-in-persons issues by the law enforcement community; and

(3) enhanced ability to develop and work cases in trafficking in persons cross-organizationally and multi-jurisdictionally which may begin to influence changes in trafficking patterns.

Risks:

Risks associated with the implementation of the congressionally mandated new nonimmigrant classification include: increased workload for adjudicators which may impact overall efficiency and productivity; and increases in fraudulent applications/claims of such victimization in order to obtain lawful permanent residence.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/08	
Interim Final Rule Comment Period End	07/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS No. 2134-01

Transferred from RIN 1115-AG21

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RIN: 1615–AA60

DHS—USCIS

60. • CHANGES TO REQUIREMENTS AFFECTING H–2A NONIMMIGRANTS

Priority:

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

Legal Authority:

8 USC 1101; 8 USC 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 rule is intended to increase the flexibility, attractiveness and, consequently, the use by United States employers of H-2A program in lieu of either having to forgo hiring seasonal immigrant labor or hire them illegally.

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 sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a).

Alternatives:

Make no change.

Anticipated Costs and Benefits:

There is likely to be a small increase in the usage of H-2A visas although the increase is impossible to estimate accurately. Also, several qualitative changes are expected to result from this rule:

1. Crops will be more likely to be harvested, cows milked, etc. This will result in associated economic benefits that are not quantified at this point.

2. By increasing flexibility, the quality of life for H-2A immigrants will improve.

3. Illegal immigration as measured by the percentage of agricultural workers who are unauthorized to work in the United States will decline.

This rule is not estimated to impose any new or increased costs on the Government or public.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS 2428-07

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RIN: 1615–AB65

DHS—U.S. Coast Guard (USCG)

PROPOSED RULE STAGE

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61. 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 has been amended to address the training and assessments necessary to obtain merchant mariner credentials, to propose streamlined regulations for the mariner credential issuance process, and to make several minor editorial and clarification changes throughout title 46 parts 10, 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; (3) Attempt to clarify regulations that have generated confusion among USCG offices and industry; and (4) Incorporate security-related requirements to ensure compliance with the 2006 amendments to the STCW Convention.

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 Costs and Benefits:

Based on preliminary analysis, the first-year (initial) costs of this rulemaking are $21.5 million or $22.3 million at three or seven percent discount rates, respectively. The annual costs of this rulemaking after the first year range between $8.3 million and $15.4 million, depending upon the year and the discount rate. These cost estimates may change through further development of the rulemaking and after consideration of public comments. The primary benefit of this rulemaking is to specify seafarer training. There are no preliminary quantifiable benefit estimates for this rulemaking.

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
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
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	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Old Docket Number CGD 95-062.

Transferred from RIN 2115-AF26

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RIN: 1625–AA16

DHS—USCG

62. COMMERCIAL FISHING INDUSTRY VESSELS (USCG–2003–16158)

Priority:

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

Legal Authority:

46 USC 4502(a) to 4502(d); 46 USC 4505, 4506; 46 USC 6104; 46 USC 10603; DHS Delegation No. 0170.1(92)

CFR Citation:

46 CFR 28

Legal Deadline:

None

Abstract:

This rulemaking would amend commercial fishing industry vessel requirements to enhance maritime safety. The proposed changes would affect vessel stability and watertight integrity, carriage of immersion suits, training, compliance documentation, and safety equipment.

Market or Regulatory Failure Analysis: Currently, the commercial fishing industry remains one of the most hazardous occupations in the United States. Many commercial fishing vessels do not meet suggested stability requirements or maintain adequate safety training and equipment. Without regulatory action, not all individual owners of commercial fishing vessels will voluntarily invest in improved safety due to the short run uncertainty of individual benefits.

Statement of Need:

Commercial fishing remains one of the most dangerous industries in America. The Commercial Fishing Industry Vessel Safety Act of 1988 (''the Act,'' codified in 46 U.S.C. chapter 45) gives the Coast Guard regulatory authority to improve the safety of vessels operating in that industry. Although significant reductions in industry deaths were recorded after the Coast Guard issued its initial rules under the Act in 1991, we believe more deaths and serious injury can be avoided through compliance with new regulations in the following areas: vessel stability and watertight integrity, vessel maintenance and safety equipment including crew immersion suits, crew training and drills, and improved documentation of regulatory compliance.

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. 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation 0170.1.

Alternatives:

The Coast Guard considered the following alternatives and rejected them for the reasons indicated:

Maintaining the regulatory status quo — rejected because we believe additional regulations will have a favorable impact in reducing industry deaths;

Requiring the licensing of commercial fishermen and mandating the inspection of all industry vessels — rejected because of the probable expense such measures would entail;

Requiring vessel operators and crew members to carry certificates issued upon completion of training — rejected because of questionable legal authority, probable high cost, and probable adverse impact on industry labor supply; and

Relying on voluntary compliance with Coast Guard guidance — rejected because too few vessels voluntarily comply with existing Coast Guard guidance.

Anticipated Costs and Benefits:

The proposed rule is economically significant with the preliminary first-year cost estimate of approximately $107.9 million or $112.1 million at three or seven percent discount rates, respectively. The preliminary annual costs of this rulemaking after the first year range between $25.6 million and $47.9 million, depending upon the year and the discount rate. These cost estimates may change through further development of the rulemaking and after consideration of public comments. The primary benefit of this rulemaking is improved safety of commercial fishing vessels.

Risks:

Commercial fishing continues to rank at or near the top of the most hazardous occupations in the United States. It involves far more casualties than other maritime commercial activities regulated by the Coast Guard, resulting in a significant proportion of the agency's Search and Rescue and marine casualty investigation activities. Commercial fishing industry casualties usually result from the complex interplay of many factors, and accident reconstruction to determine the exact cause of a casualty is usually impossible in the marine environment. Although it is therefore difficult or impossible to prove a causal connection between our previous issuance of regulations affecting this industry and the subsequent decrease in the number of industry deaths, we believe those regulations contributed materially to creating a culture of safety in which the prevention of casualties is more likely to occur. Because we know that a vessel's stability, watertight integrity, and overall condition can be critical factors in preventing a casualty, and that safety equipment and the crew's ability to use that equipment can be critical to surviving a casualty, we believe that additional regulations in those areas will strengthen the culture of safety and result in further safety gains.

Timetable:

Action	Date	FR Cite
NPRM	04/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1625–AA77

DHS—USCG

63. NAVIGATION EQUIPMENT; SOLAS CHAPTER V AMENDMENTS AND ELECTRONIC CHART SYSTEM (USCG–2004–19588)

Priority:

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

Legal Authority:

33 USC 1223(a)(3); 46 USC 3306(a)(1); 46 USC 3703; PL 108–293, sec 410; 33 USC 1231; DHS Delegation 0170.1

CFR Citation:

33 CFR 164; 46 CFR 32; 46 CFR 96; 46 CFR 159; 46 CFR 165; 46 CFR 167; 46 CFR 195

Legal Deadline:

NPRM, Statutory, January 1, 2007, Prescribe Electronic Charts Regulations before January 1, 2007.

Abstract:

This rulemaking project would add new, and clarify existing, navigation safety equipment regulations in 33 CFR part 164 including electronic chart system regulations. This project would also create a new 46 CFR part 165, and a new subpart: 46 CFR part 159, subpart 159.008. These new title 46 regulations would provide for specific type-approval procedures and quality assurance processes, respectively, to require uniform function and capability of equipment across a myriad of manufacturers. These changes would reconcile existing domestic safety of navigation regulations with SOLAS Chapter V navigation safety regulations amended in 2000. By making these revisions to 33 CFR and 46 CFR, we would fulfill the United States' obligations as an International Maritime Organization Contracting Government to implement SOLAS Chapter V as amended for U.S. flag vessels and other vessels operating on navigable waters of the United States. This project supports the Coast Guard's strategic goals of maritime safety and mobility. Market or Regulatory Failure Analysis: The commercial vessel industry does not have uniform, nationwide carriage requirements for navigational equipment. The NPRM would require certain domestic vessels, based on tonnage thresholds, to have navigational equipment consistent with the requirements in SOLAS Chapter V for vessels that transit beyond the baseline. This provision of the NPRM affects a very small population of domestic vessels. This is an effort to close the regulatory gap between what is currently required for domestic vessels and the requirements contained in SOLAS V in order to harmonize U.S. standards with international standards. ECS is required, as a congressional mandate, for essentially the same vessel population as AIS. This provision applies to both U.S. and foreign vessels that transit U.S. waters.

Statement of Need:

The United States is a contracting government to the International Maritime Organization (IMO) International Convention for the Safety of Life at Sea, 1978 (SOLAS) and, thus, has an obligation to incorporate SOLAS regulations into domestic regulations for vessels subject to SOLAS. The navigation safety regulations in SOLAS Chapter V were revised in 2000. Since 2000, the Coast Guard has been ensuring U.S. vessels on an international voyage comply with SOLAS primarily through our inspection process and policy decisions to minimize the potential that a U.S. vessel would be delayed or face penalties in a foreign port for non-compliance. In this rulemaking, we are also proposing regulations for electronic charts to meet Congress' mandate in section 410 of the Coast Guard and Maritime Transportation Act of 2004 (the Act), which amended the Ports and Waterways Safety Act and added section 1223a to Title 33 of the U.S. Code. Regulations for electronic charts and the systems that are used to display them are needed to foster continual improvement in the tools that provide situational awareness for mariners navigating in U.S. waters.

Summary of Legal Basis:

The authority for the Coast Guard to prescribe, change, revise or amend these regulations is provided in 33 U.S.C. 1223(a)(3) and 1231; 46 U.S.C. 3306(a)(1) and 3703; Pub. Law 108-293, Section 410; and Department of Homeland Security Delegation No. 0170.1.

Alternatives:

Our goals through this rulemaking are to harmonize domestic regulations with international standards and, thereby, promote navigation safety and ensure that U.S. vessels visiting foreign ports are not subjected to scrutiny and possible penalties for being non-compliant. We considered the scope of the 2000 SOLAS Chapter V amendments and the latitude granted contracting governments with respect to application of Chapter V provisions to vessels operating landward of the baseline. We determined that existing regulations for navigation equipment are sufficient for these vessels. We also considered continuing to grant approvals for navigation equipment through the existing policy structure instead of regulations in Title 46 CFR. In this case, we determined that publishing regulations for equipment approvals is critical to maintaining oversight, quality control, and enforceability.

With regard to electronic charts, we considered the latitude granted by Congress to determine which vessels, other than those specified in the Act, would be required to install and operate electronic charts. We considered adopting the same applicability for automatic identification systems (AIS) and electronic chart systems (ECS) because the two interact in a beneficial and synergistic manner, but determined there was a need for different treatment because ECS and AIS have different purposes. For example, the utility of AIS may be greater than the utility of an ECS for a vessel or platform that is primarily stationary.

Anticipated Costs and Benefits:

The initial cost estimate is $3.1 million or $3.2 million in the first year and $70.9 million or $76.6 million in the second year at three or seven percent discount rates, respectively. The annual costs after the first two years of implementation range between $9.0 million and $13.3 million, depending upon the year and the discount rate. These estimates are based on technology that is currently available for ECS. These estimates may change through further development of the rulemaking and after consideration of public comments. The primary benefit of this NPRM is navigational and situational awareness. There are no preliminary quantifiable benefit estimates for this rulemaking.

Risks:

By implementing SOLAS Chapter V amendments and the electronic charts provisions of the Maritime Transportation Act of 2004, navigation equipment requirements will be further standardized and improved as the Coast Guard fulfills these international and Congressional mandates. Consequently, we expect some reduction in the risks of loss of life and property associated with navigation safety errors, and a reduction in the risk of sanctions being imposed by foreign governments against visiting-U.S. vessels for non-compliance with SOLAS.

Timetable:

Action	Date	FR Cite
NPRM	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State

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Related RIN: Related to 1625–AA99

RIN: 1625–AA91

DHS—USCG

64. 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 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 NODs as well as NOAs 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 Costs and Benefits:

The cost estimate in the first year of implementation is $20.6 million rounded at either seven or three percent discount rates. The cost estimate in the second year of

implementation is $74.9 million or $78.0 million at seven or three percent discount rates, respectively. The annual costs after the first two years of implementation range between $6.7 million and $54.5 million, depending upon the year (of replacement) and the 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. Based on analysis of past marine casualties and potential avoided injuries, the average annual quantifiable benefit from this rulemaking is approximately $1.5 million (non-discounted). 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	01/00/08	

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).

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RIN: 1625–AA99

DHS—USCG

65. • INCREASING PASSENGER WEIGHT STANDARD FOR PASSENGER VESSELS (USCG 2005–22732)

Priority:

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

Legal Authority:

33 USC 1321(j); 43 USC 1333; 46 USC 2103,3205,3306,3307,3703, 6101; 49 USC App. 1804; EO 111735; 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 either to passenger overloading or operating these vessels in hazardous weather conditions.

Market or Regulatory Failure Analysis: 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. 111735, 38 FR 21243, 3 CFR, 1971-1975 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. A notice and comment rulemaking will be necessary for a comprehensive regulatory change that is based on the views of all interested parties.

Anticipated Costs and Benefits:

The first-year implementation cost estimate is $4.5 million or $4.7 million at three or seven percent discount rates, respectively. The annual costs after the first year range between $1.5 million and $2.8 million, depending upon the year and the 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	04/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1625–AB20

DHS—USCG

66. ● 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 Chapter 701; 50 USC 191, 192; EO 12656

CFR Citation:

33 CFR Subchapter H

Legal Deadline:

Final, Statutory, April 2008, SAFE Port Act, codified at 46 USC 70105(k).

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, 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. The SAFE Port Act also requires that the pilot program begin within 180 days from signature of the Act (October 13, 2006). This means our final rule must be promulgated by April of 2009.

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 Costs 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. Based on the 2006 Regulatory Evaluation, the average initial costs for affected owners and operators of vessels and facilities to acquire and install reader technology was approximately $225.5 million in the first year (non- discounted) with technology replacement occurring every five years. Based on public comments and mandates from the SAFE Port Act, we plan to revise the 2006 cost estimates associated with reader technology by incorporating data and findings from the pilot program. 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.

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
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN: Related to 1625–AB02, Related to 1652–AA41

RIN: 1625–AB21

DHS—USCG

FINAL RULE STAGE

67. OUTER CONTINENTAL SHELF ACTIVITIES (USCG–1998–3868)

Priority:

Other Significant

Legal Authority:

43 USC 1333(d)(1); 43 USC 1348(c); 43 USC 1356; PL 109–347, sec. 109; Department of Homeland Security Delegation No. 0170.1.

CFR Citation:

33 CFR 140 to 147

Legal Deadline:

Other, Statutory, April 11, 2007, Sec 109, Safe Port Act, P.L. 109–347.

The SAFE Port Act requires that, not later than 180 days after the date of the enactment of this Act, the Secretary shall update and finalize the rulemaking on notice of arrival for foreign vessels on the Outer Continental Shelf. To promulgate those rules as expeditiously as possible, the Coast Guard has inserted them into this rulemaking project.

Abstract:

The Coast Guard is the lead Federal agency for workplace safety and health, other than for matters generally related to drilling and production that are regulated by the Minerals Management Service (MMS), on facilities and vessels engaged in the exploration for, or development or production of, minerals on the OCS. This project would revise the regulations on Outer Continental Shelf (OCS) activities to: 1) Add new requirements for fixed OCS facilities for lifesaving, fire protection, training, hazardous materials used as stores, and accommodation spaces; 2) require foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged; 3) allow all mobile inland drilling units to operate on the OCS out to a defined boundary line if they meet requirements for lifesaving, firefighting, and operations similar to those for fixed OCS facilities; and 4) add a Congressionally mandated component concerning notices of arrivals of foreign vessels on the OCS. This project would affect the owners and operators of facilities and vessels engaged in offshore activities associated with the exploration for, development of, or production of the resources of the OCS. In order to increase maritime domain awareness and security on the OSC, and pursuant to the SAFE Port Act (Pub. Law 109-347), this rule would also establish notice of arrival requirements for foreign vessels arriving on the OCS. It supports the Coast Guard's strategic goal of marine safety and environmental protection.

Market or Regulatory Failure Analysis: Regulations need to be updated to account for technological change. The original regulations were intended for OCS activity in shallower water and closer to land. The regulations also needed to better reflect current industry practices. A few owners and operators may not be able to internalize the benefits of these safety measures. Further, the diverse industry on the OCS is not capable of establishing uniform regulations.

Statement of Need:

The last major revision of Coast Guard OCS regulations occurred in 1982. At that time, the offshore industry was not as technologically advanced as it is today. Offshore activities were in relatively shallow water near land, where help was readily available during emergency situations. The equipment regulations required only basic equipment, primarily for lifesaving appliances and hand-held portable fire extinguishers. Since 1982, the requirements in 33 CFR chapter I, subchapter N, have not kept pace with the changing offshore technology or the safety problems it creates as OCS activities extend to deeper water (10,000 feet) and move farther offshore (150 miles). This rulemaking reassesses all of our current OCS regulations in light of past experiences and new improvements in order to help make the OCS a safer workplace. Additionally, the rule would comply with Section 109 of the SAFE Port Act (P.L. 109-347)by including notice of arrival requirements for foreign vessels operating on the OCS.

Summary of Legal Basis:

The authority for the Coast Guard to prescribe, change, revise or amend these regulations is provided under 14 U.S.C. 85; 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356; Public Law 109-347, Section 109; and Department of Homeland Security Delegation No. 0170.1. Section 145.100 also issued under 14 U.S.C. 664 and 31 U.S.C. 9701.

Alternatives:

The Coast Guard considered filling the shortfall in existing OCS regulations by extending the current vessel and MODU regulations. This approach was rejected after concluding that the differences between fixed and floating units made this approach impractical.

We also considered requiring compliance with industry standards. Those standards, though, do not cover all of the areas needing regulation. The new rule would adopt available consensus standards where appropriate. Nonregulatory alternatives, such as agency policy documents and voluntary acceptance of industry standards were also considered. They were also rejected, however, because enforceable regulations are necessary in order to carry out the relevant statutes.

Anticipated Costs and Benefits:

The first-year implementation cost estimate is $64 million or $67 million at three or seven percent discount rates, respectively. The annual costs after the first year range between $7.5 million and $19.2 million, depending upon the year and the discount rate. These cost estimates may change through further development of the rulemaking and after consideration of public comments. The anticipated benefit is to improve safety for OCS activities and align current regulations with current industry practice. Based on analysis of past marine casualties, the average annual benefit estimate from this rulemaking is $1.3 million (non-discounted).

Risks:

The extensive revisions to health and safety requirements for OCS units in this rule would substantially reduce the risk of injury or illness on those units. Additionally, a terrorist attack against a large OCS production facility could have a significant negative effect on the U.S. economy. By improving the ability of the Coast Guard to identify potential terrorists bound for the OCS and coordinate appropriate responses before they arrive, this rulemaking will expand maritime domain awareness and reduce the risk of terrorist actions against OCS units.

Timetable:

Action	Date	FR Cite
Request for Comments	06/27/95	60 FR 33185
Comment Period End	09/25/95	
NPRM	12/07/99	64 FR 68416
NPRM Correction	02/22/00	65 FR 8671
NPRM Comment Period Extended	03/16/00	65 FR 14226
NPRM Comment Period Extended	06/30/00	65 FR 40559
NPRM Comment Period End	11/30/00	
Interim Final Rule	02/00/08	
Interim Final Rule Comment Period End	05/00/08	
Final Rule	03/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Docket Numbers: The notice of request for comments published June 27, 1995, was assigned Coast Guard docket number 95-016. Following the request for comments, that docket was terminated. This project continues under Docket No. USCG-1998-3868 and RIN 1625-AA18.

Transferred from RIN 2115-AF39

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AA18

DHS—U.S. Customs and Border Protection (USCBP)

PROPOSED RULE STAGE

68. 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 Costs 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 comprised 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 Rule	02/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

Transferred from RIN 1515-AD10

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RIN: 1651–AA41

DHS—USCBP

69. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 109–347, Section 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 Costs and Benefits:

As of the projected effective date of the regulation, CBP estimates 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. We 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 undertakes 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.

Our 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—2017).

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DHS—USCBP

FINAL RULE STAGE

70. DOCUMENTS REQUIRED FOR TRAVELERS ENTERING THE UNITED STATES AT SEA AND LAND PORTS–OF–ENTRY FROM WITHIN THE WESTERN HEMISPHERE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

PL 108–458; PL 109–295

CFR Citation:

8 CFR 212; 8 CFR 235

Legal Deadline:

Final, Statutory, June 1, 2009.

Abstract:

Amendment to require U.S. citizens who previously were exempt from presenting a passport or other authorized travel document to present such documents that denote identity and citizenship when entering the United States. The amendment would require that United States citizens and nonimmigrant aliens from Canada,

Bermuda and Mexico entering the United States at sea and land ports-of-entry from Western Hemisphere countries would be required to present an authorized travel document that denotes identity and citizenship in circumstances where travel was previously permitted without such a document.

Statement of Need:

The Western Hemisphere Travel Initiative (WHTI) will reduce vulnerabilities identified in the final report of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. WHTI is intended not only to enhance security efforts at the borders, but is also intended to expedite the movement of legitimate travel within the Western Hemisphere.

The land border, in particular, presents complex operational challenges, in that a tremendous amount of traffic must be processed in a short amount of time. For example, there are often several passengers in a vehicle, and multiple vehicles arriving at one time at each land border port-of-entry. Many of the people encountered crossing at the land border ports-of-entry are repeat crossers, who travel back and forth across the border numerous times a day.

The historical absence of standard travel document requirements for the travel of Canadian and U.S. citizens across our northern and southern borders has resulted in the current situation, where a multiplicity of documents can be presented at ports-of-entry by Canadian and U.S. travelers. As a result, those individuals who seek to enter the United States or Canada illegally or who pose a potential threat could falsely declare themselves as U.S. or Canadian citizens. They can do this through several methods: presenting fraudulent documents that cannot be validated; presenting facially valid documentation that cannot be validated against the identity of the holder; assuming the identity of the legitimate authentic document holder; or undocumented false claims. These same vulnerabilities exist for individuals purporting to be U.S. citizens crossing back and forth across the southern border with Mexico.

U.S. travel document requirements for Mexican nationals already addressed most of these vulnerabilities prior to the passage of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Generally, Mexican nationals are required to present either a Mexican passport with a visa or a biometric Border Crossing Card (BCC) when entering the United States. Mexican nationals can also apply for membership in DHS Trusted Traveler Programs such as FAST (Free and Secure Trade) and SENTRI (Secure Electronic Network for Travelers Rapid Inspection).

The current documents presented by U.S., Canadian, and Bermudian citizens arriving from within the Western Hemisphere vary widely in terms of the security and reliability as evidence of identity, status, and nationality. This variety poses challenges for accurate identity and admissibility determinations by border officials and has been identified as a security vulnerability for cross-border travel between these countries. It is recognized that national passports of Canada, Mexico, Bermuda (whether Bermudian or British passports) and the United States do currently, and will continue to, provide reliable evidence of identity and nationality for the purposes of cross-border travel.

Standardizing documentation requirements for travelers entering the United States in the land border environment would enhance our national security and secure and facilitate the entry process into the United States. Limiting the number of acceptable, secure documents would allow border security officials to quickly, efficiently, accurately, and reliably review documentation, identify persons of concern to national security, and determine eligibility for entry of legitimate travelers without disrupting the critically important movement of people and goods across our land borders. Standardizing travel documents for citizens of the United States, Canada, Bermuda, and Mexico entering the United States in the land border environment would also reduce confusion for the travel industry and make the entry process more efficient for CBP officers and the public alike.

Summary of Legal Basis:

This rule is required pursuant to section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by the Department of Homeland Security Appropriations Act of 2007.

Alternatives:

CBP considered a number of regulatory alternatives to the rule.

1) Require all U.S. travelers (including children) to present a valid passport book. This alternative would require all U.S. citizens, including minors under 16 and all cruise passengers, to present a valid passport book. The passport card, CBP trusted traveler documents, the MMD, and documents from DHS-approved pilot programs would not be accepted. This would be a more stringent alternative, and it was rejected as potentially too costly and burdensome for low-risk populations of travelers. While the traditional passport book will always be an acceptable document for a U.S. citizen to present upon entry to the United States, DHS and DOS believe that the cost of a traditional passport book may be too burdensome for some U.S. citizens, particularly those living in border communities where land-border crossings are an integral part of everyday life. DHS and DOS believe that children under the age of 16 pose a low security threat in the land and sea environments and will be permitted to present a certified copy of a birth certificate when arriving in the United States at all land and sea ports-of-entry from within the Western Hemisphere. Additionally, DHS and CBP have developed an alternative procedure for children traveling in groups. DHS and DOS have also determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment.

2) Require all U.S. travelers (including all children) to present a valid passport book, passport card, or other approved document.

The second alternative is similar to the proposed rule, though it includes children and does not exempt cruise passengers. It is again more stringent than the proposed rule. While this alternative incorporates the low-cost passport card and CBP trusted traveler cards as acceptable travel documents, this alternative was ultimately rejected as potentially too costly and burdensome for low-risk populations of travelers (certain cruise passengers and minors under 16).

Anticipated Costs and Benefits:

The analysis summarized here considered U.S. travelers entering the United States via land ports-of-entry on the northern and southern borders (including arrivals by ferry and pleasure boat) as well as certain cruise ship passengers. The period of analysis is 2005-2014 (10 years). CBP calculates costs beginning in 2005 because although the full suite of WHTI rules is not yet in place, DOS has already

seen a dramatic increase in passport applications since the WHTI plan was announced in early 2005. We account for those passports obtained prior to full implementation to more accurately estimate the economic impacts of the rule as well as to incorporate the fairly sizable percentage of travelers that currently hold passports in anticipation of the new requirements.

In addition to the traditional passport book, the Secretary of Homeland Security is designating the passport card, CBP trusted traveler cards (NEXUS, SENTRI, FAST), the Merchant Mariner Document, and specified documents from a DHS-approved WHTI pilot program as generally acceptable travel documents for U.S. citizens to enter the United States at land and sea ports-of-entry. Because DHS and DOS believe that children under the age of 16 pose a low security threat in the sea and land environments, U.S. children may present a certified copy of a birth certificate in lieu of the designated documents. Additionally, DHS and DOS have determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment. To meet the cruise exemptions, a passenger must board the cruise ship at a port or place within the United States and the passenger must return on the same ship to the same U.S. port or place from where he or she originally departed.

For the summary of the analysis presented here, CBP assumes that only the passport, trusted traveler cards, and the MMD are available in the first years of the analysis (recalling that the period of analysis begins in 2005 when passport cards and pilot-program documents were not yet available). CBP also assumes that most children under 16 will not obtain a passport or passport card but will instead use alternative documentation (birth certificates). The estimates reflect that CBP trusted traveler cards would be accepted at land and sea ports-of-entry. Finally, CBP assumes that most of the U.S. cruise passenger population will present alternative documentation (government-issued photo ID and certified copy of birth certificate) because they meet the waiver criteria proposed.

To estimate the costs of the rule, we follow this general analytical framework—

-Determine the number of U.S. travelers that will be covered.

-Determine how many already hold acceptable documents.

-Determine how many will opt to obtain passports or passport cards, and estimate their lost ''consumer surplus.''

-Determine how many will forgo travel instead of obtaining passports or passport cards, and estimate their lost ''consumer surplus.''

Building on the work conducted for the 2005 DOS passport study, CBP distilled approximately 300 million annual crossings into the number of frequent (defined as at least once a year), infrequent (once every 3 years), and rare (once every 10 years) ''unique U.S. adult travelers.'' We then estimate the number of travelers without the documentation this rulemaking proposes to be required and estimate the cost to obtain such documents. The fee for the passport varies depending on the age of the applicant, whether or not the applicant is renewing a passport, whether or not the applicant is requesting expedited service, and whether or not the applicant obtains a passport or a passport card. Additionally, we consider the amount of time required to obtain the document and the value of that time. We use the 2005 DOS passport demand study and CBP statistics on the trusted travelerprograms to estimate how many unique U.S. travelers already hold acceptable documents.

We estimate covered cruise passengers using data from the Maritime Administration (MARAD, 2006 data) and itineraries available on the cruise line websites (for 2007). The overwhelming majority of Western Hemisphere cruise passengers—92 percent—would fall under the proposed cruise-passenger waiver. Passengers not covered by the waiver fall into four trade markets—Alaska (72 percent), Trans-Panama Canal (16 percent), U.S. Pacific Coast (8 percent), and Canada/New England (4 percent). We estimate that these passengers will have to obtain a passport rather than one of the other acceptable documents because these travelers will likely have an international flight as part of their cruise vacation, and only the passport is a globally accepted travel document. We use a comment to the August 2006 Notice of Proposed Rulemaking (NPRM) for implementation of WHTI in the air and sea environments (71 FR 46155) from the International Council of Cruise Lines to estimate how many unique U.S. cruise travelers already hold acceptable documentation.

Based on CBP's analysis, approximately 3.2 million U.S. travelers are affected by the proposed rule in the first year of analysis (2005). Of these, approximately 2.9 million enter through a land-border crossing (via privately owned vehicle, commercial truck, bus, train, on foot) and ferry and recreational boat landing sites. An estimated 0.3 million are cruise passengers that do not meet the waiver criteria in the NPRM (note that over 90 percent of U.S. cruise passengers are expected to meet the proposed waiver criteria). CBP estimates that the traveling public acquired approximately 3.2 million passports in the first year of the analysis, in the anticipation of the passport requirements, at a direct cost of $417 million.

To estimate potential forgone travel in the land environment, we derive traveler demand curves for access to Mexico and Canada based on survey responses collected in the DOS passport study. We estimate that when the rule is implemented, the number of unique U.S. travelers to Mexico who are frequent travelers decreases by 6.5 percent, the unique U.S. travelers who are infrequent travelers decreases by 7.3 percent, and the unique U.S. travelers who are rare travelers decreases by 17.8 percent. The number of U.S. travelers visiting Canada who are frequent travelers decreases by 3.7 percent, the unique U.S. travelers who are infrequent travelers decreases by 10.7 percent, and the unique U.S. travelers who are rare travelers decreases by 10.9 percent. These estimates account for the use of a passport card for those travelers who choose to obtain one. For unique travelers deciding to forgo future visits, their implied value for access to these countries is less than the cost of obtaining a passport card.

To estimate potential forgone travel in the relatively small number of cruises affected in the sea environment, we use a study from Coleman, Meyer, and Scheffman (2003), which described the Federal Trade Commission investigation into potential impacts of two cruise-line mergers and estimated a demand elasticity for cruise travel. We estimate that the number of travelers decreases by 24.4 percent, 13.4 percent, 7.0 percent, and 5.6 percent for travelers on short (1 to 5 nights), medium (6 to 8 nights), long (9 to 17 nights), and very long cruises (over 17 nights) once the rule is implemented.

Costs of the rule (expressed as losses in consumer surplus) are summed by year of the analysis. We then add the

government costs of implementing WHTI over the period of analysis. Ten-year costs are $3.3 billion at the 3 percent discount rate and $2.8 billion at 7 percent. Annualized costs are $384 million at 3 percent and $406 million at 7 percent.

Finally, because the benefits of homeland security regulations cannot readily be quantified using traditional analytical methods, we conduct a ''breakeven analysis'' to determine what the reduction in risk would have to be given the estimated costs of the implementation of WHTI (land environment only). Using the Risk Management Solutions U.S. Terrorism Risk Model (RMS model), we estimated the critical risk reduction that would have to occur in order for the costs of the rule to equal the benefits—or break even.

The RMS model has been developed for use by the insurance industry and provides a comprehensive assessment of the overall terrorism risk from both foreign and domestic terrorist organizations. The RMS model generates a probabilistic estimate of the overall terrorism risk from loss estimates for dozens of types of potential attacks against several thousand potential targets of terrorism across the United States. For each attack mode-target pair (constituting an individual scenario) the model accounts for the probability that a successful attack will occur and the consequences of the attack. RMS derives attack probabilities from a semi-annual structured expert elicitation process focusing on terrorists' intentions and capabilities. It bases scenario consequences on physical modeling of attack phenomena and casts target characteristics in terms of property damage and casualties of interest to insurers. Specifically, property damages include costs of damaged buildings, loss of building contents, and loss from business interruption associated with property to which law enforcement prohibits entry immediately following a terrorist attack. RMS classifies casualties based on injury-severity categories used by the worker compensation insurance industry.

The results in the figure below are for the cost estimates presented above and casualty costs based on willingness-to-pay estimates and a $3 million value of a statistical life (VSL). These results show that a decrease in perceived risk leads to a smaller annualized loss and a greater critical risk reduction, and an increase in perceived risk leads to a greater annualized loss and a smaller critical risk reduction. The total range in critical risk reduction is a factor of four and ranges from 6.6 to 26 percent, with a critical risk reduction of 13 percent required for the standard risk scenario.

Timetable:

Action	Date	FR Cite
NPRM	06/26/07	72 FR 35088
NPRM Comment Period End	08/27/07	
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

URL For More Information:

www.regulations.gov

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Related RIN: Related to 1651–AA66

RIN: 1651–AA69

DHS—Transportation Security Administration (TSA)

PROPOSED RULE STAGE

71. 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.

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.

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. Sec. 1616 of Pub.L. 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 Costs 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	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1652–AA38

DHS—TSA

72. 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.

Sec. 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108-458; 12/17/2004) 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; 12/17/2004) 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 NPRM would establish the regulatory basis for initiation of the Secure Flight program.

Anticipated Costs 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 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% would total from $1.648 billion to $2.536 billion. Air carriers would incur total costs of $92.7 to $297.0 million, and travel agents would incur costs of $86.5 to $257.4 million. TSA projected Federal Government costs would be from $1.114 to $1.326 billion. The total

cost of outlays would be from $1.293 billion to $1.880 billion. Additionally, the cost to individuals (value of time) would be between $354.4 and $655.7 million.

Timetable:

Action	Date	FR Cite
Notice: Information Collection; Emergency Processing	09/24/04	69 FR 57342
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	03/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

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Related RIN: Related to 1652–AA48

RIN: 1652–AA45

DHS—TSA

73. • LARGE AIRCRAFT SECURITY PROGRAM, OTHER AIRCRAFT OPERATOR SECURITY PROGRAM, AND AIRPORT OPERATOR SECURITY PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

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 with 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 that certain airports that serve large aircraft to adopt security programs.

Statement of Need:

This NPRM would apply security measures currently in place for operators of certain types of aircraft to operators of other aircraft and enhance those measures. 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, 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 all the features that we believe are necessary to enhance their security.

Anticipated Costs 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 $1.2 billion, discounted at 7%. 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 88.6% 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 thus newly be subject to the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1652–AA03, Related to 1652–AA04

RIN: 1652–AA53

DHS—TSA

74. • 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 sec. 1405 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

This rulemaking will propose general requirements to require high-risk public transportation agencies 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 USC 114; Sec. 1405 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	06/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA56

DHS—TSA

75. • 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 sec. 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), must issue a regulation no later than 6 months after the date of enactment (Feb. 3, 2008) 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 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 training program to prepare railroad frontline employees for potential security threats and conditions.

Summary of Legal Basis:

49 USC 114; Sec. 1517 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	02/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA57

DHS—TSA

76. ● 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 sec. 1512 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), must issue a regulation no later than 12 months after date of enactment (Aug. 3 2008) 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 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.

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 USC 114; Sec. 1512 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	08/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA58

DHS—TSA

77. ● 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 sec. 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007); 121 Stat. 266), must issue a regulation no later than 6 months after date of enactment (Feb. 3, 2008) 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 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 training program to prepare over-the-road bus frontline employees for potential security threats and conditions.

Summary of Legal Basis:

49 USC 114; sec. 1534 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	02/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA59

DHS—TSA

78. ● 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:

According to sec. 1531 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), 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 the Implementing Recommendations of the 9/11 Commission Act of 2007.

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.

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 USC 114; sec. 1531 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	02/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA60

DHS—TSA

79. ● SECURITY THREAT ASSESSMENTS OF CERTAIN TRANSPORTATION PERSONNEL

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1411, 1414, 1520, 1522, 1602

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Transportation Security Administration (TSA) will propose new regulations to conduct security threat assessments on all frontline employees for public transportation agencies, railroads, and over-the-road buses in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007.

TSA will also propose user fees to cover the cost of the security treat assessments and redress.

Under the Implementing Recommendations of the 9/11 Commission Act of 2007, the regulation must include limitations on how employers may use the information, prohibitions on making false statements about requirements, and a redress process.

Statement of Need:

Sections of the Implementing Recommendation of the 9/11 Commission Act of 2007 require TSA to complete security threat assessments and provide a redress process for all frontline employees for public transportation agencies, railroads, and over-the-road buses. There could be a further need for threat assessments on transportation personnel that could be addressed under this rule.

Summary of Legal Basis:

49 USC 114; sections 1411, 1414, 1520, 1522, and 1602 of PL 110-53, Implementing Recommendation of the 9/11 Commission Act of 2007.

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	
Final Rule	08/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DHS—TSA

FINAL RULE STAGE

80. 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 to 44914 ; 49 USC 44916 to 44918; 49 USC 44935 to 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 be issuing requirements in this rulemaking action 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 sensitive-security 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. This action will allow TSA to enhance rail security by coordinating its activities with other Federal agencies, which would also avoid duplicative inspections and minimize the compliance burden on the regulated parties. This rule is intended to augment existing rail transportation laws and regulations that the Department of Transportation (DOT) administers.

Statement of Need:

The Transportation Security Administration (TSA) is issuing a 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 codifies the scope of TSA's existing inspection program and requires regulated parties to allow TSA and Department of Homeland Security (DHS) officials to enter, inspect, and test property, facilities, and records relevant to rail security. This rule also requires that regulated parties designate rail security coordinators and report significant security concerns to DHS. This final rule focuses on shipments of certain hazardous materials, establishing chain of custody and control procedures, reporting of location and shipping information to TSA upon request, and other measures for rail cars that pose the greatest security vulnerabilities. TSA also clarifies and amends the sensitive security information (SSI) protections to cover certain information associated with rail transportation.

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 Costs and Benefits:

The primary estimate of the total ten-year cost of the final rule discounted at 7% 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 national requirements to appoint 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
Notice of Proposed Rulemaking (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 Rule	11/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Federalism:

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

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RIN: 1652–AA51

DHS—TSA

81. ● 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 sec. 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 (Aug. 3, 2008) 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 USC 114; Sec. 1408 of PL 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Costs and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/07	
Final Rule	08/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1652–AA55

DHS—Federal Emergency Management Agency (FEMA)

PROPOSED RULE STAGE

82. SPECIAL COMMUNITY DISASTER LOANS PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 5121–5606

CFR Citation:

44 CFR 206

Legal Deadline:

None

Abstract:

This rulemaking implements the Special Community Disaster Loans Program authorized in the Community Disaster Loan Act of 2005. This rule describes the procedures and requirements for a program designed to provide loans for essential services to local governments that have experienced a loss in revenue due to a major disaster. It will also include a cancellation provision as provided by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, for certain community disaster loans previously authorized by Congress in the Community Disaster Loan Act of 2005 and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006. Finally, the proposed rule is intended to make technical corrections to organizational titles as a result of the Post-Katrina Emergency Management Reform Act of 2006. These regulations do not apply to the traditional Community Disaster Loans Program.

Statement of Need:

This rulemaking is needed to implement statutory requirements and 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:

While this rulemaking implements statutory requirements, the public has already been afforded an opportunity to provide comments on the interim rule for the Community Disaster Loan Act of 2005, and the public will be afforded an opportunity to provide comments on the 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 Costs and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

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	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

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BILLING CODE 4410–10–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

As the Nation's housing agency, the Department of Housing and Urban Development (HUD) is committed to increasing homeownership, particularly among minorities; creating affordable housing opportunities for low-income Americans; and supporting the homeless, the elderly, people with disabilities, and people living with AIDS. HUD is also committed to promoting economic and community development, and enforcing the Nation's fair housing laws.

Each year, through its programs and initiatives, HUD enables millions of individuals and families, including increasing numbers of minorities, to become homeowners or to obtain safe, decent, and affordable rental housing. HUD helps communities improve economic conditions and infrastructure in distressed areas, thereby making these communities more livable. HUD increases public awareness of fair housing laws, and it is through this awareness, coupled with enforcement of fair housing laws, that HUD reduces incidents of housing discrimination. Each year, HUD also continues to strengthen its partnerships with other Federal agencies, State and local governments, and private sector organizations, including for-profit, nonprofit, faith-based, or community-based organizations. These partnerships help HUD advance its mission to increase homeownership, support community development, and increase access to affordable housing free from discrimination.

HUD's three programmatic strategic goals, embodied in HUD's mission statement—increasing homeownership, promoting access to decent affordable housing, and strengthening communities—form the foundation each fiscal year for the majority of HUD's proposals for new or revised regulatory programs and initiatives, and this is true for Fiscal Year (FY) 2008.

The regulatory plan for HUD for FY 2008 highlights certain significant regulatory policy proposals that are designed to advance HUD's mission.

Priority: Increasing Homeownership

Ownership—and homeownership in particular—is the key to financial independence, wealth-building, and stronger, healthier communities. An ownership society has been a central theme of this Administration. To date, more than 75 million families, or nearly 70 percent of all Americans, are homeowners—more than at any time in our nation's history. HUD is making steady progress in helping more Americans achieve the dream of homeownership.

One way that HUD believes it can expand homeownership opportunities 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

To improve the advance disclosure of settlement costs, this proposed rule would amend HUD's RESPA regulations by improving and standardizing the Good Faith Estimate (GFE) form to improve disclosure of loan terms and settlement costs, to make it easier to use for shopping among settlement providers. The amendments would provide more accurate estimates of the costs of settlement services shown on the GFE; bring greater certainty to such settlement costs; and expressly state when RESPA permits certain pricing mechanisms that benefit consumers. HUD believes that these proposed regulatory changes not only would improve advance disclosure of settlement costs, but would encourage shopping and competition to lower such costs. HUD would also update RESPA's regulations to reflect changes that have occurred in the mortgage industry since RESPA was enacted in 1974.

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

Another mechanism by which HUD increases homeownership opportunities is through the establishment of housing goals for Fannie Mae and Freddie Mac (collectively, the Government Sponsored Enterprises or GSEs), and HUD's oversight of compliance with these goals.

The GSEs were chartered by Congress to create a secondary market for residential mortgage loans. Fannie Mae and Freddie Mac are the largest source of housing finance in the United States. Their Congressional charters require each corporation to achieve public purposes that include providing stability and liquidity in the secondary mortgage market; providing secondary market assistance relating to residential mortgages, including mortgages for low- and moderate-income families; and promoting access to mortgage credit throughout the nation, including underserved areas.

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, HUD is required to establish housing goals for the GSEs. The current goals promulgated by regulation in 2004, cover the calendar years 2005 through 2008. The Secretary, therefore, is proposing to establish new goals for future years. The new goals to be established by this rule will be designed to ensure that the GSEs carry out their statutory responsibilities to finance housing that serves very low-, low-, and moderate-income families and those living in areas traditionally underserved by the mortgage markets.

Priority: Promoting Decent Affordable Housing

While homeownership is a top priority of HUD, HUD recognizes that it may not be a viable option for everyone. Therefore, promoting decent affordable housing for families and individuals who may not yet be ready to purchase a home also is a central part of HUD's mission. To this end, HUD seeks to improve the quality of the housing opportunities provided to families in public and assisted housing. Public housing is an important asset in which the Federal Government has invested for more than seven decades. Throughout America, public housing provides homes for millions of Americans who have serious housing needs due to age, income, or disability. For many very low-income families and individuals, public housing represents the line between decent shelter and homelessness. To ensure that those of lesser means are well-housed in decent, safe, and viable communities, HUD provides capital funds to maintain this asset. Assistance under the Capital Fund is the primary, regular source of funding made available by HUD to a public housing agency (PHA) for its capital activities, including modernization, rehabilitation, and the development of public housing. HUD's goal is to ensure that PHAs can address their most

serious capital issues when the need arises, in order to avoid more costly and extensive renovations after need accrues for several years.

To accomplish these goals, HUD will focus on updating and improving the regulations governing the Capital Fund.

Regulatory Action: Capital Fund Program

The regulations implementing the new Capital Fund formula were promulgated in 2000. This proposed rule would establish the full regulatory framework for the Capital Fund Program. This proposed rule would update, consolidate, and streamline the regulations governing the former legacy public housing modernization programs: the Comprehensive Grant Program, the Comprehensive Improvement Assistance Program, and the Public Housing Development Program. One of the objectives of the proposed rule is to improve the long-term planning of capital improvements among PHAs, while minimizing the administrative burden of such planning without sacrifice to its quality and effectiveness. The proposed rule also would modify the physical-needs assessment in the existing regulations to provide PHAs with critical information on the physical condition of each project in the PHA's inventory.

While HUD provides assistance that helps to ensure that PHAs can address their most serious capital issues, HUD holds PHAs accountable for providing safe and decent housing and protecting the Federal investment in their properties. The changes proposed by this rule to the Capital Fund program are designed to assist PHAs with effective property-based planning, which will assist in improving PHA decisionmaking and improved capital planning.

The Priority Regulations that Comprise HUD's FY 2008 Regulatory Plan

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

HUD—Office of the Secretary (HUDSEC)

PROPOSED RULE STAGE

83. HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC: HOUSING GOALS (FR–4960)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

12 USC 1451 et seq; 12 USC 1716 to 1723h; 12 USC 4501 to 4641; 28 USC 2461 note; 42 USC 3535(d); 42 USC 3601 to 3619

CFR Citation:

24 CFR 81

Legal Deadline:

None

Abstract:

Through this rule, the Department will propose housing goals for the purchase of mortgages by Fannie Mae and Freddie Mac (collectively, the Government Sponsored Enterprises, or GSEs) going forward and make any necessary revisions to HUD's GSE rules to ensure that the GSEs meet statutory requirements and carry out their public missions. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), this rule would establish new goals for the GSEs' purchase of mortgages financing low- and moderate-income housing; special affordable housing; and housing in central cities, rural areas, and other underserved areas. This rule would clarify, as necessary, HUD's guidelines for counting different types of mortgage purchases toward those goals. The current housing goals apply through 2008. The Secretary of HUD has general regulatory power over each GSE and is required to make such rules and regulations as necessary to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished. HUD's current GSE regulations implement FHEFSSA and include provisions relating to fair housing, new program approval, reporting, and access to information requirements. This rule will propose revisions to clarify HUD's rules implementing FHEFSSA and carry out the Secretary's regulatory responsibilities.

Statement of Need:

In the absence of new goals, the goals already established for 2008 remain in place, but the Secretary intends to establish goals going forward with the objective of ensuring that the two GSEs fully address the housing finance needs of very low-, low-, and moderate-income families and residents of underserved areas, and thus more fully realize their public purposes. FHEFSSA sets forth the Secretary's responsibilities regarding the GSEs and the GSEs' charters specify their public missions. Under FHEFSSA, the Secretary must make necessary rules and regulations to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished.

Summary of Legal Basis:

The Department is required to establish housing goals for the GSEs pursuant to FHEFSSA (12 USC 4501 et seq.). HUD also has general regulatory power over each GSE (12 USC 4541) and is required to make such rules and regulations as are necessary to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished. (See 12 USC 4501-4641)

Alternatives:

The Department considered the alternative of leaving the housing goals unchanged. However, HUD takes very seriously its obligations under the law to establish the housing goals using the most current data and information.

The Department also considered leaving other provisions of the GSE rules unchanged. However, HUD believes that some changes may be appropriate to better accomplish the purposes of the law.

Anticipated Costs and Benefits:

This rule is anticipated to have the benefit of increasing homeownership opportunities and affordable housing units for low- and moderate-income families and underserved communities and ensuring that the GSEs otherwise carry out their responsibilities under FHEFSSA. There is no expectation that these objectives would be costly for the GSEs. HUD's analyses have consistently indicated that meeting appropriate housing goals will have little impact on the GSEs' financial returns or on the safety and soundness of GSE operations. Additionally, increased GSE activity in the affordable lending arena has not adversely affected traditional portfolio lenders.

Risks:

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

Timetable:

Action	Date	FR Cite
ANPRM	11/02/04	69 FR 63576
ANPRM Comment Period End	12/17/04	
NPRM	04/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—Office of Housing (OH)

PROPOSED RULE STAGE

84. REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA); TO SIMPLIFY AND IMPROVE THE PROCESS OF OBTAINING MORTGAGES AND REDUCE 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:

In July and August 2005, HUD held seven roundtable discussions about possible changes to HUD's RESPA regulations with industry, including small business entities, consumers, and other interested parties. These roundtables were held at HUD Headquarters and in the cities of Los Angeles, California; Chicago, Illinois; and Fort Worth, Texas. HUD found the roundtable discussions to be very informative and, after further considerations of the issues and proposals raised at the roundtables and further assessment of current mortgage industry practices, HUD is proposing changes to its RESPA regulations that would improve and standardize the Good Faith Estimate (GFE) form to make it easier to use for shopping among settlement providers and help borrowers understand how yield spread premiums can affect their settlement charges.

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. Under current rules, there is confusion concerning the role of the mortgage broker and how the broker is compensated. Recent changes in the mortgage industry have heightened the need for greater clarity. The current GFE does not necessarily result in reliable estimates for consumers or facilitate shopping, which would lead to lower costs. Addressing these considerations in HUD's regulations can result in price reductions for consumers.

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 USC 2617).

Alternatives:

As noted above, the RESPA disclosure requirements have not been substantially revised in several years. The Department tried to bring some clarity to the process through two policy statements: a Statement of Policy on Lender Payments to Mortgage Brokers, issued on March 1, 1999, and a Clarification of the 1999 Statement of Policy, issued on October 17, 2001. Non-regulatory alternatives were considered and acted upon, but it was determined that the changes in the marketplace and recent judicial decisions call for new regulations on the part of HUD.

Anticipated Costs and Benefits:

Because the nation's home mortgage market is a billion-dollar industry, there are costs and benefits associated with this rule that will be addressed in the Economic Analysis that will accompany the proposed rule. The Economic Analysis will identify a wide range of benefits, costs, efficiencies, transfers and market impacts. The effects on consumers from improved borrower shopping have the potential to be substantial as a result of this rulemaking. Similarly, increased competition, which may result from a GFE that encourages shopping, could result in large reductions in settlement service costs, as well as possibly associated income transfers from service providers who are earning ''economic rents'' in today's system to borrowers, who most likely would be the ultimate beneficiaries of more competition among settlement service providers. Entities that would suffer revenue losses under this rulemaking are those who now overcharge uninformed borrowers, or are high-cost producers, or are benefiting from the current system's limitations on competition.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HUD—Office of Public and Indian Housing (PIH)

PROPOSED RULE STAGE

85. CAPITAL FUND PROGRAM (FR–4880)

Priority:

Other Significant

Legal Authority:

42 USC 1437g; 42 USC 1437z–7; 42 USC 3535(d)

CFR Citation:

24 CFR 905

Legal Deadline:

None

Abstract:

This rule will establish the full regulatory framework for the Capital Fund Program, which provides assistance for the capital and management improvement needs of public housing agencies (PHAs). This rule will replace and remove several other rules that currently govern a PHA's use of HUD assistance, including part 941 — Public Housing Development and part 968 — Public Housing Modernization. This rule will continue and expand the streamlining of procedures and requirements initiated under the Comprehensive Grant Program and Comprehensive Improvement Program at part 968.

Statement of Need:

Assistance under the Capital Fund Program is the primary, regular source of funding made available by HUD to a PHA for its capital activities, including modernization and development of public housing. This rule will implement fully the requirements for the use of assistance made available under the Capital Fund Program. The regulations will provide the appropriate notice of the legal framework for the program, with clear and uniform guidance for program operation.

Summary of Legal Basis:

Sections 518, 519, and 539 of the Quality Housing and Work Responsibility Act, which amended Sections 9 and 5 of, and added section 35(g) to, the U.S. Housing Act of 1937.

Alternatives:

The amendments to the U.S. Housing Act of 1937 made by the Quality Housing and Work Responsibility Act, regarding the Capital Fund Program required a formula system to be established to govern funding of PHAs' public housing capital needs. This formula was established by final rule issued in 2000. Guidance for administration of these funds necessitates a permanent legal framework rather than informal and sporadic HUD notices.

Anticipated Costs and Benefits:

The costs of the program as administered with one fund from which a PHA would fund all of its capital needs are the same as under existing provisions. The benefits of having one funding mechanism for all such needs, and the provision of additional flexibility to PHAs to manage their physical assets, would provide increased benefits to the PHAs. Likewise, uniform program administration of these funds would provide increased benefits to the PHAs.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

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, 547 wildlife refuges, and approximately 1.7 billion acres submerged in offshore waters. 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

All of the Department's bureaus and offices have significant regulatory responsibilities.

The Office of Surface Mining Reclamation and Enforcement (OSM), in partnership with the States and Indian tribes, establishes and enforces environmental standards for coal mining and reclamation operations. In addition, OSM administers the abandoned mine land reclamation program, which is funded by a fee assessed on each ton of coal produced. Money from these fees is placed in a fund that is used to reclaim lands and waters impacted by historic mining activities conducted before the enactment of the Surface Mining Control and Reclamation Act of 1977. The collection of the fee for reclamation purposes was scheduled to expire in 2007 but was extended by legislation on December 20, 2006, and will now be collected through September 30, 2021. The extension of the fee will result in the continued reclamation and restoration of land and water resources affected by past coal mining, and will also result in the elimination of many health and safety hazards.

Other 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 included:

- Increased bureau awareness of and responsiveness to the needs of small businesses and better compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA);
- A departmental effort to evaluate the economic effects of planned rules and regulations;
- Issuance of guidance in the Departmental Manual to ensure the use of plain language;
- 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 the 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
- Hydropower license rules promulgated jointly with the Departments of Agriculture and Commerce, in consultation with FERC, that streamline the licensing and appeals process as called for in the Energy Policy Act of 2005.

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, the Department is implementing the President's energy policy and the Energy Policy Act of 2005, including numerous regulatory actions. The Bureau of Land Management and the Minerals Management Service are developing proposed rules to implement the Energy Policy Act. 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.

The Energy Policy Act of 2005 directed Interior to promulgate regulations regarding tar sands leasing, geothermal leasing, and oil and gas lease acreage. These were all issued this fiscal year. Further, other energy-related regulations were issued. The Minerals Management Service, for example, issued final regulations regarding geological and geophysical exploration on the Outer Continental Shelf (OCS), incident reporting, data release definitions, and cost recovery.

The Bureau of Land Management 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. With these tools, BLM will further reduce and ultimately eliminate the backlog of pending permits while allowing the development of energy resources in an environmentally responsible manner.

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

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 is currently developing guidance for expanding the use of the Recovery Credit System that was developed in collaboration with partners at Fort Hood, Texas.

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.

The U.S. Geological Survey (USGS) is developing 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 will be informed of their obligation to follow this policy and 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 Project 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. 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 were associated with either a streamlined NEPA tool or a CWPP.

The National Park Service is developing 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. A new long-term plan, EIS, and rulemaking must be completed before December 19, 2007, if the parks are to open for oversnow vehicle use for the 2007-2008 winter season. Since July 2005 the parks have implemented a Public and Agency Participation Plan with a commitment to open information sharing. This Plan (available on the parks' winter use website) employs a variety of outreach methods to keep cooperating agencies and other interested parties informed. These methods attempt to meaningfully involve the public through: roving team meetings, selected larger meetings, newsletters, and web site postings (Yellowstone site and NPS Planning, Environment, and Public Comment (PEPC) system). To date in this process, the parks have held or attended approximately 60 meetings and open houses.

One research proposal (which evaluates key uncertainties regarding road grooming and bison movements) is currently undergoing peer review and will inform the FEIS. Also, an operational risk assessment of avalanche issues will inform the FEIS. Additionally, social science research planned for the 2007-2008 winter season would explore visitor perceptions of 1) human/wildlife interactions and 2) impacts to natural soundscapes.

A Draft EIS was made available for public review March 27, 2007 through June 5 for formal public comment. The Proposed Rule comment period closed on July 16. Public meetings were held in Cody, Wyoming; West Yellowstone, Montana; St. Paul, Minnesota; and Lakewood, Colorado. A cooperating agency meeting was held in Idaho Falls, Idaho. The cooperating agencies are the States of Wyoming, Montana, and Idaho, the five counties around the parks, the U.S. Forest Service and EPA. Approximately 120,000 public comments were received on the Draft EIS and approximately 2,000 public comments were received on the Proposed Rule. The schedule for the remainder of the process is:

Final EIS available and ROD signed: fall 2007

Final rule published: fall 2007

The Bureau of Land Management (BLM) published a grazing administration rule. However, that rule is the subject of a court ruling that strikes down many of its provisions. The Department is reviewing that ruling and considering the appropriate response.

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 Northwest Hawaiian Islands National Marine Monument (Papahanaumokuakea); development of a seamless network to protect and conserve the Nation's ocean and coastal refuges, reserves, parks and sanctuaries; and creation of a National Water Quality Network.

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.

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 40 species for which delisting or downlisting (reclassification from endangered to threatened) may be appropriate.

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. As a result of the recently enacted energy legislation, the Administration developed a joint rule involving the Departments of Agriculture, Commerce, and the Interior that establishes a trial-type hearing for a review of disputes over ''material facts'' included in hydropower licenses.

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 now considering publication of these procedures for codification in the Code of Federal Regulations. The proposed regulations supplement the CEQ regulations and must be used in conjunction with them. The regulations, if promulgated, will ensure that field staff have the tools to tailor their implementation of the NEPA process to local needs and interests.

The Federal Lands Recreation Enhancement Act (REA; Pub. L. 108-447), enacted in December 2004, requires that the Forest Service and BLM establish Recreation Resource Advisory Committees (RRACs), or use existing BLM RACs to perform the duties of RRACs. These committees will 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. After holding numerous ''listening sessions'' across the country in order to hear recommendations from the public on the appropriate configuration of the RRACs, the agencies established an organizational structure that was approved by both the Department of the Interior and the Department of Agriculture. The Departments signed an Interagency Agreement establishing the framework, processes, and collaborative RRAC approach the two agencies will use 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;
- Through a negotiated rulemaking process, the Bureau of Indian Affairs has finalized its roads program rule, which reflects the importance of the roads program to the individual tribes and the varying needs of the tribal governments;
- 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. 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 rule.

Regulatory Actions Related to the Events of September 11, 2001

The Bureau of Reclamation is responsible for protecting 348 reservoirs and more than 500 Federal dams, 58 hydroelectric plants, and over 8 million acres of Federal property. Public Law 107-69 granted Reclamation law enforcement authority for its lands. On April 17, 2006, Reclamation finalized its rules implementing this authority.

Rules of Particular Interest to Small Businesses

The NPS snowmobiling rule for Yellowstone and Grand Teton National Parks and the John D. Rockefeller Memorial Parkway is of great interest to small businesses in the area of the parks, in particular those who rent snowmobiles. An initial Regulatory Flexibility Analysis points toward economic benefits to businesses in gateway communities, with some costs incurred by non-snowmobile users of the parks.

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. As a result of the 9th Circuit's ruling on ''Gifford Pinchot,'' invalidating the FWS's regulatory definition of destruction or adverse modification of critical habitat, the Department is considering a rulemaking.

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 were 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 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 managing trust responsibilities to Indian tribes and individual Indians and encouraging tribal governments to engage in self governance and self determination.

The BIA's rulemaking and policy development processes foster public and tribal awareness of the standards and procedures that directly affect them. The processes also encourage the public and the tribes to participate in developing these standards and procedures. The goals of BIA regulatory policies are to: (a) fulfill the Secretary's trust responsibilities to federally recognized tribes and individual Indians; (b) develop Indian trust management policies and regulations that implement statutory requirements articulated by Congress; (c) ensure

consistent policies within BIA that result in uniform interactions with tribal governments; (d) facilitate tribal involvement in the delivery of BIA services; and (e) ensure continued protection of tribal treaties and statutory rights.

The BIA and the Office of the Secretary propose to finalize in late 2007 several of their regulations related to Indian trust management to meet the policies articulated by Congress in the Indian Land Consolidation Act (ILCA) as amended by the American Indian Probate Reform Act of 2004 (AIPRA). These amendments 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, 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.

The Department is also developing amendments to regulations in the areas of land acquisitions; leasing; grazing; minerals and energy; rights-of-way; and trust fund accounting and appeals. Together, these regulatory changes to be proposed in 2008 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.

Indian Affairs will also be working to implement provisions of the No Child Left Behind Act, which requires negotiated rulemaking to develop standards for facilities maintenance and new school construction. A proposed rule should be published by the end of 2008.

The Bureau of Land Management

The Bureau of Land Management (BLM) manages about 258 million acres of land surface 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 Regulatory Program mirrors statutory responsibilities and BLM objectives, including the following:

- Supporting the objectives of the Energy Policy Act of 2005 by developing regulations that facilitate the domestic production of energy, including renewable energies such as biomass, wind, solar, and other alternative sources of energy;
- 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.

The objectives of the Regulatory Program include preparing regulations that:

- Are the product of communication, coordination, and consultation with all affected interests and the public;
- Are easy for the public to understand, especially those who would be most affected by them; and
- Are subject to periodic review to determine whether the rules require updating to reflect statutory or policy changes, and whether they are achieving desired results.

The BLM's regulatory priorities include:

- Completing rules to facilitate implementation of the Energy Policy Act of 2005 in order to encourage domestic production of energy;
- Completing amendments of the recreation permit regulations in order to bring them into conformance with new governing law, including the Federal Lands Recreation Enhancement Act; and
- Completing the reorganization and updating of the regulations on locating, recording, and maintaining mining claims and mill and tunnel sites to eliminate obsolete provisions and make the regulations easier to follow.

Most BLM regulations affect small business. Many business entities that operate on public lands qualify as small businesses as the term is defined by the Small Business Administration (SBA). The BLM's regulations do not specifically target small businesses. The BLM strives to ensure that regulations do not unduly burden business entities whether or not they are considered small businesses.

The BLM's mining and grazing rules have traditionally generated the greatest concern for small businesses, because most livestock operators and mining companies are small entities, as classified by the SBA.

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. In the fall of 2007, we expect to publish a final rule pertaining to valuation of oil on Indian lands (RIN 1010-AD00).

- **Encourage development of alternative energy and alternate uses for existing facilities**

  We expect to publish a proposed rule (RIN 1010-AD30) in late 2007 that would provide a framework to regulate development of alternative energy sources and alternate uses of existing facilities on the OCS.

- **Promote Gulf of Mexico coastal restoration through revenue sharing with affected States**

  We are drafting a proposed rule (RIN 1010-AD46) 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 and mitigation of damage to fish, wildlife or natural resources.

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, OSM is the primary enforcer of SMCRA's provisions until the States achieve ''primacy;'' that is, until they demonstrate that their regulatory programs meet all the specifications in SMCRA and have regulations consistent with those issued by OSM.

When a primacy State 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 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. Thus, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on Indian lands.

OSM has sought to develop and maintain a stable regulatory program for surface coal mining that 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 objectives for the coming year include:

- Maintaining regulatory certainty so that coal companies know what is expected of them and citizens know what is intended and how they can participate;
- Ensuring an affordable, reliable energy supply while protecting the environment;
- Continued consultation, cooperation, and communication with interested groups during the rulemaking process in order to increase the quality of the rulemaking, and, to the greatest extent possible, reflect consensus on regulatory issues; and
- Completion of ongoing rulemaking initiatives resulting from new legislation, litigation by the coal industry and environmental groups, and efforts by OSM to address areas of concern that have arisen during the course of implementing its regulatory program.

U.S. Fish and Wildlife Service

The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Four principal mission goals include:

The sustainability of fish and wildlife populations. FWS conserves, protects, restores, and enhances fish, wildlife, and plant populations entrusted to its care. FWS carries out this mission goal through migratory bird conservation at home and abroad; administration of the national wildlife refuge system; native fisheries restoration; recovery and protection of threatened and endangered species; prevention and control of invasive species; and work with our international partners.

Habitat conservation through a network of lands and waters. Cooperating with others, FWS strives to conserve an ecologically diverse network of lands and waters of various ownership that provide habitat for fish, wildlife, and plant resources. This mission goal emphasizes two kinds of strategic actions: (1) the development of formal agreements and plans with partners who provide habitat for multiple species, and (2) the actual conservation work necessary to protect, restore, and enhance those habitats vital to fish and wildlife populations. The FWS's habitat conservation strategy focuses on the interaction and balance of people, lands and waters, and fish and wildlife through an ecosystem approach.

Public use and enjoyment. FWS provides opportunities to the public to enjoy, understand, and participate in the use and conservation of fish and wildlife resources. The Service directs activities on national wildlife refuges and national fish hatcheries that increase opportunities for public involvement with fish and wildlife resources. Such opportunities include hunting, fishing, wildlife observation and photography, and environmental education and interpretation, as well as hands-on experiences through volunteer conservation activities on FWS-managed lands.

Partnerships in natural resources. FWS supports and strengthens partnerships with tribal, State, and local governments and others in their efforts to conserve and enjoy fish, wildlife, and plants and habitats, consistent with the President's Executive Order on Cooperative Conservation. FWS administers Federal grants to States and territories for restoration of fish and wildlife resources

and has a continuing commitment to work with tribal governments. FWS also promotes partnerships with other Federal agencies where common goals can be developed. The Service carries out these mission goals through several types of regulations. While carrying out its responsibility to protect the natural resources entrusted to its care, FWS works continually with foreign and State governments, affected industries and individuals, and other interested parties to minimize any burdens associated with its activities. In carrying out its assistance programs, the Service administers regulations to help interested parties obtain Federal assistance and then comply with applicable laws and Federal requirements.

Some Service regulations permit activities otherwise prohibited by law. These regulations allow possession, sale or trade, scientific research, and educational activities involving fish and wildlife and their parts or products. In general, these regulations supplement State regulations and cover activities that involve interstate or foreign commerce.

FWS enforces regulations that govern public access, use, and recreation on 547 national wildlife refuges and in national fish hatcheries. The Service authorizes only uses compatible with the purpose for which each area was established, are consistent with State and local laws where practical, and afford the public appropriate economic and recreational opportunity.

FWS administers regulations to manage migratory bird resources. Annually, the Service issues a regulation on migratory bird hunting seasons and bag limits that is developed in partnership with the States, tribal governments, and the Canadian Wildlife Service. These regulations are necessary to permit migratory bird hunting that would otherwise be prohibited by various international treaties.

FWS implements regulations under the Endangered Species Act (ESA) to fulfill its statutory obligation to identify and conserve species faced with extinction and to conserve certain mammals under the Marine Mammal Protection Act. The ESA dictates that the basis for determining endangered and threatened species must be limited to biological considerations. Regulations enhance the conservation of ESA-listed species and help other Federal agencies comply with the ESA. Under section 7 of the ESA, all Federal agencies must consult with the Service on actions that may jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats. In designating critical habitat for listed species, the Service considers biological information and economic and other impacts of the designation. Areas may be excluded if the benefits of exclusion outweigh the benefits of inclusion, provided that such exclusion will not result in the extinction of the species.

Finally, FWS is working in partnership with NOAA and the State of Hawaii (co-trustees) to develop a joint Monument Management Plan (MMP). The Hawaiian Islands and Midway Atoll National Wildlife Refuges Comprehensive Conservation Plan (CCP) will be included in the MMP, which is due to be developed in draft form by December 2007 (the FWS National Wildlife Refuge System previously published a notice in May 2007 stating that the CCP would be included in the MMP).

National Park Service

The National Park Service conserves 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 also manages 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; the National Register of Historic Places; national historic landmarks; historic preservation; technical preservation services; Historic American Buildings survey; Historic American Engineering Record; and interagency archeological services. The National Park Service maintains regulations that help manage public use, access, and recreation in units of the National Park System. The Service provides visitor and resource protection to ensure public safety and prevent derogation of resources. The regulatory program develops and reviews regulations, maintaining consistency with State and local laws, to allow these uses only if they are compatible with the purpose for which each area was established. In the upcoming year, the National Park Service will complete final rulemaking to implement the Winter Use Plans for Yellowstone and Grand Teton National Parks and J.D. Rockefeller Jr. Memorial Parkway. In addition, the Service's regulatory priority is to develop special regulations for individual park areas to better manage bicycle use, off-road vehicle use, and off-leash dog walking, as well as finishing the final PWC rule at Gateway National Recreation Area.

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 is designed to ensure that its mission is carried out expeditiously, efficiently, and with an emphasis on cooperative problem solving. Reclamation expects to finalize its Environmental Impact Statement on the proposed adoption of Colorado River Interim Guidelines for

Lower Basin Shortages and Coordinated Operations for Lakes Powell and Mead by mid-October 2007 and to publish a Record of Decision by mid-December 2007.

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. This also addresses the requirement for biennial review.

DOI—Office of Surface Mining Reclamation and Enforcement (OSMRE)

PROPOSED RULE STAGE

86. 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 apply the buffer requirement to all waters of the United States, not just perennial and intermittent streams, 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 Costs 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	11/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOI—Bureau of Land Management (BLM)

PROPOSED RULE STAGE

87. OIL SHALE LEASING AND OPERATIONS

Priority:

Other Significant

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 Costs 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	03/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

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 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. 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 is planning 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 will propose to adopt revised ADA Standards for Accessible Design that are consistent with the revised ADA Accessibility Guidelines.

The Department also plans to review 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 review and 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 is planning 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 will simplify and clarify 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 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 will be 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 will also offer proposed answers to the interpretive questions raised in the advance notice and present 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 will prepare an additional regulatory assessment of the estimated annual cost of compliance with regard to existing facilities. In this process, the Department will give 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. 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, 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. 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 will implement different aspects of the Attorney General's initiatives.

Also, the Department of Justice will be working with the Department of Homeland Security (DHS) to implement the increase in civil penalties for employer sanctions as proposed by DHS.

2. 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 2008, to seek modifications to its regulations governing commerce in firearms and explosives. ATF continues analysis of its regulations governing storage requirements for explosives, including fireworks explosive materials. 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 controlling abuse of narcotics and dangerous drugs, while ensuring adequate supplies for legitimate medical 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.

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 limits for ephedrine, pseudoephedrine, and phenylpropanolamine at the retail level, establishes quotas at the manufacturing level, and limits the importation of these chemicals 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]
- ''Combat Methamphetamine Epidemic Act of 2005: Fee for Self-Certification for Regulated Sellers of Scheduled Listed Chemical Products'' [RIN 1117-AB13]
- ''Record Requirements for Chemical Distributors'' [RIN 1117-AB14]

In addition to its implementation of CMEA, DEA is working to curb the diversion of other chemicals important in the illicit manufacture of controlled substances. DEA recently imposed greater restrictions on iodine, moving this chemical from List II to List I,

reducing the threshold for regulated transactions to zero, adding import and export regulatory controls, and establishing a concentration limit for chemical mixtures containing iodine. See RIN 1117-AA93.

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 limiting the communications of inmates identified as having an identifiable link to terrorist-related activities.

DOJ—Civil Rights Division (CRT)

PROPOSED RULE STAGE

88. 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 will be 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 will simplify and clarify the preparation of the proposed rule to follow. 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 will accompany 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 will 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 will issue as the second step of the above described title III rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title III regulation, this notice will propose to adopt revised ADA Standards for Accessible Design consistent with the minimum guidelines of the revised ADAAG. The second stage will initiate 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 Costs 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 Access Board's regulatory assessment will also apply to the Department's proposed adoption of revised ADAAG as ADA standards insofar as the standards apply to new construction and alteration. The Department will also prepare an additional regulatory assessment of the estimated annual cost of compliance with the revised standards with regard to existing facilities that are subject to title III of the ADA. 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	01/00/08	
NPRM Comment Period End	03/00/08	

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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DOJ—CRT

89. 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 will simplify and clarify 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 will accompany 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 will 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 will issue as the second step of the above-described title II rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the

title II regulation alone, this notice will also propose 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 Costs 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 regulation to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA Standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to 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 Access Board's regulatory assessment will also apply to the Department's proposed adoption of revised ADAAG as ADA standards insofar as the standards apply to new construction and alteration. The Department will also prepare an additional regulatory assessment of the estimated annual cost of compliance with the revised standards with regard to existing facilities that are subject to title III of the ADA.

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	01/00/08	
NPRM Comment Period End	03/00/08	

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)

2007 Regulatory Plan

Executive Summary: Protecting America's Workers

Since its creation in 1913, the Department of Labor has been guided by the idea that workers deserve safe and healthy workplaces, as well as protection of their wages and pensions. The Secretary of Labor has made protecting America's workers 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 workers 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 workers 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 workers need constant updating of skills to compete in a changing marketplace. DOL helps employers and workers 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

DOL has identified 21 high priority items for regulatory action. Nine items address health and safety issues, which are central to DOL's mission and which represent a major focus of the Secretary. Two agencies, the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA), are responsible for these initiatives.

The Mine Safety and Health Administration (MSHA) administers the Federal Mine Safety and Health Act of 1977 (Mine Act), which was recently amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). MSHA is undertaking a number of significant regulatory actions to continue to reduce deaths, injuries, and illnesses, and ensure safe and healthful workplaces for the Nation's miners.

On May 22, 2007, MSHA published an Emergency Temporary Standard (ETS) on Sealing of Abandoned Areas (RIN 1219-AB52), to protect miners working in underground coal mines from the grave danger that they face when underground seals separating abandoned areas from active workings fail. The ETS includes requirements to strengthen the design, the construction, the maintenance, and the repair of seals; requirements for sampling and controlling atmospheres behind seals; and requirements for increasing the overpressure of seals in accordance with the MINER Act. MSHA expects to issue a Final Rule on Sealing of Abandoned Areas by February 2008.

On September 6, 2007, MSHA published separate proposed rules to address Mine Rescue Teams (RIN 1219-AB53) in underground coal mines, and Mine Rescue Team Equipment (RIN 1219-AB56) in underground coal and metal and nonmetal mines. The proposed Mine Rescue Teams rule includes provisions for the number, training, composition and certification of mine rescue teams in accordance with the MINER Act, and will be completed in 2007. The proposed Mine Rescue Team Equipment rule would amend existing standards to reflect advances in mine rescue team equipment technology, and will be completed in early 2008.

MSHA is continuing work on its Asbestos Exposure Limit (1219-AB24 final rule), which will provide increased protection to miners potentially exposed to health hazards associated with asbestos. The final rule lowers miners' permissible exposure limit for asbestos from 2.0 fibers per cubic centimeters (f/cc) to 0.1 f/cc.

MSHA is also continuing to work on its Diesel Particulate Matter: Conversion Factor from Total Carbon to Elemental Carbon (RIN 1219-AB55) rulemaking, which will establish the most appropriate measure for determining compliance with the final DPM exposure limit.

MSHA intends to publish a Request for Information on the use of the Continuous Personal Dust Monitor (RIN: 1219-AB48) based upon a research report from the National Institute for Occupational Safety and Health. This new technology is designed to continuously measure a coal miner's exposure to respirable coal mine dust. Such information, available immediately at the miner's work location, has the potential to reduce the occurrence of respirable lung disease among coal miners.

MSHA may initiate a new rulemaking on Refuge Alternatives in Underground Coal Mines in accordance with the MINER Act pending completion of a report by NIOSH due December 2007.

MSHA may initiate a new rulemaking on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining in accordance with the MINER Act pending completion of a technical study panel report due December 2007.

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 2008.

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 plans to issue a notice of proposed rulemaking in January 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 2007, 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 Health Insurance Portability and Accountability Act (HIPAA) access, portability and renewability provisions of the Employee Retirement Income Security Act (ERISA) (RIN 1210-AA54). With respect to pension plans, the Department will be developing guidance to encourage the automatic enrollment of participants in 40l(k) plans and the use of default investment options that will enhance retirement savings (RIN 1210-AB10).

The Department also 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) and regulations relating to individual pension benefit statements (RIN 1210-AB20). ERISA's requirements affect private sector employee benefit plans including an estimated 683,000 pension benefit plans, covering approximately 106 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 four priority regulatory initiatives that reflect the Secretary's emphasis on meeting the needs of the 21st century workforce. These regulations include: (1) the Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations (RIN 1205-AB50) which will update the Apprenticeship regulations that have not been updated since promulgated in 1977; (2) 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, which make substantial changes to the current SCSEP; (3) YouthBuild regulations (RIN 1205-AB49), which arise from Congress transferring oversight and administration of the YouthBuild Program to the U.S. Department of Labor in accordance with the YouthBuild Transfer Act of 2006, enacted in September 2006; and (4) the Federal-State Unemployment Compensation Program; Interstate Arrangement for Combining Employment and Wages (RIN 1205-AB51), which amends current regulations to provide that individuals can only establish Combined-Wage Claims in a State in which they have worked.

The Employment Standards Administration (ESA) has one priority regulatory initiative. ESA's initiative pertains to regulations issued under the Family and Medical Leave Act (FMLA) that were also discussed in OMB's 2001, 2002 and 2004 Reports to Congress on the Costs and Benefits of Regulations. ESA continues to review the issues raised by the decision of the U.S. Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.,* 535 U.S. 81 (2002), and the decisions of other courts, for possible revisions to the FMLA regulations.

DOL—Employment Standards Administration (ESA)

PROPOSED RULE STAGE

90. FAMILY AND MEDICAL LEAVE ACT OF 1993; CONFORM TO THE SUPREME COURT'S RAGSDALE DECISION

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 2654

CFR Citation:

29 CFR 825

Legal Deadline:

None

Abstract:

The U.S. Supreme Court, in Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81 (2002), invalidated regulatory provisions issued under the Family and Medical Leave Act (FMLA) pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Department intends to address this and decisions of other courts in proposed revisions to the FMLA regulations.

Statement of Need:

The FMLA requires covered employers to grant eligible employees up to 12 workweeks of unpaid, job-protected leave a year for specified family and

medical reasons, and to maintain group health benefits during the leave as if the employees continued to work instead of taking leave. When an eligible employee returns from FMLA leave, the employer must restore the employee to the same or an equivalent job with equivalent pay, benefits, and other conditions of employment. FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA.

The FMLA regulations require employers to designate if an employee's use of leave is counting against the employee's FMLA leave entitlement, and to notify the employee of that designation (29 CFR 825.208). Section 825.700(a) of the regulations provides that if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against the employee's 12 weeks of FMLA leave entitlement.

On March 19, 2002, the U.S. Supreme Court issued its decision in Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81 (2002). In that decision, the Court invalidated regulatory provisions pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Court ruled that 29 CFR 825.700(a) was invalid absent evidence that the employer's failure to designate the leave as FMLA leave interfered with the employee's exercise of FMLA rights. The Department intends to propose revisions to address issues raised by this and other judicial decisions.

Summary of Legal Basis:

This rule is issued pursuant to section 404 of the Family and Medical Leave Act, 29 U.S.C. 2654.

Alternatives:

After completing a review and analysis of the Supreme Court's decision in Ragsdale and other judicial decisions, regulatory alternatives may be developed for notice-and-comment rulemaking.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later time.

Timetable:

Action	Date	FR Cite
RFI	12/01/06	71 FR 69504
RFI Comment Period End	02/16/07	72 FR 3775
RFI Comment Report	06/28/07	72 FR 35550
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1215–AB35

DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

91. 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, Public Law 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, including new requirements relating to performance accountability, income eligibility for program participation, competition of national grants and services to participants.

This proposed NPRM consists of 8 subparts: subpart A—Definitions; Subpart B—Coordination with the Workforce Investment Act; subpart C—the State Plan; subpart D—Grant Application, Eligibility, and Award Requirements; 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) will be 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 amendments instituted a number of significant changes to the Senior Community Service Employment Program (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 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 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 notice of proposed rulemaking (NPRM) in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NPRM.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

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

92. YOUTHBUILD PROGRAM

Priority:

Other Significant

Legal Authority:

PL 109–281

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The YouthBuild Transfer Act of 2006, Public Law 109-281, enacted on September 22, 2006, transfers oversight and administration of the YouthBuild program from the U.S. Department of Housing and Urban Development (HUD) to the U.S. Department of Labor (DOL). The YouthBuild program model targets are high school dropouts, adjudicated youth, youth aging out of foster care, and other at-risk youth population. The program model balances in-school learning, geared toward a high school diploma or GED, and construction skills training, geared toward a career placement for the youth. DOL intends to develop regulations in response to the legislation and to guide the program implementation and management.

Statement of Need:

In 2003, the White House Task Force report on Disadvantaged Youth recommended the transfer of YouthBuild because the program is ''at its core, an employment and training program for disadvantaged youth, and will benefit from administrative oversight in DOL within the Employment & Training Administration.'' On September 22, 2006, President Bush signed into law the YouthBuild Transfer Act (Pub. L. 109-281) which transfers the YouthBuild program from the Department of Housing and Urban Development (HUD) to the Department of Labor (DOL). The Employment and Training Administration (ETA) will administer the YouthBuild program beginning in Fiscal Year (FY) 2007.

The YouthBuild program assists youth who are often significantly behind in basic skills, in obtaining a high school diploma or GED credential, advance towards post-secondary education and career pathways in construction occupations. The primary target populations for YouthBuild are adjudicated youth, youth aging out of foster care, out-of-school youth, and other at-risk populations. Youth accomplish this through the building or rehabilitation of affordable homes in their communities.

The proposed regulation will consist of general information on funding and the grant application process, the program structure including eligibility and participation, performance requirements, and Administration allowances. The regulation also references compliance with existing standards of housing, environmental protections, and safety.

Summary of Legal Basis:

These regulations are authorized by the YouthBuild Transfer Act. 29 U.S.C. 2918a (2006).

Alternatives:

The public will be afforded an opportunity to provide comments on the YouthBuild regulations when the Department publishes the proposed rule in the Federal Register.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date, if necessary.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	04/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1205–AB49

DOL—ETA

93. APPRENTICESHIP PROGRAMS, LABOR STANDARDS FOR REGISTRATION, AMENDMENT OF REGULATIONS

Priority:

Other Significant

Legal Authority:

50 Stat 664, as amended (29 USC 50; 40 USC 3145; 5 USC 301)

CFR Citation:

29 CFR 29 (Revision)

Legal Deadline:

None

Abstract:

Regulations that implement the National Apprenticeship Act at title 29 Code of Federal Regulations (CFR) part

29 have not been updated since first promulgated in 1977. The Department of Labor (DOL) proposes to update 29 CFR part 29 to ensure that the National Registered Apprenticeship System has the necessary tools and flexibility to keep pace with changes in the economy, technological advances, and corresponding workforce challenges. The proposed rule addresses those changes by both making the procedures for apprenticeship program registration more flexible and strengthening oversight of program performance, including DOL's recognition of a State Apprenticeship Agency (SAA) as the appropriate agency for registering local apprenticeship programs for Federal purposes, and DOL's de-recognition of a SAA. The proposed rule also updates part 29 to incorporate gender neutral terms and technological advances in the delivery of related technical instruction. Such revisions will enable DOL to promote apprenticeship opportunity in the 21st century while continuing to safeguard the welfare of apprentices.

Statement of Need:

Regulations for the Registered Apprenticeship System at Title 29 of the Code of Federal Regulations (CFR) Part 29 have not been updated since the Department of Labor promulgated them in 1977. The regulations must be updated to ensure that the regulatory framework for the Registered Apprenticeship System aligns with technological advancements, changes in the economy, and corresponding workforce challenges that have occurred in the past three decades. The proposed revisions will enable the Registered Apprenticeship System to continue its vital role in developing a skilled, competitive American workforce.

Summary of Legal Basis:

The regulation is authorized by Sec. 1, 50 Stat., as amended 929 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301), and Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

Alternatives:

The public will be afforded an opportunity to provide comments on the proposed revisions of the Apprenticeship Programs, Labor Standards for Registration when the Department publishes the proposed rule in Federal Register.

Anticipated Costs and Benefits:

Preliminary estimates of anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date, if appropriate.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	11/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Tribal

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DOL—ETA

94. FEDERAL–STATE UNEMPLOYMENT COMPENSATION PROGRAM; INTERSTATE ARRANGEMENT FOR COMBINING EMPLOYMENT AND WAGES

Priority:

Other Significant

Legal Authority:

26 USC 3304(a)(9)(B); Secretary's Order No. 3–2007, 72 FR 15907, April 3, 2007

CFR Citation:

20 CFR 616 (Revision)

Legal Deadline:

None

Abstract:

Section 3304(a)(9)(B) of the Federal Unemployment Tax Act requires States to participate in any arrangement specified by the Secretary of Labor for payment of unemployment compensation on the basis of combining an individual's employment and wages in two or more states. Current regulations implementing this arrangement allow individuals who have worked in more than one State to establish a combined-wage claim (CWC) in the State in which they are physically located, regardless of whether or not they have covered wages in that State. The Employment and Training Administration proposes amending current regulations to provide that individuals can establish CWC claims only in a State in which they have worked.

Statement of Need:

The current regulation for determining the State in which a CWC is established (the paying State) was issued in 1974 to replace a complicated set of tests for determining the paying State. It was intended to speed payments to eligible claimants by streamlining a manual process which relied on mailing paper forms between States. Before 1974, it could take weeks or months to determine which State should be the paying State for a particular claim. In 1974, UC claims were filed in person. Therefore, a simple solution was to make the paying State the State in which the claimant was physically present, which is where he or she would file the claim. All of the claimant's wages would be transferred to this State, whose law would govern eligibility and the amount of benefits.

An unintended consequence of this arrangement is that the paying State is not always a State in which the individual had insured wages. Since this definition was codified, a practice called ''forum shopping'' has developed. Forum shopping is where a claimant who has worked in more than one State travels to a State with a higher weekly benefit amount to file a CWC claim, even though the claimant has never worked in that State. This practice occurs because weekly benefit amounts vary greatly among States. States with higher weekly amounts have reported a number of instances where individuals traveled to these States for the purpose of filing a CWC and then immediately returned home. That cross-country travel is faster and more affordable has facilitated this practice.

The Department believes that forum shopping is undesirable for two reasons. First, it unfairly advantages claimants who worked in multiple States over those who worked in just one state. Second, it results in higher benefit charges to former employers than would otherwise occur.

Now that the technology exists to overcome the administrative difficulties that resulted in the current definition of paying State, the Department believes it is appropriate to more tightly conform the regulations to UC's character as wage insurance by making

the paying State any State where the individual earned insured wages. Most claims are now filed by telephone or via the Internet, and States can now instantly access each other's wage information and transfer wages electronically or CWCs. Information about the weekly benefit amounts and other eligibility requirements of various State laws is now easily accessible.

Summary of Legal Basis:

This regulation is authorized under section 3304(a)(9)(B) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(9)(b)).

Alternatives:

The Interstate Benefits Committee of the National Association of State Workforce Agencies met to discuss options to address ''forum shopping''. No recommendations were made.

Anticipated Costs and Benefits:

Preliminary estimates of costs and benefits have not been determined at this time and will be determined at a later date, if necessary.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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DOL—ETA

FINAL RULE STAGE

95. 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, Public Law 109-365, enacted on October 17, 2006, contains provisions amending title V of that Act, that 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 of title V requires that the Agency establish and implement new measures of performance by July 1, 2007. Section 513(b) requires that the Secretary issue definitions of indicators of performance through regulation after consultation with stakeholders. Therefore, this Interim Final Rule 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 Senior Community Service Employment Program (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 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 the Older Americans Act of 1965.

Alternatives:

The public was afforded an opportunity to provide comments on the SCSEP program changes when the Department published the Interim Final Rule (IFR) in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the IFR.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

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	09/00/08	

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)

PROPOSED RULE STAGE

96. FEE AND EXPENSE DISCLOSURES TO PARTICIPANTS IN INDIVIDUAL ACCOUNT PLANS

Priority:

Other Significant

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 Costs 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	02/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1210–AB07

DOL—EBSA

97. AMENDMENT OF STANDARDS APPLICABLE TO GENERAL STATUTORY EXEMPTION FOR SERVICES

Priority:

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

Legal Authority:

29 USC 1108(b)(2); 29 USC 1135

CFR Citation:

29 CFR 2550

Legal Deadline:

None

Abstract:

This rulemaking will amend the regulation setting forth the standards applicable to the exemption under ERISA section 408(b)(2) for contracting or making reasonable arrangements with a party in interest for office space or services (29 CFR 2550.408b-2). This amendment will ensure that plan fiduciaries are provided or have access to that information necessary to a determination of whether an arrangement for services is ''reasonable'' within the meaning of the statutory exemption.

Statement of Need:

This regulation is needed to eliminate the current uncertainty as to what information relating to services and fees plan fiduciaries must obtain and service providers must furnish for purposes of determining whether a contract for services to be rendered to a plan is reasonable.

Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Regulation 29 CFR 2550.408b-2 sets for the conditions necessary for relief, including the requirement that such contract or arrangement is reasonable.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Timetable:

Action	Date	FR Cite
NPRM	11/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1210–AB08

DOL—EBSA

98. PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE TO PARTICIPANTS IN INDIVIDUAL ACCOUNT PLANS

Priority:

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

Unfunded Mandates:

Undetermined

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 (PL 109-280) amended ERISA by adding new section 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 Costs 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
RFI	12/04/06	71 FR 70429
RFI Comment Period End	01/30/07	
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1210–AB13

DOL—EBSA

99. PERIODIC PENSION BENEFIT STATEMENTS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1025; ERISA sec 105; PL 109–280 sec 508, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

CFR Citation:

29 CFR 2520

Legal Deadline:

Final, Statutory, August 18, 2007.

Abstract:

Section 508 of the Pension Protection Act of 2006 (PPA) amended section 105 of ERISA to require plans that are subject to ERISA to automatically provide participants and certain beneficiaries with individual pension benefit statements. Generally, defined benefit plans must provide the statement every three years, with an annual alternative. Individual account plans that permit participant direction must provide the statement quarterly and individual account plans that do not permit participant direction must provide the statement annually. The PPA directed the Department of Labor to provide a model statement within one year of enactment of the statute and the Department has been given interim final rulemaking authority.

Statement of Need:

This rulemaking is needed to implement the new pension benefit statement requirements in section 105 of ERISA, with respect to which Congress directed the Secretary of Labor to issue model benefit statements.

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 508(b)(2) of the PPA provides that the Secretary may promulgate any interim final rules as the Secretary determines appropriate to carry out the new pension benefit statement requirements.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Timetable:

Action	Date	FR Cite
NPRM	04/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1210–AB20

DOL—EBSA

FINAL RULE STAGE

100. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171 to 1172; 29 USC 1191c

CFR Citation:

29 CFR 2590

Legal Deadline:

None

Abstract:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA, the Internal Revenue Code, and the Public Health Service Act with parallel provisions designed to improve health care access, portability and renewability. The Departments of Labor, the Treasury, and the Health and Human Services are mutually dependent due to shared interpretive jurisdiction and are proceeding concurrently to provide additional regulatory guidance regarding these provisions.

Statement of Need:

In general, the health care portability provisions in part 7 of ERISA provide for increased portability and availability of group health coverage through limitations on the imposition of any preexisting condition exclusion and special enrollment rights in group health plans after loss of other health coverage or a life event. Plan sponsors, administrators and participants need guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Part 7 of ERISA specifies the portability and other requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Anticipated Costs and Benefits:

Costs and benefits of regulatory alternatives were estimated and taken into account in developing the proposed rule and published in the Federal Register.

Risks:

Failure to provide guidance concerning part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Effective	06/07/97	
Interim Final Rule Comment Period End	07/07/97	
Request for Information	10/25/99	64 FR 57520
Comment Period End	01/25/00	
NPRM	12/30/04	69 FR 78800
Request for Information	12/30/04	69 FR 78825
Final Rule	12/30/04	69 FR 78720
Final Action Effective	02/28/05	
Request for Information/ Comment Period End	03/30/05	
NPRM Comment Period End	03/30/05	
Final Action	06/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—EBSA

101. SECTION 404 REGULATION—DEFAULT INVESTMENT ALTERNATIVES UNDER PARTICIPANT DIRECTED INDIVIDUAL ACCOUNT PLANS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 1104(c)(5); 29 USC 1135

CFR Citation:

29 CFR 2550

Legal Deadline:

Final, Statutory, February 19, 2007.

Abstract:

This rulemaking would establish a relief under which a fiduciary of a participant directed individual account

pension plan will be deemed to have satisfied his or her fiduciary responsibilities with respect to investment and asset allocation decisions made on behalf of individual participants and beneficiaries who fail to give investment direction. This rulemaking will describe the types of investments that qualify as default investments in order to obtain fiduciary relief. As with other investment alternatives available under the plan, fiduciaries will continue to be responsible for the prudent selection and monitoring of qualifying default investment alternatives.

Statement of Need:

Section 404(c)(1) of ERISA provides that, where a participant or beneficiary of an employee pension benefit plan exercises control over assets in an individual account maintained for him or her under the plan, the participant or beneficiary is not considered a fiduciary by reason of his or her exercise of control and other plan fiduciaries are relieved of liability under part 4 of title I of ERISA for the results of such exercise of control. As part of the Pension Protection Act of 2006, section 404(c) was amended to provide relief accorded by section 404(c)(1) to fiduciaries that invest participant assets in certain types of investment alternatives in the absence of participant investment direction. The Pension Protection Act directed the Department to issue final default investment regulations under section 404(c)(5)(A) of ERISA no later than 6 months after the date of enactment of the Pension Protection Act. This rulemaking responds to a need on the part of plan sponsors and fiduciaries for guidance on the selection of default investments for plan participants who fail to make an investment election. Such guidance would also improve retirement savings for millions of American workers.

Summary of Legal Basis:

Promulgation of this regulation is authorized by sections 505 and 404(c) of ERISA.

Alternatives:

Regulatory alternatives were considered in developing the proposed rule and published in the Federal Register.

Anticipated Costs and Benefits:

Costs and benefits of regulatory alternatives were estimated and taken into account in developing the proposed rule and published in the Federal Register.

Risks:

Failure to provide guidance on default investment options for individual account plans may result in diminished retirement savings for the many participants who fail to make an investment election with regard to their accounts. In addition, failure to issue final default investment regulations under section 404(c)(5)(A) of ERISA no later than 6 months after the date of enactment of the Pension Protection Act would contravene section 624 of the Pension Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	09/27/06	71 FR 56806
NPRM Comment Period End	11/13/06	
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—Mine Safety and Health Administration (MSHA)

PRERULE STAGE

102. CONTINUOUS PERSONAL DUST MONITORS

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

On June 24, 2003, MSHA announced that all work on its Plan Verification and Single-Sample Respirable Coal Mine Dust final rules would cease and the rulemaking record would remain open in order to obtain information concerning Continuous Personal Dust Monitors (CPDMs) currently being tested by NIOSH. A Federal Register notice was published on July 3, 2003, extending the comment periods indefinitely. NIOSH issued a report on the CPDM in September 2006, and another report concerning test results in June 2007. MSHA will solicit public input on potential applications of this new monitoring technology in coal mines.

Statement of Need:

Respirable coal mine dust levels in this country are significantly lower than they were over two decades ago. Despite this progress, there continues to be concern about our current sampling program and MSHA's ability to accurately measure and maintain respirable coal mine dust at or below the applicable standard. The new CPDM, unlike the technology that has been employed since 1970 to measure concentrations of respirable coal mine dust, offers the capability to provide accurate and timely continuous readings of the dust level during a shift. Responses to this Request for Information (RFI) will assist the Agency in determining: (1) how to deploy the CPDM in coal mines and utilize its coal dust monitoring capability to further improve miner health protection from disabling occupational lung disease; and (2) the regulatory and non-regulatory actions that would promote its use for exposure monitoring and control.

Summary of Legal Basis:

This RFI is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

This RFI would explore options for amending and improving health protection from that afforded by the existing standards.

Anticipated Costs and Benefits:

MSHA will develop a preliminary economic analysis to accompany any proposed rule that may be developed.

Risks:

Respirable coal dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause black lung, which is potentially

disabling and can cause death. MSHA is pursuing both regulatory and nonregulatory actions to eliminate this disease through the control of coal mine respirable dust levels in mines and reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
Request for Information	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.msha.gov/regsinfo.htm
www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1219–AB14, Related to 1219–AB18

RIN: 1219–AB48

DOL—MSHA

PROPOSED RULE STAGE

103. DIESEL PARTICULATE MATTER: CONVERSION FACTOR FROM TOTAL CARBON TO ELEMENTAL CARBON

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813

CFR Citation:

30 CFR 57

Legal Deadline:

None

Abstract:

On May, 18, 2006, MSHA promulgated its final rule on Diesel Particulate Matter (DPM) Exposure of Underground Metal and Nonmetal Miners (71 FR 28924), phasing in the final diesel particulate matter (DPM) exposure limit over a 2-year period, with the final limit of 160 TC micrograms of total Carbon per cubic meter of air to become effective on May 20, 2008. The DPM exposure limit is expressed in terms of a ''TC'' or ''total carbon'' limit. MSHA is initiating a new rulemaking to establish the most appropriate measure for determining compliance with the final DPM exposure limit. Using the latest available evidence, MSHA will be examining the most appropriate conversion factor for a comparable elemental carbon (EC) limit. An EC measurement ensures that a TC exposure limit is valid and not the result of environmental interferences.

Statement of Need:

The May 18, 2006 final rule at 30 CFR 57.5060(b)(3) requires mine operators to ensure that the miners' personal exposures to DPM in an underground mine do not exceed an airborne concentration of 160 micrograms of total carbon per cubic meter of air during an average 8-hour equivalent full shift, effective May 20, 2008. This rulemaking proposes the EC conversion factor for the 160 TC limit, which would allow mine operators to implement the requirements of the May 18, 2006 final rule.

Summary of Legal Basis:

Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

MSHA will also analyze and evaluate options to convert the final PEL of 160 ug/m3 of TC to a comparable final EC-based PEL.

Anticipated Costs and Benefits:

MSHA will prepare estimates of the anticipated costs and benefits associated with the selected conversion factor.

Risks:

A number of epidemiological studies have found that exposure to diesel exhaust presents potential health risks to miners. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mining environment, occupational exposure to diesel exhaust may present a greater hazard due to ventilation limitations and the presence of other airborne contaminants, such as toxic mine dusts or mine gases. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposure to diesel particulate matter. Proceeding with a separate rulemaking to determine the correct TC to EC conversion factor for the phased-in final limits will more effectively reduce miners' exposures to DPM.

Timetable:

Action	Date	FR Cite
NPRM	11/00/07	
Final Action	05/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.msha.gov/regsinfo.htm
www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1219–AB55

DOL—MSHA

FINAL RULE STAGE

104. ASBESTOS EXPOSURE LIMIT

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 71

Legal Deadline:

None

Abstract:

MSHA's permissible exposure limit (PEL) for asbestos applies to surface (30 CFR part 56) and underground (30 CFR part 57) metal and nonmetal mines and to surface coal mines and surface areas of underground coal mines (30 CFR part 71). MSHA proposed a rule to lower the asbestos PELs to an 8-hour time-weighted average of 0.1 fiber per cubic centimeter (f/cc) of air and the excursion limit to 1.0 f/cc of air as averaged over a 30 minute sampling period, which would reduce asbestos-induced occupational disease among miners. The proposed PELs are the same as the Occupational Safety and Health Administration (OSHA's) PELs.

Statement of Need:

Current scientific data indicate that MSHA's existing asbestos PEL is not sufficiently protective of miners' health. MSHA's asbestos regulations date to 1967 and are based on the Bureau of Mines (MSHA's predecessor) standard of 5 million particles per cubic foot of air (mppcf). Other Federal agencies have addressed this issue by lowering their asbestos PELs. These lower limits reflect new information and studies that compare asbestos-related disease risk to the number of asbestos-exposed workers.

Summary of Legal Basis:

Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

The Agency increased sampling to determine miners' exposure levels to asbestos. In early 2000, MSHA began an extensive sampling effort at operations with potential asbestos exposure including taking samples at all existing vermiculite, taconite, talc, and other mines to determine the level of asbestos present. While sampling, MSHA staff also discussed various potential hazards of asbestos with miners and mine operators and the types of preventive measures that could be implemented to reduce exposures.

The final rule will be based on comments and testimony to the proposed rule as well as MSHA sampling and inspection experience.

Anticipated Costs and Benefits:

The anticipated costs of the proposed rule to the mining industry would be approximately $136,000 annually. Of this total amount, the cost to the metal and nonmetal mining sector would be $91,500, and the cost to the coal mining sector would be $44,600.

MSHA estimates that between 1 and 19 deaths could be prevented over the next 65 years, which represents approximately 9 to 84 percent of all occupationally related deaths caused by asbestos exposure. Under the proposed exposure limit, approximately 1 out of every 1,000 miners will avoid the risk of death from asbestosis, lung cancer, mesothelioma, or other forms of cancer attributed to asbestos exposure.

Risks:

Miners could be exposed to the hazards of asbestos at mine operations where ore body contains asbestos. In addition, miners could be exposed to asbestos at facilities that install, remove or work with material containing asbestos. Overexposure to asbestos causes asbestosis, lung cancer, mesothelioma, and other forms of cancer.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/02	67 FR 15134
Notice of Change to Public Meetings	04/18/02	67 FR 19140
ANPRM Comment Period End	06/27/02	67 FR 15134
NPRM	07/29/05	70 FR 42950
NPRM Comment Period End	11/21/05	70 FR 43950
Public Hearing	10/18/05	70 FR 43950
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

The Office of the Inspector General issued a report entitled, ''Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana,'' in March 2001.

URL For More Information:

www.msha.gov/regsinfo.htm

URL For Public Comments:

www.regulations.gov

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RIN: 1219–AB24

DOL—MSHA

105. SEALING OF ABANDONED AREAS

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 75.335

Legal Deadline:

Final, Statutory, December 15, 2007.

Abstract:

The Mine Safety and Health Administration (MSHA) published an emergency temporary standard (ETS) on May 22, 2007. Under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) the ETS became effective immediately; however, MSHA must publish a final rule no later than nine months after publication of the ETS. In addition, section 10 of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) requires the Secretary of Labor to finalize mandatory standards relating to the sealing of abandoned areas in underground coal mines no later than December 15, 2007. Therefore, MSHA is issuing a final rule. This final rule will include new comprehensive standards for underground coal mines regarding seal design approval, strength and installation approval, construction, maintenance and repair, sampling and monitoring, training, and recordkeeping, all of which are necessary to protect miners from hazards of sealed areas. It also implements the requirements of section 10 of the MINER Act by increasing the level of overpressure for new seals.

Statement of Need:

MSHA issued the ETS in response to the grave danger that miners face when

underground seals separating abandoned areas from active workings fail. However, as the ETS is effective until superseded by a mandatory standard, which MSHA shall promulgate within 9 months after publication of the ETS, the ETS provides miners continued critical protection that strengthens the requirement for the design, construction, maintenance, and repair of seals, as well as requirements for sampling, monitoring, and controlling atmospheres behind seals and providing training to miners constructing or repairing seals.

Summary of Legal Basis:

Promulgation of this regulation is authorized by section 101 of the Mine Act and by section 10 of the MINER Act.

Alternatives:

This final rule would provide: (1) the safety protections afforded to miners by the existing ETS; and (2) additional protections through experience gained through the rule and comments received during rulemaking. MSHA has analyzed regulatory alternatives in its regulatory economic analysis (REA) in support of the ETS. MSHA prepared any analysis of the cost of two alternatives regarding seal application approval: (1) certification of a professional engineer along with supporting documentation; and (2) design based on actual explosion testing. MSHA also considered and included a discussion of alternatives in the preamble to the ETS without a cost analysis. MSHA requested comments on alternatives including seal design, sampling, construction, and seal strength.

Anticipated Costs and Benefits:

The anticipated costs and benefits of the final rule focus on seals that would actively monitored to maintain an inert atmosphere and seals that would be strengthened to better withstand explosions, both of which would reduce injuries and fatalities. MSHA will prepare a regulatory economic analysis for the final rules.

Risks:

Underground coal mines are dynamic work environments in which the working conditions can change rapidly. Caved, mined-out areas may contain coal dust and accumulated gas. This gas can be ignited by rock falls, lightning and, in some instances, fires started by spontaneous combustion. Seals are intended to isolate the environment within the sealed area from the active workings of the mine, and to prevent an explosion that may occur on the inby side of the seal from propagating to the outby side of the seal where miners work or travel. Seals must therefore be designed to withstand elevated pressures and also to prevent the sealed atmosphere from reaching the explosive range. Adequate seals are crucial to contain explosions and prevent potentially explosive or toxic gases from migrating into the active working areas of underground coal mines. Miners rely on seals to protect them from the potentially hazardous environments within the sealed area. Recent mine explosions have demonstrated that improvements in seals are needed.

Timetable:

Action	Date	FR Cite
Emergency Temporary Standard	05/22/07	72 FR 28796
Extension of Comment Period	06/25/07	72 FR 34609
Emergency Temporary Standard (ETS) Comment Period Extended to 9/17/07	08/14/07	72 FR 45358
Public Hearing	07/10/07	72 FR 28796
Public Hearing	07/12/07	72 FR 28796
Public Hearing	07/17/07	72 FR 28796
Public Hearing	07/19/07	72 FR 28796
Comment Period Ends	08/17/07	72 FR 34609
Comment Period Extended	09/17/07	72 FR 45358
Final Action	02/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.msha.gov/regsinfo.htm
www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1219–AB52

DOL—MSHA

106. MINE RESCUE TEAMS

Priority:

Other Significant

Legal Authority:

30 USC 957; 30 USC 811; 30 USC 825

CFR Citation:

30 CFR 49

Legal Deadline:

Final, Statutory, December 15, 2007.

Abstract:

On June 15, 2006, Public Law 109-236 or the Mine Improvement and New Emergency Response Act (MINER Act) of 2006 became effective. This rulemaking will implement section 4 of the MINER Act by amending existing standards and developing new standards to provide for certification, composition, and training requirements for mine rescue teams in underground coal mines. Mine rescue team members also must be at the mine within an hour from the mine rescue station, requirements for mine rescue teams are set forth in 30 CFR part 49.

Statement of Need:

Section 4 of the MINER Act requires the Secretary of Labor to finalize mandatory health and safety standards relating to mine rescue teams in underground coal mines no later than December 15, 2007. Existing standards require properly trained mine rescue teams to be available within 2 hours from the mine rescue station during mine emergencies. The MINER Act requires team members to have underground coal mining experience and requires teams to participate in mine rescue contests. The MINER Act also provides for multi-employer teams, State-sponsored teams, and contract teams to ensure the availability of qualified mine rescue teams.

Summary of Legal Basis:

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 and the MINER Act of 2006.

Alternatives:

As required by the MINER Act, MSHA must publish a regulation on mine rescue teams.

Anticipated Costs and Benefits:

The proposed rule would increase safety and improve effectiveness of mine rescue teams. MSHA estimates that the yearly cost of the proposed rule would be $3.0 million for the underground coal mine industry and $0.1 million for State-sponsored mine rescue teams.

Risks:

Mine explosions at the Sago Mine and Darby No. 1 Mine and a mine fire at the Alma Mine in 2006 resulted in the deaths of 19 underground coal miners. Explosions, fires, and the migration of potentially explosive methane-air mixtures from worked-out areas to the working areas of an underground coal mine endanger all miners who work in the mine, including potential rescuers.

Timetable:

Action	Date	FR Cite
NPRM	09/06/07	72 FR 51320
NPRM Comment Period End	11/09/07	
Final Action	12/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State

URL For More Information:

www.msha.gov/regsinfo.htm
www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1219–AB53

DOL—Occupational Safety and Health Administration (OSHA)

PRERULE STAGE

107. 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 a 50µg/m3 exposure limit 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 Costs 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	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 1218–AB70

DOL—OSHA

PROPOSED RULE STAGE

108. CRANES AND DERRICKS

Priority:

Other 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 Costs 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 Comment 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	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 1218–AC01

DOL—OSHA

109. 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 (US), 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. US 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 Costs 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	11/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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BILLING CODE 4510–23–S

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 disparate 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 acquisition 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 scheduling of rulemakings 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. 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 are a few examples of this.

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 if 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 rules are either completed in a timely manner or that 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. Of special importance during this fiscal year will be the continued implementation of the Department's response to the Administration's initiative on good guidance practices and other matters. These were adopted in amendments to Executive Order (E.O.) 12866(amended by E.O. 13422) and an OMB Bulletin (07-02). 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.

During fiscal year 2008, OST will continue its efforts to complete work on a final rule that would establish accessibility requirements for vessels which involves complex issues unlike those affecting land transportation (2105-AB87). This final rule would make passenger vessels accessible to, and usable by, individuals with disabilities. OST will also continue its focus on completing a final rule to revise its Air Carrier Access Act regulations (2105-AC97). This rule would add provisions concerning foreign air carriers, use of oxygen by passengers, and accommodations for deaf and hard of hearing passengers, as well as updating the entire rule.

OST also is helping to 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 2007-2008 include:

- Automatic Dependent Surveillance - Broadcast (ADS-B) Out equipment (2120-AI92);
- Part 121 Pilot Age Limit (2120-AJ01);
- Transport Airplane Fuel Tank Flammability Reduction (2120-AI23); and
- Aging Aircraft Program - Widespread Fatigue Damage (2120-AI05).

The FAA developed the Aging Airplane Program to address structural and non-structural system safety issues that may arise as airplanes age and in response to:

(1) Airplanes being operated beyond their original design service goals;

(2) The 1988 Aloha Boeing 737 accident; and

(3) The Aging Airplane Safety Act of 1991.

Other significant rulemakings included in the Aging Airplane Program are:

(1) Enhanced Airworthiness Program for Aging Systems/Fuel Tank Safety; and

(2) Widespread Fatigue Damage Program.

The FAA also is taking actions to advance the Department's congestion initiative. The FAA is currently working on a congestion management rule for LaGuardia Airport (2120-AI70) 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) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (2125-AF14);

(2) Design Build (2125-AF12);

(3) Express Lane Demonstration Project (2125-AF07);

(4) Projects of National and Regional Significance (2125-AF08);

(5) Temporary Traffic Control Devices (2125-AF10); and

(6) 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 the recently enacted legislation.

Finally, the FHWA continues to work to complete the rulemaking that proposes to amend 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 drivers, carriers, States, and others that create improved safety conditions and operating practices.

FMCSA continues to develop regulations both mandated by Congress and initiated by the Agency to increase safety. FMCSA has completed all rulemakings required under the Motor Carrier Safety Improvement Act of 1999, except ''Medical Certification as Part of the Commercial Driver's License'' (RIN 2126-AA10), which is among its highest priorities and is included in the Agency's Regulatory Plan. FMCSA published a notice of proposed rulemaking (NPRM) on this rule in November 2006 and is currently developing a final rule. Additionally, FMCSA has made progress in addressing the significant number of rules required by its most recent reauthorization legislation, SAFETEA-LU. The Agency is committed to promulgating these additional rules while still making progress on a large and challenging rulemaking agenda. FMCSA has completed several SAFETEA-LU rules, including ''Commercial Driver's License Standards; School Bus Endorsement'' (RIN 2126-AA94), and an ''omnibus'' rule (RIN 2126-AA96) that implements more than a dozen SAFETEA-LU provisions. FMCSA has also published notices of proposed rulemaking on the SAFETEA-LU-required rules: ''Brokers of Household Goods Transportation by Motor Vehicle'' (RIN 2126-AA84) and ''Intermodal Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment'' (RIN 2126-AA86).

FMCSA's Regulatory Plan includes six rules that are high priority for the Agency because they would have a positive impact on safety. Included in the Regulatory Plan are: ''Medical Certification as Part of the Commercial Driver's License'' (RIN 2126-AA10), ''New Entrant Safety Assurance Process'' (RIN 2126-AA59), ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment'' (RIN 2126-AA86), ''Electronic On-Board Recorders for Hours-of-Service Compliance'' (RIN 2126-AA89), ''National Registry of Certified Medical Examiners'' (RIN 2126-AA97), and ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (RIN 2126-AB02).

Together these priority rules will help to substantially improve commercial motor vehicle (CMV) safety on our nation's highways in a variety of ways. The Medical Certification as Part of the Commercial Driver's License rulemaking (RIN 2126-AA10) would serve as a significant first step in a comprehensive update of how FMCSA addresses the medical condition of drivers who operate CMVs. The New Entrant Safety Assurance Process rule (RIN 2126-AA59) would raise the standard of compliance for passing the new entrant safety audit. The National Registry rulemaking (RIN 2126-AA97) would provide for a database of medical examiners and will establish training, testing, and certification standards for the medical examiners who certify that interstate CMV drivers meet the FMCSA's physical qualifications standards. The Electronic On-Board Recorders notice of proposed rulemaking (RIN 2126-AA89), which was published in January 2007, would implement performance standards for the use of electronic on-board recording devices and ensure that these standards reflect state-of-the-art information and management technologies. The Commercial Driver's License Testing and Learner's Permit rulemaking (RIN 2126-AB02) will revise commercial driver's license testing and require new minimum Federal standards for States to issue commercial learner's permits.

In order to manage the significant number of rules on its agenda, FMCSA has revised its rulemaking procedures to increase oversight and involvement by senior agency leaders and to add structure and accountability to the rulemaking process. FMCSA continues to monitor the process and make changes when additional issues are identified.

The Agency continues work on its Comprehensive Safety Analysis 2010 (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 results 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 implementation of CSA 2010 commences with the rulemaking ''Carrier Safety Fitness Determinations'' (RIN 2126-AB11).

In addition, under the Manufacturing Regulatory Reform Agenda, FMCSA published a final rule this year on ''Parts and Accessories Necessary for Safe Operations; Surge Brake Requirements'' (RIN 2126-AA91). This rulemaking allows the use of automatic hydraulic inertia brake systems (surge brakes) on trailers operated in interstate commerce.

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. Title X, Subtitle C, Sec. 10301, section 30128 (d) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (SAFETEA-LU) calls for a final rule to upgrade the roof crush standard, FMVSS No. 216, by July 2008. A notice of proposed rulemaking was published in December 2005 for upgraded roof crush resistance.

In FY 2008, NHTSA will publish a final rule that would increase the stringency of stopping distance requirements for truck tractors equipped with air brake systems, FMVSS No. 121. Such improvements would reduce the stopping distance disparity with light vehicles, and would result in fewer deaths and injuries and reduce property damage due to fewer crashes between truck tractors and light vehicles. A notice of proposed rulemaking was published in December 2005 for heavy truck stopping distances.

Also in 2008, light truck corporate average fuel economy (CAFE) standards for Model Years 2012 and beyond will be published, in accordance with statutory requirements and Executive Order No. 13432.

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.

In FY 2008, FRA plans to publish a final rule that would provide Regulatory Relief for Electronically Controlled Pneumatic Brake System Implementation (2130-AB84). This rulemaking would establish criteria for operating trains equipped with Electronically Controlled Pneumatic Brake System technology.

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 will include 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.

FTA participates in the Department's congestion initiative. Current rulemakings that will advance this initiative include New Starts/Small Starts (2132-AA81). FTA is also working with FHWA to complete the rulemaking for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (2132-AA83). FTA is planning to issue a contractor performance rule (2132-AA96).

Maritime Administration (MARAD)

MARAD administers Federal laws and programs designed to promote and maintain a U.S. merchant marine capable of meeting the Nation's shipping needs for both national

security and domestic and foreign commerce.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility of ensuring the availability of adequate and efficient water transportation services for American shippers and consumers. To advance these objectives, MARAD issues regulations, which are principally administrative and interpretive in nature, when appropriate, in order to provide a net benefit to the U.S. maritime industry.

MARAD's regulatory priorities a re to update existing regulations and to reduce unnecessary burden on the public.

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 pipeline and other transportation modes. 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, in particular its enterprise approach, to assess data; develop a consensus approach to standard setting, and regulation if necessary; 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.

Over the coming year, PHMSA will 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. For example, to enhance aviation safety, PHMSA plans to propose enhanced packaging, hazard communication, and handling requirements for the transportation of batteries of all types, in order to reduce fire risk caused by short-circuiting or accidental activation of batteries contained in equipment (2137-AE27). To address the risks posed by the bulk transportation of high-risk hazardous materials, PHMSA is working with FRA to develop 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, and is supporting efforts to develop effective industry practices for safe loading and unloading of bulk hazmat containers (2130-AB69). Additionally, to address the need for an overall national program to enhance rail security, we are working with FRA and TSA to address the safe and secure transportation of hazardous materials transported in commerce by rail. Specifically, we would require rail carriers to compile annual data on certain shipments of explosive, toxic by inhalation, and radioactive materials, use the data to analyze safety and security risks along rail routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. We would also clarify rail carriers' responsibility to address in their security plans issues related to en route storage and delays in transit. 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).

A major priority for the hazardous materials program will be to eliminate regulatory barriers to the introduction and use of new technologies, while ensuring the continued safety of the Nation's transportation system. A major challenge for PHMSA is to facilitate technological development while ensuring the safe transportation of hazardous materials that are essential to such development. To this end, PHMSA is leading an international effort to develop standards for the safe transport of fuel cell cartridges and systems—an essential step in the market introduction of these emerging alternative fuel technologies—and expects to propose to permit airline passengers to hand-carry small, consumer application fuel cell systems aboard passenger planes provided the fuel cell systems meet certain performance standards (2137-AE19).

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. In particular, PHMSA is considering revisions to the list of hazardous materials that require development and implementation of a security plan to address security risks during transportation in commerce. PHMSA expects to propose to include only those materials that pose a significant security threat in transportation; narrowing the list will reduce regulatory burdens on both shippers and carriers while continuing security planning requirements for high-risk materials (2137-AE22).

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. This increased attention includes additional physical inspection. Because each distribution pipeline is located in the populated areas it serves, the operator of the distribution pipeline would include the entire pipeline in its integrity management program. The intent is to reduce the overall risk associated with operation (2137-AE15).

In addition, PHMSA will continue work on addressing currently unregulated rural pipelines that operate at low stress levels. PHMSA plans to extend safety regulation to pipelines in environmentally sensitive areas and began collecting data on the remaining rural pipelines. PHMSA will also consider extending the regulations applicable to the remaining unregulated rural low stress pipelines (2137-AD98).

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 2007-8 DOT REGULATORY PLAN

This chart does not account for non-quantifiable benefits, which are often substantial.

Agency/RIN Number	Title	Stage	Quantifiable Costs Discounted 2006 $ (Millions)	Quantifiable Benefits Discounted 2006 $ (Millions)
OST				
2105-AC97	Nondiscrimination on the Basis of Disability in Air Travel	FR 05/08	1,212	2,077
Total for OST			**1,212**	**2,077**
FAA				
2120-AI05	Aging Aircraft Program (Widespread Fatigue Damage)	FR 05/08	537	1,214
2120-AI23	Transport Airplane Fuel Tank Flammability Reduction	FR 11/07	1,145	1,132
2120-AI92	Automatic Dependent Surveillance-Broadcast (ADS-B) Out	NPRM 10/07	2,433	2,018
2120-AJ01	Part 121 Pilot Age Limit	NPRM 01/08	(no estimate yet)	(no estimate yet)
Total for FAA			**4,115**	**4,364**
FMCSA				
2126-AA10	Medical Certification Requirements as Part of the CDL	FR 04/08	61	83
2126-AA59	New Entrant Safety Assurance Process	FR 03/08	490	3,900
2126-AA86	Requirements of Intermodal Equipment Operators and Motor Carriers and Drivers Operating Intermodal Equipment	FR 04/08	147-241	82-258
2126-AA89	Electronic On-Board Recorders	FR 09/08	190-280	200
2126-AA97	National Registry of Certified Medical Examiners	NPRM 12/07	860	1014
2126-AB02	Commercial Driver's Licenses and Learner's Permits	NPRM 12/07	26	96
Total for FMCSA			**1,774–1,957**	**5,195–5,371**
NHTSA				

Agency/RIN Number	Title	Stage	Quantifiable Costs Discounted 2006 $ (Millions)	Quantifiable Benefits Discounted 2006 $ (Millions)
2127-AG51	Roof Crush Resistance	FR 07/08	96	72-138
2127-AJ37	Reduced Stopping Distance Requirements for Truck Tractors	FR 01/08	52	847–1,031
2127-AK08	Light Truck Corporate Average Fuel Economy Standards, Model Years 2012 and Beyond	NPRM 11/07 Final Rule 11/08	(no estimate yet)	(no estimate yet)
Total for NHTSA			**148**	**919–1,169**
FRA				
2130-AB84	Regulatory Relief for Electronically Controlled Pneumatic Brake System Implementation	FR 08/08	1,520	3,262
Total for FRA			**1,520**	**3,262**
FTA				
2132-AA81	New Small/Starts	NPRM 10/07	(no estimate yet)	(no estimate yet)
Total for FTA			**---**	**---**
PHMSA				
2137-AE02	Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments	FR 12/07	17	(no estimate; 1 accident = 126)
2137-AE15	Pipeline Safety: Distribution Integrity Management	NPRM 12/07	1,484	2.691
Total for PHMSA			**1,501**	**2,691**
TOTAL FOR DOT			**10,270 - 10,453**	**18,508 - 18,934**

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 $3.0 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.
The PHMSA and DOT total estimates include the costs for RIN 2137-AE02, but not the benefits, since the agency has not calculated the estimated benefits at this time.

DOT—Office of the Secretary (OST)

FINAL RULE STAGE

110. +NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Priority:

Other Significant

Legal Authority:

14 USC 41702; 14 USC 41705; 14 USC 41712

CFR Citation:

14 CFR 382

Legal Deadline:

None

Abstract:

This rulemaking would add coverage under the Air Carrier Access Act to foreign air carriers and comprehensively update and revise 14 CFR Part 382. It would also clarify or propose new provisions in such areas as movable aisle armrests, preboarding announcements, and accessibility of carrier web sites.

Statement of Need:

This rule is needed to ensure nondiscriminatory policies and acessible services by air carriers, including foreign air carriers. It is also needed to improve accomdations for passengers who use medical oxygen or have impaired hearing.

Summary of Legal Basis:

Air Carrier Access Act.

Alternatives:

Concerning foreign carriers, the main alternative (inadequate) would have been to rely on foreign policies and rules. With respect to oxygen, the main alternative would be to simply require carriers to allow passengers to bring on their own portable oxygen containers or to also allow carriers to provide oxygen to passengers who need it. With respect to accommodations for deaf and hard of hearing passengers, the main alternative would be to not change the current rule, which has fewer such accommodations.

Anticipated Costs and Benefits:

Present value benefits in 2006 dollars, for the combined ACAA final rule (foreign carriers, oxygen, and deaf and hard of hearing) are estimated at $2077.0m. Present value costs are

estimated at $1212.4m, resulting in estimated net benefits of $864.6m.

Risks:

The risks of not taking regulatory action would be to allow barriers to air travel by people with disabilities to remain in place.

Timetable:

Action	Date	FR Cite
NPRM	11/04/04	69 FR 64364
Comment Period Extended	01/28/05	70 FR 4058
NPRM Comment Period End	02/02/05	
Comment Period End	03/04/05	
Final Rule	01/00/08	

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–AC97

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

111. +AUTOMATIC DEPENDENT SURVEILLANCE—BROADCAST (ADS–B) EQUIPAGE MANDATE TO SUPPORT AIR TRAFFIC CONTROL SERVICE

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 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 46506–46507; 49 USC 47122; 49 USC 47508; 49 USC 47528–47531; 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 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 Costs and Benefits:

The estimated cost of this proposed rule ranges from a low of $1.31 billion to a high of $7.51 billion dollars. 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 Comment Period End	01/03/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Project number ATO-06-552-R.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

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RIN: 2120–AI92

DOT—FAA

112. +PILOT AGE LIMIT

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701–44702; 49 USC 44705; 49 USC 44709–44711; 49 USC 44713; 49 USC 44716–44717; 49 USC 44722; 49 USC 44901; 49 USC 44903–44904; 49 USC 44912; 49 USC 46105

CFR Citation:

14 CFR 121

Legal Deadline:

None

Abstract:

This rulemaking would raise the upper age limit for pilots serving in air carrier operations (14 CFR part 121) to age 65, as long as the other pilot at the controls is under age 60. In addition, and to conform to ICAO standards, the FAA would make a minor amendment to airmen certification rules to require that air carrier pilots over age 60 hold an FAA first-class medical certificate.

Statement of Need:

In November 2006, the International Civil Aviation Organization (ICAO) adopted Amendment 167 to increase the ''upper age limit'' for pilots operating in ''international commercial air transport operations'' to age 65, provided the other pilot is under age 60. The rulemaking would make the FAA's upper age limit for pilots consistent with ICAO's new standard.

Summary of Legal Basis:

This rulemaking is proposed under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

Alternatives:

The FAA is currently reviewing alternatives to the rulemaking.

Anticipated Costs and Benefits:

The FAA is currently developing the costs and benefits of this rulemaking.

Risks:

In accordance with our treaty obligations under Article 33 to the Convention on International Civil Aviation, we have changed the operations specifications for foreign air carriers (that do not fly N-registered aircraft) in order to comply with the new International Civil Aviation Organization standards. This does have the effect of allowing some pilots older than age 60 who are employed by foreign air carriers to operate within the United States. This creates an inconsistency with U.S. certificated pilots. We expect that this inconsistency will be resolved by the ongoing rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Cost estimates are not yet available. They will be included when the draft regulatory evaluation is completed. Docket number for project is FAA-2006-26139.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2120–AJ01

DOT—FAA

FINAL RULE STAGE

113. +AGING AIRCRAFT PROGRAM (WIDESPREAD FATIGUE DAMAGE)

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701–44702; 49 USC 44705; 49 USC 44709–44711; 49 USC 44713; 44 USC 44716–44717; 49 USC 44722; 49 USC 46105; 49 USC 1372; Pub L 107–71 sec 104; . . .

CFR Citation:

14 CFR 121; 14 CFR 129

Legal Deadline:

None

Abstract:

This rulemaking would require design approval holders to establish limits of validity (LOVs) of the engineering data that support the maintenance programs for certain transport category airplanes, and it would require them to determine if maintenance actions are needed to prevent widespread fatigue damage before an airplane reaches its LOV. This rulemaking would require operators of any affected airplane to incorporate the LOV and any necessary service information into their maintenance programs. This rulemaking would also prohibit operation of an affected airplane beyond the operational limit, unless an operator has incorporated an extended LOV and any necessary service information into its maintenance program.

Statement of Need:

History has shown that widespread fatigue damage (WFD) is a significant safety risk for transport category airplanes. The Aloha B-737 accident in 1988 showed FAA and industry that WFD could be a problem that could lead to catastrophic failure of airplane structure. Numerous widespread fatigue damage incidents since then have confirmed that it is a threat common to all aging airplanes. Because widespread fatigue damage results from the interaction of many small cracks, existing inspection methods are inadequate to reliably detect and prevent it.

Summary of Legal Basis:

Section 44701, Title 49 of the United States Code states that the Administrator shall promote safety of flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety.

Alternatives:

The FAA acknowledges the proposed rule may have a significant impact on a substantial number of small entities. We conclude the current proposal is the preferred alternative because it provides for a common WFD system for all operators who fly in the same airspace under the same operating environment.

We considered the following alternatives:

1. Exclude small entities

2. Extend the compliance deadline for small entities

3. Establish lesser technical requirements for small entities

4. Expand the requirements to cover more airplanes

Anticipated Costs and Benefits:

The cost of this proposal is $358.1 million. The benefits of this proposal consist of $654 million in accident prevention benefits and $74 million in detection benefits, for total benefits of $728 million.

Risks:

Because widespread fatigue damage problems will occur as airplanes operate beyond their initial operational limit, operators are likely to detect such problems over the 20-year forecast period. The FAA has assumed that there is a probability of widespread fatigue damage problems occurring for each fuselage type of five percent in each year. Under this assumption, there is a 35 percent chance that there will be zero WFD problems detected for a particular fuselage type over a 20-year period.

Timetable:

Action	Date	FR Cite
NPRM	04/18/06	71 FR 19927
NPRM Comment Period Extended	07/17/06	71 FR 38540
NPRM Comment Period End	09/18/06	
Final Rule	07/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Present value (7%) cost $537 million — Present value (7%) benefits $1,214 million

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2120–AI05

DOT—FAA

114. +TRANSPORT AIRPLANE FUEL TANK FLAMMABILITY REDUCTION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 44701–44702; 49 USC 44704

CFR Citation:

14 CFR 25; 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 91

Legal Deadline:

None

Abstract:

This rulemaking will require that flammability reduction means be incorporated into existing airplanes, newly manufactured airplanes, and new designs. It establishes new design standards for future and pending applications for type certification as well as new operating rules for retrofitting existing airplanes.

Statement of Need:

There have been four accidents caused by fuel tank explosions since 1989. Two occurred during flight and two others occurred on the ground. Terrorists caused one of the four. In the other three cases, no ignition source was identified as the cause of the explosion. In all four cases, however, investigators concluded that the center wing fuel tank in these airplanes contained flammable vapors when the fuel tanks exploded and the accidents occurred.

Summary of Legal Basis:

Section 44701, title 49 of the United States Code states that the Administrator shall promote safety of flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety.

Alternatives:

1. Require flammability reduction means on new production and new designs without requiring retrofit. The risk analysis for this option predicted an unacceptable high number of future accidents due to the high number of airplanes within the current fleet that would remain in service for many years. 2. Require inerting of all fuel tanks on existing airplanes in the fleet and new type designs. 3. Exclude all cargo operators. 4. Address unsafe condition through airworthiness directive. 5. Impose changes on operators as opposed to requiring OEMs to develop design changes. Past experience on similar safety initiatives shows the OEMs do not consistently support these effors and places in undue burden on the operators.

Anticipated Costs and Benefits:

The The FAA is conducting a regulatory evaluation using various combinations of the value of a human life, the timing of the next accidents, the passenger load on the next accident airplane, and the effectiveness of SFAR 88. We anticipate costs and benefits will vary based upon assumptions used in calculating these values. Using a value of $3 million per life, average airplane size, average time for the next accident, the costs could exceed $1 billion and quantitative benefits will be less than $1 billion.

Risks:

The FAA believes at least one and as many as five accidents will happen in the next 50 years.

Timetable:

Action	Date	FR Cite
NPRM	11/23/05	70 FR 70922
NPRM Comment Period Extended	03/21/06	71 FR 14122
Comment Period End	05/08/06	
Final Rule	02/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Present value (7%) cost $1,145 million — Present value (7%) benefits $1,132 million

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2120–AI23

DOT—Federal Motor Carrier Safety Administration (FMCSA)

PROPOSED RULE STAGE

115. +NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS

Priority:

Economically 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)

CFR Citation:

49 CFR 390; 49 CFR 391

Legal Deadline:

None

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 SAFETEA-LU.

Statement of Need:

In enacting the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [PL 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 certified 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 removing drivers who are not medically qualified to drive from interstate driving, and also from requiring drivers to seek medical treatment for conditions (such as hypertension) that are likely to impact safety and driver health. FMCSA has determined that focusing on medical examiner performance is one strategy for improving safety and reducing fatalities on our highways.

Summary of Legal Basis:

The fundamental legal basis for the NRCME program comes from 49 U.S.C. 31149(d), which authorizes FMCSA to establish and maintain a current national registry of medical examiners. FMCSA is also directed to determine which medical examiners are qualified to perform examinations of CMV drivers and to issue medical certificates. FMCSA is authorized 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. 3113(a).

Alternatives:

FMCSA is considering how best to address the concerns expressed by Congress. In doing so, we are exploring several options. We will discuss the various alternatives in a planned notice of proposed rulemaking.

Anticipated Costs 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	02/00/08	

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

116. +COMMERCIAL DRIVER'S LICENSE TESTING AND COMMERCIAL LEARNER'S PERMIT STANDARDS

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

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, 105 Stat 1914, 2151; Sec 4122 of PL 109–59 (2005); Sec 703 of PL 109–347

CFR Citation:

49 CFR 380; 49 CFR 383; 49 CFR 384; 49 CFR 385

Legal Deadline:

Final, Statutory, April 14, 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) (Public Law 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) (Public Law 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) (Public Law 109-347, 120 Stat. 1884, at 1944). It is also based in part on the Motor Carrier Safety Act of 1984 (MCSA) (Public Law 98-554, Title II, 98 Stat. 2832; 49 U.S.C. 31136, and the safety provisions of the Motor Carrier Act of 1935 (MCA) (Chapter 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 Costs and Benefits:

We estimate 10 year costs (discounted at 7 percent) 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	02/00/08	

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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RIN: 2126–AB02

DOT—FMCSA

FINAL RULE STAGE

117. +MEDICAL CERTIFICATION REQUIREMENTS AS PART OF THE COMMERCIAL DRIVER'S LICENSE

Priority:

Other Significant

Legal Authority:

sec 215, PL 106–159; 113 Stat. 1748, 1767 (1999); 49 USC 31305 note and 31502

CFR Citation:

49 CFR 383, 384, and 391; 49 CFR 390

Legal Deadline:

None

Abstract:

This rulemaking would require those commercial driver's license (CDL) drivers who are required to obtain a Federal medical certification for the current status of that certification be made part of the commercial driver's licensing and renewal process, as required by Section 215 of the Motor Carrier Safety Improvement Act. Incorporating the current medical certification status information into the State-administered Commercial Driver's License Information System (CDLIS) driver record would improve highway safety by requiring those drivers who are required by Federal regulations to obtain a medical certificate to provide ''proof'' of that medical certification in order to obtain or retain a CDL. It would enable electronic verification of the current medical certification status as part of existing employer and enforcement programs. It would eliminate the requirement for those CDL operators who are required by Federal regulations to obtain a medical certificate to carry their medical examiner's certificate in addition to their CDL since an electronic record would verify that there is a valid medical certificate. FMCSA is currently reviewing comments to the docket.

Statement of Need:

This rule is required by Public Law 106-159. Section 215 of the Act requires that medical certification information be made part of the CDL. When applying for (or renewing) a CDL, 49 CFR Part 383 requires drivers to self-certify whether they are subject to part 391 (Qualifications of Drivers). If they operate in interstate commerce and are not excepted, then part 383 requires these drivers to self-certify whether they meet the physical qualification requirements of Part 391. Part 383 does not currently require drivers to provide any ''proof'' regarding their physical qualification to operate a CMV in order to obtain or retain a CDL. This rulemaking would require interstate CDL drivers who are not excepted to begin providing to their State driver-licensing agency (SDLA) an original or copy (at the State's discretion) of each medical examiner's certificate they obtain. The SDLA would modify their implementation of CDLIS and record information on that driver's Commercial Driver License Information System (CDLIS) individual driver record maintained by the State. The new required information would include both the self-certification regarding applicability of part 391, and for interstate drivers who are not excepted, the current medical certification status information. This combination of information about the applicability of part 391 and medical certification status would determine whether a CDL could be issued, transferred, upgraded, renewed, or retained.

Summary of Legal Basis:

Section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) directed the Secretary of Transportation (Secretary) to ''initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses.'' The physical qualifications requirements in 49 CFR part 391 are based on 49 U.S.C. 31136 and 31502. The physical qualifications standards are at 49 CFR § 391.11. Part 391 regulations are applicable only to drivers who operate CMVs, as defined in 49 U.S.C. 31132. Thus, FMCSA interprets section 215 of MCSIA applicable only to interstate CDL holders.

The Commercial Motor Vehicle Safety Act of 1986 directed the Secretary to establish licensing standards for drivers that operate CMVs, as defined in 49 U.S.C. 31301. Those operators of CMVs as defined in 49 U.S.C. 31301, who are engaged solely in intrastate commerce, must obtain a CDL but are not required by current Federal regulations to obtain a medical certificate as proof of their physical qualifications to operate commercial vehicles. [49 CFR § 383.71(a)(1)]. The Secretary delegated these authorities to FMCSA. [49 CFR § 1.73].

Alternatives:

All alternatives require SDLAs to modify CDLIS. Under alternatives 1 and 2, SDLAs receive paper documents (original or copy) and perform data input. Under alternative 3, SDLAs receive an electronic CDLIS transaction.

Employing motor carriers would be able to obtain medical certification status on CDLIS motor vehicle record (MVR) obtained from SDLA. For drivers subject to part 391 and not excepted, MVR would contain medical certification status, as well as license status. Enforcement personnel obtain current license status, whether driver operates in interstate commerce, and medical certification status via electronic checks.

Under all three alternatives, the CDLIS driver record serves as the official record to indicate whether a driver operating in interstate commerce is required to be medically certified, and, if so, whether the driver is currently medically certified.

1. CDL Renewal Cycle Same as Medical Certificate.

Driver provides a current medical examiner's certificate to SDLA, which issues a new CDL expiring same day as certificate. Medical certificates expire in two years, so CDLs would be issued more often, and drivers would pay more fees that States assess.

2. No Change in CDL Renewal Cycle-Distributed.

As in alternative 1, CDL drivers provide medical a current examiner's certificate to SDLA. There would be no additional issuance of a new CDL. SDLAs develop capability to downgrade CDL if new certification not received by expiration. Employers and enforcement personal obtain needed verifications from CDLIS driver record.

3. No Change in CDL Renewal Cycle-Centralized.

Certificates go to central location. Status information electronically transmitted to SDLA, which develop capability to electronically receive and record on CDLIS driver record. As in alternative 2, SDLA downgrades CDL if new certification is not received by time it expires. Employer and enforcement access like alternatives 1 and 2 above.

Anticipated Costs and Benefits:

A preliminary regulatory evaluation for this rule was prepared and was placed in the docket when the NPRM was published. Costs being reviewed based on comments to the NPRM. Currently, we estimate 10 year costs (discounted at 7 percent) at $61,134,000, total benefit at $82,585,000, and net benefit over 10 years at $21,450,000.

Risks:

In addition to assessing costs, the agency is assessing the safety benefits.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/94	59 FR 36338

Action	Date	FR Cite
ANPRM Comment Period End	11/14/94	
NPRM	11/16/06	71 FR 66273
NPRM Comment Period End	02/14/07	
Final Rule	04/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State

Additional Information:

Docket ID: FMCSA-97-2210.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AA10

DOT—FMCSA

118. +NEW ENTRANT SAFETY ASSURANCE PROCESS

Priority:

Other Significant

Legal Authority:

PL 106–159, sec 210; 113 Stat 1748 (1999); PL 107–87, sec 350; 49 USC 31144

CFR Citation:

49 CFR 385

Legal Deadline:

None

Abstract:

This rulemaking would change the New Entrant Safety Assurance Process by raising the standard of compliance for passing the new entrant safety audit. It also would make clarifying changes to some of the existing new entrant regulations. The rule also proposes a separate application procedure and safety oversight system for non-North America-domiciled motor carriers. The proposed rule would improve the Agency's ability to identify at-risk new entrant carriers and would ensure deficiencies in basic safety management controls are corrected before the new entrant is granted permanent registration. These changes would not impose additional operational requirements on any new entrant carrier. All new entrants would continue to receive educational information on how to comply with the safety regulations and be given an opportunity to correct any deficiencies found. FMCSA recognizes many new entrants are small businesses that are unaware of these requirements and continue to need our assistance.

Statement of Need:

Sec. 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Public Law 106-159, December 9, 1999, 113 Stat. 1764] directed the agency to establish a safety monitoring system and application process for owners and operators requesting authority to operate in interstate commerce. The objective is to ensure new owners and new operators are knowledgeable about applicable Federal motor carrier safety standards.

Summary of Legal Basis:

Under sec. 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Public Law 106-159, December 9, 1999, 113 Stat. 1764], Congress directed the agency to require new owners and new operators granted operating authority to pass a safety review within 18 months of beginning operations. Additionally, the agency must establish minimum requirements for applicants for new authority to operate in Interstate commerce to ensure applicants are knowledgeable about applicable Federal motor carrier safety standards.

Alternatives:

The agency considered requiring a proficiency examination to evaluate a new applicant's knowledge about applicable Federal motor carrier safety standards. Instead, FMCSA required applicants for new entrant authority to self-certify that they are knowledgeable of applicable Federal requirements and provided educational and technical assistance materials to familiarize them with applicable standards.

The agency provided two alternatives for increasing the number of new entrant motor carriers audited annually. First, the agency provides an alternative to how a safety auditor may conduct safety audits. The safety auditor may audit a single new entrant motor carrier at its place of business or conduct group audits of multiple new entrant motor carriers at one time at a location other than a motor carrier's place of business. The agency also solicited comment on whether to use private contractors to conduct the safety audits and is exploring the option in forthcoming rulemakings.

Anticipated Costs and Benefits:

We estimate the costs to be $490 million (net present value discounted at 7% over 10 years) and the benefits to be $3,900 million (net present value discounted at 7% over 10 years). The full regulatory evaluation for the NPRM is in the docket.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
Interim Final Rule (IFR)	05/13/02	67 FR 31978
IFR Comment Period End	07/12/02	
IFR Effective	01/01/03	
NPRM	12/21/06	71 FR 76730
NPRM Comment Period End	02/20/07	
Final Rule	03/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Docket ID: FMCSA-2001-11061

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AA59

DOT—FMCSA

119. +REQUIREMENTS FOR INTERMODAL EQUIPMENT PROVIDERS AND MOTOR CARRIERS AND DRIVERS OPERATING INTERMODAL EQUIPMENT

Priority:

Other Significant

Legal Authority:

49 USC 31136 and 31502; 49 USC 31151; sec 4118, PL 109–59 (2005)

CFR Citation:

49 CFR 386, 392; 49 CFR 385, 390, 393, and 396

Legal Deadline:

Final, Statutory, August 11, 2006.

Abstract:

This rulemaking would require entities that offer intermodal container chassis for transportation in interstate commerce to: File a Motor Carrier Identification Report (Form MCS-150); display a USDOT identification number on each chassis offered for such transportation; establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each chassis offered for transportation and maintain documentation of the program; and provide a means for effectively responding to driver and motor carrier complaints about the condition of intermodal container chassis. The rulemaking is considered significant because of substantial industry and congressional interest and because it involves other departmental modes.

Statement of Need:

Section 4118 of SAFETEA—LU amended 49 U.S.C., chapter 311, by adding new section 31151 (49 U.S.C. 31151) titled ''Roadability.'' Section 31151 states: ''The Secretary of Transportation, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.''

Summary of Legal Basis:

This rulemaking is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act) and section 4118 of SAFETEA-LU, codified at 49 U.S.C. 31151). The 1984 Act provides authority to regulate drivers, motor carriers, and vehicle equipment. Section 4118 of SAFETEA-LU requires the Secretary of Transportation to issue regulations ''to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.'' It specifies, in considerable detail, a minimum of 14 items that must be included in the regulations. It also provides the authority for Departmental employees designated by the Secretary to inspect intermodal equipment and related maintenance and repair records, and to place out-of-service equipment that fails to comply with applicable Federal safety regulations until the necessary repairs have been made. The legislation also requires the Secretary to preempt State requirements for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005 on the effective date of the final rule. However, it allows the Secretary to waive preemption if a State makes application, provided the Secretary finds that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce.

Alternatives:

The legislative mandate precluded broad regulatory alternatives. However, the NPRM requested comments concerning the marking of intermodal equipment, and in particular, whether other unique identification numbers could serve the same purpose as the USDOT number.

Anticipated Costs and Benefits:

We estimate the costs to be between $146.7 and $241.7 million (net present value discounted at 7% over 10 years), and the benefits to be between $82.3 to 257.6 million (net present value discounted at 7% over 10 years). The full regulatory evaluation for the NPRM is in the docket.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
NPRM	12/21/06	71 FR 76796
NPRM Comment Period End	03/21/07	
Comment Period Extended	04/13/07	72 FR 18615
End Extended Comment Period	05/21/07	
Final Rule	04/00/08	

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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Related RIN: Related to 2126–AA38

RIN: 2126–AA86

DOT—FMCSA

120. +ELECTRONIC ON–BOARD RECORDERS FOR HOURS–OF–SERVICE COMPLIANCE

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

49 U.S.C. 31502; 49 U.S.C. 31136(a); Pub. L 104–88; Pub. L 103.311; 49 USC 31137(a)

CFR Citation:

49 CFR 350; 49 CFR 385; 49 CFR 395; 49 CFR 396

Legal Deadline:

None

Abstract:

This rulemaking would amend the Federal Motor Carrier Safety Regulations to incorporate new performance standards for electronic on-board recorders (EOBRs) to document compliance with the Federal hours-of-service rules. This would help ensure that performance standards for EOBRs are appropriate and reflect state-of-the-art communication and information management technologies. The rulemaking would consider the potential benefits and costs of requiring motor carriers to install and use EOBRs and evaluate alternative approaches including: 1) Mandating such practice industry-wide, 2) limiting the

requirement to motor carriers with certain characteristics, and 3) allowing EOBR use to remain voluntary.

Statement of Need:

On July 16, 2004, the United States Court of Appeals for the District of Columbia Circuit vacated FMCSA's 2003 final rule concerning hours-of-service of commercial motor vehicle drivers, for reasons unrelated to EOBRs. In dicta, however, the court stated that section 408 of the ICCTA ''required the Agency, at a minimum, to collect and analyze data on the costs and benefits of requiring EOBRs.''

Summary of Legal Basis:

Section 31502 of title 49 of the United States Code provides that ''[t]he Secretary of Transportation may prescribe requirements for: (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This rulemaking addresses ''safety of operation and equipment'' of motor carriers and ''standards of equipment'' of motor private carriers and, as such, is well within the authority of 49 U.S.C. 31502. The rulemaking would allow motor carriers to use EOBRs to document drivers' compliance with the HOS requirements; require some noncompliant carriers to install, use, and maintain EOBRs for this purpose; and update existing performance standards for on-board recording devices.

Section 31136 of title 49 of the United States Code provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.''

Alternatives:

FMCSA considered several alternatives to the proposal discussed here. These addressed the applicability of the proposal to all or subsets of the population of regulated motor carriers, the threshold for the application of the remedial directive, and the technical requirements for the EOBR itself.

Concerning a requirement for using EOBRs, the agency considered applying the proposed requirement to all motor carriers, to long-haul motor carriers only, and to long-haul carriers with recurring hours-of-service noncompliance. Concerning a requirement for the technical requirements for an EOBR, the agency considered three levels of complexity and sophistication. Taken in combination, only the lowest-cost device applied to only the non-compliant long-haul motor carriers generated a positive annualized net benefit of safety over costs. Concerning the application of the remedial directive, the agency considered different noncompliance thresholds and different numbers of compliance reviews. The particular combination proposed provided a window wide enough for FMCSA or State enforcement officials to perform at least two compliance reviews, at current rates, on over 90 percent of carriers with indicia of poor driver safety. The time frame between the Agency's initial findings and its issuance of remedial directives would be short enough to preserve the directives' efficacy in remedying repeated noncompliance.

Anticipated Costs and Benefits:

For our most likely option at present, we estimate the costs to be between $19 and $28 million per year (discounted at 7%) and the benefits to be about $20 million per year (discounted at 7%). The regulatory full evaluation for the NPRM is in the docket.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/04	69 FR 53386
ANPRM Comment Period End	11/30/04	
NPRM	01/18/07	72 FR 2340
NPRM Comment Period End	04/18/07	
Final Rule	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

None

Federalism:

Undetermined

Additional Information:

Docket ID: FMCSA-2004-18940.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AA89

DOT—National Highway Traffic Safety Administration (NHTSA)

PROPOSED RULE STAGE

121. +ROOF CRUSH RESISTANCE

Priority:

Other Significant

Legal Authority:

49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation:

49 CFR 571.216

Legal Deadline:

Final, Statutory, July 1, 2008.

Abstract:

This rulemaking would upgrade vehicle roof crush requirements. It is part of the agency's comprehensive response to mitigate the number of fatalities and injuries resulting from vehicle rollovers. Rollover crashes constitute about 3 percent of passenger vehicle crashes, but about one third of the fatalities. Light trucks are more prone

to rollover, and their percentage of the U.S. fleet continues to increase. This crash mode constitutes a disproportionate segment of the Nation's highway safety problem. This rulemaking is significant because of public interest in vehicle safety.

Statement of Need:

Rollovers are especially lethal crashes. While rollovers comprise just 3% of all light passenger vehicle crashes, they account for almost one-third of all occupant fatalities in light vehicles, and more than 60 percent of occupant deaths in the SUV segment of the light vehicle population.

Agency data show that nearly 24,000 occupants are seriously injured and 10,000 occupants are fatally injured in approximately 273,000 non-convertible light vehicle rollover crashes that occur each year. In order to identify how many of these occupants might benefit from the proposed upgrade, the agency analyzed real-world injury data in order to determine the number of occupant injuries that could be attributed to roof intrusion. The agency examined front outboard occupants who were belted, not fully ejected from their vehicles, whose most severe injury was associated with roof contact, and whose seating position was located below a roof component that experienced vertical intrusion as a result of a rollover crash. NHTSA estimates that there are about 807 seriously and approximately 596 fatally injured occupants per year that fit these criteria. The agency believes that some of these occupants would benefit from this upgrade.

Summary of Legal Basis:

Section 30111, title 49 of the USC, states that Secretary shall prescribe motor vehicle safety standards.

Alternatives:

The agency will consider alternatives related to performance criteria and test procedures.

Anticipated Costs and Benefits:

In the NPRM, the agency estimated benefits of this proposal to range from 498 to 793 non-fatal injuries and 13 to 44 fatalities. The annual equivalent lives saved were estimated at 39 to 55. The estimated average cost in 2003 dollars, per vehicle, of meeting the proposed requirements would be $10.67 per affected vehicle. Added weight from design changes is estimated to increase lifetime fuel costs by $5.33 to $6.69 per vehicle. The cost per year for the vehicle fleet is estimated to be $88-$95 million. The cost per equivalent life saved is estimated to range from $2.1 to $3.4 million.

Risks:

Current motor vehicles provide numerous occupant protection systems, such as side curtain air bags, upper interior padding, and advanced safety belt systems, that mitigate occupant head-to-roof contact injuries. Nevertheless, an estimated 498-793 non-fatal injuries and 13-44 fatalities will continue to occur annually, absent the proposed change in regulation. Potential adverse risks the agency is also evaluating include a causal increase in rollover propensity that could overwhelm the anticipated benefits from this upgrade.

Timetable:

Action	Date	FR Cite
Request for Comments	10/22/01	66 FR 53376
RFC Comment Period End	12/06/01	
NPRM	08/23/05	70 FR 49223
NPRM Comment Period End	11/21/05	
Supplemental NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

OMB cleared subject to NHTSA making changes to the reg eval

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 2127–AH74

RIN: 2127–AG51

DOT—NHTSA

122. ● +LIGHT TRUCK CORPORATE AVERAGE FUEL ECONOMY STANDARDS, MODEL YEARS 2012 AND BEYOND

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 32902; Delegation of authority at 49 CFR 1.50

CFR Citation:

49 CFR 533

Legal Deadline:

Final, Statutory, November 1, 2008.

CAFE standards must be set at least 18 months prior to the start of a model year. However, this action is also subject to a direction by the President of the United States to complete rulemaking in 2008.

Abstract:

This rulemaking would address Light Truck Corporate Average Fuel Economy Standards pursuant to the President's Executive Order No. 13432.

Statement of Need:

Issuance of CAFE standards for light trucks is necessary to improve energy security, strengthen national security, and protect the environment.

Summary of Legal Basis:

Section 32902(a) of Title 49 of the United States Code requires the issuance of maximum feasible CAFE standards for light trucks for each model year.

Alternatives:

Joint rulemaking with the U.S. Environmental Protection Agency.

Anticipated Costs and Benefits:

The costs and benefits of the new standards addressed in this action have not yet been assessed.

Risks:

Depending on how manufacturers address Federal fuel economy requirements, there is some potential effect on safety. The agency has minimized this risk by switching to attribute-based standards in the last light truck CAFE rulemaking. This switch discourages the downsizing of vehicles since as vehicles become

smaller, the applicable fuel economy target becomes more stringent.

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2127–AK08

DOT—NHTSA

FINAL RULE STAGE

123. +REDUCED STOPPING DISTANCE REQUIREMENTS FOR TRUCK TRACTORS

Priority:

Other Significant

Legal Authority:

49 CFR 1.50; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322

CFR Citation:

49 CFR 571.121

Legal Deadline:

None

Abstract:

This rulemaking would reduce stopping distance requirements for truck tractors equipped with air brake systems. Advances in heavy vehicle braking systems show that improved stopping performance is attainable for these vehicles. Such improvements would reduce the stopping distance disparity with light vehicles, and would result in fewer deaths and injuries and reduce property damage due to fewer crashes between truck tractors and light vehicles.

Statement of Need:

Large trucks have longer stopping distances than light vehicles, increasing the chance of crashes in panic stopping situations. Crash data show that combination unit trucks (e.g., tractor-trailers) are highly involved in large truck fatal crashes with light vehicles. Agency test results indicate that significantly reduced tractor stopping distances may be achieved by using current-technology brake systems. The agency believes that sufficient test data exists to move forward with a proposal.

Summary of Legal Basis:

Section 30111, Title 49 of the USC, states that the Secretary shall prescribe motor vehicle safety standards.

Alternatives:

The agency is not pursuing any alternatives to reduce stopping distances for this type of vehicle other than changes in the requirements in FMVSS No. 121.

Anticipated Costs and Benefits:

Reducing the stopping distance requirements (service brakes and/or emergency brakes) for tractors in FMVSS No. 121, Air Brake Systems, by 20 to 30 percent is expected to reduce unable-to-stop-in-time collisions between combination-unit trucks and light vehicles. Test data has indicated that stopping distance reductions of up to 30 percent may be achievable for all tractors in FMVSS No. 121. Evaluation is underway to determine the reductions in deaths, injuries, and property damage that could result from reductions in tractor stopping distances.

Risks:

The agency believes there are no substantial risks to this rulemaking, and that only beneficial outcomes will occur as the industry moves to improved tractor braking systems.

Timetable:

Action	Date	FR Cite
NPRM	12/15/05	70 FR 74270
NPRM Comment Period End	04/14/06	
Final Rule	03/00/08	

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: 2127–AJ37

DOT—Federal Railroad Administration (FRA)

PROPOSED RULE STAGE

124. +REGULATORY RELIEF FOR ELECTRONICALLY CONTROLLED PNEUMATIC BRAKE SYSTEM IMPLEMENTATION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 20103; 49 USC 20107; 49 USC 20302; 49 USC 20306; 49 USC 20701–20702; 49 USC 21301–21302

CFR Citation:

49 CFR 229; 49 CFR 232; 49 CFR 238

Legal Deadline:

None

Abstract:

This rulemaking would establish criteria for operating trains equipped with Electronically Controlled Pneumatic Brake System technology. This rulemaking would also provide regulatory relief, when necessary, to promote the transition to Electronically Controlled Brake System technology within the rail industry. This

rulemaking relates to, but is separate from the waiver proceeding under Docket No. FRA-2006-26435.

Statement of Need:

The proposed regulations are designed to provide for and encourage the safe implementation and use of ECP brake system technologies. FRA has determined that permitting the railroad industry flexibility in the manufacture and operation of ECP brake systems is the most efficient and cost-effective method of ensuring the safe operation of ECP brake equipped freight trains and freight cars. The proposed sections requiring the amendment of the railroads' current operating and training rules and the relaxation of inspection requirements and frequencies provides the industry with the flexibility needed to take advantage of ECP brake system implementation. Moreover, the current FRA regulations do not adequately address the use of ECP brake system technology. In fact, application of current regulations to freight trains and freight cars equipped with ECP brake systems will create inadequate and unnecessarily burdensome requirements.

Summary of Legal Basis:

FRA is issuing this rule pursuant to its rulemaking authority (49 U.S.C. 20103(a)) as delegated to the FRA Administrator (49 CFR 1.49).

Alternatives:

Currently, FRA accepts waiver applications from railroads that seek relief from FRA safety regulations in order to test new ECP brake system technologies. Since FRA must consider the safety ramifications of each application on a case-by-case basis, this procedure leaves considerable uncertainty regarding what type of safety case must be demonstrated to obtain approval. Prior to this action, FRA also considered: (1) leaving the existing regulatory requirement as is and (2) mandating the implementation and use of ECP brake systems. However, agency inaction would hinder introduction of new, safer railroad brake technology and mandating the implementation and use of ECP brake technology would be logistically and economically unfeasible and burdensome. Accordingly, the proposed regulations are designed to provide for and encourage the optional and safe implementation and use of ECP brake system technologies.

Anticipated Costs and Benefits:

If the industry was to take advantage of the proposed relief to the extent estimated by FRA for solely unit and unit-like trains, it would cost it approximately $1.5 billion (discounted at 7%). The total benefits of the proposed rule are approximately $3.2 billion (discounted at 7%). In addition, FRA anticipates substantial benefits that cannot be accurately quantified or forecasted at this time, including a potential $2.5 billion in savings from a 1 mph increase in network velocity. Overall, it appears that the benefits of the rule would significantly outweigh the costs.

Risks:

The advantages of ECP brake technology will significantly improve the safety and the performance of train operations, significantly reducing the risk of train accidents. Examples of such benefits include: better train handling through simultaneous brake applications; continuous brake pipe charging; graduated release brake operation; shorter train stopping distances; self-monitoring capabilities; electronic train management; and improved performance.

Timetable:

Action	Date	FR Cite
NPRM	09/04/07	72 FR 50820
NPRM Comment Period End	11/05/07	

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: 2130–AB84

DOT—Federal Transit Administration (FTA)

PROPOSED RULE STAGE

125. +MAJOR CAPITAL INVESTMENT PROJECTS—NEW/SMALL STARTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

P.L. 109–59, sec.3011; PL 109–59, sec 3011

CFR Citation:

49 CFR 611

Legal Deadline:

Final, Statutory, April 7, 2006

Abstract:

This rulemaking would establish a simplified evaulation process for projects seeking less than $75 million in New Starts funds. The rule will set out FTA's evaluation and rating process for proposed projects based on the results of project justification and local financial commitment. This action is mandated by SAFETEA-LU.

Statement of Need:

Section 3011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA's) fixed guideway capital investment grant program known as ''New Starts.'' SAFETEA-LU also added created a new category of major capital investments that have a total project cost of less than $250 million, and that are seeking less than $75 million in section 5309 major capital investment funds. This rulemaking proposes to implement those changes and a number of other changes that FTA believes will improve the New Starts program.

Summary of Legal Basis:

Section 5309, Title 49 of the United States Code requires the Secretary to promulgate regulations for evaluation and selection of major capital investment projects that have a total project cost of less than $250 million, and that are seeking less than $75 million in Section 5309 major capital investment funds.

Alternatives:

FTA sought public input through an Advance Notice of Proposed Rulemaking and several outreach sessions on the various options it might pursue as part of this rulemaking. The Notice of Proposed Rulemaking contains a discussion of the various alternatives it considered in proposing a regulatory framework for implementing 49 U.S.C. 5309(d) and (e).

Anticipated Costs and Benefits:

The single largest change in the New Starts program is the creation in SAFETEA-LU of the ''Small Starts'' program, to which FTA has added ''Very Small Starts.'' Over the first ten years of the Small Starts program, the cumulative impact of transfer from New Starts to Small Starts will likely be $1.9 Billion, with a Net Present Value of $1.311 Billion using a discount rate of 7 percent. This effect is difficult to characterize in terms of cost or benefit, as it simply represents a ''transfer of a transfer'' from one governmental entity to another.

Risks:

The proposed rulemaking provides a framework for a discretionary grant program; it does not propose to regulate other than for applicants for Federal funds. As such, the rulemaking poses no risks for the regulated community, other than for the risks inherent in pursuing Federal funds that might not be awarded if a project fails to satisfy the eligibility and evaluation criteria in the proposed regulatory structure.

Timetable:

Action	Date	FR Cite
ANPRM	01/30/06	71 FR 4864
ANPRM Comment Period End	03/10/06	
NPRM	08/03/07	72 FR 43328
NPRM Comment Period End	11/01/07	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Local, State

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2132–AA81

DOT—Pipeline and Hazardous Materials Safety Administration (PHMSA)

PROPOSED RULE STAGE

126. +PIPELINE SAFETY: DISTRIBUTION INTEGRITY MANAGEMENT

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 5103, 60102, 60104, 60108–10, 60113, 60118, and 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 manade 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 Costs and Benefits:

The monetized benefits resulting from the proposed rule are estimated to be $195 million per year. The costs of the proposed rule 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	03/00/08	

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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RIN: 2137–AE15

DOT—PHMSA

FINAL RULE STAGE

127. +HAZARDOUS MATERIALS: ENHANCING RAIL TRANSPORTATION SAFETY AND SECURITY FOR HAZARDOUS MATERIALS SHIPMENTS

Priority:

Other Significant

Legal Authority:

49 USC 5101 – 5127

CFR Citation:

49 CFR 172–174; 49 CFR 179

Legal Deadline:

None

Abstract:

In consultation with the Federal Railroad Administration (FRA), PHMSA would revise the current requirements on the safe and secure transportation of hazardous materials transported in commerce by rail. It may require rail carriers to (1) compile annual data on certain shipments of hazardous materials and use the data to analyze safety and security risks along rail transportation routes where those materials are transported; (2) assess alternative routing options and make routing decisions based on those assessments; and (3) clarify the current security plan requirements to address en route storage and delays in transit.

Statement of Need:

PHMSA is responsible for the safe and secure movement of hazardous materials by all transportation modes, including the nation's railroads. The Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) are designed to achieve three goals: (1) to ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, (2) to ensure that the security risks associated with the transportation of hazardous materials in commerce are addressed, and (3) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the material being transported. The HMR also include operational requirements applicable to each mode of transportation.

PHMSA's hazardous materials transportation regulatory program is designed to balance safety and security concerns with economic and societal goals. Rail shipments of hazardous materials are often transported in substantial quantities and are potentially vulnerable to sabotage or misuse. Such materials are already mobile and are routinely transported in proximity to large population centers. A primary safety and security concern involving the rail transportation of hazardous materials is the prevention of a catastrophic release in proximity to densely populated urban areas, events or venues with large numbers of people in attendance, iconic buildings, landmarks, or environmentally significant areas.

Summary of Legal Basis:

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.) Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. In addition, the Homeland Security Council has tasked DOT and DHS to improve security of rail shipments of toxic inhalation hazard (TIH) materials.

Alternatives:

Alternative 1: Do nothing

This alternative continues the status quo. We would not issue a final rule to require carriers to make route selections for certain highly hazardous materials based on a comprehensive assessment of the safety and security vulnerabilities along available routes nor would we require rail carriers to inspect rail cars for IEDs or implement measures to minimize time in transit for highly hazardous materials. The current security plan requirements would continue in place.

Alternative 2: Impose enhanced safety and security requirements for a broad list of hazardous materials transported by rail

Under this alternative, we would impose enhanced safety and security requirements for rail shipments of a broad list of hazardous materials, including explosives; flammable solids, liquids, and gases; poison and poison inhalation hazard materials; oxidizers and organic peroxides; and corrosive materials.

Alternative 3: Impose enhanced safety and security requirements for specified rail shipments of highly hazardous materials

Under this alternative, we would impose enhanced safety and security requirements only for those classes and quantities of hazardous materials that pose unique and substantial safety and security risks. Covered materials would include: (1) more than 2,268 kg (5,000 lbs) in a single carload of Division 1.1., 1.2, and 1.3 explosives; (2) bulk quantities (119 gallons or more) of PIH materials; and (3) highway route-controlled quantities of radioactive materials. For these reasons, we have selected this alternative.

Anticipated Costs and Benefits:

Costs

Rail carriers and shippers may incur costs associated with rerouting shipments or mitigating safety and security vulnerabilities identified as a result of their route analyses. Because the final rule builds on the current route evaluation and routing practices already in place for most, if not all, railroads that haul the types of hazardous materials covered, we do not expect rail carriers to incur significant costs associated with rerouting. Generally, costs associated with the provisions of this final rule include costs for collecting and retaining data and performing the mandated route safety and security analysis. We estimate total 20-year costs to gather the data and conduct the analyses proposed in this final rule to be about $17.4 million (discounted at 7%).

Benefits

The major benefits expected to result from this final rule relate to enhanced safety and security of rail shipments of hazardous materials. The requirements of the final rule are intended to reduce the safety and security risks associated with the transportation of the specified hazardous materials. We estimated the costs of a major accident or terrorist incident by calculating the costs of the January 2005 Graniteville, South Carolina, accident. This accident killed nine people and injured 554 more. In addition, the accident necessitated the

evacuation of more than 5,400 people. Total costs associated with the Graniteville accident are almost $126 million. If the measures proposed in this final rule prevent just one major accident or intentional release over a twenty-year period, the resulting benefits would more than justify the potential compliance costs. We believe that they could.

Risks:

It is possible to envision scenarios where hazardous materials in transportation could be used to inflict hundreds or even thousands of fatalities. Direct costs and those attributable to transportation system disruption that would surely result could easily total in the billions of dollars. We are operating under the premise that, in today's environment, it is necessary to take reasonable measures to reduce the likelihood that such events will be successful. The presence of such measures should, in fact, help deter potential attacks.

The measures in the rule have the potential of reducing the likelihood of success of such an attack. Moreover, the American public has an expectation that reasonable measures will be taken to help ensure the security of hazardous materials present in our society so they are not used for nefarious purposes. Companies are taking or have already taken steps to develop systematic security plans and security awareness training. These requirements will help ensure a consistent approach in the area while permitting flexibilities that are important in keeping costs at reasonable levels.

Timetable:

Action	Date	FR Cite
Request for Comments	08/10/04	69 FR 50987
Comment Period End	10/18/04	
NPRM Comment Period End	10/29/06	
NPRM	12/21/06	71 FR 76834
NPRM Comment Period End	02/20/07	
Final Rule	12/00/07	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

HM Docket: HM-232E; RSPA-2004-18730

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2137–AE02

BILLING CODE 4910–9X–S

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.

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 Office of the Assistant Secretary for Financial Institutions is responsible for developing and promulgating regulations implementing TRIA, as extended and amended by TRIEA. 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 continued the ongoing work of implementing TRIA. Congress, during 2007, has been deliberating the further extension of the Terrorism Risk Insurance Program. Should the Program be extended, Treasury will issue guidance and regulations implementing any changes authorized by legislation in 2008. Alternatively, should the Program not be extended, Treasury will issue guidance as appropriate to effect the cessation of operations.

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- approved CBP customs-revenue function regulations issued were a final rule adopting the interim regulations that implemented the preferential trade benefit provisions of the United States-Chile Free Trade Agreement Implementation Act and a final rule adopting the interim rule regarding procedures on the refund of excess customs duties paid on entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (also known as ''CAFTA-DR''). CBP also published interim rules regarding the implementation of the preferential tariff treatment and other customs-related provisions of the United States-Singapore Free Trade Agreement Implementation Act, the United States-Jordan Free Trade Area Implementation Act, and the United States-Morocco Free Trade Implementation Act. In addition, 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 Act'') which concerned the extension of certain trade benefits to Haiti in the Tax Relief and Health Care Act of 2006.

During this past year, CBP also amended its regulations on an interim basis to establish 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. In addition, in conjunction with the final regulations adopted by the Department of Commerce, CBP finalized its proposed rule on the entry of certain cement products from Mexico requiring a U.S. Commerce Department import license based on the ''Agreement on Trade in Cement'' between the governments of the United States and Mexico.

Another important regulation CBP finalized this year is one which clarifies the responsibilities of importers of food, drugs, devices, and cosmetics under the basic CBP importation bond which provided a reasonable time period (30 days) to allow the Food and Drug Administration to perform its enforcement functions with respect to the merchandise which is conditionally released under bond for admissibility determinations on these covered articles.

During fiscal year 2008, Treasury and CBP plan to finalize several interim regulations involving the customs revenue functions not delegated to DHS. Among these are the following interim regulations that implement the trade benefit provisions of the Trade Act of 2002:

- The Caribbean Basin Economic Recovery Act
- The African Growth and Opportunity Act

CBP also plans to finalize interim regulations this fiscal year to implement the preferential trade benefit provisions of the United States-Singapore Free Trade Agreement Implementation Act, the United States-Jordan Free Trade Agreement, and the United States-Morocco Free Trade Agreement. CBP also expects to issue interim regulations implementing the United States-Bahrain Free Trade Agreement Implementation Act, the United States-Australia Free Trade Agreement Implementation Act and the United States-Central America-Free Trade Agreement Implementation Act.

CBP also plans 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.

In addition, Treasury and CBP plan to propose uniform rules governing the determination of the country of origin of imported merchandise. The uniform rules would extend the application of the North American Free Trade Agreement country of origin rules to all trade.

Treasury and CBP also plan to continue moving forward with amendments to improve its regulatory procedures begun under the authority granted by the Customs Modernization provisions of the North American Free Trade Implementation Act (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 permanently establish the programs. Consistent with this practice, we expect to finalize a proposal to permanently establish 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 2008, subject to funding availability, the Fund will provide financial assistance awards and technical assistance grants through the CDFI 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.

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.

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 2007, FinCEN issued the following final rules: a final rule on enhanced due diligence for correspondent accounts maintained for certain foreign banks; a final rule that exempts casinos from the requirement to file currency transaction reports on jackpots from slot machines and video lottery terminals and that also exempts, under certain conditions, reportable transactions in currency involving certain money plays and bills inserted into electronic gaming devices; and one final rule 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's regulatory priorities for fiscal year 2008 include 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 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.
- *Money Services Businesses.* FinCEN will continue to implement and refine its strategy with regard to money services businesses, including: using analytical tools and establishing partnerships with law enforcement to identify unregistered money services businesses; continuing to revise, simplify, clarify and, where possible, narrow the regulatory framework for money services businesses; and developing and delivering internal and external education, outreach, and training on relevant regulatory topics regarding the money services business industry for both the money services business and banking industries, law enforcement, and other regulatory agencies.
- *SAR Confidentiality.* FinCEN will coordinate with regulatory authorities on an amendment with respect to existing regulations pertaining to the confidentiality of Suspicious Activity Reports.

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 2008 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 2008, the IRS and Treasury intend to finalize those regulations.
- *LIBOR Swaps Used to Hedge a Tax-exempt Bond Issue.* Issuers of tax-exempt bonds have historically hedged their variable-rate bonds with swaps that are based on a tax-exempt market index. Recently, hedges have evolved to where the floating rate is now frequently determined based on a taxable interest rate or taxable interest rate index, such as the London Interbank Offered Rate (LIBOR). Issuers assert that a taxable-index hedge is better than a hedge based on tax-exempt rates because the taxable market is more liquid, producing more transparent pricing. Moreover, a taxable-index hedge produces substantial cost savings to issuers. The industry, however, is uncertain about how the arbitrage rules under section 148 apply to taxable-index hedges. This question is particularly troubling for an issuer that issues variable-rate, advance refunding bonds because the issuer needs to know the yield on its bond issue to know its permitted investment yield for the defeasance escrow. During fiscal year 2008, the IRS and Treasury intend to issue proposed regulations that will clarify how the arbitrage rules apply to taxable-index hedges and provide other corrections to the arbitrage regulations under section 148.
- *Stripped Interests in Bond and Preferred Stock Funds.* Sections 1286(f) and 305(e)(7) were added to the Internal

Revenue Code by the American Jobs Creation Act of 2004 (AJCA) to address the treatment of stripped interests in bond and preferred stock funds. Section 1286(f) provides for the IRS and Treasury to prescribe regulations applying rules, similar to the rules of sections 1286 and 305(e), to account for stripped interests in an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof. There are no specific statutory rules directly addressing stripping transactions with respect to common stock or other equity interests (other than preferred stock). In addition, section 305(e) does not address the proper treatment of dividend coupons separated from stripped preferred stock. Specific rules are needed to prevent the generation of artificial losses upon the disposition of stripped interests and to prevent the deferral of the recognition of taxable income associated with these types of stripped interests. During fiscal year 2008, the IRS and Treasury intend to issue proposed regulations under section 1286(f) providing rules to account for these stripped interests that are similar to those of sections 1286 and 305(e) and which will prevent the generation of artificial losses and require the current accrual of taxable income on the stripped interests.

• *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. During fiscal year 2008, the IRS and Treasury intend to repropose regulations in this area in light of those comments.

• *Intangible Property and Transfer Pricing Initiatives.* On August 22, 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 2008. Additionally, proposed regulations will be issued under section 367(d) of the Code, which provides that a transfer by a U.S. person of an intangible to a foreign corporation in certain nonrecognition transactions will be treated as a sale of that property for a series of payments contingent on the property's productivity, use, or disposition. The IRS and Treasury will coordinate the provisions to prevent intangible value going to offshore affiliates without arm's length consideration, whether intangibles are transferred directly, embedded in the performance of services, contributed via incorporation or reorganization, or conveyed in the course of a cost sharing arrangement. 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 Guidance Initiatives.* The IRS and Treasury intend to issue final regulations under section 901 of the Internal Revenue Code and guidance under other provisions of the Code during fiscal year 2008 to address the foreign tax credit and related issues. On August 3, 2006, the IRS and Treasury issued proposed regulations to address the operation of the foreign tax credit rules in the context of foreign consolidated regimes and with respect to so-called hybrid entities, entities that are treated as separate taxable entities under either U.S. or foreign law but as transparent entities under the other country's tax law. During fiscal year 2008, the IRS and Treasury intend to issue final regulations in this area. On March 29, 2007, the IRS and Treasury issued proposed regulations that address the inappropriate creation or transfer of foreign tax liability in order to obtain foreign tax credits. The IRS and Treasury intend to issue final regulations in this area during fiscal year 2008 as well. The IRS and Treasury also expect to issue additional guidance that will provide rules relating to the reduction in the number of foreign tax credit categories and other provisions added by the AJCA. The guidance will provide for tax treatment that is consistent with the policies of the foreign tax credit provisions and applicable law.

• *Subpart F Anti-deferral Regime Initiatives.* The IRS and Treasury intend to issue guidance during fiscal year 2008 to address the use of contract manufacturing arrangements to produce property sold by controlled foreign corporations. The guidance will include rules that address the manufacturing exception to foreign base company sales income under section 954(d)(1) of the Internal Revenue Code. The rules will also provid e related guidance under the branch rule of section 954(d)(2). On January 24, 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 2008, 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.

•*Nuclear Power Tax Incentives.* Section 468A of the Internal Revenue Code provides a current deduction for amounts contributed to a qualified nuclear decommissioning reserve fund relating to existing nuclear power plants. The Energy Policy Act of 2005 (the Act) made several changes to

section 468A. Specifically, the Act eliminated certain limitations that prior law had placed on the amount that a taxpayer may deduct for the taxable year. Further, the Act allows a ''pour-over payment,'' or ''special transfer'' into the qualified fund of amounts that prior law had prevented from being contributed to the qualified fund in prior taxable years, and new section 468A(f)(2) permits taxpayers to claim ratably over the remaining useful life of the nuclear plant a deduction for the amounts contributed to the qualified fund in the special transfer. A separate schedule of ruling amounts (a ''schedule of deduction amounts'') must be obtained from the Secretary before these deductions may be claimed. In addition, the Act requires taxpayers to obtain a new schedule of ruling amounts when the Nuclear Regulatory Commission (NRC) extends the operating license of the plant. Congress also provided a tax incentive for the construction of advanced nuclear power plants. In particular, the Act added section 45J to the Code, which permits a taxpayer producing electricity at a qualified advanced nuclear power facility to claim a credit for each kilowatt-hour of electricity produced for the eight-year period beginning when the facility is placed in service. A taxpayer may only claim the credit for production of electricity equal to the ratio of the allocated capacity that the taxpayer receives from the Secretary to the rated nameplate capacity of the taxpayer's facility. Section 45J(b)(3) provides that the Secretary shall allocate the national megawatt capacity limitation in such manner as the Secretary may prescribe. The IRS and Treasury, after consultation with the Department of Energy, published Notice 2006-40 providing guidance with respect to procedures for applying for an allocation of the national megawatt capacity limitation and other issues arising under section 45J. As a result of these statutory changes, during fiscal year 2008, the IRS and Treasury intend to (1) issue temporary regulations providing guidance to taxpayers regarding the new substantive provisions under section 468A, including how to obtain the new schedules, as well as update the existing regulations under section 468A to reflect statutory changes; and (2) issue temporary regulations to incorporate the rules set forth in Notice 2006-40, as well as to provide other necessary guidance under section 45J.

• *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). During fiscal year 2008, the IRS and Treasury intend to issue regulations providing guidance relating to the tax return preparer penalty, as amended. The IRS and Treasury also intend to issue guidance regarding the administration of this penalty.

• *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 have prioritized the various pieces of guidance required to comply with those rules and will be issuing guidance in the form of proposed regulations during fiscal year 2008. Specifically, these proposed 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 also intend to issue guidance 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), has conducted a review of its regulations to identify opportunities to streamline our 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 we 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. We also have completed the summary of the comments and recommendations received, as the statute requires, together with a draft report to Congress on our conclusions. The final report is expected to be submitted to Congress before the end of fiscal year 2007.

Significant final rules issued during fiscal year 2007 include:

• *Management Official Interlocks* (12 CFR Part 26).The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (banking agencies) issued a joint interim rule with request for comment onJanuary 11, 2007 (72 FR 1274) and joint final rule on July 16, 2007 (72 FR 38753) to implement section 610 of the Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, - 610, 120 Stat. ____, (Oct. 13, 2006). The rule modifies the relevant metropolitan statistical area

prohibition under the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*) to allow a management official of one depository organization to serve as a management official of an unaffiliated depository organization if the depository organizations (or a depository institution affiliate thereof) have offices in the same relevant metropolitan statistical area and one of the depository organizations in question has total assets of least $50 million.

- *Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks* (12 CFR Part 4). The banking agencies issued an interim rule with request for comment on April 10, 2007 (72 FR 17798) and a joint final rule on September 25, 2007 (72 FR 54347) to implement the Financial Services Regulatory Relief Act of 2006 and related legislation (the Examination Amendments). The Examination Amendments permit insured depository institutions that have up to $500 million in total assets, and that meet certain other criteria, to qualify for an 18-month, rather than 12-month on-site examination cycle.
- *Special Lending Limits for Residential Real Estate Loans, Small Business Loans, and Small Farm Loans* (12 CFR Part 32). The OCC issued an interim rule with request for comment on June 7, 2007 (72 FR 31441) to permanently incorporate special lending limits for 1-4 family residential real estate loans, small business loans, and small farm loans or extensions of credit. The OCC will issue a final rule based on comments received.

The OCC's regulatory priorities for fiscal year 2008 principally include the issuance of a final rule based on our proposed package of regulatory burden reducing amendments, completion of rulemakings required by the FACT Act, and the implementation of new regulatory capital standards. The OCC plans to issue the following:

- *Identity Theft Detection, Prevention, and Mitigation Program for Financial Institutions and Creditors* (12 CFR Parts 30 and 41). The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and Federal Trade Commission (the agencies) are planning to issue a final rule to establish guidelines and regulations to implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Section 114 requires the agencies to issue jointly guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, the agencies must issue regulations requiring each financial institution and creditor to establish reasonable policies and procedures to implement the guidelines. The regulations must contain a provision requiring a card issuer to notify the cardholder if the card issuer receives a notice of change of address for an existing account and a short time later receives a request for an additional or replacement card. Section 315 requires the agencies to jointly issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports should 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 agencies issued a notice of proposed rulemaking on July 18, 2006. 71 FR 40786.
- *Fair Credit Reporting; Affiliate Marketing Regulations* (12 CFR Part 41). The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration (the agencies) are planning to issue a final rule to implement the affiliate sharing provisions of section 214 of the FACT Act. The final rule would implement the consumer notice and opt-out provisions of the FACT Act regarding the sharing of consumer information among affiliates for making solicitations to a consumer for marketing purposes. The agencies issued a notice of proposed rulemaking on July 15, 2004. 69 FR 42502.
- *Fair Credit Reporting, Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies* (12 CFR Part 41). The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and Federal Trade Commission (the agencies) are planning to issue a joint notice of proposed rulemaking to implement section 312 of the FACT Act. Section 312 requires the agencies to issue guidelines regarding the accuracy and integrity of information entities furnish to a consumer reporting agency. Section 312 also requires the agencies to consult and coordinate with each other in order to issue consistent and comparable 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 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 concerning the accuracy of information contained in a consumer report on the consumer based on the consumer's direct request to the furnisher. The agencies issued an advance notice of proposed rulemaking on March 22, 2006. 71 FR 14419.
- *Risk-Based Capital Guidelines: Implementation of New Basel Capital Accord (Basel II)* (12 CFR Part 3). The banking agencies plan to issue 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. The Federal banking agencies published the notice of proposed rulemaking (NPRM) on September 25, 2006 at 71 FR 55830 soliciting industry comments on a proposal for implementing Basel II in the United States. In particular, the NPRM 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 NPRM 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 their regulatory capital requirements. The OCC has included this rulemaking project in Part II of the Regulatory Plan.

- *Risk-Based Capital Standards: Market Risk* (12 CFR Part 3). The banking agencies plan to issue a final rule to amend the current market risk capital requirements for national banks. The banking agencies issued a notice of proposed rulemaking on September 25, 2006 at 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. Specifically, the banking agencies propose to require banks to hold additional capital for the risk of default of trading positions beyond the 10-day horizon required by the current market risk capital requirement.
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Basel II Standardized Approach.* As part of the OCC's ongoing efforts to develop and refine the capital standards to enhance their risk sensitivity and ensure the safety and soundness of the national banking system, the OCC plans to issue a notice of proposed rulemaking to amend various provisions of the capital rules. The changes involve amending the current capital rules for those banks that will not be subject to the advanced internal ratings-based approaches.
- *Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act* (12 CFR Part 40). The banking agencies, along with the National Credit Union Administration, the Federal Trade Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission (the agencies) 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, the agencies proposed a safe harbor model privacy form that financial institutions may use to provide the disclosures under the privacy rules. The agencies are now working on a final rule.
- *Regulatory Burden Reduction and Technical Amendments.*The OCC plans to issue a final rule to further the goal of reducing regulatory burden for national banks. The OCC issued a notice of proposed rulemaking on July 3, 2007 (72 FR 36550). The proposed changes would 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, proposed revisions also would be made to add or enhance requirements for safety and soundness reasons.

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.* On September 25, 2006, the Agencies published a joint NPRM prescribing a new risk-based capital adequacy framework that would require some, and permit other, qualifying banks, savings associations, and bank holding companies (banking organizations) to apply certain approaches contained in the Basel II Framework. Specifically, the NPRM would prescribe an internal ratings-based approach (IRB) to calculate regulatory credit risk capital requirements, and to use advanced measurement approaches to calculate regulatory operational risk capital requirements. The NPRM specified the criteria that a banking organization must meet to use these advanced approaches. 71 FR 55830 (Sept 25, 2006). 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 rules and guidance in fiscal year (FY) 2008.
- *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 2008.
- *Risk-Based Capital Standards; Standardized Approach.* The banking agencies also plan to issue an NPRM implementing the Standardized Approach to credit risk and approaches to operational risk that are contained in the Basel II Framework. 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 will also be issued in FY 2008 and would replace the NPRM on Domestic Capital Modifications, which was published at 71 FR 77446 on Dec. 26, 2006.

Significant final rules issued during fiscal year 2007 include:

- *Subordinated Debt Securities and Mandatorily Redeemable Preferred Stock.* OTS issued a final rule updating existing rules governing the inclusion of subordinated debt and mandatorily redeemable stock in supplementary capital. The final rule deleted unnecessary and outdated requirements and conformed OTS rules more closely to the other banking agencies (72 FR 27862; Feb. 28, 2007).
- *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 will finalize the interim rule in FY 2008.

- *Community Reinvestment Act—Interagency Uniformity*. OTS issued a final rule revising its CRA regulations in four areas to reestablish uniformity between its regulations and those of the other federal banking agencies. The final rule was published on March 22, 2007, at 72 FR 13429.
- *Stock Benefit Plans in Mutual-to-Stock Conversions and Mutual Holding Company Structures.* OTS issued final regulations regarding stock benefit plans established after mutual-to-stock conversions or in mutual holding company structures. OTS also made several other minor changes to the regulations governing mutual-to-stock conversions and minority stock issuances (72 FR 35145; June 27, 2007).

OTS anticipates implementing sections of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) as follows:

- *Fair Credit Reporting - Affiliate Marketing Regulations.* The banking agencies and the National Credit Union Administration (NCUA) plan to issue a final rule implementing section 214 of the FACT Act. The rule would implement the consumer notice and opt-out provisions of the FACT Act regarding the sharing of consumer information among affiliates for marketing purposes. The agencies published a proposed rule on July 15, 2004, at 69 FR 42502.
- *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 concerning 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.
- *Fair Credit Reporting- Identity Theft Red Flags and Address Discrepancies.* The banking agencies, NCUA, and FTC plan to issue a final rule implementing section 114 and 315 of the FACT Act. Section 114 requires the agencies to develop guidelines for use in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. It also requires the agencies to issue regulations requiring each financial institution and creditor to establish reasonable policies and procedures to implement such guidelines. The regulations must contain a provision requiring a card issuer to notify the cardholder if the card issuer receives a notice of change of address for an existing account, and a short time later receives a request for an additional or replacement card. Section 315 requires the agencies to jointly issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports should employ when such 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 in the file for the consumer. The agencies published a proposed rule on July 18, 2006, at 71 FR 40786.

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.

OTS will decide during fiscal year 2008 whether and, if so, to what extent, additional regulation is needed to implement the prohibition against unfair or deceptive acts or practices in section 5 of the Federal Trade Commission Act. This would be in furtherance of the Advance Notice of Proposed Rulemaking OTS published on August 8, 2007, at 72 FR 43570.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to carry out the Federal laws relating to the manufacture and commerce of, and collection of Federal taxes on, alcohol and tobacco products, and the collection of Federal excise tax on firearms and ammunition. TTB's mission and regulations are designed to:

- Regulate the alcohol and tobacco industries, including systems for licenses and permits;
- 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;
- Suppress commercial bribery, consumer deception, and other prohibited practices in the alcohol beverage industry; and
- Assist the States and other F ederal agencies in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes in avoidance of State taxes.

In 2008, 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, amounting to $14.8 billion in FY 2006. 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 - Exportation of Tobacco Products and Cigarette Papers and Tubes), the American Viticultural Area program (Part 9), and TTB procedure and administration (Part 70).

In early FY 2008, the bureau plans to put forward for Department of the Treasury publication notices of proposed rulemaking on parts 19 and 9 and an advance notice of proposed rulemaking on part 25. Additional regulations modernization work will begin later in the year on part 28. In addition to TTB's modernization updates, in FY 2008 the Bureau will pursue final regulatory action regarding allergens, serving facts for alcohol beverage labels and advertisements, and the classification distinctions between cigars and cigarettes for excise tax purposes.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) administers the following regulations:

- Governing transactions in Government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended.
- Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local Government securities.
- Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations.
- Governing securities held in Treasury's retail systems.
- 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.

The rules setting out the terms and conditions for the sale and issue of marketable book-entry Treasury bills, notes, and bonds are known as the Uniform Offering Circular. Treasury is considering lowering the minimum purchase amount for all Treasury marketable securities from $1,000 to $100. If this policy change is approved, during fiscal year 2008, BPD plans to issue rules to lower the par amount and multiple of Treasury notes, bonds, and TIPS that may be stripped from $1,000 to $100. The lower purchase amount will enable smaller investors to participate in Treasury marketable securities auctions and encourage Americans to save more.

In fiscal year 2008, BPD plans to issue a rule to lower the annual purchase limitation for Series EE and Series I savings bonds. Currently, investors can purchase $30,000 each of definitive and book-entry Series EE savings bonds and $30,000 each of definitive and book-entry Series I savings bond per person, per calendar year. The new rule will permit an investor to purchase a principal amount of $5,000 each of definitive and book-entry Series EE savings bonds and $5,000 each of definitive and book-entry Series I savings bonds per person, per calendar year. As a result of the change in the annual purchase limitation, we are withdrawing the $10,000 Series I definitive savings bond denomination on original issue. The change will permit Treasury to continue to offer savings options for investors with limited means, while encouraging those with greater financial resources to participate in marketable securities auctions.

BPD intends to issue regulations, in fiscal year 2008, clarifying matters related to deceased bond owners. In addition, BPD will take the opportunity to make non-substantive technical corrections to the regulations.

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 2008, FMS's regulatory plan includes the following priorities:

- *Management of Federal Agency Disbursements:* FMS is amending 31 CFR part 208 to increase the use of agency electronic payments. In fiscal year 2008, a proposed rule will provide that electronic payments are required for any individual who becomes eligible to receive Federal payments, unless the individual certifies that he or she does not have a bank account. This amendment to 31 CFR part 208 is in addition to a final rule, issued by FMS in the summer of 2007, facilitating the delivery of Federal payments to victims of disasters and emergencies.
- *Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Securities*: FMS will amend 31 CFR part 225 to incorporate changes required by the Financial Services Regulatory Relief Act of 2006. The Act makes changes to 31 U.S.C. - 9301 and - 9303 to allow the Secretary of the Treasury to determine the types of securities that may be pledged in lieu of surety bonds, and requires that the securities be valued at current market rates.
- *Payment of Federal Taxes and the Treasury Tax and Loan Program:* FMS will amend 31 CFR part 203 to support operational changes resulting from the implementation of new computer systems and to eliminate provisions that are obsolete, duplicative, or more appropriately located in the Treasury Financial Manual.
- *Payment of Federal Taxes and the Treasury Tax and Loan Program*: FMS may amend 31 CFR part 203 or such other part to support proposed legislation that, if enacted, would broaden Treasury's authority to invest the operating cash of the Treasury in repurchase obligations.

Committee on Foreign Investment in the United States and Implementation of the Foreign Investment and National Security Act of 2007

On July 26, 2007, the President signed into law the Foreign Investment and National Security Act of 2007 (FINSA), which becomes effective on October 24,

2007. Under the law, the President is to direct, subject to notice and comment, the issuance of regulations to carry out Section 721 of the Defense Production Act, which FINSA amended. Since its enactment in 1988, Section 721 has been implemented by the Committee on Foreign Investment in the United States (CFIUS). The Secretary of the Treasury has served as the chairperson of CFIUS since its creation by Executive order in 1975 and, under FINSA, will continue as chairperson. We anticipate that the Department of the Treasury will play an important role, with other CFIUS agencies, in the issuance of these regulations.

TREAS—Comptroller of the Currency (OCC)

FINAL RULE STAGE

128. IMPLEMENTATION OF A REVISED BASEL CAPITAL ACCORD (BASEL II)

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:

As part of OCC's ongoing efforts to develop and refine capital standards to ensure the safety and soundness of the national banking system and to implement statutory requirements, OCC is amending various provisions of the capital rules for national banks. This change involves the implementation of the new framework for the Basel Capital Accord (Basel II). OCC is conducting this rulemaking jointly with the other Federal Banking Agencies. In addition, the Federal Banking Agencies also have published for comment additional proposed Basel II Guidance. See 72 FR 9084 (February 28, 2007).

Statement of Need:

This rulemaking is necessary to implement an international initiative regarding the capital adequacy regulation of certain domestic financial institutions. Specifically, this rulemaking implements the ''International Convergence of Capital Measurement and Capital Standards'' (Basel II), which comprehensively revises the 1988 ''International Convergence of Capital Measurement and Capital Standards'' into the standards and requirements that will govern the largest banks in the United States.

Summary of Legal Basis:

OCC is implementing the Basel II capital framework for certain domestic financial institutions. 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 OCC to establish minimum capital levels for financial institutions that 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 Standards: Revised Capital Adequacy Guidelines (Basel II), Office of the Comptroller of the Currency, International and Economic Affairs (2006).''

Anticipated Costs and Benefits:

Not yet determined.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/03	68 FR 45900
NPRM	09/25/06	71 FR 55830
NPRM Comment Period End	01/23/07	
NPRM Comment Period Extended From 01/23/2007 to 03/26/2007	12/26/06	71 FR 77518
Final Action	12/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Split from 1557–AB14

RIN: 1557–AC91

TREAS—Office of Thrift Supervision (OTS)

FINAL RULE STAGE

129. IMPLEMENTATION OF A REVISED BASEL CAPITAL ACCORD (BASEL II)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1828 (note)

CFR Citation:

12 CFR 567

Legal Deadline:

None

Abstract:

In 2003, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the ''Federal Banking Agencies'') sought industry comment on a proposed framework for implementing the New Basel Capital Accord in the United States. The advance notice of proposed rulemaking (ANPRM) 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).

In the fourth quarter of 2004, the Federal Banking Agencies began a quantitative impact study to help determine the potential impact of implementing the capital framework set forth in the ''International Convergence of Capital Measurement and Capital

Standards: A Revised Framework,'' which updates and makes some significant revisions to the preliminary New Basel Capital Accord document from 2003, upon which the above ANPRM was based.

After review of the results of the quantitative impact study and after further review and full consideration of public comments received on the ANPRM, the Federal Banking Agencies published a notice of proposed rulemaking for implementation of this capital framework. The NPRM specified criteria that would be used to determine banking organizations that would be required to use the advanced approaches, subject to meeting certain qualifying criteria, supervisory standards, and disclosure requirements. Other banking organizations that would meet the criteria, standards, and requirements also would be eligible to use the advanced approaches. Under the advanced approaches, banking organizations would use internal estimates of certain risk components as key inputs in the determination of their regulatory capital requirements.

Statement of Need:

This rulemaking is necessary to implement an international initiative regarding the capital adequacy regulation of certain domestic financial institutions. Specifically, this rulemaking implements the ''International Convergence of Capital Measurement and Capital Standards'' (Basel II), which comprehensively revised the 1988 ''International Convergence of Capital Measurement and Capital Standards'' into the standards and requirements that will govern the largest savings associations in the United States.

Summary of Legal Basis:

OTS is implementing the Basel II capital framework for certain domestic financial institutions. This initiative is based on the OTS' general rulemaking authority under the Home Owners' Loan Act, and its authority under 12 USC 1464(t). 12 USC 1464(t)(1) specifically authorizes OTS to establish minimum capital levels for savings associations, including risk-based capital standards.

Alternatives:

Not yet determined.

Anticipated Costs and Benefits:

See Economic Data.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/03	68 FR 45900
ANPRM Comment Period End	11/03/03	
NPRM	09/25/06	71 FR 55830
NPRM Comment Period End	01/23/07	
NPRM Comment Period Extended	12/26/06	71 FR 77518
NPRM Comment Period End	03/26/07	
Final Rule	12/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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Related RIN: Related to 1550–AB11

RIN: 1550–AB56

BILLING CODE 4811–42–S

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 United States Environmental Protection Agency (EPA) is the primary Federal agency responsible for safeguarding the quality of the natural environment and protecting human health from deleterious pollutants. 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.

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.

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 is advancing clean, renewable fuels and clean air through a renewable fuel standard which encourages the use of renewable fuels produced from American crops.
- By the end of FY 2006, more than 2,500 polluted waters identified by states in 2000 were restored or found to be meeting water quality standards.
- EPA continues to commit to Brownfields redevelopment via strong public-private partnerships and innovative and creative solutions. By encouraging cleanup and redevelopment of America's abandoned and contaminated waste sites, the Brownfields Program has leveraged more than $8.2 billion in private investment, more than 37,500 jobs, and more than 8,300 properties assessed for potential redevelopment.
- EPA has a leading role in homeland security by supporting the protection of critical water infrastructure and coordinating development of national capabilities and strategies to address chemical, biological, and radiological contamination from a terrorist event. In FY 2006, EPA received emergency response plans for 100 percent of all large and medium community drinking water systems that conducted vulnerability assessments; launched a pilot water contamination warning system; developed short-term exposure limits and established health effects guidelines for exposure to hazardous chemicals or a terrorist incident; and updated the National Response Plan in light of lessons learned from hurricanes Katrina and Rita.

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

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. Millions of people live in areas where urban smog, very small particles, and toxic pollutants may pose serious health concerns.

EPA's programs will allow the Nation to make substantial progress in protecting human health and ecosystems from air pollution. By 2011, virtually all of the country will have put in place controls to meet current air quality standards. New motor vehicles, including trucks and buses, will be 75 to 95 percent cleaner than they were in 2003. Power plant emissions will be reduced by approximately 40 percent from 2003 levels. Taken together, 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 percent 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 5 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 represents 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 5 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.

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.

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, 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.

Timeliness 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. EPA 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.

Aggregate Costs and Benefits

Per the amendments to EO 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: Review of NAAQS for Ozone, Control of Emissions from New Locomotives and New Marine Diesel Engines, Control of Emissions from Nonroad Spark-Ignition Engines, Expanding the Comparable Fuels Exclusion under RCRA, Lead-Based Paint Activities; Amendments for Renovation, Repair and Remodeling; (2) Monetized cost information (but no monetized benefits) was provided for: Endocrine Disruptor Screening Program; Implementing the Screening and Testing Phase, Test Rule; Certain High Production Volume (HPV) Chemicals, Pesticides: Data Requirements for Antimicrobials, and Final Revisions to the Effluent Limitations Guidelines and Standards for CAFOS; (3) Monetized benefit information (but no monetized costs) was provided for: Definition of Solid Waste Revisions, Revisions to the SPCC Final Rule, Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas, Hazardous Waste Management System.

Aggregate annual monetized benefits range from $5 billion to $104 billion (benefit estimates reflect the full suite of standards under consideration for the ozone NAAQS). With the exception of the ozone NAAQS rule, we do not have sufficient information to provide a range for the aggregate cost estimates. For this reason, we are reporting the ozone cost range separate from the other rules. The annualized monetized costs for the ozone NAAQS rule range from $3.5 billion to $70 billion (cost estimates reflect the full suite of standards under consideration for the ozone NAAQS.) Aggregate annual monetized costs for all other rules are estimated to be $1 billion. This estimate does not reflect the uncertainty in the cost estimates, as noted above.

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), and
- Lead-Based Paint Activities; Amendments for Renovation, Repair and Painting (2070-AC83).

For a more extensive list of rules affecting small businesses, please see appendices B and C to the Regulatory Agenda which is available at http://www.epa.gov/opei/orpm.html#agenda.

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

In 2007, a top priority for EPA is the implementation of a recent Presidential Executive Order to reduce gasoline consumption and greenhouse gas emissions from motor vehicles and other types of engines. To this end, the Office of Air and Radiation (OAR) is working with other Federal agencies to develop the rules needed to carry out this Executive Order. These regulations are intended to give effect to the President's State-of-the-Union proposal to reduce gasoline consumption by 20 percent over the next 10 years by increasing the supply of alternative fuels and making motor vehicles more energy efficient. Another important and ongoing OAR regulatory priority is to protect public health and the environment from the harmful effects of fine particulate matter and ozone, the two air pollutants that persist widely in the Nation's air in amounts that exceed Clean Air Act health standards. Exposure to these pollutants is associated with numerous harmful effects on human health, including respiratory problems, heart and lung disease, and premature death. These pollutants also degrade visibility, an effect of particular concern in national parks and other scenic areas. In addition to ozone and particulate pollution, OAR is continuing to address toxic air pollution by controlling toxic emissions from both stationary sources and mobile sources such as cars and trucks. OAR is also working to increase the effectiveness and efficiency of its permitting and monitoring programs, which are among the main mechanisms through which clean-air protections are implemented. Finally, OAR is revising previously issued safety standards for nuclear-waste storage in response to a court decision. These efforts are described briefly below.

On May 14, 2007, President Bush issued Executive Order entitled ''Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines.'' OAR is working with other Federal agencies to implement this Executive Order by developing regulations to reduce gasoline consumption and greenhouse gas emissions from motor vehicles. These regulations will use as a starting point the President's State-of-the-Union proposal to reduce gasoline consumption by 20 percent over the next 10 years. By increasing the supply of alternative fuels and making motor vehicles more energy efficient, this effort will serve to establish rules giving effect to the President's proposal.

To help control ozone and particulate pollution, OAR is developing additional rules as part of its program to reduce emissions from mobile sources. These rules will require additional emission reductions from certain marine engines, locomotives, and small equipment. These rules will enhance the overall mobile-source control program that has already set stringent standards for most categories of vehicles, engines, and their fuels.

OAR also continues to assess new scientific information that underlies the National Ambient Air Quality Standards (NAAQS). In July, EPA proposed a rule revising the existing NAAQS for ozone, and will promulgate a final rule early in 2008. A rulemaking addressing standards for lead is also underway, with an advance notice of proposed rulemaking due for publication in December.

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. In this second phase, EPA will combine the remaining MACT source categories requiring residual risk and technology reviews 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. Among the rulemakings currently underway is the Risk and Technology Review Phase II, Group 2, which addresses 21 source categories including aerospace manufacturing, oil and natural-gas production, and production of polymers and resins.

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. Currently, 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. OAR is also developing rulemakings to clarify and better define the kinds of monitoring required in Federal and State operating permit programs, and to clarify how to determine the potential emissions from various types of sources.

EPA also expects to complete a rulemaking amending the radiation standards governing the development of the Yucca Mountain site in Nevada, the Nation's designated geologic repository for spent nuclear fuel and high-level radioactive waste. These standards were initially issued in 2001 and were partially remanded by a Federal court in 2004. To address the remand, EPA must reassess the time frame for compliance in light of the National Academy's recommendation that compliance must be addressed at the time of peak dose, which may be as long as several hundred thousand years into the future.

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 chemical risks to humans, communities and ecosystems. OPPTS employs a mix of regulatory and non-regulatory methods to achieve this goal. During the past fiscal year, OPPTS proposed and finalized a number of significant regulatory actions that are briefly highlighted below. For more information about these regulatory actions, as well as information about our other programs and activities, please visit our Web site at www.epa.gov/oppts. Looking forward to the coming fiscal year, OPPTS expects to issue several significant regulatory actions that are also highlighted below.

In working to meet OPPTS's goal, EPA thoroughly evaluates pesticides to ensure that they will meet Federal safety standards to protect human health and the environment before they can be marketed and used in the United States. EPA uses data submitted by pesticide producers to form the bases for the pesticide risk assessments and decisions as to whether pesticides meet safety standards. The Agency has kept pace with the evolving scientific understanding of pesticide risks by requiring the submission of the data needed on a case-by-case basis and OPPTS updated its registration data requirements for conventional, biochemical, and microbial pesticides in 2007. As part of this continuing effort to update and/or establish pesticide data requirements, OPPTS expects to issue two proposed rules in 2008: One would update the data requirements for antimicrobial pesticides in 40 CFR Part 158; the other would establish data requirements for plant-incorporated protectant (PIP) pesticides in 40 CFR Part 174.

In order to better protect human health and the environment, and to update and strengthen the pesticide worker safety programs, OPPTS expects to propose changes to the Code of Federal Regulations (CFR) for certifying the competency of pesticide applicators to apply pesticides safely in late 2008. Many changes in State programs have occurred since the initial applicator certification regulations were promulgated in the 1970s. Today, many States' programs go beyond the current Federal regulations in training and certifying pesticide applicators. The Agency anticipates revisions that will broaden the scope of the certification program for occupational pesticide applicators, and strengthen the demonstration of competency as a requirement of certification. In conjunction with the applicator certification regulation enhancements, OPPTS will also propose enhancements to the agricultural worker protection regulation in a separate but related regulatory action to strengthen the elements of hazard communication and pesticide worker safety training.

Evidence suggests that environmental exposure to man-made chemicals that mimic hormones (endocrine disruptors) might cause adverse health effects in human and wildlife populations. The Food Quality Protection Act directed EPA to develop a chemical screening program (the Endocrine Disruptor Screening Program, EDSP), using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. OPPTS is implementing recommendations from a scientific advisory committee, which was established to advise EPA on the EDSP, by developing and validating test systems for determining whether a chemical might have effects similar to those produced by naturally occurring hormones. As part of this program EPA is also developing a draft framework for procedures and processes to use when implementing the screening and testing phase of the EDSP, and developed an initial list of chemicals for which testing will be required. In 2008, EPA anticipates finalizing the procedures and the list of chemicals for initial screening. The screening and testing phase of the program is expected to commence in 2008.

In 2008, EPA will continue its work towards the Administration goal of eliminating childhood lead poisoning as a national health concern by 2010 by implementing a program to address lead-based paint hazards associated with renovation, repair and painting activities. The p rogram will be composed of a combination of approaches including regulations, and education and outreach that will include elements specifically designed for industry and consumers. Industry outreach will include dissemination of

information regarding the regulation, lead-safe work practices, and training opportunities. Consumer outreach will be designed to expand consumer awareness, and create demand for the use of lead-safe work practices. EPA plans to finalize and begin implementation of the Renovation, Repair and Painting Program rule in 2008. The regulation is intended to minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair, and painting activities. The regulation would require contractors conducting renovation, repair and painting activities in most target housing and child occupied facilities to be trained, certified, and to follow work practice standards designed to minimize the creation of lead hazards.

EPA continues to implement the voluntary HPV Challenge Program, a collaborative partnership between EPA and industry stakeholders, to develop health and safety screening information on sponsored high production volume chemicals. To complement this voluntary effort, OPPTS expects to propose a second test rule under the Toxic Substances Control Act (TSCA) in early 2008. This rule will require testing for a number of HPV chemicals that were not sponsored as part of the voluntary HPV Challenge Program in order to develop critical information about the environmental fate and potential hazards of those chemicals. When combined with exposure and use information obtained under the Inventory Update Rule (IUR), the Agency will be in a position to evaluate potential health and environmental risks, and take appropriate actions, as necessary. In 2007 and continuing in 2008, EPA will begin to evaluate the HPV data and develop hazard screening/risk characterizations on the HPV chemicals. These Hazard/Risk Characterizations will be posted to the High Production Volume Information System (HPVIS) website as they are completed. EPA will also begin to assess lower-volume existing chemicals. These activities will help us identify needed next steps, including regulatory and voluntary measures, to obtain more detailed toxicity or exposure information, identify safer substitutes, or identify other risk mitigation steps, if necessary. Because of the head start provided by the HPV Challenge information and Inventory Update Rule reporting, this approach will result in risk management and testing decisions on HPV chemicals in the next several years. Additionally, EPA is committed to considering any relevant data generated by other countries or regions (e.g., Canada's Chemical Management Plan or the EU's REACH legislation) which would further inform our regulatory decisions.

In July of 2007, EPA issued for public comment draft documents regarding the design of a voluntary Nanoscale Materials Stewardship Program (NMSP) under TSCA. The NMSP will complement and support EPA's new and existing chemical programs under TSCA and will help provide a firmer scientific foundation for regulatory decisions by encouraging the development of key scientific information and contribute to an improved understanding of risk management practices for nanoscale chemical substances (nanoscale materials). EPA held a public meeting on the NMSP on August 2007, and in September 2007, the Agency held a public scientific peer consultation on material characterization of nanoscale materials as well as a conference on the pollution prevention benefits of nanotechnology. If information from the NMSP or other information indicates potential new uses of existing chemicals that may result in new exposures or to fill information gaps, EPA may issue a significant new use rule or section 8 reporting rule under TSCA.

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 the safe management of wastes; preparing for, preventing and responding to chemical and oil spills, accidents, and emergencies; enhancing homeland security; and cleaning up contaminated property and making it available for reuse. EPA carries out our mission in partnership with other Federal agencies, States, tribes, local governments, communities, nongovernmental organizations, and the private sector. To further our mission, 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.

EPA is seeking to further amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the burden imposed on the regulated community for complying with these SPCC requirements, while maintaining protection of human health and the environment.

Specifically, on October 1, 2007, EPA proposed amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule at 40 CFR part 112. With these proposed changes, EPA intends to provide clarity, tailor, and streamline requirements as appropriate in order to encourage greater compliance with the SPCC regulations. These amendments are intended to exempt certain containers from the SPCC requirements; clarify the general secondary containment requirements; provide streamlined requirements for a subset qualified facilities; increase flexibility in the security requirements and flexibility in the use of industry standards to comply with integrity testing requirements; provide additional flexibility in meeting the facility diagram requirements; clarify the flexibility provided by the definition of ''facility;'' and streamline a number of requirements for oil production facilities.

The ''definition of solid waste'' rule determines which hazardous secondary materials that are recycled are regulated under the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations and which are not. Many hazardous secondary materials that are or could be reclaimed as part of the recycling process are regulated as hazardous wastes. This can discourage recycling of the wastes, due to requirements for permits (which trigger corrective action), manifests, and the other requirements imposed by the Subtitle C hazardous waste regulations. EPA is seeking innovative approaches that will increase the safe recycling of hazardous waste, while still ensuring that these materials are properly handled. In its supplemental proposal, EPA is proposing to remove unnecessary regulatory controls over certain recycling practices; EPA expects to make it easier to safely recycle hazardous secondary material. Exclusions are proposed for materials that are generated and reclaimed under the control of the generator; materials that are generated and transferred to another person or company for reclamation under specific conditions; and materials that EPA deems nonwaste through a case-by-case petition process. If the exclusions are promulgated as proposed and are adopted by all the states, EPA expects this action to result in $107 million in average annual cost savings.

EPA is considering revising the RCRA hazardous regulations to exclude from

being a solid waste any oil-bearing hazardous secondary materials that are generated by the petroleum refining industry if such materials are destined to be processed in a gasification system at the petroleum refinery and used in the manufacture of synthesis gas. This rule promotes increased energy efficiency, by allowing oil-bearing hazardous secondary materials to be used as a source of energy, while reducing the volume of hazardous waste that would otherwise be treated and land disposed. With an estimated savings between $46.4 million and $48.7 million in net social benefits per year, the final rule takes a significant step forward for the environment and for energy self-sufficiency.

The comparable fuels program currently allows specific industrial wastes to be excluded from RCRA hazardous waste requirements when they are used as a fuel and do not contain hazardous constituent levels exceeding those in a typical benchmark fuel that facilities could otherwise use as a fuel. EPA is considering promulgating a rule that would expand those hazardous wastes that could be used safely for their energy value without the expense of a RCRA permit, to promote the use of these wastes as a renewable domestic source of energy and reduce our use of fossil fuels. This rule will promote safe energy recovery and remove unnecessary costs.

The Agency plans to propose revisions to the treatment standards for the disposal of spent hydrotreating and hydrorefining catalysts. EPA is focusing on removing disincentives to the recycling of spent hydrotreating and hydrorefining catalysts, which would create more incentives to metals recovery, over disposal.

The Office of Management and Budget's Reports to Congress on the Costs and Benefits of Regulations for 2001, 2002 and 2004 included reform nominations for the Agency to consider. The following rulemakings mentioned above support reform nominations: (1) Expanding the Comparable Fuels Exclusion under RCRA, (2) Definition of Solid Waste Revisions, (3) Revisions to Recycling Requirements for Spent Hydrorefining and Hydroprocessing Catalysts, and (4) Revisions to the SPCC. In addition, two additional rulemakings under development also pertain to the reform nominations: (1) Streamlining Laboratory Waste Management in Academic and Research Laboratories and (2) Management of Cement Kiln Dust (a by-product of the cement manufacturing process.) For the former rule, the Agency proposed a set of alternative standards that are more tailored to the way laboratories operate. For the latter rule, the Agency proposed a comprehensive set of standards for the management of cement kiln dust.

Office of Water

EPA's Office of Water's primary goals are to ensure that drinking water is safe; restore and maintain oceans, watersheds, and their aquatic ecosystems to protect human health; support economic and recreational activities; and provide healthy habitat for fish, plants, and wildlife. In order to meet these goals, EPA has established a number of regulatory priorities for the coming year. They include actions affecting National Pollutant Discharge Elimination System permit requirements and drinking water.

EPA is planning to publish four actions affecting National Pollutant Discharge Elimination System (NPDES) permitting requirements in FY 2007. The first is a rule addressing the NPDES permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) in response to the order issued by the Second Circuit Court of Appeals in Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2nd Cir. 2005). The final rule responds to the court order while furthering the statutory goal of restoring and maintaining the Nation's water quality and effectively ensuring that CAFOs properly manage manure generated by their operations. A second action is the Water Transfers rulemaking. EPA plans to finalize the rule that addresses the question of whether the NPDES permitting program under Section 402 of the Clean Water Act (CWA) is applicable to water control facilities that merely convey or connect navigable waters. A third action that EPA plans to issue is a policy regarding NPDES permit requirements for peak wet weather diversions at publicly owned treatment works (POTW) treatment plants serving separate sanitary sewer collection systems. Lastly, EPA began development of NPDES permitting framework under the CWA for the discharge of pollutants incidental to the normal operation of vessels (e.g., bilgewater, deck runoff, graywater). Development of NPDES permits is necessary in light of a lawsuit in the U.S. District Court for the Northern District Court of California in which the Court ruled that EPA's regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA.

EPA

PRERULE STAGE

130. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR LEAD

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, May 1, 2008, As per 5/14/2005 order.

Final, Judicial, September 1, 2008, As per 5/14/2005 order.

Abstract:

On October 5, 1978 the EPA promulgated primary and secondary NAAQS for lead under section 109 of the Act (43 FR 46258). Both primary and secondary standards were set at a level of 1.5 μg/m3 as a quarterly average (maximum arithmetic mean averaged over a calendar quarter). Subsequent to this initial standard-setting, the Clean Air Act requires that the standard be reviewed periodically. The last such review occurred during the period 1986-1990. For that review, an Air Quality Criteria Document (AQCD) was completed in 1986 with a supplement in 1990. Based on information contained in the AQCD, an EPA Staff Paper and Exposure Assessment were prepared. Following the completion of these documents, the agency did not propose any revisions to the 1978 Pb NAAQS. The current review of the Pb air-quality criteria was initiated in November 2004 by EPA's National Center for Environmental Assessment (NCEA) with a general call for information published in the Federal Register. In January 2005, NCEA released a work plan for the review and revision of the Pb AQCD. Workshops were held to provide author feedback on a developing draft of the AQCD in August 2005. The draft AQCD was released December 1, 2005. The EPA Office of Air Quality Planning and Standards prepared a draft Staff Paper for the Administrator, which included

an initial evaluation of the key studies and scientific information contained in the AQCD and additional preliminary technical analyses. The AQCD and draft Staff Paper were reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public. An ANPRM will be published outlining the results of the final risk assessment and giving consideration to the policy assessment. As the lead NAAQS review is completed, the Administrator's proposal to reaffirm or revise the lead 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 lead 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 the ''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 lead are whether to reaffirm or revise the existing standards.

Anticipated Costs and Benefits:

Cost and benefit estimates are being developed with the proposal.

Risks:

The current national ambient air quality standards for lead are intended to protect against public health risks. During the course of this review, a risk assessment will be conducted to evaluate health risks associated with the retention or revision of the lead standards. Welfare effects will also be reviewed in relation to retention or revision of the current standard.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/07	
NPRM	04/00/08	
Final Action	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 5059;

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RIN: 2060–AN83

EPA

131. ENDOCRINE DISRUPTOR SCREENING PROGRAM (EDSP); IMPLEMENTING THE SCREENING AND TESTING PHASE

Priority:

Other Significant

Legal Authority:

15 USC 2603 ''TSCA''; 21 USC 346(a) ''FFDCA''; 42 USC 300(a)(17) ''SDWA''; 7 USC 136 ''FIFRA''

CFR Citation:

None

Legal Deadline:

None

Abstract:

Section 408(p) of the Federal Food, Drug, and Cosmetic Act, as amended by the 1996 Food Quality Protection Act, directs EPA to establish and implement a program whereby industry will be required to screen and test all pesticide chemicals to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate. The requirements of Section 408(p) were implemented through the creation of the Endocrine Disruptor Screening Program (EDSP) in 1998. The EDSP has the following three components that are proceeding simultaneously: 1) developing and validating assays; 2) setting chemical testing priorities; and 3) establishing 408(p) testing orders and related data procedures. A Federal Advisory Committee Act committee has provided advice to the EDSP on assay development and validation. For chemical testing priorities, the approach to selecting the first 50-100 chemicals was finalized in September 2005 (70 FR 56449) and EPA implemented that approach. EPA published a draft list of 73 pesticide active ingredients and high production volume (HPV) pesticide inert chemicals for initial screening in June 2007 (72 FR 33486). EPA intends to commence Tier 1 screening of the first group of pesticide chemicals by issuing test orders under FFDCA section 408(p) to chemical companies identified as the manufacturer or processor of the identified chemicals, including the pesticide registrant. EPA is developing a draft implementation policy that will describe the procedures that EPA will use to issue orders, the procedures that order recipients would use to respond to the order, how data protection and compensation will be addressed in the test orders, and other related procedures or policies.

Statement of Need:

The Endocrine Disruptor Screening Program Implementation of the Screening and Testing Phase fulfills the statutory direction and authority to screen pesticide chemicals and drinking water contaminants for their potential to disrupt the endocrine system and adversely affect human health and wildlife.

Summary of Legal Basis:

The screening and testing phase of the Endocrine Disruptor Screening Program (EDSP) potentially will encompass a broad range of types of chemicals, including pesticide chemicals, TSCA chemicals, chemicals that may be found in sources of drinking water, chemicals that may have an effect that is cumulative to the effect of a pesticide chemical, chemicals that are both pesticide chemicals and TSCA chemicals, and other chemicals that are combinations of these types of chemicals. As discussed in the Proposed Statement of Policy, EPA has a number of authorities at its disposal

to require testing of these types of chemicals. The Federal Food, Drug, and Cosmetics Act (FFDCA) section 408(p) provides EPA authority to require testing of all pesticide chemicals and any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if EPA determines that a substantial population may be exposed to the substance. 21 U.S.C. 346a)(p). Likewise, the Safe Drinking Water Act (SDWA) provides EPA with authority to require testing of any substance that may be found in sources of drinking water if EPA determines that a substantial population may be exposed to the substance. 42 USC sec 300j-17. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides EPA with authority to require testing of pesticides if EPA determines that additional data are required to maintain in effect an existing registration. 7 USC sec 136a(c)(2)(B). The Toxic Substances Control Act (TSCA) provides authority for EPA to require testing of TSCA chemicals, provided that it makes certain hazard and/or exposure findings. 15 USC sec 2603. In addition, EPA has authority to issue consent orders to require testing when interested parties agree on an acceptable testing program. 51 FR 23706 (June 30, 1986).

Alternatives:

A federal role is mandated under cited authority. There is no alternative to the role of the Federal government on this issue to ensure that pesticides, commercial chemicals and contaminants are screened and tested for endocrine disruption potential. A limited amount of testing may be conducted voluntarily but this will fall far short of the systematic screening which is necessary to protect public health and the environment and ensure the public that all important substances have been adequately evaluated.

Anticipated Costs and Benefits:

It is too early to project the costs and benefits of this program accurately. However, a preliminary rough estimate by industry indicated a cost of $200,000 per chemical. It is also too early to quantify the benefits of this program quantitatively. The goal of the program is to reduce the risks identified below.

Risks:

Evidence is continuing to mount that wildlife and humans may be at risk from exposure to chemicals operating through an endocrine mediated pathway. Epidemiological studies on the associations between chemical exposures and adverse endocrine changes continue to evaluate this problem in humans. Wildlife effects have been more thoroughly documented. Abnormalities in birds, marine mammals, fish, amphibians, alligators, and shellfish have been documented in the U.S., Europe, Japan, Canada, and Australia which have been linked to specific chemical exposures. Evidence is sufficient for the U.S. to proceed on a two track strategy: Research on the basic science regarding endocrine disruption and screening with validated assays to identify which chemicals are capable of interacting with the endocrine system. The combination of research and test data submitted in this program will enable EPA to take action to reduce risks.

Timetable:

Action	Date	FR Cite
Draft Procedures	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 4728; EPA publication information: Notice; Split from RIN 2070-AD26. In August 2000, the Agency submited the required Status Report to Congress. In March 2002, the Agency submitted the requested status report to Congress on the Endocrine Disruptor Methods Validation subcommittee under the National Advisory Council on Environmental Policy and Technology.

URL For More Information:

http://www.epa.gov/scipoly/oscpendo/index.htm

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RIN: 2070–AD61

EPA

132. NANOSCALE MATERIALS UNDER TSCA

Priority:

Other Significant

Legal Authority:

15 USC 2601et seq

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Nanoscale materials are chemical substances containing structures on the scale of approximately 1 to 100 nanometers, and may have different molecular organizations and properties than the same chemical substances on a larger scale. Because such materials may have novel properties and present novel issues, evaluating and managing health and environmental risks of nanoscale materials poses a new challenge. Under the Toxic Substances Control Act, EPA has the authority to require the development of data necessary for the assessment of chemical substances and mixtures from persons that manufacture or process them when statutory findings concerning (1) production volume and exposure/entry into the environment or (2) potential hazard can be made, and to prevent and eliminate unreasonable risk of injury to human health and environment from chemical substances and mixtures. The Office of Pollution Prevention and Toxics (OPPT) is establishing a voluntary program to

assemble existing data and information from manufacturers and processors of certain nanoscale materials. With this assembled material, EPA will take appropriate steps to protect human health and the environment from unreasonable risk from these substances. In October 2006 EPA announced a collaborative process to design a nanoscale material stewardship program inviting 500 organizations and agencies to participate. On July 12, 2007, the Agency published a document that describes specific elements regarding a voluntary stewardship program for nanoscale materials, a proposed information collection request, and a paper that describes determining the TSCA inventory status of nanoscale materials. In addition, EPA conducted a public meeting on August 2 to receive oral comments on the stewardship program and the published documents. A notice announcing the stewardship program including final versions of any documents is scheduled to be published in February, 2008.

Statement of Need:

There is evolving understanding of a new technology with regard to health and safety implications from exposure to nanoscale materials. This is also true in the areas of environmental fate, efficacy of exposure mitigation practices, etc. Therefore, at present the lack of information leads to challenges in the assessment of and decision-making on nanoscale materials.

Summary of Legal Basis:

Under TSCA, EPA has the authority to require the development of data adequate for the assessment of chemical substances and mixtures from persons that manufacture or process them, and to prevent and eliminate unreasonable risk of injury to human health and environment from chemical substances and mixtures.

Alternatives:

The stewardship program is an effective yet flexible alternative to traditional regulatory approaches.

Anticipated Costs and Benefits:

To be determined.

Risks:

EPA will use information from the stewardship program to inform appropriate steps and future framework to protect human health and the environment from unreasonable risk.

Timetable:

Action	Date	FR Cite
Notice: TSCA Inventory Status	07/12/07	72 FR 38083
Notice: Final Program Announcement	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 5058; EPA publication information: Notice: TSCA Inventory Status - http://www.epa.gov/fedrgstr/EPA-TOX/2007/July/Day-12/t13558.htm; EPA Docket information: EPA-HQ-OPPT-2004-0122

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RIN: 2070–AJ30

EPA

PROPOSED RULE STAGE

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133. IMPLEMENTING PERIODIC MONITORING IN FEDERAL AND STATE OPERATING PERMIT PROGRAMS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 70.6(c)(1); 40 CFR 71.6(c)(1); 40 CFR 64

Legal Deadline:

None

Abstract:

This rule would revise the Compliance Assurance Monitoring rule (40 CFR part 64) to be implemented through the operating permits rule (40 CFR parts 70 and 71) to define when periodic monitoring for monitoring stationary source compliance must be created, and to include specific criteria that periodic monitoring must meet. This rule satisfies our 4-step strategy announced in the final Umbrella Monitoring Rule (published January 22, 2004) to address monitoring inadequacies. The four steps were: 1) To clarify the role of title V permits in monitoring [Umbrella Monitoring Rule]; 2) to provide guidance for improved monitoring in PM-Fine SIP's; 3) to take comment on correction of inadequate monitoring provisions in underlying rules; and 4) to provide guidance on periodic monitoring. We have completed the RIA data collection and most of the analyses,and are beginning review with OPEI and an economic sub-work group.

Statement of Need:

The ''periodic monitoring'' rules, 40 CFR 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), require that ''[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§70.6(a)(3)(i)(B) and §71.6(a)(3)(i)(B)].'' Sections 70.6(c)(1) and 71.6(c)(1), called the umbrella monitoring rule, require that each title V permit contain, ''[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' On January 22, 2004 (69 Federal Register

3202), EPA announced that the Agency has determined that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these sections do not provide a basis for requiring or authorizing review and enhancement of existing monitoring in title V permits independent of any review and enhancement as may be required under the periodic monitoring rules, the CAM rule (40 CFR part 64)(62 FR 54900, October 22, 1997) where it applies, and other applicable requirements under the Act.11 This action is to publish a separate proposed rule to address what monitoring constitutes periodic monitoring under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) and what types of monitoring should be created under these provisions. The intended effect of the rule revisions in this proposal is to focus case-by-case reviews on those applicable requirements for which we can identify potential gaps in the existing monitoring provisions.

Summary of Legal Basis:

Section 502(b)(2) of the Act requires EPA to promulgate regulations establishing minimum requirements for operating permit programs, including ''[m]onitoring and reporting requirements.'' 42 U.S.C. § 7661a(b)(2). Second, section 504(b) authorizes EPA to prescribe ''procedures and methods'' for monitoring ''by rule.'' 42 U.S.C. § 7661c(b). Section 504(b) provides: ''The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. . . .'' Other provisions of title V refer to the monitoring required in individual operating permits. Section 504(c) of the Act, which contains the most detailed statutory language concerning monitoring, requires that ''[e]ach [title V permit] shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. § 7661c(c). Section 504(c) further specifies that ''[s]uch monitoring and reporting requirements shall conform to any applicable regulation under [section 504(b)]. . . .'' Section 504(a) more generally requires that ''[e]ach [title V permit] shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.'' 42 U.S.C. § 7661c(a).

Alternatives:

Some existing monitoring required under applicable requirements could be improved and will be addressed in connection with both the upcoming PM2.5 implementation rulemaking and by improving monitoring in certain federal rules or monitoring in SIP rules not addressed in connection with the PM2.5 implementation guidance or rulemaking over a longer time frame.

Anticipated Costs and Benefits:

We are assessing the benefits associated with improved monitoring including the reduction in source owner response time to potential excess emissions problems. Such reduced response time to take corrective action that will be required by the rule will result in measurable emissions reductions that will be balanced against the cost of increased equipment, data collection, and recordkeeping costs. We estimate the total costs of the rule to be more than $100 million.

Risks:

There are no environmental and health risks associated with implementing this monitoring rule; the underlying rules with emissions limits address those risks for each subject source category. The effect of the monitoring resulting from this rule will be to reduce the occurrence of excess emissions episodes that raise such risks.

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN No. 4699.2; Split from RIN 2060-AK29.

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RIN: 2060–AN00

EPA

134. REVISIONS TO THE DEFINITION OF POTENTIAL TO EMIT (PTE)

Priority:

Other Significant

Legal Authority:

42 USC 7401; 42 USC 7412; 42 USC 7414; 42 USC 7416; 42 USC 7601

CFR Citation:

40 CFR Part 51; 40 CFR 52; 40 CFR 63; 40 CFR 70; 40 CFR 71

Legal Deadline:

None

Abstract:

This rulemaking rule would revise the definition of the term ''potential to emit'' (PTE) used in numerous regulations to determine the applicability of major source requirements. The regulatory amendments will address enforceability issues raised in court decisions by the D.C. Circuit regarding the types of limitations allowed to be used in a source's PTE calculations. We plan revisions to the definitions of PTE for three major source Act programs: (1) Major New Source Review (NSR) program, (2) the section 112 program that regulates Hazardous Air Pollutants (HAPs), and (3) the title V Federal operating permits program. We also plan to amend regulations that were not part of the court cases challenging the definition of potential to emit (e.g., visibility rules and Federal operating permits program rules) in order to be consistent with other EPA regulations. In addition to addressing the issue of whether PTE limitations have to be federally enforceable, the revised definition of PTE would set forth the

specific criteria a limitation must meet to be effective. Finally, the proposal would clarify that EPA now uses the term ''federally enforceable'' to refer only to the ability of the Federal government or citizens to enforce the requirement in federal courts, and not to the effectiveness of PTE limits as well.

Statement of Need:

The proposed rulemaking responds to three court decisions issued in 1995 and 1996 that remanded EPA's regulatory requirement that PTE limits be federally enforceable. Although the federal enforceability requirement was vacated in the Federal PSD, NSR, and title V rules, the section 112 program rules were not vacated and thus still contain the federal enforceability requirement. In the interim however, until EPA clarifies the issues related to federal enforceability of PTE limits, current EPA policy recognizes State enforceable PTE limits for purposes of avoiding section 112 and Title V requirements in many circumstances. The new regulations would respond to the court's remands in the various cases.

Summary of Legal Basis:

The proposed rule responds to three court orders regarding the federal enforceability component in the definition of ''potential to emit.'' See National Mining Association v. EPA (59 F. 3d 1351, D.C. Cir. 1995), Chemical Manufacturers Assn v. EPA, No. 89-1514 (D.C. Cir. Sept. 15, 1995) and Clean Air Implementation Project v. EPA, No. 96-1224 (D.C. Cir. June 28, 1996). In those cases, the court questioned federally enforceability as a necessary criteria for effective PTE limits. The definitions of PTE in the implementing regulations for the major source programs interpret the statutory term ''potential to emit'' and provide a legal mechanism for sources that wish to restrain their emissions to avoid triggering major source requirements. Several provisions of the Clean Air Act (CAA or the Act) require that ''major'' sources be regulated more stringently than sources that are not major. A ''major'' source generally is defined as one that either ''emits or has the potential to emit'' air pollutants above a specified amount (referred to as major source thresholds). Until EPA addresses the issues and clarifies the PTE definitions, there will be some uncertainty regarding what is required for enforceability of PTE limits. Parties currently rely on EPA guidance for determining if PTE limits are legally enforceable and effective.

Alternatives:

To address the court decisions EPA must either (i) remove the exclusive federal enforceability requirement or (ii) provide an explanation as to why federal enforceability enhances the effectiveness of PTE limits to such a degree that it is within reason to require federally enforceable limits. In this rulemaking, EPA will consider both options provided by the court and propose our preferred option. The proposal will specifically request comment on our preferred approach as well as any alternative options.

Anticipated Costs and Benefits:

The proposed rule will not impose additional costs on sources. First, PTE limits are voluntary in that the source chooses to take a PTE limit rather than meet major source requirements. Moreover, currently, sources that wish to take PTE limits must demonstrate that their restrictions are effective according to a number of existing EPA policy documents and applicable regulations, for example under minor new source review regulations and guidance. By codifying the criteria that make PTE limits effective, we will be providing additional certainty and clarity for sources wishing to obtain PTE limits. We expect that clarifying enforceability would yield benefits in terms of improved information about sources emissions and compliance. But because PTE limits generally reduce potential rather than actual emissions and since PTE limits are already in widespread use, we do not expect significant environmental impacts associated with this rule change. These regulations will impose a burden increase initially on those State and local programs that may need to revise or remove PTE definitions in their rules to make them consistent with these amendments as approved in the final rule. Thereafter, we expect a reduction in burden for all programs due to a less burdensome administrative process.

Risks:

There are no environmental and health risks associated with implementing the proposed amended PTE definition; the underlying rules with emissions limits address those risks for each subject source category.

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

Additional Information:

SAN No. 5025;

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RIN: 2060–AN65

EPA

135. RISK AND TECHNOLOGY REVIEW PHASE II GROUP 2

Priority:

Other Significant

Legal Authority:

CAA Sections 112(f)(2), 112(d)(6)

CFR Citation:

00 CFR NYD

Legal Deadline:

None

Abstract:

Under CAA Section 112(d)(6) EPA is required to review MACT standards and revise them ''as necessary (taking into account developments in practices, processes and control technologies)'' no less frequently than every 8 years. EPA also must evaluate the MACT standards within 8 years after promulgation and promulgate standards under CAA Section 112(f)(2) if required to protect public health with an ample margin of safety. EPA will combine the remaining MACT source categories requiring residual risk and technology reviews into several groups to enable us to more closely meet statutory dates, raise and

resolve programmatic issues in one action, minimize resources by using available data and focusing on high risk sources, and provide consistent review and analysis. We will use available data including emissions from the most recent 2002 national emission inventory (NEI) and augment it with available site-specific data. This action was originally referred to as RTR Phase II and included 34 MACT standards and 50 source categories. We reduced the scope of this action and will now focus on RTR Phase II Group 2 which consists of 11 MACT standards covering 21 source categories with MACT compliance dates of 2002 and earlier. We plan to model each MACT source category to obtain inhalation risks, including cancer risk and incidence, population cancer risk, and non-cancer effects (chronic and acute). We also plan to evaluate multipathway risk associated with those source categories with significant levels of persistent and bioaccumulative HAP. We published an ANPRM in March 2007 to solicit public comments and corrections on emissions data that will be used to assess risk for these source categories. We will remodel the categories based on the updated data. EPA will then evaluate the effectiveness and cost of additional risk reduction options and make acceptability and ample-margin-of-safety determinations in accordance with Benzene NESHAP decision framework. Where the need for additional controls are identified, standards would be developed that include technology, work practice, or performance standards as amendments to the existing MACT standards.

The 11 MACT standards, the 21 source categories, and the associated NAICS codes are listed below.

Aerospace Manufacturing and Rework Facilities, 336411

Marine Tank Vessel Loading Operations, 4883

Mineral Wool Production, 32799

Natural Gas Transmission and Storage, 486210

Oil and Natural Gas Production, 211

Pharmaceuticals Production, 3254

Group I Polymers and Resins, 325212

Epichlorohydrin Elastomers Production

Hypalon™Production

Nitrile Butadiene Rubber Production

Polybutadiene Rubber Production

Styrene-Butadiene Rubber and Latex Production,

Group IV Polymers and Resins, 325211

Acrylic-Butadiene-Styrene Production

Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production

Methyl Methacrylate-Butadiene-Styrene Production

Nitrile Resins Production

Polyethylene Terephthalate Production

Polystyrene Production

Styrene-Acrylonitrile Production

Primary Aluminum Reduction Plants, 331312

Printing and Publishing Industry, 32311

Shipbuilding and Ship Repair Operations, 36611

EPA will finalize these in two groups; one group will be finalized following the schedule noted below, the other will be finalized in 2009.

Statement of Need:

Under CAA Section 112(d)(6) EPA is required to review MACT standards and revise them ''as necessary (taking into account developments in practices, processes and control technologies)'' no less frequently than every 8 years. EPA also must evaluate the MACT standards within 8 years after promulgation and promulgate standards under CAA Section 112(f)(2) if required to protect public health with an ample margin of safety.

Summary of Legal Basis:

Clean Air Act Sections 112(f)(2) and 112(d)(6).

Alternatives:

Where additional controls are identified, risk reduction alternatives will be evaluated that include technology, work practice, or performance standards. Any alternatives that are selected would be implemented as amendments to the existing MACT standards.

Anticipated Costs and Benefits:

For the risk reduction alternatives we will evaluate costs, emission reductions, risk reductions, various measures of cost effectiveness and where appropriate, benefits analysis. We plan to consider the added benefit of reducing emissions of criteria pollutants, including PM, and green house gas emissions.The facts underlying the risk determination will be key factors in making any subsequent technology review determination.

Risks:

Each MACT source category will be assessed to determine cancer and noncancer inhalation risks, environmental risks, and multipathway risks. Cancer risk will include maximum individual risk (MIR), incidence, and population risk, and non-cancer effects will include chronic and acute risks. We also plan to evaluate the multipathway risk associated with those source categories with significant levels of persistent and bioaccumulative HAP.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/07	72 FR 14734
ANPRM; comment period extension	05/25/07	72 FR 29287
NPRM	11/00/07	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

SAN No. 5093; EPA publication information: ANPRM;

Sectors Affected:

3364 Aerospace Product and Parts Manufacturing; 3313 Alumina and Aluminum Production and Processing; 32731 Cement Manufacturing; 3341 Computer and Peripheral Equipment Manufacturing; 32411 Petroleum Refineries; 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum); 22132 Sewage Treatment Facilities

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RIN: 2060–AN85

EPA

136. ● RULEMAKING TO ADDRESS GREENHOUSE GAS EMISSIONS FROM MOTOR VEHICLES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

Clean Air Act Sections 202, 206, 208, 211

CFR Citation:

40 CFR 86, 40 CFR 80

Legal Deadline:

None

Abstract:

This action will implement the President's recent Executive Order to address greenhouse gas emissions from motor vehicles. This regulatory effort will evaluate reductions in gas consumption and greenhouse gas emissions from motor vehicles, using as a starting point the President's proposal to reduce gasoline consumption by up to 20% over the next 10 years. By increasing the supply of alternative fuels and making motor vehicles more energy efficient, this effort will serve to establish rules giving effect to the President's proposal.

Statement of Need:

On May 14, 2007 President Bush signed an Executive Order requiring Federal agencies to take the first steps toward regulations to control greenhouse gas emissions (GHG) from motor vehicles and their fuels. The President also directed agencies to take steps to cut gasoline consumption and GHG from motor vehicles using his ''Twenty in Ten'' plan as a starting point. This plan would achieve reductions in U.S. gasoline consumption of up to 20 percent over the next 10 years. Up to a fifteen-percent reduction in petroleum-based consumption would come through the use of renewable and alternative fuels, and up to a five-percent reduction would come from increased fuel efficiency for cars and trucks. The President directed EPA, DOT, DOE, and USDA to complete this process by the end of 2008. Based on this directive, we have established a schedule to issue a notice of proposed rulemaking by the end of 2007 and a final rule by the end of October 2008.

Summary of Legal Basis:

On April 2, 2007, the Supreme Court ruled that the EPA must determine, under Section 202(a) of the Clean Air Act, whether greenhouse gas emissions (GHG) from new motor vehicles cause or contribute to air pollution that endangers public health or welfare. Based on that Supreme Court ruling, GHG are air pollutants under the Clean Air Act. EPA expects to address whether GHG from new motor vehicles meet the endangerment criteria in the process of proposing regulations to control GHG from new motor vehicles and their fuels. EPA is following the directions of the Presidential Executive Order in proposing such standards.

The primary authority to regulate motor vehicles to reduce their emissions falls under Section 202(a) (1) of the Clean Air Act. This provision requires that the Administrator shall by regulation prescribe standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or motor vehicle engines which in his judgment cause or contribute to air pollution and which may reasonably be anticipated to endanger public health or welfare. A regulatory action depends on an Administrator determination that the GHG emissions from new motor vehicles causes, or contributes to, air pollution which may reasonably be anticipated to endanger the public health or welfare.

In setting fuel standards, two sections of the Clean Air Act are being considered. The primary authority for regulating motor vehicle fuels and fuel additives falls under Section 211(c) where the Administrator may, on the basis of information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle where a similar endangerment finding is made. This section provides authority to address all fuels and additives, including renewable and alternative fuels. Further, the Energy Policy Act of 2005 (EPAct 2005, Public Law 109-58) amended the Clean Air Act by adding section Section 211(o) which requires EPA to set minimum volume standards for renewable fuel use. EPAct 2005 established the volumes of renewable fuel to be used through 2012, and established a minimum level to be used after that date which EPA can adjust upward based on consideration of certain factors. EPA is considering an integrated compliance approach that will use both 211(c) and 211(o) authorities for the fuel-related provisions of the proposed GHG rule.

Alternatives:

EPA will seek comment on alternatives to approaches being developed in the proposed rulemaking.

Anticipated Costs and Benefits:

Cost and benefit information is being developed as the rulemaking process proceeds. Costs and benefit information can not be determined until after regulatory approaches have been proposed. Preliminary cost and benefit information will be provided when the rule is officially proposed.

Risks:

The risks from emissions contributing to GHG's and their impact on public health and welfare are being evaluated and will be discussed as the endangerment finding process proceeds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	
Final Action	10/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Additional Information:

SAN No. 5164;

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RIN: 2060–AO56

EPA

137. TEST RULE; TESTING OF CERTAIN HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority:

Other Significant

Legal Authority:

15 USC 2603

CFR Citation:

40 CFR 790 to 799

Legal Deadline:

None

Abstract:

EPA is issuing test rules under section 4(a) of the Toxic Substances Control Act (TSCA) to require testing and recordkeeping requirements for certain high production volume (HPV) chemicals (i.e., chemicals which are manufactured (including imported) in the aggregate at more than 1 million pounds on an annual basis) that have not been sponsored under the voluntary HPV Challenge Program. Although varied based on specific data needs for the particular chemical, the data generally collected under these rules may include: acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, mutagenicity, ecotoxicity, and environmental fate. The first rule proposed testing for 37 HPV chemicals with substantial worker exposure. When finalized on March 16, 2006, the number of chemicals included in the first final rule was reduced to 17 based on new information on annual production volumes, worker exposure, and commitments to the voluntary HPV Challenge Program. Subsequent test rules, including a proposed rule scheduled to be published in spring of 2008 are expected to require similar screening level testing for additional unsponsored HPV Challenge Program chemicals.

Statement of Need:

Prior to inception of the HPV Challenge Program, in 1998, EPA found that, of those non-polymeric organic substances produced or imported in amounts equal to or greater than 1 million pounds per year based on 1990 reporting for EPA's Inventory Update Rule (IUR), only 7 percent had a full set of publicly available internationally recognized basic health and environmental fate/effects screening test data. Of the over 2,800 HPV chemicals based on 1990 data, 43% had no publicly available basic hazard data. For the remaining chemicals, limited amounts of the data were available. This lack of available hazard data compromised the ability of EPA and others to determine whether these HPV chemicals pose potential risks to human health or the environment, as well as the public's right-to-know about the hazards of chemicals that are found in their environment, their homes, their workplaces, and the products that they buy. On April 21, 1998, a national initiative, known as the Chemical Right-To-Know (ChemRTK) Initiative, was announced by EPA. This Initiative is designed to collect and, where needed, develop the basic screening level toxicity and fate data that are necessary to provide the information needed to assess the potential hazards/risks that may be posed by exposure to HPV chemicals. A primary component of the ChemRTK Initiative is the voluntary HPV Challenge Program, which was created in cooperation with industry, environmental groups, and other interested parties, and is designed to assemble basic screening level test data on the potential hazards and fate of HPV chemicals. Since the inception of the HPV Challenge Program in 1998, industry chemical manufacturers and importers have participated in the Challenge Program by sponsoring 2,250 chemicals with sponsorship by more that 350 companies and 100 consortia. EPA is in the process of developing hazard characterizations based on the data received to date under the Challenge Program. Data needs which remain unmet in either the voluntary HPV Challenge Program or through complementary international efforts (i.e., the OECD SIDS HPV Program and the International Council of Chemical Associations) may be addressed through rulemaking under TSCA section 4.

Summary of Legal Basis:

These test rules would be issued under section 4(a)(1)(B) of TSCA. Section 2(b)(1) of TSCA states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statute to include import] and those who process such chemical substances and mixtures[.]'' To implement this policy, TSCA section 4(a) mandates that EPA require by rule that manufacturers and processors of chemical substances and mixtures conduct testing if the Administrator finds that: (1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment, (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture, (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

Alternatives:

The strategy and overall approach that EPA is using to address data collection needs for U.S. HPV chemicals includes a voluntary component (the HPV Challenge Program), certain international efforts, and these rulemakings under TSCA. The issuance of a rulemaking is often the Agency's final mechanism for obtaining this important information.

Anticipated Costs and Benefits:

The potential benefits of these test rules are substantial. For those chemical substances included in these rules, EPA believes that there are insufficient data to reasonably determine or predict their effects on health or the environment. EPA believes that the internationally recognized basic health and environmental fate/effects screening testing that would be required in these rules would provide critical information needed to conduct screening level characterizations of the health and environmental hazards of these substances. This information, when combined with information about

exposure and uses, will allow the Agency and others to evaluate the potential health and environmental risks of these substances and to take appropriate follow up action. The cost of the baseline screening testing laboratory costs that would be imposed is estimated to be about $300,000 per chemical for a full set of tests. It is unlikely, however, for a chemical to need a full set of tests, which would only occur if none of the data in question already exists.

Risks:

Data collected and/or developed under these test rules, when combined with information about exposure and uses, will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate follow up action.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81658
Final Action	03/16/06	71 FR 13709
Direct Final Action; Revocation; Coke–Oven Light Oil (Coal)	12/08/06	71 FR 71058
NPRM2	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 3990; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-TOX/2000/December/Day-26/t32497.htm; EPA Docket information: EPA-HQ-OPPT-2005-0033

Sectors Affected:

325 Chemical Manufacturing; 32411 Petroleum Refineries

URL For More Information:

www.epa.gov/opptintr/chemtest

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RIN: 2070–AD16

EPA

138. PESTICIDES; DATA REQUIREMENTS FOR ANTIMICROBIALS

Priority:

Other Significant

Legal Authority:

7 USC 136 to 136y

CFR Citation:

40 CFR 158 and 161

Legal Deadline:

None

Abstract:

EPA will update and revise its pesticide data requirements for antimicrobial pesticide products. The revisions will revise its existing data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for antimicrobial pesticides, including product chemistry and residue chemistry, toxicology, and environmental fate and effects.

Statement of Need:

The Agency is in the process of updating its data requirements for pesticides. Since the current data requirements were first published in 1984, the information needed to support the registration of a pesticide has evolved along with the expanding knowledge base of pesticide chemical technology. Over the years, revisions and updates to the data requirements have been applied on a case-by-case basis. In 2007, the Agency promulgated data requirements for conventional, and biochemical and microbial pesticide chemicals. As part of this action, the 1984 data requirements were transferred intact to part 161 to provide continued regulatory coverage for antimicrobial pesticides until the Agency can promulgate a final regulation. This rule will update and revise the existing data requirements for antimicrobial pesticide products. These revisions build upon those previously proposed for conventional chemicals, but are tailored to the specific data needs of antimicrobial pesticides. The revisions will provide stakeholders with greater transparency and clarity to determine the data needed for an antimicrobial pesticide product without having extensive consultations with the Agency, more focused use patterns that reflect current practice, and a more efficient registration process. When the Agency promulgates the revised data requirements in part 158 subpart W, the current data requirements in part 161 will be removed.

Summary of Legal Basis:

7 U.S.C. 136 to 136y

Alternatives:

The Agency is required by its various statutory mandates to establish data requirements that support its regulatory decisions. The Agency re-evaluates those data requirements in light of scientific advances, analytical improvements, and new technology, to provide a sound scientific basis for those decisions. On a case by case basis, the Agency considers whether alternative regulatory methods, such as restrictions on use, would obviate the need for data, and explores means of introducing flexibility and clarity to reduce burdens on the regulated community. For this rule, EPA will analyze keeping the current data requirements as specified in part 161, using the data requirements promulgated for conventional chemicals, and promulgating new data requirements specifically for antimicrobials.

Anticipated Costs and Benefits:

The Agency is conducting an economic analysis to support the rule. Anticipated benefits include less uncertainty and clearer understanding of the actual risk, increased clarity and transparency to the regulated community, improved scientific basis for pesticide regulatory decisions, and enhanced international harmonization with less duplication of data. The increased costs of the rule are estimated

as greater than $3 million /year for the 72 companies that hold registrations or have applied for a registration for an antimicrobial product.

Risks:

The revisions to the data requirements to be proposed, like the existing requirements in part 158, would require an applicant for pesticide registration to supply the Agency with information on the pesticide: composition, toxicity, potential human exposure, environmental properties and ecological effects, and, in certain cases, efficacy. This information is used to assess the human health and environmental risks associated with the product. The data that will be required by this regulation are the foundation of EPA's risk assessment for antimicrobial pesticides, and provide a sound scientific basis for any licensing decisions that impose requirements that mitigate or reduce risks. Under FIFRA, the applicant for registration must demonstrate to the Agency's satisfaction that the pesticide product will not cause ''unreasonable adverse effects'' to humans or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 4173

Sectors Affected:

32519 Other Basic Organic Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

URL For More Information:

http://www.epa.gov/pesticides/regulating/data.htm

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RIN: 2070–AD30

EPA

139. PESTICIDES; COMPETENCY STANDARDS FOR OCCUPATIONAL USERS

Priority:

Other Significant

Legal Authority:

7 USC 136; 7 USC 136i; 7 USC 136w

CFR Citation:

40 CFR 171; 40 CFR 156; 40 CFR 152

Legal Deadline:

None

Abstract:

The EPA is proposing change to federal regulations guiding the certified pesticide applicator program (40 CFR 171). Change is sought to strengthen the regulations to better protect pesticide applicators and the public and the environment from harm due to pesticide exposure. Changes may include having certain occupational users of pesticides demonstrate competency by meeting minimum competency requirements. The need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the need for changes to the regulation.

Statement of Need:

The regulations governing the Federal and State certification of pesticide applicators, 40 CFR part 171, were originally promulgated in 1974. Since that time State certification programs have gone beyond the Federal regulations in a number of areas. The need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the need for changes to the regulation. Stakeholders identified the need for a minimum standard of competency for all occupational users of pesticides as well as the establishment of standards for determination of applicator competency and continued competency.

Summary of Legal Basis:

7 U.S.C. 136w

Alternatives:

EPA is considering various alternatives to regulation change based upon stakeholder input. The Agency is in the formative stages of this regulatory effort, and alternatives have not yet been fully identified and evaluated.

Anticipated Costs and Benefits:

EPA will develop an economic analysis to support this rule.

Risks:

The proposed regulation would require that certain occupational users of pesticides meet minimum competency standards and require additional competency determinations of those who use the most toxic pesticides in a manner that could result in significant exposure to the public. These changes would strengthen the regulations that protect pesticide applicators and the public from potential harm due to pesticide exposure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Tribal

Additional Information:

SAN No. 5007

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RIN: 2070–AJ20

EPA

140. PESTICIDES; AGRICULTURAL WORKER PROTECTION STANDARD REVISIONS

Priority:

Other Significant

Legal Authority:

7 USC 136; 7 USC 136w

CFR Citation:

40 CFR 156; 40 CFR 170

Legal Deadline:

None

Abstract:

The EPA is developing a proposal to revise the federal regulations guiding agricultural worker protection (40 CFR 170). The changes under consideration are intended to improve agricultural workers' ability to protect themselves from potential exposure to pesticides and pesticide residues. In addition, EPA is proposing to make adjustments to improve and clarify current requirements and facilitate enforcement. Other changes sought are to establish a right-to-know Hazard Communication program and make improvements to pesticide safety training, with improved worker safety the intended outcome. The need for change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations.

Statement of Need:

The regulations governing the protection of agricultural workers, 40 CFR part 170, were promulgated in 1992. Since that time, stakeholders provided input on areas to improve the regulation, particularly to better protect agricultural field workers and handlers from pesticide risks. The need for change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations. Stakeholders identified the need for a minimum standard of competency for all occupational users of pesticides as well as the establishment of standards for determination of applicator competency and continued competency.

Summary of Legal Basis:

7 U.S.C. 136w

Alternatives:

EPA is considering various alternatives to regulation change based upon stakeholder input. The Agency is in the formative stages of this regulatory effort, and alternatives have not been fully identified and evaluated.

Anticipated Costs and Benefits:

EPA will develop an economic analysis to support this rule.

Risks:

This proposal would reduce the risks to agricultural workers from potential exposure to pesticides and pesticide exposure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 5006

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RIN: 2070–AJ22

EPA

141. PESTICIDES; DATA REQUIREMENTS FOR PLANT–INCORPORATED PROTECTANTS (PIPS)

Priority:

Other Significant

Legal Authority:

7 USC 136a; 7 USC 136w

CFR Citation:

40 CFR 158 and 174

Legal Deadline:

None

Abstract:

EPA intends to propose codifying data requirements for the pesticide registration of plant-incorporated protectants (PIPs). These data requirements are intended to provide EPA with data and other information necessary for the registration of PIPs. These requirements would improve the Agency's ability to make regulatory decisions about the human health and environmental effects of these products. By codifying data requirements specific to PIPs, the regulated community would have a better understanding of and could better prepare for the registration process. This proposed rule

is one in a series of proposals to update and clarify pesticide data requirements.

Statement of Need:

There are currently no separate data requirements for plant-incorporated protectants (PIPs), a new type of pesticide first registered in the mid-1990s. Instead, the Agency has relied on the microbial pesticide data requirements tailored on a case-by-case basis. The information needed to support the registration of a PIP has evolved along with the expanding knowledge base of pesticide chemical technology. When established, these data requirements will reflect current scientific knowledge and understanding. Establishing these data requirements will provide stakeholders with greater transparency and clarity to determine the data needed for PIP pesticide product without having extensive consultations with the Agency and a more efficient registration process. Further, establishing these data requirements will improve the Agency's ability to make regulatory decisions about human health and environmental effects of PIP pesticides to better protect wildlife, the environment and people.

Summary of Legal Basis:

The final rule will describe data and information needed to support multiple pesticide mandates under two statutes: the registration, reregistration, registration review, and experimental use permit programs under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and the tolerance-setting and reassessment program under the Federal Food, Drug and Cosmetic Act (FFDCA). These programs are authorized under FIFRA sections 3, 4, and 5 and FFDCA sec 408.

Alternatives:

The Agency is required by its various statutory mandates to establish data requirements that support its regulatory decisions. On a case-by-case basis, the Agency considers whether alternative regulatory methods would obviate the need for data and explores the means of introducing flexibility and clarity to reduce burdens on the regulated community. For this rule, EPA will analyze several scenarios including establishing data requirements tailored specifically to PIP pesticides, not establishing any data requirements, and remaining status quo with relying on the microbial pesticide data requirements tailored on a case-by-case basis.

Anticipated Costs and Benefits:

The Agency is conducting an economic analysis to support this rule. Anticipated benefits include greater certainty and clearer understanding of the actual risk, increased clarity and transparency to the regulated community, improved scientific basis for pesticide regulatory decisions, and enhanced international harmonization with less duplication of data. However, since this rulemaking is currently under Agency workgroup discussion, the specific costs and benefits of the action have not yet been determined. The Agency expects this rule to result in decreased illness and death resulting from pesticide exposure.

Risks:

The proposed revisions to the data requirements, like the existing requirements in part 158, would require an applicant for pesticide registration to supply the Agency with information on the pesticide: Composition, toxicity, potential human exposure, environmental properties, and ecological effects. This information is used to assess the human health and environmental risks associated with the product. The data that will be required by this regulation form the foundation of EPA's risk assessment for pesticides, and provide a sound scientific basis for any licensing decisions that impose requirements that mitigate or reduce risks, and that ensure that pesticide resides in food meet the ''reasonable certainty of no harm'' risk standard of the Federal Food Drug and Cosmetic Act (FFDCA).

Timetable:

Action	Date	FR Cite
NPRM	05/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal

Additional Information:

SAN No. 5005

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RIN: 2070–AJ27

EPA

142. REVISIONS TO THE SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) RULE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

33 USC 1321

CFR Citation:

40 CFR 112

Legal Deadline:

None

Abstract:

EPA will propose to amend 40 CFR part 112, which includes the Spill Prevention, Control, and Countermeasure (SPCC) rule promulgated under the authority of the Clean Water Act. The proposed rule may address a variety of issues associated with the July 2002 SPCC final rule.

Statement of Need:

The proposed rule is necessary to clarify the regulatory obligations of SPCC facility owners and operators and to reduce the regulatory burden where appropriate.

Summary of Legal Basis:

33 USC 1321 et seq.

Alternatives:

EPA considered alternative options for various aspects of this proposed rule, following receipt of public comments, and through logical outgrowth of previously considered alternatives.

Alternative options included (1) exempting asphalt cement containers from the requirements of the SPCC rule; (2) exempting farms of a certain storage capacity, where the exact storage capacity has not been specified; (3) providing an exemption only for residential heating oil containers located at farms; (4) providing the same relief as in the preferred option to owners and operators of qualified facilities with total oil storage capacities of 5,000 gallons or less; (5) giving the option wherein owners and operators of new production facilities would be allowed one year after the start of operations to prepare and implement an SPCC Plan; (6) allowing the facilities to choose between a flowline maintenance program with a contingency plan (as in the proposed amendments) and providing a method of secondary containment for flowlines and intra-facility gathering lines; (7) regulatory alternatives for oil production facilities that have wells that produce 10 barrels or less of crude oil per day and are known as ''stripper wells.''

Anticipated Costs and Benefits:

At the 7 percent discount rate, the proposed amendments to the SPCC rule are expected to yield annualized cost savings of approximately $7 million from the proposed exemption of hot-mix asphalt containers, $4 million from the proposed changes for exempting pesticide application equipment, $2 million from the proposed exemption of residential heating oil containers, $251 million from the proposed amendments to the definition of facility, $1 million from the proposed clarification to the facility diagram requirements, $48 million from the proposed revision to the loading rack definition, $24 million from the streamlined requirements for Tier 1 qualified facilities, $7 million from the proposed amendments to the security requirements, $9 million from the amendments to integrity testing requirements, $2 million for owners and operators of AFVO facilities, $25 million for owners and operators of production facilities from the six-month delay in SPCC Plan preparation and implementation, and $8 million from exemption of flow-through process vessels from sized secondary containment. Additional benefits of this rule were not quantified because the impact of the rule on human health and environment are expected to be marginal. The principal effect of the proposed amendments would be lower compliance costs for owners and operators of certain types of facilities and equipment.

Risks:

In the absence of quantitative information on the change in risk related to the specific proposed amendments, EPA conducted a qualitative assessment, which suggests that the proposed amendments will not lead to a significant increase in oil discharge risk.

Timetable:

Action	Date	FR Cite
Notice Clarifying Certain Issues	05/25/04	69 FR 29728
NPRM 1 yr Compliance Extension	06/17/04	69 FR 34014
Final 18 months Compliance Extension	08/11/04	69 FR 48794
NODA re certain facilities	09/20/04	69 FR 56184
NODA re oil–filled and process equipment	09/20/04	69 FR 56182
NPRM	10/15/07	72 FR 58377
NPRM Comment Period End	12/14/07	
Final Action	10/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN No. 2634.2; Split from RIN 2050-AC62.

URL For More Information:

www.epa.gov/oilspill/spcc.htm

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RIN: 2050–AG16

EPA

143. REVISIONS TO LAND DISPOSAL RESTRICTIONS TREATMENT STANDARDS AND AMENDMENTS TO RECYCLING REQUIREMENTS FOR SPENT PETROLEUM REFINING HYDROTREATING AND HYDROREFINING CATALYSTS

Priority:

Other Significant

Legal Authority:

42 USC 1006; 42 USC 2002(a); 42 USC 3001 to 3009; 42 USC 3014; 42 USC 6905; 42 USC 6906; 42 CFR 6912; 42 USC 6921; 42 USC 6922; 42 USC 6924 to 6927; 42 USC 6934; 42 USC 6937; 42 USC 6938

CFR Citation:

40 CFR 261; 40 CFR 266; 40 CFR 268

Legal Deadline:

None

Abstract:

Pursuant to regulations found at 40 CFR 260.20, the Vanadium Producers and Reclaimers Association (VPRA) submitted a rulemaking petition to the EPA requesting that the Agency amend the hazardous waste regulations affecting the treatment and disposal of certain petroleum refinery process wastes. Specifically, VPRA requested that EPA revise the treatment standards under the Land Disposal Restrictions (LDR) Program for the disposal of spent hydrotreating and hydrorefining catalysts (waste codes K171 and K172, respectively). EPA is publishing a notice in response to the rulemaking petition, by proposing to amend the Land Disposal Restriction (LDR) requirements for EPA Waste Code K172 by adding numeric treatment standards for certain polynuclear aromatic hydrocarbons (PAHs). EPA is also responding to other elements of the rulemaking petition in this notice. Finally, in response to separate comments received from petroleum industry representatives, EPA is taking this opportunity to propose changes to its regulations to help encourage consistent levels of recycling of spent hydrotreating and hydrorefining catalysts, in a manner that protects human health and the environment.

Statement of Need:

The purpose of this proposed rule, as described in the abstract, is to respond to a rulemaking petition. EPA believes that the petitioners have made suitably credible arguments that the existing requirements for treating and disposing

of certain refinery wastes may need adjusting, thus this proposal. In addition, regarding the recycling part of this action (again, described in the abstract above) EPA determined that exploring ways to encourage the recycling of these spent catalysts safely has merit.

Summary of Legal Basis:

There is no court order requiring this action.

Alternatives:

EPA decided that the alternative of not proposing this rule was not the option of choice. See Statement of Need. Further evaluation of alternatives may occur during the development of this action; currently in the early stages of development.

Anticipated Costs and Benefits:

No formal cost/benefit analysis has been performed to date.

Risks:

This rule is responding to a petition that alleges EPA's current rules do not adequately address the risk to human health and the environment associated with the disposal of spent refinery catalysts. EPA is currently trying to better understand the risk issues. At this time, this is undetermined.

Timetable:

Action	Date	FR Cite
Notice of Data Availability	10/20/03	68 FR 59935
NPRM	06/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

Additional Information:

SAN No. 5070; EPA publication information: Notice of Data Availability - http://www.epa.gov/fedrgstr/EPA-WASTE/2003/November/Day-24/f29319.htm; ; EPA Docket information: Legacy Docket No. RCRA-2003-0023 for 10/20/03 NODA

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RIN: 2050–AG34

EPA

144. • NPDES VESSEL VACATUR

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

Not Yet Determined

CFR Citation:

40 CFR 122.3

Legal Deadline:

None

Abstract:

This action is necessary because EPA must address a District Court ruling (currently on appeal to the U.S. Court of Appeals for the 9th Circuit) which vacates a regulatory exemption at 40 CFR 122.3(a). Northwest Environmental Advocates v. U.S. Environmental Protection Agency (ND CA, C 03-5760 SI). The regulation excludes discharges incidental to the normal operation of a vessel from NPDES permitting and has existed, essentially unchanged, since 1973. Unless overruled on appeal, the Court's September 2006 ruling will vacate the entire exclusion as of September 30, 2008. As of September 30, 2008, discharges of pollutants incidental to the normal operation of a vessel that had formerly been exempted from NPDES permitting by the regulation will be subject to prohibitions in CWA § 301(a) against the discharge of a pollutant without a permit.

Statement of Need:

This action is necessary because EPA needs to address a District Court ruling (currently on appeal to the U.S. Court of Appeals for the 9th Circuit) which vacates a regulatory exemption at 40 CFR 122.3(a). Northwest Environmental Advocates v. U.S. Environmental Protection Agency (ND CA, C 03-5760 SI). The existing regulation excludes discharges incidental to the normal operation of a vessel from NPDES permitting and has been on the books, essentially unchanged, since 1973. The Court's September 2006 ruling will vacate the entire exclusion as of September 30, 2008.

Summary of Legal Basis:

The legal basis is the Clean Water Act, 33 USC 1251 et seq.

Alternatives:

Unknown.

Anticipated Costs and Benefits:

Unknown.

Risks:

Unknown.

Timetable:

Action	Date	FR Cite
Proposal	01/00/08	
Final	To Be	Determined

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 5162;

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RIN: 2040–AE93

EPA

FINAL RULE STAGE

145. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): DEBOTTLENECKING, AGGREGATION AND PROJECT NETTING

Priority:

Other Significant

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 51.165; 40 CFR 51.166; 40 CFR 52.21

Legal Deadline:

None

Abstract:

This project will revise rules governing the major new source review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). The new regulations will clarify and codify our policy of when multiple activities at a single major stationary source must be considered together for the purposes of determining major NSR applicability (''aggregation''). Also, we are changing the way emissions from permitted emissions units upstream or downstream from those undergoing a physical change or change in the method of operation are considered when determining if a proposed project will result in a significant emissions increase (''debottlenecking''). Finally, we are clarifying how emissions decreases from a project may be included in the calculation to determine if a significant emissions increase will result from a project (''project netting''). When final, these rules will improve implementation of the program by articulating and codifying principles for determining major NSR applicability that we currently address through guidance only. These rule changes reflect the EPA's consideration of the EPA's 2002 Report to the President and its associated recommendations as well as discussions with various stakeholders including representatives of environmental groups, State and local governments, and industry.

Statement of Need:

The current New Source Review program provides for emissions from multiple projects to be aggregated (aggregation) as one single project under certain circumstances. Similarly, when making a PSD applicability calculation, emissions from units whose effective capacity and potential to emit have been increased as a result of a modification to another unit (debottlenecked units), must be included in the initial PSD applicability calculations. Specific questions regarding the application of these two terms have been addressed on a case-by-case basis. By completing this rulemaking, regulated entities and regulatory agencies will be provided an additional level of certainty in addressing applicability issues.

Summary of Legal Basis:

42 USC 7411(a)(4)

Alternatives:

Alternatives will be developed as the rulemaking proceeds.

Anticipated Costs and Benefits:

We are not able to provide quantitative estimates of the costs and benefits of this rule because of our inability to specifically identify the quantity, types, 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 do not expect this rule to add to the costs of the program, nor do we expect that the environmental benefits of the program would significantly change as a result of this rulemaking.

Risks:

Risk information cannot be developed for this rule for the same reasons mentioned above regarding costs and benefits.

Timetable:

Action	Date	FR Cite
NPRM	09/14/06	71 FR 54235
Final Action	06/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local

Additional Information:

SAN No. 4793; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-AIR/2006/September/Day-14/a15248.htm;

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RIN: 2060–AL75

EPA

146. CONTROL OF EMISSIONS FROM NEW LOCOMOTIVES AND NEW MARINE DIESEL ENGINES LESS THAN 30 LITERS PER CYLINDER

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7522 to 7621

CFR Citation:

40 CFR 92; 40 CFR 94

Legal Deadline:

None

Abstract:

Locomotives and marine diesel engines are important contributors to our nation's air pollution today accounting for about 20 percent of mobile source nitrogen oxides (NOx) emissions and about 25 percent of mobile source fine diesel particulate matter (PM 2.5) emissions. EPA is proposing a comprehensive program to significantly reduce emissions from locomotives and marine diesel engines. It would apply new exhaust emission standards and idle reduction requirements to diesel locomotives of all types—line-haul, switch, and passenger. It would also set new exhaust emission standards for all types of marine diesel engines below 30 liters per cylinder displacement. These include marine propulsion engines used on vessels from recreational and small fishing boats to super-yachts, tugs and Great Lakes freighters, and marine auxiliary engines

ranging from small gensets to large generators on ocean-going vessels. We estimate PM reductions of 90 percent and NOx reductions of 80 percent from engines meeting these standards, compared to engines meeting the current standards. EPA has already taken steps to bring emissions levels from light-duty and heavy-duty highway, and nonroad diesel vehicles and engines to very low levels over the next decade, while the emission levels for locomotive and marine diesel engines remain at much higher levels—comparable to the emissions for highway trucks in the early 1990s. The additional PM2.5 and NOx emission reductions resulting from the proposed standards would assist states in attaining and maintaining the Ozone and the PM2.5 National Air Quality Standards both near term and in the decades to come. The proposed program includes a set of near-term emission standards for newly-built engines. These would phase in starting in 2009. The near-term program also contains more stringent emissions standards for existing locomotives. These would apply when the locomotive is remanufactured and would take effect as soon as certified remanufacture systems are available (as early as 2008), but no later than 2010 (2013 for Tier 2 locomotives). We are requesting comment on an alternative under consideration that would apply a similar remanufacture requirement to existing marine diesel engines installed in vessels currently in the fleet. We are also proposing long-term emissions standards for newly-built locomotives and marine diesel engines based on the application of high-efficiency catalytic aftertreatment technology. These standards would phase in beginning in 2015 for locomotives and 2014 for marine diesel engines. Finally, are proposing revised testing, certification, and compliance provisions to better ensure emissions control in use. Entities potentially regulated by this action are those which manufacture, remanufacture and/or import locomotives and/or locomotive engines; and those which own and operate locomotives. This proposed action would also affect companies and persons that manufacture, sell, or import into the United States new marine compression-ignition engines, companies and persons that rebuild or maintain these engines, companies and persons that make vessels that use such engines, and the owners/operators of such vessels.

Statement of Need:

Locomotive and marine diesel engines generate significant emissions of fine particulate matter (PM2.5) and nitrogen oxides (NOx) that contribute to nonattainment of the National Ambient Air Quality Standards for PM2.5 and ozone. NOx is a key precursor to ozone and secondary PM formation. These engines also emit hazardous air pollutants or air toxics, which are associated with serious adverse health effects. Emissions from locomotive and marine diesel engines also cause harm to public welfare, including contributing to visibility impairment and other harmful environmental impacts across the US. (The health and welfare impacts of these pollutants are described elsewhere in this Regulatory Agenda.) Emissions from locomotive and marine diesel engines account for substantial portions of the country's ambient PM2.5 and NOx levels. Today these engines account for about 20 percent of mobile source NOx emissions and about 25 percent of mobile source diesel PM 2.5 emissions. Under the standards EPA has proposed, by 2030 annual NOx emissions from these diesel engines would be reduced by 765,000 tons and PM2.5 emissions by 28,000 tons, and those reductions would continue to grow beyond 2030 as the fleet turnover to the clean engines is completed. State and local governments are working to protect the health of their citizens and comply with requirements of the Clean Air Act. As part of this effort they recognize the need to secure additional major reductions in both diesel PM2.5 and NOx emissions by undertaking numerous state level actions, while also seeking Agency action, including the setting of stringent new locomotive and marine diesel engine standards. The emission reductions in this proposal will play a critical part in state efforts to attain and maintain the National Air Quality Standards both near term and through the next two decades.

Summary of Legal Basis:

Authority for the actions in this proposed rule is granted to the Environmental Protections Agency (EPA) by sections 114, 203, 205, 206, 207, 208, 213, 216, and 301(a) of the Clean Air Act as amended in 1990. EPA is proposing emissions standards for new marine diesel engines pursuant to its authority under section 213(a)(3) and (4) of the Clean Air Act (CAA) and for new locomotives and new engines used in locomotives pursuant to its authority under section 213(a)(5) of the CAA. CAA section 213(a)(3) directs the Administrator to set NOx, VOCs, or carbon monoxide standards for classes or categories of engines that contribute to ozone or carbon monoxide concentrations in more than one nonattainment area, such as marine diesel engines. CAA section 213(a)(4), authorizes the Administrator to establish standards to control emissions of pollutants which may reasonably be anticipated to endanger public health and welfare, where the Administrator determines, as it has done for emissions of PM, that nonroad engines as a whole contribute significantly to such air pollution. Finally, section 213(a)(5) directs EPA to adopt emission standards for new locomotives and new engines used in locomotives that achieve the greatest degree of emissions reductions achievable through the use of technology that the Administrator determines will be available for such vehicles and engines, taking into account the cost of applying such technology within the available time period, the noise, energy, and safety factors associated with the applications of such technology.

Alternatives:

We have developed emission inventory impacts, cost estimates and benefit estimates for two types of alternatives. The first type looks at the impacts of varying the timing and scope of our proposed standards. The second considers a programmatic alternative that would set emission standards for existing marine diesel engines. Alternative 1 examines the potential impacts of the locomotive remanufacturing program by excluding it from the analysis. Alternative 2 considers the possibility of pulling ahead the Tier 4 standards by one year for both the locomotive and marine programs, while leaving the rest of the proposed program unchanged. This alternative represents a more environmentally protective set of standards. However, our review of the technical challenges to introduce the Tier 4 program, especially considering the locomotive remanufacturing program and the Tier 3 standards which go before it, leads us to conclude that introducing Tier 4 a year earlier is not feasible. Alternative 3 most closely reflects the program we described in our Advanced Notice of Proposed Rulemaking, whereby we would set new aftertreatment based emission standards as soon as possible. In this case, alternative 3 eliminates our proposed Tier 3 standards and locomotive remanufacturing standards, while pulling the Tier 4 standards

ahead to 2013 (3 months after the introduction of 15 ppm ULSD). As with alternative 2, we are concerned that it may not be feasible to introduce Tier 4 technologies on locomotive and marine diesel engines earlier than the proposal specifies. Alternative 4 would eliminate the Tier 4 standards and retain the Tier 3 and locomotive remanufacturing requirements. This alternative allows us to consider the value of combining the Tier 3 and locomotive remanufacturing standards together as one program, and conversely, allows us to see the additional benefits gained when combining them with the Tier 4 standards. This alternative falls well short of the total benefits that our comprehensive program is expected to realize. Alternative 5 would establish a two-part marine engines remanufacturing program to reduce emissions from marine diesel engines above 800hp installed on commercial vessels. These engines remain in the fleet in excess of 20 years and can substantially contribute to air pollution. In part one, beginning as early as 2008, vessel owners and rebuilders (also called remanufacturers) would be required to use a certified kit when the engine is rebuilt (or remanufactured) if such a kit is available. In the second part, which could begin in 2013, the marine diesel engine identified by the EPA as a high-sales volume engine model would have to meet specified emission requirements when the engine is remanufactured. If no certified system were available, companies subject to these provisions would need to either retrofit an emission reduction technology for the engine that demonstrates at least a 25 percent reduction or repower (replace the engine with a new one). The second part of the program is contingent on EPA developing a list of high volume marine diesel engines for which a remanufacture certificate must be available by 2013. Finally, the second step of the program could be made subject to a technical review in 2011A summary of the five alternatives is contained in Tables VII-1 and VII-2 of the proposed rule. Table VII-1 includes the expected PM and NOx emission reductions, associated with each alternative through 2040 expressed as a net present value (NPV) using discounting rates of 3 percent and 7 percent. It also includes the estimated costs for each alternative through 2040 expressed at 3 percent NPV and 7 percent NPV. Table VI-2 shows the PM and NOx inventory reductions, costs, and benefits of each alternative estimated for the year 2030.

Anticipated Costs and Benefits:

The total monetized benefits of the proposed standards, when based on published scientific studies of the risk of PM-related premature mortality, these benefits are projected to be more than $12 billion in 2030, assuming a 3 percent discount rate (or $11 billion assuming a 7 percent discount rate). Our estimate of total monetized benefits based on the PM-related premature mortality expert elicitation is between $4.6 billion and $33 billion in 2030, assuming a 3 percent discount rate (or $4.3 and $30 billion assuming a 7 percent discount rate). The social costs of the proposed program are estimated to be approximately $600 million in 2030. The estimated 2030 social welfare cost of 567.3 million is based on an earlier version of the engineering costs of the rule which estimated $568.3 million engineering costs in 2030 (see table V-15). The current engineering cost estimate for 2030 is $605 million. See section V.C.5 for an explanation of the difference. The estimated social costs of the program will be updated for the final rule. The impact of these costs on society are estimated to be minimal, with the prices of rail and marine transportation services estimated to increase by less about 0.4 percent for locomotive transportation services and about 0.6 percent for marine transportation services. Though there are a number of health and environmental effects associated with the proposed standards that we are unable to quantify or monetize, the benefits of the proposed standards far outweigh the projected costs.

Risks:

The emissions of PM and ozone precursors from locomotive and marine diesel engines are associated with serious public health problems including premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function. In addition, emissions from locomotives and marine diesel engines are of particular concern, as diesel exhaust has been classified by EPA as a likely human carcinogen. Many people spend a large portion of time in or near areas of concentrated locomotive or marine diesel emissions, near rail yards, marine ports, railways, and waterways. Recent studies show that populations living near large diesel emission sources such as major roadways, rail yards and marine ports are likely to experience greater diesel exhaust exposure levels than the overall US population, putting them at a greater health risk. Scientific studies show ambient PM is associated with a series of adverse health effects. The locomotive and marine diesel engines, covered in this proposal contribute to both short-and long-term PM2.5 exposures. Health effects associated with short-term exposures (hours to days) to ambient PM include premature mortality, increased hospital admissions, heart and lung diseases, increased cough, adverse lower-respiratory symptoms, decrements in lung function and changes in heart rate rhythm and other cardiac effects. Studies examining populations exposed to different levels of air pollution over a number of years show associations between long-term exposure to ambient PM2.5 and both total and cardio respiratory mortality. Locomotive and marine diesel engines also result in significant emissions of NOx and VOC emissions which contribute to the formation of ground-level ozone pollution or smog. People in many areas across the U.S. continue to be exposed to unhealthy levels of ambient ozone. The health and welfare effects of ozone are well documented and are assessed in EPA's 2006 ozone Air Quality Criteria Document (ozone AQCD) and EPA staff papers. Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's activity. Ozone can also aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. People who are more susceptible to effects associated with exposure to ozone include children, the elderly, and individuals with respiratory disease such as asthma. locomotive and marine diesel engine emissions include diesel exhaust (DE), a complex mixture comprised of carbon dioxide, oxygen, nitrogen, water vapor, carbon monoxide, nitrogen compounds, sulfur compounds and numerous low-molecular-weight hydrocarbons. A number of these gaseous hydrocarbon components are individually known to be toxic including aldehydes, benzene and 1,3-butadiene. Locomotive and marine diesel engine exhaust emissions contribute to ambient levels of other air toxics known or suspected as human

or animal carcinogens, or that have non-cancer health effects. These other compounds include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, polycyclic organic matter (POM), and naphthalene. All of these compounds, except acetaldehyde, were identified as national or regional risk drivers in the 1999 National-Scale Air Toxics Assessment (NATA) and have significant inventory contributions from mobile sources. That is, for a significant portion of the population, these compounds pose a significant portion of the total cancer and non-cancer risk from breathing outdoor air toxics. The reductions in locomotive and marine diesel engine emissions proposed in this rulemaking would help reduce exposure to these harmful substances.

Timetable:

Action	Date	FR Cite
ANPRM	06/29/04	69 FR 39276
NPRM	04/03/07	72 FR 15938
Final Action	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 4871;

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RIN: 2060–AM06

EPA

147. CONTROL OF EMISSIONS FROM NONROAD SPARK–IGNITION ENGINES AND EQUIPMENT

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7521 to 7601(a)

CFR Citation:

40 CFR 90; 40 CFR 91

Legal Deadline:

NPRM, Statutory, December 1, 2004. Final, Statutory, December 31, 2005.

Abstract:

We are setting emission standards for new nonroad spark-ignition engines that will substantially reduce emissions from these engines. The proposed exhaust emission standards would apply starting in 2009 for new marine spark-ignition engines, including first-time EPA standards for sterndrive and inboard engines. The proposed exhaust emission standards would apply starting in 2011 and 2012 for different sizes of new land-based, spark-ignition engines at or below 19 kilowatts (kW), which is equivalent to about 25 horsepower. These small engines are used primarily in lawn and garden applications. We are also proposing to adopt evaporative emission standards for vessels and equipment using any of these engines. Nationwide, these emission sources contribute to ozone, carbon monoxide (CO), and particulate matter (PM) nonattainment.

We estimate that by 2030, this proposed rule would result in significantly reduced pollutant emissions from regulated engine and equipment sources, including estimated annual nationwide reductions of 631,000 tons of volatile organic hydrocarbon emissions, 98,200 tons of NOx emissions, and 6,300 tons of direct particulate matter (PM2.5) emissions. These reductions correspond to significant reductions in the formation of ground-level ozone. We would also expect to see annual reductions of 2,690,000 tons of carbon monoxide emissions, with the greatest reductions in areas where there have been problems with individual exposures. The requirements in this rule will substantially benefit public health and welfare and the environment. We estimate that by 2030, the proposal's emission reductions would annually prevent 450 PM-related premature deaths, approximately 500 hospitalizations, and 52,000 work days lost. The total estimated annual benefits of the proposed rule in 2030 would be $3.4 billion. Estimated costs in 2030 would be many times less at $240 million.

Statement of Need:

Nationwide, emissions from Marine SI engines and Small SI engines contribute significantly to mobile source air pollution. By 2020 without this final rule these engines would account for about 27 percent (1,352,000 tons) of mobile source volatile organic hydrocarbon compounds (VOC) emissions, 31 percent (16,374,000 tons) of mobile source carbon monoxide (CO) emissions, 4 percent (202,000 tons) of mobile source oxides of nitrogen (NOx) emissions, and 16 percent (39,000 tons) of mobile source particulate matter (PM2.5) emissions. The new standards will reduce exposure to these emissions and help avoid a range of adverse health effects associated with ambient ozone, CO, and PM levels. In addition, the new standards will help reduce acute exposure to CO, air toxics, and PM for persons who operate or who work with or are otherwise active in close proximity to these engines. They will also help address other environmental problems associated with Marine SI engines and Small SI engines, such as visibility impairment in our national parks and other wilderness areas. These effects are described in more detail in subsequent sections of this Preamble.

Summary of Legal Basis:

Clean Air Act section 213(a)(1) directs EPA to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions ''cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Section 213(a)(2) further requires us to determine whether emissions of CO, VOC, and NOx from all nonroad engines significantly contribute to ozone or CO concentrations in more than one nonattainment area. If we determine that emissions from all nonroad engines do contribute significantly to these nonattainment areas, section 213(a) (3) then requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that cause or contribute to such pollution. Specific statutory direction to set standards for nonroad spark-ignition engines comes from section 428(b) of the 2004 Consolidated Appropriations Act, which requires EPA to adopt regulations under the Clean Air Act ''that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower.''

Alternatives:

For Small spark-ignition engines, we considered what is achievable with catalyst technology. Our technology assessment work indicated that the proposed emission standards are feasible in the context of provisions for establishing emission standards prescribed in section 213 of the Clean Air Act. We also considered what can

be achieved with larger, more efficient catalysts and improved fuel induction systems. Based on this work we evaluated more stringent HC+NOx standards involving a 50 percent reduction for Class I engines and a 65-70 percent reduction for Class II engines.

For Marine SI engines, we considered a more stringent exhaust emission standard for outboard and personal watercraft engines. This second tier of standards could apply starting in 2012 or later. Such a standard would be consistent with currently certified emission levels from a significant number of four-stroke outboard engines.

We considered both more and less stringent evaporative emission control alternatives. For small equipment, we considered a less stringent alternative without running loss emission standards. However, we believe that controlling running loss and diffusion emissions from non-handheld equipment is feasible at a relatively low cost. For a more stringent alternative, we considered applying a diurnal emission standard for all small equipment. We believe that passively purging carbon canisters could reduce diurnal emissions by 50 to 60 percent from small equipment. For marine vessels, we considered a less stringent alternative, where there would be no diurnal emission standard for vessels with installed fuel tanks. For a more stringent scenario, we considered a standard that would require boat builders to use an actively purged carbon canister. This means that, when the engine is operating, it would draw air through the canister to purge the canister of stored hydrocarbons.

Anticipated Costs and Benefits:

The requirements in this proposed rule would substantially benefit public health and welfare and the environment. We estimate that by 2030, these proposed emission reductions would annually prevent 450 PM-related premature deaths, approximately 500 hospitalizations, and 52,000 work days lost. The total estimated annual benefits of this proposed rule in 2030 would be about $3.4 billion. Estimated costs in 2030 would be many times less at $240 million.

Risks:

The health benefits associated with this proposed rule are expressed in terms of avoided premature mortalities and other endpoints, and have been estimated based on scaling of detailed modeling results from EPA's Clean Air Nonroad Diesel regulation.

Timetable:

Action	Date	FR Cite
NPRM	05/18/07	72 FR 28098
Final Action	06/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN No. 4882;

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RIN: 2060–AM34

EPA

148. AMENDMENT OF THE STANDARDS FOR RADIOACTIVE WASTE DISPOSAL IN YUCCA MOUNTAIN, NEVADA

Priority:

Other Significant

Legal Authority:

PL 102–486

CFR Citation:

40 CFR 197

Legal Deadline:

None

Abstract:

This action will amend the standards for Yucca Mountain, Nevada (40 CFR Part 197). These standards were issued in 2001 and were partially remanded by a Federal court in 2004. These amendments will address the remanded portion of the standards, viz., the compliance period. Yucca Mountain is the site of a potential geologic repository for spent nuclear fuel and high-level radioactive waste. It is about 100 miles northwest of Las Vegas, Nevada, and straddles the boundaries of the Nevada Test Site, Bureau of Land Management land, and an Air Force bombing range. The site is being developed by the Department of Energy (DOE). The DOE will submit a license application to the Nuclear Regulatory Commission (NRC). We (EPA) were given the authority to set Yucca Mountain-specific standards in the Energy Policy Act of 1992 (EnPA). The EnPA also requires NRC to adopt our standards in its licensing regulations and use them as a basis to judge compliance of the repository's performance. The Agency issued final Yucca Mountain standards in 2001. In July 2004, the DC Circuit Court returned the standards to EPA for reconsideration of the regulatory time frame. The Court found that the 10,000-year compliance period violates our authorizing statute for Yucca Mountain regulation because it is not ''based upon and consistent with'' scientific recommendations required from the National Academy of Sciences under the legislation. To address the Court's opinion, we must reassess the time frame in light of the National Academy's recommendation that compliance must be addressed at the time of peak dose, which may be as long as several hundred thousand years into the future.

Statement of Need:

Congress selected Yucca Mountain as the Nation's only candidate site for a repository for nuclear spent fuel and high-level radioactive waste. The Energy Policy Act of 1992 requires EPA to set Yucca-Mountain-specific standards. Standards were promulgated in 2001. In July 2004, the DC Circuit Court returned the standards to EPA for reconsideration of the regulatory time frame.

Summary of Legal Basis:

The Energy Policy Act of 1992 requires EPA to set Yucca-Mountain-specific standards. Standards were promulgated in 2001. In July 2004, the DC Circuit Court returned the standards to EPA for reconsideration of the regulatory time frame.

Alternatives:

To address the Court's opinion, we must reassess the time frame in light of the National Academy's recommendation that compliance must be addressed at the time of peak dose, which may be as long as several hundred thousand years into the future. Alternatives addressing that recommendation will be developed as the rulemaking proceeds.

Anticipated Costs and Benefits:

An economic impact assessment (EIA) was performed for the proposed rulemaking. The EIA showed that many of the arguments and conclusions of the EIA for the original standards in 2001 are applicable to the proposed rule, which extends the compliance period from 10,000 years to as long as 1 million years. Specifically, the need to evaluate compliance with the individual protection standard is the same, the types of information needed to make those evaluations are the same, the performance assessment methodologies are the same, and the reasonable expectation approach to establishing the basis for the evaluations and compliance decisions is the same. Consequently, the proposed changes to the standards do not require additional efforts in site characterization, design, or assessment methodology development. Because DOE is not expected to make changes, undertake significant site characterization, or drastically revise its performance approach or models as a result of EPA's revisions to the 2001 rulemaking, there are no costs directly attributable to EPA's rulemaking.

Risks:

As a result of the standards extending to as long as an unprecedented 1 million years, approaches for characterizing and expressing the risk are under consideration, and will be addressed in the final rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	08/22/05	70 FR 49014
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

Additional Information:

SAN No. 4964; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-AIR/2005/August/Day-22/a16193.htm

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RIN: 2060–AN15

EPA

149. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE

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, June 20, 2007, Consent decree.

Final, Judicial, March 12, 2008, Consent decree.

Abstract:

The Clean Air Act Amendments of 1977 require EPA to review and, if necessary, revise national ambient air quality standards (NAAQS) periodically. On July 18, 1997, the EPA published a final rule revising the NAAQS for ozone. The primary and secondary NAAQS were strengthened to provide increased protection against both health and environmental effects of ozone. The EPA's work plan/schedule for the next review of the ozone Criteria Document was published on November 2002. The first external review draft Criteria Document, a rigorous assessment of relevant scientific information, was released on January 31, 2005. The EPA's Office of Air Quality Planning and Standards will prepare a Staff Paper for the Administrator, which will evaluate the policy implications of the key studies and scientific information contained in the Criteria Document and additional technical analyses, and identify critical elements that EPA staff believe should be considered in reviewing the standards. The Criteria Document was reviewed by CASAC and the public, changes were incorporated, and the final Criteria Document was released on March 21, 2006. The Staff Paper was released on January 31, 2007. As the ozone NAAQS review is completed, the Administrator's proposal to reaffirm or revise the ozone 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 ozone 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 ozone are whether to reaffirm or revise the existing standards.

Anticipated Costs and Benefits:

A regulatory impact analysis (RIA) has been prepared that presents the costs and benefits associated with the proposed revised ozone standards and two other alternative standards This RIA was issued in late July, and the document is available at http://www.epa.gov/ttn/ecas/ria.html.

Risks:

The current national ambient air quality standards for ozone are intended to protect against public health risks associated with morbidity and/or premature mortality and public welfare risks associated with adverse vegetation and ecosystem effects. During the course of this review, risk assessments will be conducted to evaluate health and welfare risks

associated with retention or revision of the ozone standards.

Timetable:

Action	Date	FR Cite
Notice	12/29/05	70 FR 77155
NPRM	07/11/07	72 FR 37818
Final Action	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 5008; EPA publication information: Notice - http://www.epa.gov/fedrgstr/EPA-AIR/2005/December/Day-29/a24608.pdf;

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RIN: 2060–AN24

EPA

150. 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 51; 40 CFR 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 Costs 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:

Risk information will be developed as appropriate as the rulemaking proceeds.

Timetable:

Action	Date	FR Cite
NPRM	10/20/05	70 FR 61081
Supplemental NPRM	05/08/07	72 FR 26202
Final Action	08/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, 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.

URL For More Information:

www.epa.gov/nsr

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RIN: 2060–AN28

EPA

151. FINAL RULE FOR IMPLEMENTATION OF THE NEW SOURCE REVIEW (NSR) PROGRAM FOR PM2.5

Priority:

Other Significant

Legal Authority:

42 USC 7410; 42 USC 7501 et seq

CFR Citation:

40 CFR 51

Legal Deadline:

None

Abstract:

This rulemaking action is the final rule which lays out the provisions and requirements for implementation of the NSR program for particulate matter less than 2.5 microns in diameter (PM2.5). This rule would apply to new and modified major stationary sources of PM2.5. In 1997, EPA promulgated National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM2.5). EPA designations of 39 nonattainment areas for the PM2.5 standards became effective on April 5, 2005. The Clean Air Fine Particle Implementation Rule, which was proposed in the Federal Register on November 1, 2005, included requirements and guidance for State and local air pollution agencies to follow in developing State implementation plans (SIPs) designed to bring areas into attainment with the 1997 standards. The proposed rule also included the New Source Review (NSR) provisions for implementing the PM2.5 program. In this final action, we have split the NSR provisions of the proposed rule as a separate package. This rule will address the applicability of NSR to precursors, Major Source Threshold and Significant Emissions Rate for PM2.5, preconstruction monitoring requirements, offset provisions and inter pollutant trading of offsets and finally the transition provisions.

Statement of Need:

This rule is needed to promulgate the federal requirements for implementing a PM2.5 NSR program States and local agencies have until April 5, 2008 in preparing State implementation plans (SIPs) designed to address the NSR requirements for PM2.5.

Summary of Legal Basis:

42 USC 7410 and 42 USC 7501 et seq.

Alternatives:

Alternatives will be explored as the final rule is developed.

Anticipated Costs and Benefits:

We are not able to provide quantitative estimates of the costs and benefits of this rule because of our inability to specifically identify the quantity, types, and locations of sources that will be subject to 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 do not expect this rule to add to the costs of the program, nor do we expect that the benefits of the program will significantly change.

Risks:

Since the risks of PM2.5 emissions exposure have been addressed in the PM2.5 NAAQS rule, we do not anticipate any additional risk reduction as a result of implementing this rule.

Timetable:

Action	Date	FR Cite
NPRM	11/01/05	70 FR 65984
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN No. 4752.2; Split from RIN 2060-AK74.

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RIN: 2060–AN86

EPA

152. LEAD–BASED PAINT; AMENDMENTS FOR RENOVATION, REPAIR AND PAINTING

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

15 USC 2682 ''TSCA section 402''; 15 USC 2684 ''TSCA section 404''

CFR Citation:

40 CFR 745

Legal Deadline:

Final, Statutory, October 28, 1996.

NPRM, Statutory, December 30, 2005, Administration deadline.

Abstract:

In 2008, EPA will continue its work towards the Administration goal of eliminating childhood lead poisoning as a national health concern by 2010 by implementing a comprehensive program to address lead-based paint hazards associated with renovation, repair and painting activities. The program will be comprised of a combination of approaches including regulations, and an extensive education and outreach campaign that will include elements specifically designed for industry and consumers. Industry outreach will include dissemination of information regarding the regulation, lead-safe work practices, and training opportunities. Consumer outreach will be designed to expand consumer awareness, and create demand for the use of lead-safe work practices. EPA plans to finalize and begin implementation of the Renovation, Repair and Painting Program regulations in 2008. EPA proposed these regulations on January 10, 2006 and amended that proposal on June 5, 2007 to include child occupied facilities within the scope of the rule. The regulation should minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair, and painting activities. The regulations would require contractors conducting renovation, repair and painting activities in most target housing and child occupied facilities to be trained, certified, and to follow work practice standards designed to minimize the creation of lead hazards.

Statement of Need:

Childhood lead poisoning is a pervasive problem in the United States, with almost a million young children having more than 10 ug/dl of lead in their blood (Center for Disease Control's level of concern). Although there have been dramatic declines in blood-lead levels due to reductions of lead in paint, gasoline, and food sources, remaining paint in older houses continues to be a significant source of childhood lead poisoning. These rules will help insure that individuals and firms conducting renovation, repairs and painting activities will do so in a

way that safeguards the environment and protects the health of building occupants, especially children under 6 years old.

Summary of Legal Basis:

This regulation is mandated by TSCA section 402(c). TSCA Section 402(c) directs EPA to address renovation and remodeling activities by first conducting a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular basis. Section 402(c) further directs the Agency to revise the lead-based paint activities regulations (40 CFR part 745 subpart L) to apply to renovation, remodeling or painting activities that create lead-based paint hazards.

Alternatives:

EPA is considering alternatives including on the job training for renovation workers, the use of test kits to determine the presence of lead paint, and the use of a cleaning verification protocol to determine if a job site is sufficiently clean. TSCA Section 402(c) states that should the Administrator determine that any category of contractors engaged in renovation or remodeling does not require certification; the Administrator may publish an explanation of the basis for that determination.

Anticipated Costs and Benefits:

EPA's economic analysis provides quantitative cost estimates for the training, certification, and work practices required by the rule. The economic analysis provides quantitative benefits estimates for avoided incidence of IQ loss due to reduced lead exposures to children under the age of 6, and a qualitative discussion of other avoided adverse health effects in children and adults. The economic analysis of the final rule will incorporate new information characterizing lead levels in dust and soil after renovation, repair, and painting activities, and a new modeling approach to estimate the resultant blood lead and IQ loss in children under the age of 6.

Risks:

This rule is aimed at reducing the prevalence and severity of lead poisoning, particularly in children. The Agency has concluded that many R&R work activities can produce or release large quantities of lead. These activities include, but are not limited to: sanding, cutting, window replacement, and demolition. Lead exposure to R&R workers appears to be less of a problem than to building occupants (especially young children). Some workers (and homeowners) are occasionally exposed to high levels of lead. Any work activity that produces dust and debris may create a lead exposure problem.

Timetable:

Action	Date	FR Cite
NPRM	01/10/06	71 FR 1588
Notice of Availability; Supplemental Economic Analysis	03/02/06	71 FR 10628
Notice of Availability; Draft Pamphlet	03/08/06	71 FR 11570
Request for Comment; Lead Paint Test Kit Development	03/16/06	71 FR 13561
NPRM: Extension of Comment Period	04/06/06	71 FR 17409
Notice of Availability; Study Results	03/16/07	72 FR 12582
Supplemental NPRM	06/05/07	72 FR 31022
Final Action	03/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN No. 3557; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-TOX/2006/January/Day-10/t071.htm; EPA Docket information: EPA-HQ-OPPT-2005-0049; Individual Document id in the EPA docket: www.regulations.gov

Sectors Affected:

23599 All Other Special Trade Contractors; 23551 Carpentry Contractors; 53111 Lessors of Residential Buildings and Dwellings; 23322 Multifamily Housing Construction; 23521 Painting and Wall Covering Contractors; 531311 Residential Property Managers; 23321 Single Family Housing Construction; 54138 Testing Laboratories

URL For More Information:

http://www.epa.gov/oppt/lead/pubs/renovation.htm

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RIN: 2070–AC83

EPA

153. REGULATION OF OIL–BEARING HAZARDOUS SECONDARY MATERIALS FROM THE PETROLEUM REFINING INDUSTRY PROCESSED IN A GASIFICATION SYSTEM TO PRODUCE SYNTHESIS GAS

Priority:

Other Significant

Legal Authority:

42 USC 6901; 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937; 42 USC 6938; 42 USC 6939; 42 USC 6974

CFR Citation:

40 CFR 260; 40 CFR 261

Legal Deadline:

None

Abstract:

The U.S. Environmental Protection Agency (EPA) is considering finalizing revisions to the RCRA hazardous regulations to exclude oil-bearing secondary materials, generated by the petroleum refining industry, from the definition of solid waste if the materials are destined to be processed in a gasification device manufacturing synthesis gas fuel. We are considering this exclusion in order to clarify and simplify RCRA jurisdiction, and to be consistent with other comparable existing exclusions in the petroleum refining industry.

Statement of Need:

We are undertaking the rulemaking to: (1) Prevent unnecessary confusion regarding the status of recycling of oil-bearing hazardous secondary material from the petroleum industry in a gasification system; (2) promote the use of a technologically advanced method of extracting hydrocarbons from secondary materials; and (3) remove regulatory restrictions that may limit the petroleum refining industry's ability to maximize the production of fuels and materials commodities from petroleum refining while minimizing the generation of waste.

Summary of Legal Basis:

No aspect of this action is required by statute or court order.

Alternatives:

Based on comments and additional analysis, we are looking into whether a separate exclusion is unnecessary and overly prescriptive and whether our original strategy of amending the existing regulatory language found at 40 CFR 261.4(a)(12) should be done.

Anticipated Costs and Benefits:

We estimate the rule will yield between $46.4 million and 48.7 million in net social benefits per year. Avoided waste management costs make up the most significant share of the benefits followed by feedstock savings. Commercial facilities that manage refinery wastes may experience annual revenue losses of $10.8 million to $15.1 million under the final rule.

Risks:

N/A

Timetable:

Action	Date	FR Cite
NPRM	03/25/02	67 FR 13684
Notice: Extension of Comment Period	06/11/02	67 FR 39927
Final Action	02/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

Additional Information:

SAN No. 4411; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-WASTE/2002/March/Day-25/f7097.htm; This is an extension of a previous notice that contained the following RIN: 2050-AD88.; EPA Docket information: F-2002-RPRP-

Sectors Affected:

32411 Petroleum Refineries

URL For More Information:

http://www.epa.gov/epaoswer/hazwaste/gas-fs.pdf

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RIN: 2050–AE78

EPA

154. EXPANDING THE COMPARABLE FUELS EXCLUSION UNDER RCRA

Priority:

Other Significant

Legal Authority:

RCRA 4004

CFR Citation:

40 CFR 261.38

Legal Deadline:

None

Abstract:

EPA currently excludes specific industrial wastes, also known as comparable fuels, from most Resource Conservation and Recovery Act (RCRA) hazardous waste management requirements when the wastes are used for energy production and do not contain hazardous constituent levels that exceed those found in a typical benchmark fuel that facilities would otherwise use. Using such wastes as fuel saves energy by reducing the amount of hazardous waste that would otherwise be treated and disposed, promotes energy production from a domestic, renewable source, and reduces use of fossil fuels. With an interest in supplementing the nation's energy supplies and to ensure that energy sources are managed only to the degree necessary to protect human health and the environment, EPA, as part of the Resource Conservation Challenge, is examining the effectiveness of the current comparable fuel program and considering whether other industrial wastes could be safely used as fuel as well. As part of this investigation, EPA has proposed to expand the existing comparable fuel exclusion and is seeking comment on that proposal.

Statement of Need:

EPA has proposed to expand the comparable fuel exclusion under section 261.38 of the rules implementing subtitle C of the Resource Conservation and Recovery Act (RCRA) for fuels that are produced from hazardous waste but which generate emissions that are comparable to emissions from burning fuel oil when such fuels are burned in an industrial boiler. Such excluded fuel would be called emission-comparable fuel (ECF). ECF would be subject to the same specifications that currently apply to comparable fuels, except that the specifications for certain hydrocarbons and oxygenates would not apply. The ECF exclusion would be conditioned on requirements including: design and operating conditions for the ECF boiler to ensure that the ECF is burned under the good combustion conditions typical for oil-fired industrial boilers; and conditions for tanks storing ECF which conditions are typical of those for storage of commercial fuels, and are tailored for the hazards that ECF may pose. This rule, if finalized, is intended to save energy by reducing the amount of hazardous waste that would be otherwise treated and disposed, and also to promote energy production from a domestic, renewable source and reduce our use of fossil fuels.

Summary of Legal Basis:

This action is discretionary on the Agency's part.

Alternatives:

To make significant changes to the existing comparable fuels standard, EPA must modify the existing regulations. EPA has proposed modified regulations and is seeking comment on those potential regulatory modifications.

Anticipated Costs and Benefits:

This rule, as proposed, is projected to result in a benefit to society in the form of net cost savings to the private sector, on a nationwide basis, thereby allowing

for the more efficient use of limited resources elsewhere in the market. This is accomplished without compromising protection of human health and the environment by ensuring comparable emissions from the burning of high Btu value waste. The total net social benefits projected as a result of this rule, as proposed, are estimated at approximately $23 million per year. Avoided management and fuel costs represent the vast majority of all benefits (cost savings). Transportation, boiler retrofits, and analytical costs represent the majority of the costs. This estimate assumes all States adopt the rule, and incorporates all cost savings to affected generators, less all associated costs. Nearly 183,000 tons (U.S.) of waste are expected to initially qualify for the exclusion with approximately 107,000 tons/year actually excluded. Of this total, we estimate that approximately 34,000 tons are not currently burned for energy recovery.

Risks:

The exclusion for emission-comparable fuel (ECF) would be based on the rationale that ECF has fuel value, that the hydrocarbon and oxygenate constituents no longer subject to a specification themselves have fuel value, and that emissions from burning ECF in an industrial boiler operating under good combustion conditions are likely not to differ from emissions from burning fossil fuels under those same conditions. Emissions from burning ECF in an industrial boiler operating under good combustion conditions would be comparable to emissions from burning fuel oil in an industrial boiler operating under the same good combustion conditions because operating a boiler under good combustion conditions, evidenced by carbon monoxide (CO) emissions below 100 ppmv (on an hourly rolling average), assures the destruction of organic compounds generally to trace levels, irrespective of the type or concentration of the organic compound in the feed. Given that ECF (including the hydrocarbon and oxygenate portion) would have legitimate energy value and that emissions from burning ECF are comparable to fuel oil when burned in an industrial boiler under the good combustion conditions typical of such boilers, classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating a risk from burning greater than those posed by fossil fuel. Under these circumstances, EPA can permissibly classify ECF as a non-waste.

Timetable:

Action	Date	FR Cite
NPRM	06/15/07	72 FR 33284
Notice: Extension of Comment Period	07/19/07	72 FR 39587
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4977; ; EPA Docket information: EPA-HQ-RCRA-2005-0017; http://www.regulations.gov

URL For More Information:

http://www.epa.gov/epaoswer/hazwaste/combust/compfuels/exclusion.htm

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RIN: 2050–AG24

EPA

155. DEFINITION OF SOLID WASTES REVISIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 6903 ''RCRA Section 1004''

CFR Citation:

40 CFR 261.2

Legal Deadline:

None

Abstract:

On October 28, 2003 (68 FR 61558), EPA proposed revisions to the definition of solid waste for hazardous secondary materials being reclaimed in a continuous process in the generating industry in an effort to increase the recycling of such materials. The Agency also took comment on a broader proposal to exclude hazardous secondary materials from being a solid waste under RCRA Subtitle C. This proposal was in part prompted by various court decisions about the extent of RCRA jurisdiction over hazardous secondary materials being recycled. In the same notice, the Agency also proposed criteria for determining whether or not hazardous secondary materials are recycled legitimately; the legitimacy criteria would apply to both those hazardous secondary materials that were excluded, as well as those that would remain subject to regulation under Subtitle C of RCRA. EPA received numerous comments on the proposal. In addition, EPA has conducted studies of recycling practices and the circumstances under which recycling of hazardous secondary materials are reclaimed in an environmentally sound manner, as well as when such reclamation has caused environmental problems. Based on the comments received and the new information being made available for public comment, the Agency issued a supplemental proposal on March 26, 2007 (72 FR 14172) to exclude from being a solid waste certain hazardous secondary materials that are reclaimed. We also took comment on revisions being considered to the legitimacy criteria, as well as on a variance process regarding hazardous secondary materials that are recycled.

Statement of Need:

EPA is revising the definition of solid waste to increase recycling.

Summary of Legal Basis:

Association of Battery Recyclers v. EPA, 203 F. 2d 1047 (D.C. Cir. 2000); American Mining Congress v. EPA, 824 F. 2d 1177 (D.C. Cir. 1987) and other cases.

Alternatives:

We have solicited comment in the proposal on several alternative regulatory options, including a broad exclusion for legitimately recycled materials, and are evaluating public comments on all available options.

Anticipated Costs and Benefits:

If the exclusions are promulgated as proposed and are adopted by all states, EPA expects this action to result in a net effect of $107 million in average annual cost savings to about 4600 facilities in 530 industries, and is expected to remove from RCRA regulation 0.65 million tons per year of hazardous secondary materials currently managed as RCRA hazardous waste, and 0.06 million tons (9%) of hazardous waste that is currently disposed (i.e., landfilled or incinerated), which EPA expects may switch to recycling as a result of this rule. The breakdown of net cost savings per exclusion is $87 million per year for materials recycled onsite, by the same company, or through a tolling arrangement, $19 million per year for intercompany offsite recycling, and one million per year for case-by-case non-waste determinations. These estimates are within the uncertainty range of $93 million to $205 million in annual materials management cost savings, and 0.33 to 1.70 million tons per year in affected hazardous secondary materials, respectively, for the net effect of the proposed regulatory exclusions.

Risks:

EPA has conducted three new studies that address the following risk-related questions: (1) How do recyclers ensure that industrial recycling is done in an environmentally safe manner?; (2) to what extent has industrial recycling resulted in past environmental problems?; and (3) are there certain economic forces that can explain environmental problems resulting from such recycling? EPA used these studies in developing our 2007 proposal.

Timetable:

Action	Date	FR Cite
NPRM	10/28/03	68 FR 61558
Supplemental NPRM	03/26/07	72 FR 14172
Final Action	07/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4670.1; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-WASTE/2003/October/Day-28/f26754.htm; Split from RIN 2050-AE98.

URL For More Information:

http://www.epa.gov/epaoswer/hazwaste/dsw/index.htm

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RIN: 2050–AG31

EPA

156. NPDES PERMIT REQUIREMENTS FOR PEAK WET WEATHER DISCHARGES FROM PUBLICLY OWNED TREATMENT WORK TREATMENT PLANTS SERVING SANITARY SEWER COLLECTION SYSTEMS POLICY

Priority:

Other Significant

Legal Authority:

33 USC 1311; 33 USC 1318; 33 USC 1342; 33 USC 1361

CFR Citation:

40 CFR 122.41(m)

Legal Deadline:

None

Abstract:

During periods of wet weather, wastewater flows received by municipal sewage treatment plants can significantly increase, which can create operational challenges for sewage treatment facilities. Where peak flows approach or exceed the design capacity of a treatment plant they can seriously reduce treatment efficiency or damage treatment units. In addition to hydraulic concerns, wastewater associated with peak flows may have low organic strength, which can also decrease treatment efficiencies. One engineering practice that some facilities use to protect biological treatment units from damage and to prevent overflows and backups elsewhere in the system is referred to as wet weather blending. Wet weather blending occurs during peak wet weather flow events when flows that exceed the capacity of the biological units are routed around the biological units and blended with effluent from the biological units prior to discharge. Regulatory agencies, sewage treatment plant operators, and representatives of environmental advocacy groups have expressed uncertainty about National Pollutant Discharge Elimination System (NPDES) requirements addressing such situations. EPA requested public comment on a proposed policy published on November 7, 2003. Based on a review of all the information received, EPA has decided not to finalize the policy as proposed in November 2003. On December 22, 2005, EPA requested public comment on an alternative Peak Flows Policy that is significantly different than the 2003 draft policy.

Statement of Need:

Regulatory agencies, municipal operators of wastewater facilities, and representatives of environmental advocacy groups have expressed uncertainty about the appropriate regulatory interpretation for peak wet weather diversions at publicly owned treatment works (POTW) treatment plants serving separate sanitary sewer collection systems. This policy is needed to clarify NPDES permit requirements for such wet weather diversions and to ensure a comprehensive regulatory approach reduces peak wet diversions.

Summary of Legal Basis:

33 USC 1251 et seq.

Alternatives:

On November 7, 2003, EPA requested public comment on a proposed policy which would have provided an alternative regulatory interpretation. Under the proposed interpretation in the November 7, 2003 proposed policy, a wet weather diversion around biological treatment units that was blended with the wastewaters from the biological units prior to discharge would not have been considered to constitute a prohibited bypass if the six criteria specified in the November 7, 2003 proposed policy were met. EPA received significant public comment on the proposed policy, including over 98,000 comments opposing the policy due to concerns about human health risks. On May 19, 2005, EPA indicated that after consideration of the

comments, the Agency had no intention of finalizing the 2003 proposal. On July 26, 2005, Congress enacted the FY 2006 Department of the Interior, Environment, and Related Agencies Appropriations Act (Pub. L. 109-54). Section 203 of the Appropriations Act provides that none of the funds made available in the Act could be used to finalize, issue, implement or enforce the November 7, 2003 proposed blending policy. On December 22, 2005, EPA requested public comment on an alternative Peak Flows Policy that is significantly different than the 2003 draft policy.

Anticipated Costs and Benefits:

The costs and benefits associated with this policy have not been evaluated.

Risks:

The collection and treatment of municipal sewage and wastewater is vital to public health. During significant rain events, high volumes of water entering a sewage collection system can overwhelm the collection system or treatment plant. Operators of wastewater treatment plants must manage these high flows to both ensure the continued operation of the treatment process and to prevent backups and overflows of raw wastewater in basements or city streets. The proposed policy seeks to reduce public health risks by encouraging municipalities to make investments in ongoing maintenance and capital improvements to improve their system's long-term performance.

Timetable:

Action	Date	FR Cite
1st Draft Policy	11/07/03	68 FR 63042
2nd Draft Policy	12/22/05	70 FR 76013
Final Policy	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State, Tribal

Federalism:

Undetermined

Additional Information:

SAN No. 4690; EPA publication information: 2nd Draft Policy - http://www.epa.gov/fedrgstr/EPA-WATER/2005/December/Day-22/w7696.htm; EPA Docket information: EPA-HQ-OW-2005-0523

Sectors Affected:

22132 Sewage Treatment Facilities

URL For More Information:

www.epa.gov/npdes

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RIN: 2040–AD87

EPA

157. CONCENTRATED ANIMAL FEEDING OPERATION RULE

Priority:

Other Significant

Legal Authority:

CWA 301, 304, 306, 307, 308, 402, 501

CFR Citation:

40 CFR Part 122; 40 CFR Part 412

Legal Deadline:

None

Abstract:

This rulemaking is in response to the Second Circuit's February 28, 2005, decision in Waterkeeper Alliance vs. EPA, which vacated provisions in the Concentrated Animal Feeding Operations (CAFO) rule found at 40 CFR 412. Two vacatures from the case affect the 1) duty that all CAFOs need to apply for an NPDES permit, and 2) provisions that nutrient management plans (NMPs) need only be kept on-site. This rule would remove the duty to apply for all CAFOs and replace it with a requirement for CAFOs to apply for a permit if they discharge or propose to. The rule also would establish a process to address the court's concerns that the information within NMPs be available for public comment, reviewed by the permit authority, and incorporated into the permit. It is EPA's intention to make only those changes necessary to address the issues raised by the court.

Statement of Need:

EPA is revising the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) in response to the decision issued by the Second Circuit Court of Appeals in Waterkeeper Alliance v. EPA, 399 F.3d 486 (2nd Cir. 2005), which vacated certain aspects of the 2003 CAFO rule and remanded other aspects for clarification. This rule responds to the court's decision while furthering the statutory goal of restoring and maintaining the nation's water quality and effectively ensuring that CAFOs properly manage manure generated by their operations.

Summary of Legal Basis:

Congress passed the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters'' (33 U.S.C. 1251(a)). Among the core provisions, the CWA establishes the NPDES permit program to authorize and regulate the discharge of pollutants from point sources to waters of the U.S. 33 U.S.C. 1342. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term ''point source.'' Section 502(12) defines the term ''discharge of a pollutant'' to mean ''any addition of any pollutant to navigable waters from any point source'' (emphasis added). EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR Part 122. The Act also provides for the development of technology-based and water quality-based effluent limitations that are imposed through NPDES permits to control the discharge of pollutants from point sources. CWA sections 301(a) and (b).

Alternatives:

Because this rulemaking is in response to the decision issued by the Second Circuit Court of Appeals in Waterkeeper Alliance v. EPA vacating or remanding certain aspects of the 2003 CAFO rule, there are no non-regulatory options that would satisfy the requirements of the court.

Anticipated Costs and Benefits:

Since there is no change in technical requirements, changes in impacts on respondents are estimated to result exclusively from changes in the

information collection burden. EPA estimates that CAFOs will experience a net reduction in administrative burden of approximately $15.4 million due to the court decision. At the same time, however, permitting authorities would have to bear a net $0.5 million annual increase in administrative burden. In total, the administrative burden under the proposed rule is projected to decline to a total of approximately $64 million annually for both regulated facilities and permit authorities, which constitutes a reduction of more than $14.9 million compared to the 2003 CAFO rule.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	06/30/06	71 FR37744
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4996; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-WATER/2006/June/Day-30/w5773.htm;

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RIN: 2040–AE80

EPA

158. WATER TRANSFERS RULE

Priority:

Other Significant

Legal Authority:

33 USC 1251 et seq.

CFR Citation:

40 CFR 122.3

Legal Deadline:

None

Abstract:

This rulemaking addresses the question of whether the National Pollutant Discharge Elimination System (NPDES) permitting program under Section 402 of the Clean Water Act (CWA) is applicable to water control facilities that merely convey or connect navigable waters. For purposes of this action, the term ''water transfer'' refers to any activity that conveys or connects navigable waters (as that term is defined in the CWA) without subjecting the water to intervening industrial, municipal, or commercial use. This rulemaking focuses exclusively on water transfers and is not relevant to whether any other activity is subject to the CWA permitting requirement.

Statement of Need:

This rulemaking is needed to clarify that NPDES permits are generally not required for water transfers. In 2004, this question was presented before the Supreme Court in South Florida Water Management District v. Miccosukee Tribe of Indians. The Court declined to rule directly on the issue and remanded it back to the District Court for further deliberation, generating uncertainty among the potentially regulated community and other stakeholders.

Summary of Legal Basis:

33 USC 1251 et seq.

Alternatives:

On August 5, 2005, EPA issued a legal memorandum entitled ''Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers.'' Based on the statute as a whole, this memo concluded that Congress generally intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the NPDES permitting program. The interpretive memo stated that the Agency would initiate a rulemaking to this effect. The issuance of a rulemaking will provide the greatest certainty for stakeholders.

Anticipated Costs and Benefits:

There are no costs and benefits associated with this rulemaking.

Risks:

There are no risks associated with this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	06/07/06	71 FR 32887
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

Additional Information:

SAN No. 5040; EPA publication information: NPRM - http://www.epa.gov/fedrgstr/EPA-WATER/2006/June/Day-07/w8814.htm; ; EPA Docket information: EPA-HQ-OW-2006-0141

URL For More Information:

www.epa.gov/npdes/agriculture

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RIN: 2040–AE86

EPA

159. IMPLEMENTATION GUIDANCE FOR MERCURY WATER QUALITY CRITERIA

Priority:

Other Significant

Legal Authority:

33 USC 1251 et seq

CFR Citation:

None

Legal Deadline:

None

Abstract:

In the 2001 Federal Register notice of the availability of EPA's recommended water quality criterion for methylmercury, EPA stated that it would develop associated procedures and guidance for implementing the criterion. For states and authorized tribes exercising responsibility under CWA section 303(c), this document provides technical guidance on how they might want to use the recommended 2001 fish tissue-based criterion to develop and implement their own water quality standards for methylmercury. The guidance addresses topics including adoption and revision of standards, monitoring, waterbody assessment, water quality standards issues, TMDL development, and NPDES permitting. Since atmospheric deposition is considered to be a major source of mercury for many waterbodies, implementing this criterion involves coordination across media and program areas.

Statement of Need:

The methylmercury criterion is expressed as a fish and shellfish tissue value, and this raises both technical and programmatic implementation questions. Development of water quality standards, NPDES permits, and TMDLs present challenges because these activities typically have been based on a water concentration (e.g., as a measure of mercury levels in effluent). This guidance addresses issues associated with states and authorized tribes adopting a fish tissue-based water quality criterion into their water quality standards programs and implementation of the revised water quality criterion in TMDLs and NPDES permits. Further, because atmospheric deposition serves as a large source of mercury for many waterbodies, implementation of the criterion involves coordination across media and program areas.

Summary of Legal Basis:

N/A

Alternatives:

N/A

Anticipated Costs and Benefits:

The costs and benefits associated with this guidance have not been evaluated.

Risks:

N/A

Timetable:

Action	Date	FR Cite
Final Document	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Tribal

Additional Information:

SAN No. 5098; FDMS Docket number: Docket ID No. EPA-HQ-OW-2006-0656

URL For More Information:

http://www.epa.gov/waterscience/criteria/methylmercury

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RIN: 2040–AE87

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory 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 employees who were not previously covered.

The item in this Regulatory Plan involves a new exemption from the prohibitions of the ADEA for the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits. This rule is intended to ensure that the application of the ADEA does not discourage employers from providing health benefits to their retirees. The Commission does not believe that the proposed exemption will have a significant impact on small business entities under the Regulatory Flexibility Act because it imposes no economic or reporting burdens on such firms. On February 4, 2005, AARP sued the EEOC to prevent issuance of the final rule in Federal district court. The district court ultimately found that the EEOC did, in fact, have authority to issue the regulation. The Third Circuit Court of Appeals agreed with this conclusion in a June 4, 2007 decision and lifted a stay on issuance of the rule on September 13, 2007.

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

FINAL RULE STAGE

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160. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625

Legal Deadline:

None

Abstract:

The Commission proposes to exempt from the prohibitions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq. (ADEA or Act), the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits.

Statement of Need:

In August 2001, the Commission announced that it would consider the relationship between the ADEA and employer-sponsored retiree health benefit plans that alter, reduce, or eliminate benefits upon eligibility for Medicare or a comparable State-sponsored retiree health benefits program. There has been a decline in the number of employers providing retiree health benefits over the last 10 years. Various factors have contributed to this erosion, including the increased cost of health care coverage, an increased demand for such coverage as large numbers of workers near retirement age, and changes in the way accounting rules treat the long-term costs of providing retiree health benefits. Another factor has been employer concern about the potential application of the ADEA to employer-sponsored retiree health benefits. The Commission is proposing a narrowly drawn ADEA exemption that permits the practice of coordinating employer-provided retiree health coverage with eligibility for Medicare or a State-sponsored retiree health benefits program, so that the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees.

Summary of Legal Basis:

Pursuant to section 9 of the ADEA, the Commission is authorized to establish reasonable exemptions to and from any or all provisions of the Act as it may find necessary and proper in the public interest.

Alternatives:

The Commission considered various alternatives in developing this proposal. The Commission considered all alternatives offered by the public commenters.

Anticipated Costs and Benefits:

The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace, using these and other benefits to attract and retain the best talent available to work for their organizations. The proposed rule will ensure that the application of the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees who otherwise would have to obtain such coverage in the private individual marketplace at significant personal expense. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible.

Risks:

The proposed regulatory action will reduce the risks of liability for noncompliance with the statute by exempting certain employer practices from regulation. This proposal does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/14/03	68 FR 41542
NPRM Comment Period End	09/12/03	
Final Action	12/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

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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 2008 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) 2008.

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 expected change to 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 continuing consideration of revisions to the cross-waiver of liability regulation at 14 CFR Part 1266. Specifically, NASA is considering implementation of the cross-waiver of liability provision of the intergovernmental agreement of the International Space Station and refinement and clarification of contractual cross-waivers in NASA agreements involving launch services.

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 2008, 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. We will issue the proposed rule to revise subchapter B in the second quarter of 2008.

Regulations of Particular Concern to Small Businesses

None in fiscal year 2007.

NARA

PROPOSED RULE STAGE

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161. 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. The proposed revision will be issued in fiscal year 2008 for Federal agency and public comment.

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 identified in our Strategic Plan as a key strategy to meet the primary goal that ''essential evidence will be created, identified, appropriately scheduled, and managed for as long as needed.'' Without effective records management, records needed to document citizens' rights, actions for which Federal officials are responsible, and the historical experience of our Nation will be at risk of loss, deterioration, or destruction.

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 Costs 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	01/00/08	

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 2007 regulatory priorities are designed to support these activities.

Retirement Systems Modernization

Retirement Systems Modernization (RSM) is a strategic initiative of the Office of Personnel Management (OPM) to improve the quality and timeliness of services to individuals covered by the Civil Service Retirement System and the Federal Employees' Retirement System by modernizing business processes and the technology that supports them. RSM will transform the retirement process by devising more efficient and effective business systems to issue timely benefit payments and to respond to increased customer demand for higher levels of customer service and online self-service tools.

Some existing regulatory provisions and the procedures they prescribe are directed at the current paper-based system that will eventually cease to exist, but which will continue to operate concurrently with respect to at least certain aspects of retirement and insurance processing for some individuals. Implementation of RSM will begin in February 2008. Retirement and insurance records of current employees and annuitants will be migrated into the new system in a series of waves over the following months. The proposed RSM regulations primarily address the transformation from paper to electronic records and the automated application process — cornerstones of the modernization effort — while creating structure for future OPM directives that will be issued as necessary to facilitate the evolution of the RSM initiative.

Federal Employee Dental and Vision Benefits

OPM is proposing interim regulations to administer the Federal Employee Dental and Vision Benefits Enhancement Act of 2004. This law establishes dental and vision benefits programs for Federal employees, annuitants, and their families. By law the Federal Employees Dental and Vision Insurance Program (FEDVIP) became effective in 2006. Congress and the Administration intended for the Program to be available to enrollees as of the end of 2006, and the rules governing the program are effectively established in the existing contracts that OPM has entered into with the dental and vision carriers pursuant to the FEDVIP law. These interim regulations explain the program rules to affected enrollees and the general public, and will assist the administration of the Program.

Adverse Action Regulations

In FY 2008, OPM plans to issue final amendments to its regulations governing Federal adverse actions and career and career-conditional employment. The amendments will clarify the adverse action rules regarding employee coverage and bring the rules into conformance with binding judicial decisions interpreting the underlying statute. OPM also plans to amend these regulations to clarify the rules as needed under the Federal Workplace Flexibility Act of 2004 regarding reductions in pay and to clarify the scope of indefinite suspensions. Concurrently, OPM will remove unnecessary subparts of the regulations that cover statutory requirements, make a number of technical corrections, and use language consistent with similar regulatory requirements. The regulations will also be made more readable. These changes will help ensure that the Federal Government has an effective civilian workforce.

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 as 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, and 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 plans and strategic goals. Another change requires agencies to work with OPM to establish comprehensive management succession programs designed to develop future managers 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. OPM regulations will be designed to address these changes, and in general to increase the emphasis on employee and executive development in the Federal Government.

Human Capital Management

The provisions of Public Law 107-296 include the Chief Human Capital Officers Act of 2002 (Act), which, among other things, amended OPM's authorizing legislation in chapter 11 of title 5, United States Code, requiring OPM to design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies. On May 23, 2006, OPM published a proposed rule in the Federal Register, Human Capital Management in Agencies, that would implement the provisions of the Act, as well as Executive Order 13197, Governmentwide Accountability for Merit System Principles; Workforce Information (January 18, 2001). The proposed rule establishes a basic framework for planning and assessing human capital management progress and results, including compliance with relevant laws, rules and regulations, as assessed through agency human capital accountability systems and reported in annual agency human capital management reports. OPM expects to issue the final rule in October 2007.

Leave for Employees Affected by a Pandemic Health Crisis or Other Emergencies

In FY 2008, 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 an agency's voluntary leave bank program to be transferred to an emergency leave transfer program administered by another agency. OPM's regulations currently permit an agency's 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.
- Providing for the participation of Judicial branch employees in any emergency leave transfer program after consultation with the Administrative Office of the United States Courts (in accordance with the amendments made by Public Law 109-229, effective May 31, 2006).

Pay Flexibilities and Entitlements

In FY 2008, 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 recruitment, relocation, and retention incentives and pay setting for General Schedule employees. These statutory and regulatory changes provided agencies with enhanced pay authorities and flexibilities and 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.

Privacy Act Regulations

The Office of Personnel Management is issuing proposed regulations to revise the agency's Privacy Act regulations. The revisions include incorporating the Agency reorganization of 2003 and making plain language modifications.

Freedom of Information Act (FOIA) Regulations

The Office of Personnel Management is issuing proposed regulations to revise the agency's FOIA regulations. The revisions include incorporating the EFOIA Act of 1996 and the Agency reorganization of 2003, and making plain language modifications.

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 30,000 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). Early in 2005, the Administration proposed reforms to improve funding of plans and restore the financial health of the insurance program, which had an $18.1 billion deficit at the end of fiscal year 2006.
- *Multiemployer Program*. The smaller multiemployer program covers 1,600 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 $739 million deficit at the end of FY 2006.

Recent Legislation

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 implement the DRA 2005 and PPA 2006 changes by issuing simple, understandable, and timely regulations that do not impose undue burdens that would impede maintenance or establishment of defined benefit plans. 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, 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 expects to publish a proposed regulation on this disclosure of termination information in late 2007.

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 expects to publish a proposed regulation implementing those changes in late 2007.

PBGC also seeks to simplify filing with PBGC by increasing use of electronic filing. Electronic filing of premium information is now 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 2007, PBGC published two proposed rules implementing most of the premium changes under DRA 2005 and PPA 2006. The Corporation expects to finalize these rules in late 2007. PBGC expects to publish a proposed rule in mid-2007 implementing the authority under PPA 2006 to pay interest on premium overpayments. The Corporation is incorporating 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.

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 early 2008, 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 proposing a rule that would support lender oversight and improve lender performance. This proposed 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 proposed rule is $1.5 million.

SBA

PROPOSED RULE STAGE

162. SMALL BUSINESS LENDING COMPANY AND LENDER OVERSIGHT REGULATIONS

Priority:

Other Significant

Legal Authority:

15 USC 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 enacted by the Reauthorization Act.

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 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 Office of Credit Risk Management; and (6) define SBA's 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 will draft regulations that strengthen the Agency's management of its business loan and lender oversight programs.

Summary of Legal Basis:

Small Business Act, section 23(b)(3).

Alternatives:

This rulemaking amends and expands SBA's existing regulations on the SBLC and lender oversight programs.

Anticipated Costs 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 End	12/31/07	
Final Action	10/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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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.

In the coming years, the Social Security Administration will be facing significant challenges. As a service Agency, we must ensure that as the baby-boomers reach their retirement and disability-prone years, we continue to provide high-quality service. We must continue to address and drive down the significant workload backlogs, most especially at the hearing level for our disability claims. We also must continue to develop systems capabilities that will enable us to provide high-quality services in an era of diminishing resources. This regulatory plan introduces some of the incremental initiatives we will undertake this year to meet those challenges.

The 19 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 13 initiatives in the Plan addressing disability-related issues. They include:

- An initiative concerning attempts by disabled individuals to return to the workforce revising several current regulations addressing the Ticket to Work program. It improves mechanisms for assisting disabled individuals who want to return to the workforce. It also simplifies and improves the definition of ''using a ticket'' and the related requirements for measuring ''timely progress toward self-supporting employment;''
- A final rule modifying the disability administrative adjudication process by suspending the Federal Reviewing Official program, now operating in the Boston region, and removing the Office of Medical and Vocational Expertise from the disability adjudication process;
- A final 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 final rule expanding appellate procedures currently in place in the Boston Region to all hearing offices nationwide and applying those procedures to hearings on both disability and non-disability matters;
- Amendments to hearing level adjudication where we propose to amend several regulations and provide new regulatory language in order to address inefficiencies in the hearings process. These amendments will improve the operational effectiveness of our hearings offices. The amendments include several provisions revising current regulations: 1) clarifying that claims denied by state Disability Determination Services for ''failure to cooperate'' are technical denials rather than medical determinations, 2) allowing Administrative Law Judges (ALJs) to dismiss more quickly cases at the hearing level when fully favorable decisions have already been issued by the State agency, and 3) providing flexibility in setting the time and place of hearings. We also intend to propose new regulatory provisions that will allow ALJs to dismiss a request for a hearing where a claimant has abandoned his or her claim and to specify regulatory standards that require ALJs to clearly articulate their rationale when issuing decisions on remanded claims;
- Amendments and clarifications that apply to all levels of our adjudicatory process. Our proposals include: 1) clarifying ''good cause,'' 2) reemphasizing that Social Security Rulings are binding on all components, 3) clarifying rules regarding recontacting medical sources to resolve ambiguities in the current regulation, and 4) specifying that the preponderance of the evidence standard is the appropriate standard for adjudicating claims at the first three levels of administrative review. We also will propose new regulatory language that will redefine the definition of a Medical Source Statement in terms of the limitations imposed by the claimant's impairments rather than their remaining capacities, change the protected filing date for title II from 6 months to 60 days to mirror the policy in title XVI, and eliminate the requirement for additional documentation for proof of age for retirement applications where the alleged age matches information already contained in our database;
- Updates to Medical-Vocational Rules that will modernize specific criteria in the Agency's medical-vocational rules. We propose to clarify our policy regarding the definition of ''significant number of jobs'' to provide adjudicators with the flexibility to use a variety of methods to document their decision. We also propose changing the age range for a person ''closely approaching retirement age'' from ''60 - 64'' to ''60 and older'' to acknowledge that SSA makes disability determinations for individuals over age 65 without making substantive changes to the way adjudicators weigh the effects of age. Another proposed technical change includes modifying the vocational factor of ''education'' by removing references to ''skilled'' and ''semiskilled'' work as they relate to educational level, revising ''direct entry'' rules, clarifying the definitions of ''education'' and ''limited education,'' and introducing a rebuttable presumption that an individual's educational level is commensurate with his or her formal schooling. We also intend to clarify our policy regarding the use of vocational experts (VEs) and vocational specialists specifically with regard to the use of interrogatories for VEs and the use of various occupational data elements;
- Clarifying when claims or issues previously decided are barred from further consideration to ensure consistency of decisions at different levels of adjudication and in different locations in the country; and,
- Five initiatives updating the medical listings used to determine disability- a final rule on immune system disorders, 3 proposed rules on evaluating mental disorders, evaluating hearing loss and malignant neoplastic diseases, and an Advanced Notice of Proposed Rulemaking on HIV infections.

Improved Stewardship

Included in the Plan are several regulatory initiatives designed to strengthen our stewardship and program integrity activities. Another initiative reflects the goal to improve financial performance, as found in the President's Management Agenda. These initiatives are:

- A final rule proposing annual onsite reviews of consultative examiners (CE) facilities by State Disability Determination Services (DDS). This rule will update the annual threshold amount of billing used to select CE providers for review. Raising the threshold amount enables DDS staff to perform this review function more efficiently.
- A final rule detailing procedures to limit information provided to the public about employees in abusive relationships who fear for their physical well-being. This rule will also conform our Freedom of Information Act regulations with those of the Office of Personnel Management.
- A final rule prohibiting the award of title II benefits to persons fleeing prosecution, custody, or confinement after conviction, and to persons violating probation or parole. This final rule reflects a provision of the Social Security Protection Act of 2004.
- A proposed rule 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 would amend existing regulatory provisions and add new language recognizing law firms and other entities as claimant representatives. We are also proposing a rule that requires representatives who seek payment for their services to file requests for reconsideration or hearings via the internet.

We also will propose to improve the operational efficiency of field offices by reducing the number of individuals who must be interviewed, face-to-face, in the office. Specifically, we will eliminate the requirement to re-interview individuals who became a representative payee (rep payee) for more than one beneficiary. Current policy requires a face-to-face interview for all proposed rep payees. This regulation will eliminate the requirement for that interview where an individual is already serving as a rep payee for another beneficiary.

SSA

PRERULE STAGE

163. • REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE (HIV) SYSTEM DISORDERS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

There are several important initiatives concerning updates to our medical listings. In addition to those medical listings already on our 2007 Regulatory Plan, we intend to issue an Advanced Notice of Proposed Rulemaking concerning whether and how to revise the listing for HIV infection.

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 Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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SSA

PROPOSED RULE STAGE

164. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)

Priority:

Other Significant

Legal Authority:

42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.1500, app 1; 20 CFR 404.1520 to 404.1520a; 20 CFR 404.1528; 20 CFR 416.920a; 20 CFR 416.928

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 (SSI) payments based on disability under title XVI of the Social Security Act (the 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 disorders as affective disorders,

schizophrenic disorder, 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. 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 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 Costs and Benefits:

Costs will be included in the NPRM.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/03	68 FR 12639
ANPRM Comment Period End	06/16/03	
NPRM	11/00/07	
Final Action	07/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

165. REVISED MEDICAL CRITERIA FOR EVALUATING HEARING LOSS (2862P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405; 42 USC 902(a)(5); 42 USC 1383

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 (404.1501 through 404.1599) 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 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. The SSI program incorporates by reference and uses the same medical criteria as the old-age, survivors, and disability insurance program.

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. They ensure that determinations of disability have a sound medical basis, which 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 thus, 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 currently 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 Costs and Benefits:

Costs will be included in the NPRM.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	04/13/05	70 FR 19353
ANPRM Comment Period End	06/13/05	
NPRM	03/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

166. 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 insured status requirement under section 211 of Public Law 108-203—the Social Security Protection Act of 2004 (SSPA)—for an alien worker who was originally assigned a Social Security number (SSN) on or after January 1, 2004. Under this law, an alien worker must meet either of the following additional requirements to be fully or currently insured and to establish entitlement to any title II benefits based on his/her earnings:

* At the time that SSA issues the SSN or later, the alien worker must be authorized by the Department of Homeland Security to work in the United States; or

* The alien worker must have been admitted to the United States at any time as a nonimmigrant visitor for business (immigration category ''B-1'') or as an ''alien crewman'' (immigration category ''D-1'' or ''D-2'').

If an alien worker whose SSN was originally assigned on or after January 1, 2004, does not meet either of these requirements, then he/she is not fully or currently insured; thus entitlement is precluded. This is true even if the alien worker appears to have the required number of quarters of coverage (QCs) in accordance with the other insured status provisions. The 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 a 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 statutes as amended by section 211 of the SSPA.

Alternatives:

None

Anticipated Costs and Benefits:

Administrative start-up costs will be nominal since we already implemented the law via POMS instructions and adjudicator training. 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	12/00/07	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

167. ● AMENDMENTS TO THE ADMINISTRATIVE LAW JUDGE, APPEALS COUNCIL, AND DECISION REVIEW BOARD APPEALS LEVELS (3401P)

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)–(h); 42 USC 405(j); 42 USC 421; 42 USC 423(i); 42 USC 425; 42 USC 902(a)(5); 42 USC 405 note; 42 USC 421 note; 42 USC 902 note; 42 USC 405(s); 42 USC 423(a); 42 USC 423(b); 42 USC 1381; 42 USC 1381a; 42 USC 1383; 42 USC 1383b; 42 USC 423(i)

CFR Citation:

20 CFR 404.900; 20 CFR 404.901; 20 CFR 404.911; 20 CFR 404.924; 20 CFR 404.925; 20 CFR 404.928; 20 CFR 404.929; 20 CFR 404.933; 20 CFR 404.935; 20 CFR 404.936; 20 CFR 404.938 to 404.940; 20 CFR 404.943; 20 CFR 404.944; 20 CFR 404.946; 20 CFR 404.948 to 404.953; 20 CFR 404.955 to 404.961; 20 CFR 404.966 to 404.977; 20 CFR 404.979; 20 CFR 404.981 to 404.984; 20 CFR 404.989; 20 CFR 404.992; 20 CFR 404.993; 20 CFR 404.999c; 20 CFR 405.1 ; 20 CFR 405.5; 20 CFR 405.10; 20 CFR 405.20; 20 CFR 405.25; 20 CFR 405.30; 20 CFR 405, app to A; 20 CFR 405.230; 20 CFR 405.301; 20 CFR 405.305; 20 CFR 405.310; 20 CFR 405.315 to 405.317 ; 20 CFR 405.320; 20 CFR 405.325; 20 CFR 405.330 to 405.334; 20 CFR 405.340; 20 CFR 405.350; 20 CFR 405.351; 20 CFR 405.360; 20 CFR

405.365; 20 CFR 405.366; 20 CFR 405.370 to 405.373; 20 CFR 405.380 to 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 405.601; 20 CFR 405.701; 20 CFR 405.705; 20 CFR 405.710; 20 CFR 405.715; 20 CFR 405.720; 20 CFR 405.725; 20 CFR 416.1400; 20 CFR 416.1401; 20 CFR 416.1411; 20 CFR 416.1424; 20 CFR 416.1425; 20 CFR 416.1428; 20 CFR 416.1429; 20 CFR 416.1433; 20 CFR 416.1435; 20 CFR 416.1436; 20 CFR 416.1438 to 416.1440; 20 CFR 416.1443; 20 CFR 416.1444; 20 CFR 416.1446; 20 CFR 416.1448 to 416.1453; 20 CFR 416.1456 to 416.1461; 20 CFR 416.1466 to 416.1477; 20 CFR 416.1479; 20 CR 416.1481 to 20 CFR 416.1484; 20 CFR 416.1489

Legal Deadline:

None

Abstract:

We propose to include in parts 404 and 416 of our rules many of the hearing level procedures now in place for disability cases in the Boston region. This change will expand those rules nationwide and apply them to hearings on both disability and non-disability matters. We expect these rules will make the hearings process more efficient and help us reduce the hearings backlog, which has reached historic proportions, thereby benefiting all individuals requesting a hearing. We also propose to amend our rules governing the final level of the administrative review process to make proceedings at that level more appellate in nature, to establish procedures for appeals to that level, and to change the name of the body that will hear such appeals from the ''Appeals Council,'' or the ''Decision Review Board'' in the Boston region, to the ''Review Board.'' Consistent with the change to a more appellate process, we suggest limiting the circumstances in which new evidence may be added to the record during the appellate process. We also propose circumscribing the time period covered in any subsequent administrative hearing on remand from the Review Board or a Federal court to the time period covered by the first administrative law judge's (ALJ) hearing decision in the case.

Statement of Need:

Workloads at the hearing level have continued to grow, as have requests for review of hearing decisions. We expect even further increases in the hearings and appeals workloads as the baby boom generation advances through their disability-prone years. The proposed regulatory changes are necessary to make the hearings process more efficient and help us reduce the hearings backlog, which has reached historic proportions, thereby benefiting all individuals requesting a hearing.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising these regulations; however, we believe that the current and anticipated backlogs of cases at the appeals levels of our adjudication process require this action. We are making these proposals to ensure that we continually improve our disability adjudications process.

Anticipated Costs and Benefits:

We expect that, if finalized, the proposed rules will reduce program costs by $1.5 billion. We anticipate a small increase in program costs the first year, followed by savings that increase initially but begin to decline in 2013.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	10/29/07	72 FR 61218
NPRM Comment Period End	12/28/07	
Final Action	05/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

168. ● REPRESENTATION OF CLAIMANTS (3396P)

Priority:

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

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

We propose to amend our regulations concerning the representation of claimants before the Social Security Administration (SSA), and to publish the amended regulations in a new part of SSA's regulations. Under the proposed rules, we would amend existing provisions of our regulations on representation and add new provisions to the regulations for the purpose of recognizing firms and other entities as participants in the representation of claimants. We are also proposing a general expansion of our regulations on representation to add new provisions that would regulate additional practices and procedures that we follow in dealing with representatives and integrate those practices and procedures with the changes that we are making to recognize firms and other entities. These new provisions pertain primarily to our procedures for authorizing and paying fees for services representatives furnish in proceedings before us. Further, in addition to the changes in our existing regulations proposing to recognize firms and other entities, we are also proposing other, specific changes that affect the appointment or

representatives, authorization and payment of fees, and rules of conduct for representatives who violate our requirements, rules, or standards. The proposed rules also generally reorganize and rewrite existing regulatory provisions creating a new part in SSA's regulations.

Statement of Need:

Undetermined at this time.

Summary of Legal Basis:

Undetermined at this time.

Alternatives:

None.

Anticipated Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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SSA

169. • REVISED MEDICAL CRITERIA FOR MALIGNANT NEOPLASTIC DISEASES (3429P)

Priority:

Other Significant

Legal Authority:

42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 13.00 and 113.00, Malignant Neoplastic Diseases, of appendix 1 subpart P of part 404 of our regulations (404.1501 through 404.1599) 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 he latest advances in medical knowledge and treatment. The SSI program incorporates by reference and uses the same medical criteria as the old-age, survivors, and disability insurance program.

Statement of Need:

These proposed 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 thus, 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 less than three years old, being effective 12/15/2004. 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 Costs and Benefits:

Costs will be included in the NPRM.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

170. • AMENDMENTS AND CLARIFICATIONS TO THE ADJUDICATORY PROCESS (3431P)

Priority:

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

Legal Authority:

42 USC 401(j); 42 USC 402; 42 USC 402(j); 42 USC 402(o); 42 USC 402(p); 42 USC 402(r); 42 USC 404(f); 42 USC 405; 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 416(i); 42 USC 416(i)(2); 42 USC 421; 42 USC 421(a); 42 USC 421(i); 42 USC 421 note; 42 USC 421m; 42 USC 423; 42 USC 423(b); 42 USC 423(i); 42 USC 423 note; 42 USC 425; 42 USC 428(a); 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1306; 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC

1383(b); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

CFR Citation:

20 CFR 402.35; 20 CFR 404.630; 20 CFR 404.715(d); 20 CFR 404.900; 20 CFR 404.913; 20 CFR 404.953; 20 CFR 404.911(b)(10); 20 CFR 404.947 new; 20 CFR 404.1512(b)(3); 20 CFR 404.1513; 20 CFR 404.1566(e); 20 CFR 408.340; 20 CFR 408.345; 20 CFR 416.340; 20 CFR 416.345; 20 CFR 416.912(b)(3); 20 CFR 416.913; 20 CFR 416.966(e); 20 CFR 416.1411(b)(10); 20 CFR 416.1400; 20 CFR 416.1445 new; 20 CFR 422.1441 new; 20 CFR 422.202 new; 20 CFR 422.203

Legal Deadline:

None

Abstract:

We intend to propose regulations that apply to all levels of our adjudicatory process. Our proposals include: 1) clarifying ''good cause,'' 2) reemphasizing that Social Security Rulings are binding on all components, 3) clarifying rules regarding recontacting medical sources to resolve ambiguities in the current regulation, and 4) specifying that the preponderance of the evidence standard is the appropriate standard for adjudicating claims at the first three levels of administrative review. We also will propose new regulatory language that will redefine the definition of a Medical Source Statement in terms of the limitations imposed by the claimant's impairments rather than their remaining capacities, change the protected filing date for title II from 6 months to 60 days to mirror the policy in title XVI, and eliminate the requirement for additional documentation for proof of age for retirement applications where the alleged age matches information already contained in our database.

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 address the current and growing need for greater accuracy, efficiency, and cost control by clarifying inconsistencies in policy and streamlining procedures at all levels of our adjudicatory process.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

None.

Anticipated Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

171. • REQUIREMENT THAT PROFESSIONAL REPRESENTATIVES FILE REQUESTS FOR RECONSIDERATION AND ADMINISTRATIVE LAW JUDGE HEARINGS VIA THE INTERNET (3432P)

Priority:

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

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

We are proposing changes to modify our disability determination process in order to require professional representatives to file electronically for Reconsideration or Hearing by an Administrative Law Judge of medical claims. This requirement is necessary because of the growing number of disability appeals, the current backlog, and limitations in staffing and funding. Social Security intends that this action will shorten disability appeals time by reducing labor and processing time.

Statement of Need:

Undetermined at this time.

Summary of Legal Basis:

Undetermined at this time.

Alternatives:

Undetermined at this time.

Anticipated Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	12/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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SSA

172. • AMENDMENTS TO HEARINGS LEVEL ADJUDICATION (3434P)

Priority:

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

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 404.936; 20 CFR 404.948; 20 CFR 404.957; 20 CFR 416.1436; 20 CFR 416.1448; 20 CFR 416.1457

Legal Deadline:

None

Abstract:

We propose to amend several regulations and provide new regulatory language in order to address inefficiencies in the hearings process. These amendments will improve the operational effectiveness of our hearings offices. The amendments include several provisions revising current regulations: 1) clarifying that claims denied by state Disability Determination Services for ''failure to cooperate'' are technical denials rather than medical determinations, 2) allowing Administrative Law Judges (ALJs) to dismiss more quickly cases at the hearing level when fully favorable decisions have already been issued by the State agency, and 3) providing flexibility in setting the time and place of hearings. We also intend to propose new regulatory provisions that will allow ALJs to dismiss a request for a hearing where a claimant has abandoned his or her claim and to specify regulatory standards that require ALJs to clearly articulate their rationale when issuing decisions on remanded claims.

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 address the current and growing need for our services by increasing accuracy, efficiency, and cost control at the hearings level.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

Undetermined at this time.

Anticipated Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

173. ● UPDATES TO MEDICAL–VOCATIONAL GUIDELINES

Priority:

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

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 405(h); 42 USC 405(j); 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 423(i); 42 USC 321 note; 42 USC 422(c); 42 USC 423; 42 USC 423 note; 42 USC 425; 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC 1383(b); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

CFR Citation:

20 CFR 404.917(b); 20 CFR 404.953(a); 20 CFR 404.1563(e); 20 CFR 404.1564; 20 CFR 404.1566(b); 20 CFR 404.1566(e); 20 CFR 404.1568(d)(4); 20 CFR 404.1615(e); 20 CFR 416.963(e); 20 CFR 416.964; 20 CFR 416.966(b); 20 CFR 416.966(e); 20 CFR 416.968(d)(4); 20 CFR 416.1015(e); 20 CFR 416.1417(b); 20 CFR 416.1453

Legal Deadline:

None

Abstract:

These proposals will update specific criteria in the Agency's medical vocational rules. We propose to clarify our policy regarding the definition of ''significant number of jobs'' to provide adjudicators with the flexibility to use a variety of methods to document their decision. We also propose changing the age range for a person ''closely approaching retirement age'' from ''60 — 64'' to ''60 and older'' to acknowledge that SSA makes disability determinations for individuals over age 65 without making substantive changes to the way adjudicators weigh the effects of age. Another proposed technical change includes modifying the vocational factor of ''education'' by removing references to ''skilled'' and ''semiskilled'' work as they relate to educational level, revising ''direct entry'' rules, clarifying the definitions of ''education'' and ''limited education,'' and introducing a rebuttable presumption that an individual's educational level is commensurate with his or her formal schooling. We also intend to clarify our policy regarding the use of vocational experts (VEs) and vocational specialists specifically with regard to the use of interrogatories for VEs and the use of various occupational data elements.

Statement of Need:

The last major revision of the Agency's medical-vocational rules took place in 1978. Our proposed rules will update several critical areas of those rules to better reflect current standards in medical-vocational policy and will allow adjudicators to make more accurate disability determinations at all adjudicatory levels.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

Undetermined at this time.

Anticipated Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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SSA

174. • CLARIFY APPLICABILITY OF RES JUDICATA

Priority:

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

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 404.953; 20 CFR 416.1453

Legal Deadline:

None

Abstract:

In order to ensure consistency of decisions at different levels of adjudication and in different locations in the country, we will draft a regulation that clarifies the applicability of the concept of res judicata to findings in the disability process. The proposed regulation will specify that all adjudicators must explain in writing any change in circumstance leading to a determination different than that previously reached during adjudication of a case.

Statement of Need:

It is part of our obligation to the American public that we continue the best possible support for older Americans, people with disabilities, and their families. Our proposed rulemaking will ensure consistency and accuracy in decisions by requiring adjudicators to explain, in writing, any change in circumstances leading to change in disability determination.

Summary of Legal Basis:

Administrative—not required by statute or court order

Alternatives:

Undetermined at this time.

Anticipated Costs and Benefits:

Costs will be included in the NPRM.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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RIN: 0960–AG69

SSA

175. • ELIMINATE RE–INTERVIEWING OF REPRESENTATIVE PAYEES

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 405(a); 42 USC 405(j); 42 USC 405(k); 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.2024(b)

Legal Deadline:

None

Abstract:

We propose to improve the operational efficiency of field offices by reducing the number of individuals who must be interviewed, face-to-face, in the office. Specifically, we will eliminate the requirement to re-interview individuals who became a representative payee (rep payee) for more than one beneficiary. Current policy requires a face-to-face interview for all proposed rep payees. This regulation will eliminate the requirement for that interview where an individual is already serving as a rep payee for another beneficiary.

Statement of Need:

Budget shortfalls over the past several years have reduced our ability to meet the nation's growing needs. Social Security is responding by finding ways to increase our capacity for providing service to the public by reducing streamlining our business processes. Our proposed rulemaking will increase productivity by eliminating redundant interviews.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

Undetermined at this time.

Anticipated Costs and Benefits:

Costs will be included in the NPRM

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	09/00/08	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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SSA

FINAL RULE STAGE

176. REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE SYSTEM DISORDERS (804F)

Priority:

Other Significant

Legal Authority:

42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

We will update and revise the rules that we use to evaluate immune system disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we will revise are sections 14.00 and 114.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). These listings include such disorders as HIV/AIDS, systemic lupus erythematosus, and inflammatory arthritis.

Statement of Need:

These regulations are necessary to update the listings for evaluating immune system disorders to reflect advances in medical knowledge, treatment, and methods of evaluating these diseases. They ensure the 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. The current listings are now over 13 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 Costs and Benefits:

We anticipate that these final rules will result in negligible program and administrative costs.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	05/09/03	68 FR 24896
ANPRM Comment Period End	07/08/03	
NPRM	08/04/06	71 FR 44431
NPRM Comment Period End	10/03/06	
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0960–AF33

SSA

177. AMENDMENTS TO THE TICKET TO WORK AND SELF–SUFFICIENCY PROGRAM (967F)

Priority:

Other Significant

Legal Authority:

42 USC 902(a)(5); 42 USC 1320b–19; PL 106–170, sec 101

CFR Citation:

20 CFR 411.110; 20 CFR 411.120 to 411.155; 20 CFR 411.165 to 411.166; 20 CFR 411.170 to 411.171; 20 CFR 411.175; 20 CFR 411.180; 20 CFR 411.190; 20 CFR 411.191; 20 CFR 411.210; 20 CFR 411.325; 20 CFR 411.350 to 411.370; 20 CFR 411.385 to 411.390; 20 CFR 411.500 to 411.515; 20 CFR 411.525 to 411.566; 20 CFR 411.575 to 411.590

Legal Deadline:

None

Abstract:

These final rules will revise our current rules that implement the Ticket to Work and Self-Sufficiency Program under section 1148 of the Social Security Act. The rules will expand beneficiary eligibility to receive tickets under this program; clarify the rules for assignment of a beneficiary's ticket to a State vocational rehabilitation (VR) agency; revise the rules for payment when a beneficiary receives services from both a State VR agency and an employment network (EN); and, consistent with the Commissioner's authority in section 1148(h) of the Act, revise the rules for milestone and outcome payments, in order to increase the incentives for providers of employment services, vocational rehabilitation services, and other support services to participate in this program.

Statement of Need:

These final rules are necessary to respond to our experience and the recommendations we have received since we began implementation of the Ticket to Work and Self-Sufficiency Program in February 2002. These changes are intended to increase the incentives for providers of employment, vocational rehabilitation services, and other support services to participate in this program, and to expand the options available to beneficiaries with disabilities to obtain services to assist them to go to work and attain self-sufficiency.

Summary of Legal Basis:

Not required by statute or court order.

Alternatives:

We considered not revising the current regulations implementing the Ticket to Work program. However, we believe that these revisions to the eligibility to receive a ticket, the clarification of the rules for assignment of a ticket to a State VR agency, and the amendment of the rules for paying ENs are necessary to increase participation in the Ticket to Work program by both service providers and the beneficiaries with disabilities. This will increase the opportunities for the beneficiaries to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.

Anticipated Costs and Benefits:

We anticipate initial costs to increase due to up-front payments to ENs, and then increased program savings in later years as ENs assist more beneficiaries to achieve self-sufficiency and reduce dependency on cash benefit programs, including the Supplemental Security Income and Social Security Disability

Insurance programs. These proposed changes are estimated to result in additional costs through 2017 due to increases in the frequency and levels of payments to providers, as well as to the deferral or loss of savings achieved currently from the Continuing Disability Review process. While these higher costs are estimated to be partially offset later through an associated increase in the number of successful work attempts resulting in a reduction or elimination of certain OASDI and SSI benefits, the net effect is an increase in outlays over the budget horizon of approximately $1.3 billion.

Risks:

At this time, we have not identified any risks associated with this proposal.

Timetable:

Action	Date	FR Cite
NPRM	09/30/05	70 FR 57222
NPRM Comment Period End	12/29/05	
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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Related RIN: Related to 0960–AG44

RIN: 0960–AF89

SSA

178. PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION; AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC (2562F)

Priority:

Other Significant

Legal Authority:

5 USC 552 to 5 USC 552a; 42 USC 1306(a); 42 USC 902(a)(5)

CFR Citation:

20 CFR 401 app A(b)(3)(c)(4); 20 CFR 402.45(e)

Legal Deadline:

None

Abstract:

We plan to revise our privacy and disclosure rules to:

1. Add a new section to set out detailed procedures to further preserve the anonymity and protect the physical well-being of employees in abusive relationships or who fear for their physical well-being because of threats from others;

2. Conform SSA's Freedom of Information Act regulations in this respect more closely to Office of Personnel Management (OPM) regulations; and

3. Develop procedures for the protection in the electronic environment of personally identifiable information for at-risk employees.

Statement of Need:

To better preserve the anonymity of, and to better protect the physical well-being of, our employees who reasonably believe that they are at risk of injury or other harm if certain employment information about them is disclosed. They also ensure uniform application of the policy for at-risk employees.

Summary of Legal Basis:

Administrative-not required by statute or court order.

Alternatives:

We considered not changing our rules. However, these final rules with request for comments conform to current regulations but provide for strengthening our privacy and disclosure rule to afford better protection of employees.

Anticipated Costs and Benefits:

Negligible. Any costs were associated with regulations previously implemented.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	06/06/06	71 FR 32494
NPRM Comment Period End	08/07/06	
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0960–AG14

SSA

179. CONSULTATIVE EXAMINATION—ANNUAL ONSITE REVIEW OF MEDICAL EXAMINERS (3338F)

Priority:

Other Significant

Legal Authority:

42 USC 421(a)(1)

CFR Citation:

20 CFR 404.1519s; 20 CFR 416.919s

Legal Deadline:

None

Abstract:

We are amending our regulations to reflect the impact of inflation since 1991 when they were implemented. We propose to change the threshold

amount to require the State disability determination services (DDSs) to perform an onsite review of consultative examination (CE) providers from $100,000 to $150,000.

Statement of Need:

The change to these regulations is necessary to update the threshold amount of annual billing by CE providers that will trigger mandatory onsite review by DDS staff. The workload associated with the regulatory requirement to perform onsite reviews at the largest CE providers has increased substantially due to inflation since 1991. Therefore, mid-tier and even smaller CE providers are now receiving mandatory onsite reviews. The change will restore the onsite review program to its intended purpose; to perform onsite review at the very large CE providers to ensure that those providers have facilities which meet SSA standards.

Summary of Legal Basis:

Administrative—Not required by statute or court order.

Alternatives:

We considered not raising the amount, but determined that requiring onsite review for all CE providers with billings of $100,000 or more is an unnecessary burden for State DDSs and does not provide better service to the public.

Anticipated Costs and Benefits:

There are no additional costs. The change would lower the number of required onsite reviews. The expectation is the DDS personnel would have the flexibility to perform optional reviews and complete other higher priority work.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/20/07	72 FR 13053
NPRM Comment Period End	05/21/07	
Final Action	01/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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RIN: 0960–AG41

SSA

180. • SUSPENSION OF NEW CLAIMS TO THE FEDERAL REVIEWING OFFICIAL REVIEW LEVEL (3394F)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405(a); 42 USC 405(b); 42 USC 902(a)(5); 42 USC 421; 42 USC 423(a); 42 USC 423(b); 42 USC 1381; 42 USC 1381a; 42 USC 1383; 42 USC 1383b

CFR Citation:

20 CFR 405.10; 20 CFR 405, app to A; 20 CFR 405.240

Legal Deadline:

None

Abstract:

We propose to suspend new claims going through the Federal reviewing official (FedRo) level now operating in the Boston region. We also proose to remove the Medical and Vocational Expert System (MVES), commonly known as the Office of Medical and Vocational Experise (OMVE) from the disability adjudication process for new claims. We are making these changes to improve our disability adjudication process. Lastly, we are requesting comments on using the MVES/OMVE to develop and manage a national registry of experts.

Statement of Need:

Workloads at the appellate have continued to grow, as have requests for review of appellate decisions. We expect further increases in the appellate workloads as the baby boom generation ages. These regulatory changes are necessary to make the appellate process more efficient and help us reduce backlogs, which have reached historic proportions.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising these regulations; however, we believe that the current and anticipated backlogs of cases at the appeals levels of our adjudication process require this action. We are making these changes to ensure that we continually improve our disability adjudications process.

Anticipated Costs and Benefits:

We estimate that this rule, will result in program savings of roughly $1.0 billion in OASDI benefit payments and cost of $0.1 billion in Federal SSI payments over the next 10 years.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/15/07	72 FR 45701
NPRM Comment Period End	09/14/07	
Final Action	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0960–AG53

SSA

181. ● NONPAYMENT OF BENEFITS TO FUGITIVE FELONS AND PROBATION OR PAROLE VIOLATORS (2222F)

Priority:

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

Legal Authority:

42 USC 402; 42 USC 403; 42 USC 404(a); 42 USC 404(e); 42 USC 405(a); 42 USC 405(c); 42 USC 416(l); 42 USC 423(e); 42 USC 424a; 42 USC 425; 42 USC 902(a)(5); 42 USC 1310(b); 42 USC 1320a–8a; 42 USC 1381a; 42 USC 1382; 42 USC 1382c; 42 USC 1382h(a); 42 USC 1383; 42 USC 1383c; 48 USC 1681 note; 48 USC 1801

CFR Citation:

20 CFR 404.401; 20 CFR 404.475 NEW; 20 CFR 416.202; 20 CFR 416.1339

Legal Deadline:

None

Abstract:

To implement section 203 of the Social Security Protection Act of 2004 (SSPA), we will revise our regulation on the payment of Social Security and Supplemental Security Income benefits under titles II and XVI of the Social Security Act (the Act). Section 203 requires that title II benefits will not be paid to a person who is a fugitive felon or probation or parole violator, unless good cause is shown. Section 203 also adds a good cause exception to the title XVI fugitive felon ineligibility provision. In addition, we will make other changes required by this legislation, such as removing the reference to high misdemeanors in the state of New Jersey. Finally, we will clarify our interpretation of the statutory language

Statement of Need:

These regulations are necessary to clarify how we will implement section 203 of Public Law 108-203. We are codifying the statutory changes in our rules even though we have already implemented the statutory provisions by issuing instructions to claims adjudicators in our Program Operations Manual System. 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:

These changes are required by section 203 of the Social Security Protection Act of 2004.

Alternatives:

None—required by legislation.

Anticipated Costs and Benefits:

At the time of enactment of section 203 of Public Law 108-203, we estimated that over the first 5 fiscal years after enactment, this provision would result in $309 million in OASDI program savings and would have a negligible impact on SSI program costs.

Risks:

At this time we have not identified any risks associated with this proposal.

Timetable:

Action	Date	FR Cite
NPRM	12/05/05	70 FR 72411
NPRM Comment Period End	02/03/06	
Final Action	09/00/08	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Previously reported as 0960–AG12

RIN: 0960–AG55

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 the best available data about the nature and extent of the hazard presented by the product. The Commission then analyzes this information to determine the best way to reduce the hazard in each case. The Commission's rules require the Commission to consider, among other factors, the following criteria when deciding the level of priority for any particular project:

- frequency and severity of injury;
- causality of injury;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- unforeseen nature of the risk;
- vulnerability of the population at risk;
- probability of exposure to the hazard.

Additionally, if the Commission proposes a mandatory safety standard for a particular product, the Commission is generally required to make statutory cost/benefit findings and adopt the least burdensome requirements that adequately protect the public.

The Commission's statutory authority requires it to rely on voluntary standards rather than promulgate a mandatory standard if there is a determination by the Commission that compliance with the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified and it is likely that there will be substantial compliance with the voluntary standard. As a result, much of the Commission's work involves cooperative efforts with other participants in the voluntary standard-setting process rather than promulgating mandatory standards.

In fiscal year 2008, the Commission's significant rulemaking activity will involve addressing risks of fire associated with ignition of upholstered furniture. The emphasis on this rulemaking activity in the Commission's FY 2008 regulatory plan is consistent with the Commission's statutory mandate and its criteria for setting priorities.

CPSC

PROPOSED RULE STAGE

182. 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. On January 31, 2006, the staff sent a briefing package containing a revised draft standard and describing regulatory options to the Commission. The staff forwarded follow-up status reports on various technical research efforts in November 2006 and December 2006. The staff continues to perform laboratory testing and other research to support a possible proposed rule.

CPSC staff is considering possible impacts of flame-retardant chemical use on human health and the environment. The CPSC staff has evaluated potential health risks associated with textile and foam filling material flame retardants. At the CPSC staff's request, the National Institute for Occupational Safety and Health studied potential worker exposure to and risks from certain flame-retardant chemicals that may be used by textile and furniture producers to comply with an upholstered furniture flammability standard. CPSC staff has also worked with the Environmental Protection Agency to (a) develop a significant new use rule (SNUR) for flame-retardant compounds used in residential upholstered furniture fabrics or fillings under that agency's Toxic Substances Control Act Authority, and (b) identify and encourage the use of environmentally-preferable flame retardants under a Design for the Environment industry/government partnership. The Design for the Environment report was published in September 2005. Further, at the CPSC staff's request, the National Toxicology Program of the Department of Health and Human Services is initiating health studies of several flame retardants for which toxicity data are lacking.

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 Costs 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 Briefs Commission	12/00/07	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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BILLING CODE 6355–01–S

FEDERAL HOUSING FINANCE BOARD (FHFB)

Statement of Regulatory and Deregulatory Priorities

The Federal Housing Finance Board (Finance Board) is an independent agency that is charged under the Federal Home Loan Bank Act (Bank Act) with supervising and regulating the Nation's Federal Home Loan Bank (Bank) System. The Bank System comprises 12 regional cooperative Banks that are owned by their respective member financial institutions. The Banks provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related community lending activities. The Banks also acquire mortgage assets from members as a means of advancing their housing finance mission. The Bank System also includes the Office of Finance, which issues Bank System consolidated obligations. The Finance Board is required to prepare a regulatory plan pursuant to section 4 of Executive Order 12866. At this time, the Finance Board does not anticipate taking any significant regulatory or deregulatory actions during 2008 that would be required to be included in a regulatory plan.

The Finance Board's highest regulatory priorities during 2008 continue to be to ensure the safety and soundness of the Bank System and to ensure that the Banks fulfill their housing finance and community investment mission. In furtherance of these statutory mandates, the Finance Board expects to consider regulations that will:

- Streamline the Finance Board's review of new business activities proposed by a Bank to more clearly focus the regulatory review process on ensuring that a new product, service, or activity will not endanger the continued safe and sound operation of the Bank.
- Streamline the community support requirements to eliminate unnecessary regulatory burden, while preserving the statutory intent of ensuring that members' access to long-term advances reflects such factors as their record of performance under the Community Reinvestment Act and their record of lending to first-time homebuyers.
- Streamline the regulations governing the Banks' acquired member asset programs, to make the provisions less prescriptive while preserving the key provisions relating to safety and soundness and advancement of the Banks' housing finance mission.
- Update the regulations relating to the capital structure of the Banks to enhance their safety and soundness by ensuring that the amount and composition of their capital is appropriate in light of the risks undertaken in the course of their lines of business.
- Improve the regulations relating to the investments made by the Banks to coordinate with the repeal of the provisions of the Financial Management Policy that currently govern Bank investment portfolios.

BILLING CODE 6725–01–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, fosters economic efficiencies, and promotes international harmony.

The Commission is in the process of a comprehensive review of Commission regulations to ensure alignment with emerging industry trends and business practices, particularly as they relate to ocean transportation intermediaries and vessel-operating common carriers. As a result, the Commission has initiated a rulemaking to reduce the time available for ocean transportation intermediary applicants to file the requisite proof of financial responsibility for licensing.

The Commission continues to implement technological advancements to minimize regulatory costs and improve economic efficiencies in the ocean transportation intermediary licensing program. Toward this objective, the Commission has initiated a rulemaking to provide an optional method for filing an ocean transportation intermediary license application, Form FMC-18, through an automated filing system. The Commission anticipates that this system will be implemented in phases from late FY 2007 through early FY 2010 and plans future system enhancements such as e-bonds, e-payments and e-signatures.

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 objective or priority of the Agency's current regulatory plan will be to continue to assess major existing regulations for continuing need, burden on the regulated industry, and clarity. The Commission also receives requests from the public seeking new regulations or modifications of existing regulations. If circumstances so warrant, the Commission on its own initiative, or upon request, will institute an appropriate rulemaking proceeding.

The Commission's review of existing regulations exemplifies its objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866.

Description of the Most Significant Regulatory Actions

The Commission currently has no actions under consideration that constitute ''significant regulatory actions'' under the definition in Executive Order 12866.

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FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

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 fifteen 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, privacy, information security, and information sharing continue to be at the forefront of the Commission's consumer protection program:

(a) The Federal Trade Commission staff hosted a workshop during October 2007 that explored changes in the debt collection industry and examined 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.

(b) The Federal Trade Commission hosted a two-day public event, ''Spam Summit: The Next Generation of Threats and Solutions,'' in Washington, DC on July 11-12, 2007. The summit brought together experts from the business, government, and technology sectors, consumer advocates, and academics to explore consumer protection issues surrounding spam, phishing, and malware. This event followed earlier public workshops in 2004 related to E-mail Authentication and Spyware. The Commission has actively encouraged the private sector to develop and implement technological solutions to the threats posed by spam and is encouraged by reports of increased use of domain level email authentication technologies.

(c) Much of the Commission's identity theft and data security program for the upcoming year will be drawn from the report and recommendations of the President's ID Theft Task Force, which Chairman Majoras co-chairs with the Attorney General. *See*, http://www.idtheft.gov/reports/StrategicPlan.pdf. In implementing the Task Force recommendations, the Commission is working with public-sector, private-sector, and consumer advocates to develop tools to thwart identity theft. During 2006, the Commission launched a nationwide identity theft education program, ''Avoid ID Theft: Deter, Detect, Defend.'' *See* link at http://www.ftc.gov/bcp/edu/microsites/idtheft/business/index.html. It includes direct-to-consumer brochures, as well as training kits and ready-made materials (including presentation slides and a video) for use by businesses and community groups to educate their employees and communities. On April 23-24, 2007, the Federal Trade Commission hosted a public workshop, ''Proof Positive: New Directions in ID Authentication,'' that explored methods to reduce identity theft through enhanced authentication. The workshop focused on technological and policy requirements for developing better authentication processes, including the incorporation of privacy standards and consideration of consumer usability issues.

Recognizing that Social Security Numbers (SSNs) are often used to commit identity theft, the Commission and other Task Force agencies are developing a record on the uses of SSNs in 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. The Commission also plans to host a public forum on the issue in the near future. Following other recommendations from the President's Identity Theft Task Force, the Commission is undertaking a multi-faceted project to educate private businesses on best practices for protecting and securing sensitive personal information, including conducting regional workshops, producing and distributing a variety of print and online materials. Commission staff also are pursuing a number of data security investigations, continuing training of law enforcement on investigating identity theft crimes, and promoting improved assistance for victims of identity theft.

(d) During April 2007, the Commission hosted a public workshop, ''The Rebate Debate,'' that discussed consumers' perspectives on rebates and challenges businesses face when they offer rebates, and explored ''best practices'' in the offering and fulfillment of rebates.

Participants included consumer advocates, government officials, business representatives, and other parties involved in the rebate process.

(e) On November 6-9, 2006, the Federal Trade Commission hosted hearings on ''Protecting Consumers in the Next Tech-ade.'' The FTC brought together experts from the business, government, and technology sectors, consumer advocates, academicians, and law enforcement officials to explore the ways in which convergence and the globalization of commerce impact consumer protection. These hearings examined changes that have occurred in marketing and technology over the past decade, and garnered experts' views on upcoming challenges and opportunities for consumers, businesses, and governmental bodies. One of the issues explored at the hearings was ''behavioral advertising,'' whereby advertisers analyze consumers' online activities and provide advertising identified as relevant to their interests. On November 1-2, 2007, the Commission held a ''town hall'' public meeting that examined the privacy implications of behavioral advertising in more depth.

(f) To encourage better cybersecurity practices, the Commission has partnered with other agencies and the technology industry to launch a website called OnGuardOnline.gov, which provides practical tips from the Federal Government and the technology industry to help consumers guard against Internet fraud, secure their computer, and protect their personal information. The Commission recently added a publication there called ''Botnets and Hackers and Spam (Oh, My!)'', to help consumers and small businesses prevent criminals from tracking their Internet surfing, stealing personal information, and turning the computers into spam ''zombies'' that are part of a ''botnet'' made up of thousands of home computers through which spammers route spam. The FTC also released a new business education guide that articulates the key steps that are part of a sound data security plan. *Protecting Personal Information: A Guide for Business*, available at: http://www.ftc.gov/infosecurity.htm. Other business publications on data security and responding to data breaches are available at: http://www.ftc.gov/bcp/edu/microsites/idtheft.htm.

(g) The Commission has also encouraged active industry self-regulation in the broadband industry, which includes Internet Service Providers and other Internet infrastructure entities. *See Broadband Connectivity Competition Report: A Federal Trade Commission Staff Report* (June 27, 2007), available at: http://www.ftc.gov/reports/broadband/v070000report.pdf. Self-regulation, for example, might take the form of voluntary industry-wide disclosure guidelines that would standardize the definitions of relevant terms and conditions of broadband access services. A more comprehensive approach to address the myriad consumer protection issues facing the industry may be necessary. Moreover, any program of self-regulation is more effective when complemented by strong enforcement mechanisms.

(h) The Commission has also undertaken efforts to educate consumers and industry about the risks associated with downloading and using peer-to-peer file-sharing (P2P) software programs. The FTC has two consumer education pieces concerning this topic: 1) a consumer alert (originally published in 2003 but updated and renamed in December 2006). *See P2P File-Sharing: Evaluate the Risks*, available at: http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt128.shtm (this alert has been accessed over 1.3 million times); and 2) OnguardOnline.gov, the FTC's general Internet education website, which contains downloadable information about the risks of P2P file-sharing software, including quick facts about P2P file-sharing, an interactive quiz, and additional lessons, resources, and activities from i-SAFE, an organization involved in Internet-safety education. In addition, in a June 2005 report, the FTC staff encouraged implementation of industry proposals regarding risk disclosures and the staff has continued to monitor this area. See *Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues Staff Report Federal Trade Commission* (June 2005), available at: http://www.ftc.gov/reports/p2p05/050623p2prpt.pdf. FTC staff's reviews have confirmed that the major P2P file-sharing programs have steadily improved their risk disclosures. The FTC will continue to work with industry to enhance risk disclosures and to educate consumers.

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 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 such 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: http://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.

The Commission has 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 alcoholic beverage 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. In January 2007, the Commission issued compulsory process orders to the 12 largest alcohol suppliers, seeking information regarding industry compliance with the revised codes adopted in 2003, as well as industry response to additional recommendations contained in the 2003 report. The Commission staff is reviewing the company submissions made in response to the compulsory process orders. Upon completion of that review, staff will prepare a report reflecting its findings. The agency anticipates releasing the report in late 2007.

The Commission also launched an alcohol consumer education program, http://www.dontserveteens.gov, in October 2006. 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 purpose of the forum was to allow 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 entitled, *Perspectives on Marketing, Self-Regulation, and Childhood Obesity*. This report was the product of a joint FTC-HHS workshop in July 2005 that brought together a wide range of speakers to examine ways, including self-regulation, to promote competition among food manufacturers to produce and promote healthier food choices for children.

As noted in the 2006 report, the Commission plans to monitor closely industry progress on the recommendations. To this end, the Commission has issued compulsory process orders to 44 food and beverage marketers to obtain information on their marketing activities and expenditures targeted to children and adolescents. The Commission will use the information to prepare a report requested by Congress.

Additionally, the Commission continues to apply the Textile Corporate 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, 116 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 Funeral Rule, 16 CFR part 453, so that they can meet the rule's disclosure requirements. Approximately 247 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 part 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 will offer franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, twenty companies have agreed to participate in the program.

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); the 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; model privacy notices under the Gramm-Leach-Bliley Act; and a report assessing the implementation of the Children's Online Privacy Protection Act. The Final Actions section below describes any final actions taken on the rulemakings.

The Commission has already issued most 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:

(1) 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 64,698. The comment period ended on January 5, 2005. Staff has reviewed comments and is considering what action is appropriate.

(2) 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). The comment period closed on May 22, 2006. The agencies have assessed the comments, and hope to publish proposed rules by November 2007.

(3) Affiliate Marketing Rule—The Commission, along with the banking agencies, the NCUA, and the Securities and Exchange Commission (SEC), is 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 agencies reviewed the comments, and published a final rule on October 30, 2007 (72 FR 61424).

(4) Identity Theft Red Flags Rules—The Commission is also required to jointly promulgate 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 would, among other things, require card issuers to investigate requests for card changes. The address change rule would require 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. The agencies reviewed the comments and issued a final rule on November 9, 2007 (72 FR 63718).

(5) Risk Based Pricing Rule—The Commission jointly with the Federal Reserve expects to publish a risk-based pricing proposal for comment by the end of 2007. This statutorily-required rulemaking would address the form, content, time, manner, definitions, exceptions, and model of a risk-based pricing notice.

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.

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 annually from appropriating funds for purposes of complying with FDICIA. The Consolidated Appropriations Act of 2004 and subsequent such 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 2007.

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, to be effective on February 29, 2008. 72 FR 49947 (Aug. 29, 2007).

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 [1] are 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 and expect to take action by August 2008.

On February 27, 2007, the Commission issued a statutorily mandated report to Congress assessing the implementation of the Children's Online Privacy Protection Act, enacted in 1998 to address privacy and security risks created when children under 13 years of age are online. *See* http://www.ftc.gov/reports/coppa/07COPPA_Report_to_Congress.pdf. The Commission concluded that the Children's Online Privacy Protection Act (COPPA), and the Commission's COPPA Rule, which went into effect in April 2000, have been effective in protecting the privacy and security of young children online without unduly burdening Web site operators. The report did not recommend any changes to COPPA or to the Commission's Rule, but did note that, because widespread age verification technology is not

[1] 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.

available, age falsification remains a risk on general audience Web sites not intended for children's use. The report also identified social networking sites and mobile Internet access as new and emerging issues in children's online privacy.

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 2006-07 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. During late 2007, the Commission announced its ten-year schedule of review and that it would initiate the review of two rules and one guide during 2007: (1) the Mail or Telephone Order Merchandise Rule, (the Mail Order Rule), 16 CFR part 435, (2) the Guide Concerning Fuel Economy Advertising for New Automobiles (the Fuel Economy Guide), 16 CFR part 259, and (3) Guides for Select Leather and Imitation Leather Products (the Leather Guides), 16 CFR part 24. 71 FR 78390 (Dec. 29, 2006).

For the Mail Order Rule, the Commission issued a Federal Register notice on September 11, 2007 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 seeks 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. The comment period closes on November 7, 2007.

For the Fuel Economy Guide, the Commission issued a request for comments on May 9, 2007, on whether to retain or amend the Rule. 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.

Finally, the Commission also issued a request for comments relating to the Leather Guides on May 23, 2007. 72 FR 28906. The Leather Guides, which were adopted in 1996, 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. The Federal Register notice contains a brief overview of the Leather Guides, as well as questions that seek comment on the continuing need for the Guides, their economic impacts and benefits, whether they should be modified, possible conflicts between the Guides and other laws, changes in consumer perceptions and preferences, and the effect that changes in technology, economic conditions, or environmental conditions have had on the Guides. The comment period closed on July 23, 2007. Staff plans to make recommendations to the Commission by early 2008.

Ongoing Reviews

(a) Rules

The Commission staff is continuing its review of several rules and guides. First, for the Telemarketing Sales Rule (TSR), 16 CFR part 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, on December 18, 2006, in response to four petitions requesting an extension of the forbearance policy, the Commission announced that the forbearance policy should remain in effect until the conclusion of the prerecorded call amendment proceeding. 71 FR 77634 (Dec. 27, 2006). The Commission expects to issue a final rule on the TSR call abandonment proceeding by the end of 2007.

Second, the proposed Business Opportunities 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 one part addressing business opportunity issues.

Thereafter, the Commission published an NPRM seeking comments on the proposed Business Opportunities 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. Staff anticipates publishing a report by the end of 2007.

Third, for the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), Bureau of Competition staff is continuing to review various HSR Rule provisions. Staff anticipates sending its recommendation to the Commission regarding a proposed exemption for acquisitions of 10% or less of an issuer's voting securities by the end of 2007.

Fourth, for the Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. 455, the Commission anticipates issuing a notice seeking comments on whether to retain or amend the rule by late 2007. 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.

Fifth, for the Rules on the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act Rules), the Commission issued an NPRM on May 12, 2005, that proposed rule provisions on five discretionary topics: (1) defining 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 Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations constitute ''valid physical postal addresses'' within the meaning of the Act; (4) shortening from ten days to three the time a sender may take before honoring a recipient's opt-out request; and (5) 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. 70 FR 25426. The comment period closed on June 27, 2005, and staff anticipates sending a final recommendation to the Commission by late 2007.

Sixth, the Commission began its regulatory review of certain aspects of the Funeral Industry Practices Rule (Funeral Rule), 16 CFR part 453, in 1999. 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 is examining 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. Staff expects to forward its recommendation to the Commission by the end of 2007.

Seventh, the Commission's review of the Pay-Per-Call Rule, 16 CFR part 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 2007.

Eighth, the Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Regulations), 16 CFR part 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 2008.

(b) Guides

After issuing a staff advisory opinion indicating that the Commission's current Guides for Jewelry, Precious Metals and Pewter Industries,16 CFR part 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. This fall, the Commission will issue a notice seeking comment on proposals to amend the platinum section of the Guides to address the new platinum alloys and anticipates further action sometime during 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, 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.

In addition, 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 2008.

Final Actions

Since publication of the 2006 Regulatory Plan, the Commission has taken final actions on several rulemakings. First, in the review of the Franchise Rule, 16 CFR part 436, the Commission announced on January 22, 2007, it was retaining that rule while updating it to account for new technologies and to provide prospective franchisees with more disclosure about the nature of the franchise relationship, while minimizing the discrepancies between Federal and State law. 72 FR 15444 (March 30, 2007). The amended rule has a phased-in effective date which will be fully effective on July 1, 2008.

Second, the Commission has completed its regulatory review of and has decided to retain the Rule relating to Test Procedures and Labeling Standards for Recycled Oil, 16 CFR 311, There were no changes except for revised incorporation by reference language to the most recently published edition of American Petroleum Institute Publication 1509, the Fifteenth Edition. Last reviewed in 1995, and amended in 2004, this rule requires manufacturers of recycled oil to use certain test procedures and to meet specified labeling requirements for containers of recycled or ''re-refined'' oil intended for use as engine oil.

Finally, the Commission announced that it was retaining the Guides for the Nursery Industry, 16 CFR part 18, in their current form with one typographical correction. 72 FR 901 (Jan. 9, 2007). Adopted in 1979 and last reviewed in 1994, the Guides address a number of sales practices for outdoor plants, trees and flowers and prohibit deception as to such things as size, grade, age, condition, price, origin or the place where the products were grown.

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 EO 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, EO 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.'' EO 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.[2]

II. REGULATORY ACTIONS

The Commission has one proposed rule that would be a ''significant regulatory action'' under the definition in Executive Order 12866. Under FACTA, the Commission is required to jointly promulgate with the banking agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision) and the NCUA guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity, that indicate the possible existence of identity theft. The agencies are also required to issue joint regulations that provide guidance regarding reasonable policies and procedures that a user of a consumer report should employ when the user receives a notice of address discrepancy.

On November 9, 2007, after notice and comment, the Agencies jointly issued final rules and guidelines implementing section 114 of the FACT Act and final rules implementing section 315 of the FACT Act (72 FR 63718). The rules implementing section 114 require each financial institution or creditor to develop and implement a written Identity Theft Prevention Program (Program) to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. In addition, the Agencies issued guidelines to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of the rules. The rules implementing section 114 also require credit and debit

[2] 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).

card issuers to assess the validity of notifications of changes of address under certain circumstances. Additionally, the Agencies issued joint rules under section 315 that provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a consumer reporting agency sends the user a notice of address discrepancy. The joint final rules and guidelines are effective January 1, 2008. The mandatory compliance date for this rule is November 1, 2008.

FTC

PROPOSED RULE STAGE

183. FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 108–159, 117 Stat 1952

CFR Citation:

16 CFR 602; 16 CFR 603; 16 CFR 604; 16 CFR 610; 16 CFR 611; 16 CFR 613; 16 CFR 614; 16 CFR 682; 16 CFR 698; . . .

Legal Deadline:

Final, Statutory, December 31, 2003, Effective Date for FACTA Provisions Affecting FCRA and State Laws.

Final, Statutory, February 11, 2004, Rules Specifying Effective Dates of FACTA Provisions Where Statute Does Not Specify Dates.

Final, Statutory, March 3, 2004, Rules Prohibiting Consumer Reporting Agencies From Circumventing FACTA Provisions.

Final, Statutory, June 3, 2004, Rules Concerning Free Consumer Credit Reports.

Final, Statutory, September 4, 2004, Rules Allowing Consumers To Opt Out of Marketing by Affiliates.

Abstract:

The Fair and Accurate Credit Transactions Act of 2003 (the FACT Act or FACTA or the Act) was enacted on December 4, 2003. The Act requires that the Commission undertake a number of rulemakings and studies.

EFFECTIVE DATES —

The FACT Act required that the FTC, together with the Board of Governors of the Federal Reserve System (the Federal Reserve), jointly adopt the effective dates of portions of the statute where the effective dates are not prescribed within 2 months of enactment of the Act. On December 24, 2003, the Federal Reserve and the FTC jointly adopted Interim Final Rules that established December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act and State laws and provisions that authorize rulemakings or other implementing actions by agencies (68 FR 74467). On December 24, 2003, the Federal Reserve and FTC also issued a notice of proposed rulemaking (NPRM) requesting comments and specifying the effective dates for the other provisions of the FACT Act for which the statute does not specify an effective date (68 FR 74529). On February 11, 2004, the Commission and the Federal Reserve published joint final rules that established a schedule of effective dates for many of the provisions of the FACT Act for which the Act itself did not specifically provide an effective date. The Agencies also made final what had previously been interim; namely, establishing December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act and State laws and provisions that authorize rulemakings or other implementing actions by agencies (69 FR 6526).

CREDIT REPORTS AND RELATED ISSUES —

The FACT Act requires that the Commission adopt rules concerning credit reports and credit scores and related issues. Most of the proceedings are to be conducted jointly with the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision (the banking agencies), and the National Credit Union Administration (NCUA). The rulemaking mandates are detailed below.

Circumvention —

With respect to Credit Reports, the Act requires that the Commission issue rules by March 3, 2004, on preventing corporate and technological circumvention of the obligations imposed on nationwide consumer reporting agencies. On February 24, 2004, the FTC published an interim final rule prohibiting consumer reporting agencies from avoiding treatment as nationwide consumer reporting agencies and requested comments on this measure (69 FR 8532). The interim final rule became effective on March 3, 2004, and the comment period closed on April 23, 2004. Staff has reviewed the comments and is considering what additional action is appropriate.

Free Credit Reports —

The FACT Act required that the Commission issue rules concerning: (1) A centralized source for free consumer reports by nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies; (2) the provision of free credit reports by nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies; and (3) a streamlined process for consumers to obtain free credit reports from specialized bureaus. On March 19, 2004, the Commission requested comments on a proposed rule that would establish a centralized source, a standardized form, and a streamlined process through which consumers may request a free annual file disclosure from each nationwide specialty consumer reporting agency (69 FR 13192). On June 24, 2004, the Commission published a final rule effective on December 1, 2004, for the provision of free reports to consumers, including (1) A central source whereby consumers can make one request and receive their consumer report from each of the three major nationwide consumer reporting agencies and (2) rules with respect to the provision of free consumer reports by ''nationwide specialty consumer reporting agencies,'' as defined in new FCRA section 603(w) (69 FR 35468).

Use of Consumer Information by Affiliates for Marketing Purposes —

The Commission, along with the banking agencies, the NCUA, and the Securities and Exchange Commission (SEC), is 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 agencies reviewed the comments and published a final rule on October 30, 2007 (72 FR 61424).

Enhancement of Opt Out Notice (Prescreen Rule) —

The Commission, in consultation with the banking agencies and the NCUA, was also required to issue rules concerning the enhancement of notices to consumers about their right to opt out of prescreened solicitations. FACTA calls for these notices to be presented

in a format and in a type, size, and manner that is simple and easy to understand. The Commission published an NPRM on October 1, 2004 (69 FR 58861), and subsequently published the final rule on January 31, 2005 (70 FR 5022). The prescreen rule was effective on August 1, 2005.

Disposal of Credit Report Information —

By December 4, 2004, the Commission was required, in coordination with the banking agencies, NCUA, and the SEC, to issue rules concerning the proper disposal of credit report information and records. On April 20, 2004, the Commission published an NPRM and Request for Comments (69 FR 21388). The Commission and the other agencies published a Final Disposal Rule on November 24, 2004 (69 FR 68690). The Disposal Rule was effective on June 1, 2005.

Credit Bureau Charge for Credit Scores —

The Commission is authorized to determine a fair and reasonable fee that consumer reporting agencies may charge for disclosure of credit scores. On November 8, 2004, the Commission issued an ANPRM seeking comments on rules effecting fair and reasonable fees for credit scores (69 FR 64698). The comment period closed on January 5, 2005, and the staff has reviewed comments and is considering what action is appropriate.

Furnisher Rules —

The Commission is required, in coordination with the banking agencies and NCUA, 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). The comment period closed on May 22, 2006. The agencies have assessed the comments, and expect to publish proposed rules by November 2007.

Other Required and Discretionary Actions on Credit Reports and Related Issues —

With respect to credit reports and related issues, the Act requires the Commission jointly with the Federal Reserve to issue rules addressing the form, content, time, manner, definitions, exceptions, and model of the risk-based pricing notice. The agencies expect to publish a risk-based pricing proposal for public comment during 2007. Finally, the Commission may issue rules regarding the compilation and submission to nationwide consumer reporting agencies of all complaints of inaccurate or incomplete files and the treatment of medical information in credit reporting agency files.

IDENTITY THEFT —

The FACT Act requires that the Commission adopt rules concerning identity theft and related issues. Some of the proceedings are to be conducted jointly (or in consultation) with the banking agencies and the NCUA. The rulemaking mandates are detailed below.

Summary of Rights —

The Act requires the Commission to promulgate a summary of consumers' identity theft rights and to mount a public education campaign regarding consumers' new identity theft rights. The Commission issued the proposed summary of consumers' identity theft rights on July 16, 2004 (69 FR 42616). The Commission issued the final model summary on November 30, 2004 (69 FR 69776).

Definitions —

FACTA requires the Commission to define certain terms that are relevant to consumers' new identity theft rights (''Identity Theft Definitions Rule'') and to promulgate in a rule the length of time for active duty/military alerts. On April 28, 2004, the Commission published an NPRM proposing rules that would establish definitions for ''identity theft'' and ''identity theft report''; the duration of an ''active duty alert''; and the ''appropriate proof of identity'' for purposes of sections 605A (fraud alerts and active duty alerts), 605B (consumer report information blocks), and 609(a)(1) (truncation of Social Security numbers) of the FCRA, as amended by the FACT Act (69 FR 23370). The Commission published an Identity Theft Definitions Rule on November 3, 2004 (69 FR 63922).

Model Forms and Procedures —

FACTA also requires the Commission in consultation with the banking agencies and the NCUA to develop a model form and procedures to be used by identity theft victims for contacting and informing creditors and consumer reporting agencies of the fraud. On April 27, 2005, the Commission issued notice of its publication of guidance containing such model forms and procedures (70 FR 21792). This guidance, ''Take Charge: Fighting Back Against Identity Theft,'' is available at www.ftc.gov/bcp/edu/microsites/idtheft or by writing to FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue NW, Washington, DC 20580.

Red Flags —

The Commission is also required to jointly promulgate 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 would, among other things, require card issuers to investigate requests for card changes. The address change rule would require 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. The agencies reviewed the comments and issued a final rule on November 9, 2007 (72 FR 63718).

MISCELLANEOUS —

On May 20, 2004, the Commission issued a final rule effective on June 21, 2004, making technical changes to earlier rules, establishing a general organizational scheme for subchapter F of chapter I of title 16 of the Code of Federal Regulations, and setting forth general provisions applicable to all FTC rules under the FCRA (69 FR 29061).

Statement of Need:

Identity Theft Red Flags—The Federal Trade Commission is charged with enforcing the requirements of sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (15 U.S.C. 1681m(e) and 1681c(h)(2)), which require the Agency to issue these regulations jointly with other Agencies.

Summary of Legal Basis:

The objective of the proposed regulations is to establish guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity, that indicate the possible existence of identity theft. In addition, the proposed regulations require credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request. They also set out requirements for policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agency

described in section 603(p) of the FCRA. The legal basis for the proposed regulations is 15 U.S.C. 1681m(e) and 1681c(h)(2).

Alternatives:

The standards in the proposed Rule are flexible, and take into account a covered entity's size and sophistication, as well as the costs and benefits of alternative compliance methods. Nevertheless, the Commission sought comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities, including the need, if any, to delay the rule's effective date to provide additional time for small business compliance. If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

Anticipated Costs and Benefits:

Addressing identity theft in these circumstances will not only benefit customers, but will also benefit the financial institution or creditor, and any person (who has no relationship with the financial institution or creditor) whose identity has been misappropriated. The requirements will involve some increased costs for affected parties. Most of these costs will be incurred by those required to draft identity theft programs and annual reports. There will also be costs associated with training, and for credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request. In addition, there will be costs related to developing reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency, and for furnishing an address that the user has reasonably confirmed is accurate. The Commission does not expect, however, that the increased costs associated with regulations will be significant.

Risks:

The risks of identity theft to a customer may include: financial, reputation, and litigation risks that occur when another person uses a customer's account fraudulently, such as by using the customer's credit card account number to make unauthorized purchases. The risks of identity theft to the safety and soundness of the financial institution or creditor may include: compliance, reputation, or litigation risks for failure to adequately protect customers from identity theft; operational and financial risks from absorbing losses to customers who are the victims of identity theft; or losses to the financial institution or creditor from opening an account for a person engaged in identity theft. Addressing identity theft in these circumstances would not only benefit customers, but would also benefit the financial institution or creditor, and any person (who has no relationship with the financial institution or creditor) whose identity has been misappropriated. Nevertheless, the proposed requirements are drafted in a flexible manner that allows entities to develop and implement different types of programs based upon their size, complexity, and the nature and scope of their activities. As a result, the FTC staff expects that the burden on these low risk entities will be minimal (i.e., not significant).

Timetable:

Action	Date	FR Cite
Joint Interim Final Rules (Effective Date FACT Act Provisions)	12/24/03	68 FR 74467
NPRM (Effective Date FACT Act Provisions)	12/24/03	68 FR 74529
Joint Final Rules (Effective Date FACT Act Provisions)	02/11/04	69 FR 6526
Interim Final Rule/Request for Comments (Prohibition Against Circumvention)	02/24/04	69 FR 8532
NPRM/Request for Comments (Free Annual Credit File Disclosures)	03/19/04	69 FR 13192
Final Rule (Free Annual Credit File Disclosures)	06/24/04	69 FR 35468
NPRM – Request for Comments (Affiliate Marketing)	06/15/04	69 FR 33324
Comment Period Extended (Affiliate Marketing)	07/21/04	69 FR 43546
NPRM (Prescreen Opt Out Disclosure)	10/28/04	69 FR 58861
Final Rule (Prescreen Opt Out Disclosure)	01/31/05	70 FR 5022
NPRM – Request for Comments (Disposal of Consumer Report Information)	04/20/04	69 FR 21388
Final Rule (Disposal of Consumer Report Information)	11/24/04	69 FR 68690
Effective Date for Disposal Rule	05/01/05	
ANPRM (Credit Score Fees)	11/08/04	69 FR 64698
Comment Period Ended (Credit Score Fees)	01/05/05	
Proposed Summaries and Notices (Model Disclosures for Identity Theft Rights)	07/16/04	69 FR 42616
Final Action (Model Disclosures for Identity Theft Rights)	11/30/04	69 FR 69776
Effective Date (Model Disclosures for Identity Theft Rights)	01/31/05	
Notice of Publication (Guidance for Identity Theft Victims)	04/27/05	70 FR 21792
NPRM (Identity Theft Definitions Rule)	04/28/04	69 FR 23370
Final Rule (Identity Theft Definitions Rule)	11/03/04	69 FR 63922
Effective Date (Identity Theft Definitions Rule)	12/01/04	
Final Rule (Miscellaneous Technical Amendments)	05/20/04	69 FR 29061
ANPRM (Furnisher Accuracy and Dispute Rules)	03/22/06	71 FR 14419
ANPRM Comment Period End (''Furnisher Rules'')	05/22/06	
NPRM (Identity Theft ''Red Flags'' and ''Address Changes'' Rules)	07/18/06	71 FR 40786
NPRM Comment Period End (''Red Flags and Address Change'' Rules)	09/18/06	
Final Rule (Affiliate Marketing)	10/30/07	72 FR 61424
NPRM (Furnisher Rules)	11/00/07	
Final Rule (''Red Flags and Address Changes'')	11/09/07	72 FR 63718
NPRM (Risk Based Pricing Rule)	01/00/08	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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BILLING CODE 6750–01–S

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.

The regulatory priorities for the next fiscal year reflect the NIGC's commitment to uphold the principles of IGRA. The gaming industry changes rapidly with advancements in machine technology. It is crucial for the vitality of Indian gaming that regulators have the ability to respond quickly to these changes. To that end, the NIGC has decided that the development of technical standards and game classifications for gaming machines and related gaming systems is an important initiative for the promotion and protection of tribal gaming.

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

PROPOSED RULE STAGE

184. TECHNICAL STANDARDS FOR GAMING MACHINES AND GAMING SYSTEMS

Priority:

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

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 Costs 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. The only anticipated cost will be to gaming machine manufacturers.

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	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Tribal

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NIGC

185. GAME CLASSIFICATION STANDARDS

Priority:

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

Legal Authority:

25 USC 2706(b)(10); 25 USC 2702

CFR Citation:

25 CFR 546; 25 CFR 502.8

Legal Deadline:

None

Abstract:

It is necessary for the National Indian Gaming Commission (NIGC) to promulgate regulations establishing game classification standards because of the distinction between class II and class III gaming set forth in the Indian Gaming Regulatory Act (IGRA). Technical changes make it difficult for regulators to keep up with the gaming industry. By establishing classification standards and clarifying the definition of ''electronic or electromechanical facsimile,'' tribal gaming commissions, the primary regulators of tribal gaming, will more easily be able to distinguish between class II and class III machines.

Statement of Need:

Gaming classification standards are needed to assure that regulators can determine whether gaming machines are class II or class III devices under IGRA.

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)). IGRA expressly authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the (Act).'' (25 U.S.C. 2706(b)(10)). The Commission relies on these sections of the statute to authorize the promulgation of technical standards for game classifications and for gaming machines to ensure uniformity and integrity in tribal gaming.

Alternatives:

The Commission can either: (1) Issue a rule establishing game classifications and gaming machines, or (2) continue evaluating classifications on a case-by-case basis.

Anticipated Costs and Benefits:

The development of classification standards will reduce the cost of regulation to the Federal Government. Additionally, classification standards will aid tribal governments in the regulation of their gaming activities. There are anticipated costs to gaming machine manufacturers and tribal governments. The NIGC is conducting a cost/benefit analysis.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM (definition for electronic or electromechanical facsimile)	05/25/06	71 FR 30232
NPRM (main)	05/25/06	71 FR 30238
NPRM Withdrawn	02/09/07	72 FR 7359
NPRM	11/00/07	
NPRM (definition for electronic or electromechanical facsimile)	11/00/07	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Tribal

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BILLING CODE 7565–01–S

POSTAL REGULATORY COMMISSION (PRC)

Statement of Regulatory Priorities

The Postal Accountability and Enhancement Act (PAEA or the Act) 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 2008, the Commission's significant rulemaking activity will involve a comprehensive review of its current regulations to ensure alignment with the PAEA. Many of its regulations will be rewritten to comply with the mandates of the Act. Due to strict statutory deadlines mandated in the PAEA, the Commission's principal regulatory priorities for fiscal year 2008 are: (1) to develop and implement regulations that design a new, modern system of rate regulation for market dominant products, and (2) to develop and implement regulations to bound the Postal Service's discretion in setting rates for competitive products. 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 2008.

PRC

FINAL RULE STAGE

186. • SYSTEM OF RATE REGULATION FOR MARKET DOMINANT PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 109–435, sec 201; 39 USC 3622

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, June 20, 2008, Statutory deadline for issuance.

Congress has given the Commission 18 months from the date of enactment of PL 109-435 to issue rules establishing a modern system of rate regulation.

Abstract:

On February 5, 2007, the Commission published an advance notice of proposed rulemaking to begin a proceeding to implement a modern system for regulating rates and classes for market dominant products as required by the Postal Accountability and Enhancement Act. This system of regulations will address the standards for compliance with the objectives, factors, and requirements discussed in the PAEA.

Statement of Need:

A modern system of regulating rates and classes for market dominant products is required by the Postal Accountability and Enhancement Act. Congress tasked the Postal Regulatory Commission with the job of implementing that system. This system of regulations is the Commission's implementation of that Congressional directive.

Summary of Legal Basis:

The Postal Accountability and Enhancement Act section 201 states that ''the Postal Regulatory Commission shall . . . by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.''

Alternatives:

There are no alternative methods of complying with the requirements of Postal Accountability and Enhancement Act section 201 other than by issuing regulations.

Anticipated Costs and Benefits:

The streamlined modern system of rate regulation for market dominant products is expected to reduce litigation costs for the Postal Service and its stakeholders. It is also expected to give the Postal Service more pricing flexibility and less volatility in ratemaking than under prior law.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	02/05/07	72 FR 5230
ANPRM Comment Period End	04/06/07	
ANPRM Reply Comment Period End	05/07/07	
Second ANPRM	05/25/07	72 FR 29284
Second ANPRM Comment Period End	06/18/07	
Second ANPRM Reply Comment Period End	07/03/07	
NPRM	09/04/07	72 FR 50744
NPRM Comment Period End	09/24/07	
NPRM Reply Comment Period End	10/09/07	
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.prc.gov

URL For Public Comments:

www.prc.gov

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RIN: 3211–AA02

PRC

187. • COMPETITIVE PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 109–435, sec 202; 39 USC 3633

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, June 20, 2008, Statutory deadline for issuance.

Congress has given the Commission 18 months from the date of enactment of

PL 109-435 to promulgate rules dealing with competitive products.

Abstract:

On February 5, 2007, the Commission published an advance notice of proposed rulemaking to begin a proceeding to ensure that competitive products contribute their fair share to the Postal Service's finances as required by the Postal Accountability and Enhancement Act. These regulations will address the technical standards for ensuring that these statutory requirements are met.

Statement of Need:

The Postal Accountability and Enhancement Act directs the Commission to promulgate regulations to appropriately bound the Postal Service's discretion in setting rates for competitive products. This system of regulations is the Commission's implementation of that Congressional directive.

Summary of Legal Basis:

The Postal Accountability and Enhancement Act section 202 directs that ''the Postal Regulatory Commission shall . . . promulgate (and may from time to time thereafter revise) regulations'' to ensure that competitive products contribute their fair share to the Postal Service's finances.

Alternatives:

There are no alternative methods of complying with the requirements of Postal Accountability and Enhancement Act section 202 other than by issuing regulations.

Anticipated Costs and Benefits:

The competitive products regulations are expected to make sure that the Postal Service is an effective competitor in the marketplace and that it has appropriate tools to carry out this task. The regulations are expected to reduce litigation costs for the Postal Service and its stakeholders and give more pricing flexibility and less volatility in ratemaking than under prior law.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	02/05/07	72 FR 5230
ANPRM Comment Period End	04/06/07	
ANPRM Reply Comment Period End	05/07/07	
Second ANPRM	05/25/07	72 FR 29284
Second ANPRM Comment Period End	06/18/07	
Second ANPRM Reply Comment Period End	07/03/07	
NPRM	09/04/07	72 FR 50744
NPRM Comment Period End	09/24/07	
NPRM Reply Comment Period End	10/09/07	
Final Action	11/00/07	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.prc.gov

URL For Public Comments:

www.prc.gov

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RIN: 3211–AA03

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