Federal Register
Vol. 74, No. 233
Monday, December 7, 2009

# The Regulatory Plan

## INTRODUCTION TO THE FALL 2009 REGULATORY PLAN

*It is . . . the policy of the United States that . . . agencies shall prioritize actions based on a full accounting of both economic and social benefits and costs and shall drive continuous improvement by annually evaluating performance, extending or expanding projects that have net benefits, and reassessing or discontinuing under-performing projects.*

Executive Order 13514 on Environmental, Energy, and Economic Performance (Oct. 5, 2009)

Some of the nation's most important policies are implemented through regulation. In domains as diverse as energy efficiency, environmental protection, health care, occupational safety, civil rights, communications, homeland security, and many more, the government attempts to protect its citizens through regulations.

In a memorandum signed on January 30, 2009, President Obama emphasized that as a result of many years of experience, ''Far more is now known about regulation – not only about when it is justified, but also about what works and what does not.'' He explicitly directed the Director of the Office of Management and Budget, Peter Orszag, to evaluate the regulatory review process and, among other things, to ''clarify the role of the behavioral sciences in formulating regulatory policy'' and ''identify the best tools for achieving public goals through the regulatory process.''

Director Orszag has written that behavioral economics is ''one of the most important intellectual developments of the past several years. . . . By taking the insights of psychology and observed human behavior into account, we now have a fuller picture of how people actually behave – instead of just reducing them to the hyper-rational utility-maximizers of Econ 101.''

A behavioral approach to regulation is straightforward. It draws on evidence of people's actual behavior. It favors approaches that are clear, simple, and easy to understand. It attempts to ensure that regulations will have good consequences.

These goals have many implications for regulatory policy. In the domain of savings for retirement, consider these words from the President's Fiscal Year 2010 Budget:

''Research has shown that the key to saving is to make it automatic and simple. Under this proposal, employees will be automatically enrolled in workplace pension plans—and will be allowed to opt out if they choose. . . . Experts estimate that this program will dramatically increase the savings participation rate for low and middle-income workers to around 80 percent.''

In September 2009, the President expanded on this theme by offering a series of initiatives for increasing automatic enrollment. He said, ''We know that automatic enrollment has made a big difference in participation rates

by making it simpler for workers to save – and that's why we're going to expand it to more people.''

In many other domains, it is possible to promote regulatory goals by selecting the appropriate default rules. And where it is not possible or best to change the default, we can have a similar effect merely by easing and simplifying people's choices. Several of the rules discussed in this Plan reflect this aspiration. One such rule, involving hazard communication to workers and proposed by the Occupational Safety and Health Administration in 2009, is expected to increase simplicity, to reduce costs, and at the same time to save dozens of lives each year.

In the same vein, the Administration is taking a series of steps toward simplifying the Free Application for Federal Student Aid (FAFSA), reducing the number of questions and allowing electronic retrieval of information. Use of a simpler and shorter form is accompanied by measures designed to permit online users to transfer data previously supplied electronically on their tax forms directly onto their FAFSA application.

To achieve regulatory goals, it is important to understand that people are often affected by the behavior of their peers: If people learn that they are using more energy than similarly situated others, their energy use declines – saving money while also reducing pollution. In the domain of seatbelt usage, real change occurred as regulation worked hand-in-hand with emerging social norms. The Administration is well aware that if safety is to increase significantly on the highways, it must be in part because of social norms that discourage distracted driving (and other risky behavior). In October 2009, the President issued an Executive Order banning texting while driving by Federal employees; the Department of Transportation is embarking on a range of initiatives to reduce distracted driving.

Scientific integrity is critically important, in the sense that regulators cannot decide how to proceed without having a sense of what is known and what remains uncertain. Of course some risks are large and others are small. Some regulations are burdensome and some are not. Some regulations have unintended bad consequences; others have unintended good consequences.

In his January 30, 2009, memorandum, President Obama pointed to the importance of ''a dispassionate and analytical 'second opinion' on agency actions.'' He also asked the Director of OMB to address the role of three factors that are not always fully included in cost-benefit analysis: the interests of future generations; distributional considerations; and fairness. If regulation is to be data-driven and evidence-based, it must include, rather than neglect, the concerns of future generations.

Many of the regulations in this Plan reflect these concerns. In particular, environmental regulations, designed to combat the risks associated with climate change, are attentive to the interests of future generations and those who are least well-off. The Administration has recently developed interim figures for the social cost of carbon–figures that have been used for several different regulations in this Plan, involving energy efficiency in vending machines and greenhouse gas emissions from motor vehicles. The figures are based in part on a recognition of the well-established view that a high discount rate for long-term damage could lead to action that might harm future generations.

In addition, President Obama has placed a great deal of emphasis on open government. In his first weeks in office, he quoted the words of Supreme

Court Justice Louis Brandeis: ''Sunlight is said to be the best of disinfectants.'' President Obama explained that ''accountability is in the interest of the Government and the citizenry alike.'' He emphasized that ''[k]nowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.'' President Obama has stressed that transparency can ensure that data is available to all – and with available data, we can greatly improve our practices.

The Environmental Protection Agency has built on these ideas with its Greenhouse Gas Reporting rule, requiring disclosure by the most significant emitters. The data will allow businesses to track their own emissions and compare them to similar facilities; it will also provide assistance in identifying cost-effective ways to reduce emissions in the future.

All this is merely a start. For example, the Executive Order on environmental, economic, and energy performance will attempt to track progress in meeting crucial goals – including greenhouse gas emissions reductions – and disclose both costs and benefits to the public.

Regulatory decisions often require complex tradeoffs, especially in the current economic environment. We are committed to ensuring that those tradeoffs reflect the best available information, respect scientific integrity, and benefit from public participation – and are rooted in a clear and transparent understanding of the human consequences.

***Cass R. Sunstein***

*Administrator*

*Office of Information and Regulatory Affairs*

## DEPARTMENT OF AGRICULTURE

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 1 | National Organic Program: Access to Pasture | 0581–AC57 | Final Rule Stage |
| 2 | National Dairy Promotion and Research Program; Final Rule on Amendments to the Order | 0581–AC87 | Final Rule Stage |
| 3 | Animal Welfare; Regulations and Standards for Birds | 0579–AC02 | Proposed Rule Stage |
| 4 | Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products | 0579–AC68 | Proposed Rule Stage |
| 5 | Importation of Plants for Planting; Establishing a New Category of Plants for Planting Not Authorized for Importation Pending Risk Assessment | 0579–AC03 | Final Rule Stage |
| 6 | Enforcement of the Packers and Stockyards Act | 0580–AB07 | Proposed Rule Stage |
| 7 | Poultry Contracts; Initiation, Performance, and Termination | 0580–AA98 | Final Rule Stage |
| 8 | Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008 | 0584–AD87 | Proposed Rule Stage |
| 9 | Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions | 0584–AD88 | Proposed Rule Stage |
| 10 | Fresh Fruit and Vegetable Program | 0584–AD96 | Proposed Rule Stage |
| 11 | Child and Adult Care Food Program: Improving Management and Program Integrity | 0584–AC24 | Final Rule Stage |
| 12 | SNAP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002 | 0584–AD30 | Final Rule Stage |
| 13 | Quality Control Provisions | 0584–AD31 | 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 | Egg Products Inspection Regulations | 0583–AC58 | Proposed Rule Stage |
| 16 | Prior Labeling Approval System: Generic Label Approval | 0583–AC59 | Proposed Rule Stage |
| 17 | Changes to Regulatory Jurisdiction Over Certain Food Products Containing Meat and Poultry | 0583–AD28 | Proposed Rule Stage |
| 18 | New Poultry Slaughter Inspection | 0583–AD32 | Proposed Rule Stage |
| 19 | Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments | 0583–AD34 | Proposed Rule Stage |
| 20 | Mandatory Inspection of Catfish and Catfish Products | 0583–AD36 | Proposed Rule Stage |
| 21 | Electronic Foreign Import Certificates and Sanitation Standard Operating Procedures (SOPs) Requirements for Official Import Establishments | 0583–AD39 | Proposed Rule Stage |
| 22 | Electronic Export Application and Certification as a Reimbursable Service and Flexibility in the Requirements for Official Export Inspection Marks, Devices, and Certificates | 0583–AD41 | Proposed Rule Stage |
| 23 | 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 |
| 24 | Federal-State Interstate Shipment Cooperative Inspection Program | 0583–AD37 | Final Rule Stage |
| 25 | Rural Energy Self-Sufficiency Initiative—Section 9009 | 0570–AA77 | Prerule Stage |
| 26 | Grants for Expansion of Employment Opportunities for Individuals With Disabilities in Rural Areas—Section 6023 | 0570–AA72 | Proposed Rule Stage |
| 27 | Biorefinery Assistance Program—Section 9003 | 0570–AA73 | Proposed Rule Stage |
| 28 | Rural Business Re-Powering Assistance—Section 9004 | 0570–AA74 | Proposed Rule Stage |
| 29 | Rural Business Contracts for Payments for the Bioenergy Program for Advanced Biofuels—Section 9005 | 0570–AA75 | Proposed Rule Stage |
| 30 | Rural Energy for America Program—Section 9007 | 0570–AA76 | Proposed Rule Stage |
| 31 | Rural Microentrepreneur Assistance Program—Section 6022 | 0570–AA71 | Final Rule Stage |

## DEPARTMENT OF COMMERCE

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 32 | Amendment 16 to the Northeast Multispecies Fishery Management Plan | 0648–AW72 | Proposed Rule Stage |
| 33 | Provide Guidance for the Limited Access Privilege Program | 0648–AX13 | Proposed Rule Stage |
| 34 | Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported or Unregulated Fishing or Bycatch of Protected Living Marine Resources | 0648–AV51 | Final Rule Stage |
| 35 | Magnuson-Stevens Fishery Conservation and Management Act Provisions and Interjurisdictional Fisheries Act Disaster Assistance Programs | 0648–AW38 | Final Rule Stage |

## DEPARTMENT OF DEFENSE

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 36 | Homeowners Assistance Program (HAP) | 0790–AI58 | Final Rule Stage |

## DEPARTMENT OF EDUCATION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 37 | Teacher Incentive Fund—Priorities, Requirements, Definitions, and Selection Criteria | 1810–AB08 | Proposed Rule Stage |
| 38 | School Improvement Grants—Notice of Proposed Requirements Under the American Recovery and Reinvestment Act of 2009; Title I of the Elementary and Secondary Education Act of 1965 | 1810–AB06 | Final Rule Stage |
| 39 | Investing in Innovation—Priorities, Requirements, Definitions, and Selection Criteria | 1855–AA06 | Proposed Rule Stage |

## DEPARTMENT OF ENERGY

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 40 | Energy Conservation Standards for Small Electric Motors | 1904–AB70 | Proposed Rule Stage |
| 41 | Energy Efficiency Standards for Commercial Clothes Washers | 1904–AB93 | Final Rule Stage |

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 42 | Standards for Privacy of Individually Identifiable Health Information; Modifications to the HIPAA Privacy Rule Under the Health Information Technology for Economic and Clinical Health Act | 0991–AB57 | Proposed Rule Stage |
| 43 | Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology | 0991–AB58 | Final Rule Stage |
| 44 | Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics | 0910–AC52 | Proposed Rule Stage |
| 45 | Electronic Registration and Listing for Devices | 0910–AF88 | Proposed Rule Stage |
| 46 | Produce Safety Regulation | 0910–AG35 | Proposed Rule Stage |
| 47 | Modernization of the Current Food Good Manufacturing Practices Regulation | 0910–AG36 | Proposed Rule Stage |

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (Continued)

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 48 | Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors | 0910–AF27 | Final Rule Stage |
| 49 | Medical Device Reporting; Electronic Submission Requirements | 0910–AF86 | Final Rule Stage |
| 50 | Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents | 0910–AG33 | Final Rule Stage |
| 51 | Electronic Health Record (EHR) Incentive Program (CMS-0033-P) | 0938–AP78 | Proposed Rule Stage |
| 52 | Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2011 (CMS-1503-P) | 0938–AP79 | Proposed Rule Stage |
| 53 | Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2011 Rates and to the Long-Term Care Hospital PPS and RY 2011 Rates (CMS-1498-P) | 0938–AP80 | Proposed Rule Stage |
| 54 | Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2011 (CMS-1504-P) | 0938–AP82 | Proposed Rule Stage |
| 55 | HIPAA Mental Health Parity and Addiction Equity Act of 2008 Amendments (CMS-4140-IFC) | 0938–AP65 | Final Rule Stage |

## DEPARTMENT OF HOMELAND SECURITY

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 56 | Secure Handling of Ammonium Nitrate Program | 1601–AA52 | Proposed Rule Stage |
| 57 | Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) | 1601–AA34 | Final Rule Stage |
| 58 | Asylum and Withholding Definitions | 1615–AA41 | Proposed Rule Stage |
| 59 | Registration Requirements for Employment-Based Categories Subject to Numerical Limitations | 1615–AB71 | Proposed Rule Stage |
| 60 | New Classification for Victims of Severe Forms of Trafficking in Persons Eligible for the T Nonimmigrant Status | 1615–AA59 | Final Rule Stage |
| 61 | Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status | 1615–AA60 | Final Rule Stage |
| 62 | New Classification for Victims of Certain Criminal Activity; Eligibility for the U Nonimmigrant Status | 1615–AA67 | Final Rule Stage |
| 63 | Commonwealth of the Northern Mariana Islands Transitional Nonimmigrant Investor Classification | 1615–AB75 | Final Rule Stage |
| 64 | Commonwealth of the Northern Mariana Islands Transitional Workers Classification | 1615–AB76 | Final Rule Stage |
| 65 | Revisions to Federal Immigration Regulations for the Commonwealth of the Northern Mariana Islands; Conforming Regulations | 1615–AB77 | Final Rule Stage |
| 66 | Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG-2001-10486) | 1625–AA32 | Proposed Rule Stage |
| 67 | Inspection of Towing Vessels (USCG-2006-24412) | 1625–AB06 | Proposed Rule Stage |
| 68 | Establishment of Global Entry Program | 1651–AA73 | Proposed Rule Stage |
| 69 | Importer Security Filing and Additional Carrier Requirements | 1651–AA70 | Final Rule Stage |
| 70 | Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program | 1651–AA72 | Final Rule Stage |
| 71 | Implementation of the Guam-CNMI Visa Waiver Program | 1651–AA77 | Final Rule Stage |
| 72 | Aircraft Repair Station Security | 1652–AA38 | Proposed Rule Stage |

## DEPARTMENT OF HOMELAND SECURITY (Continued)

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 73 | Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program | 1652–AA53 | Proposed Rule Stage |
| 74 | Public Transportation and Passenger Railroads—Security Training of Employees | 1652–AA55 | Proposed Rule Stage |
| 75 | Freight Railroads—Security Training of Employees | 1652–AA57 | Proposed Rule Stage |
| 76 | Over-the-Road Buses—Security Training of Employees | 1652–AA59 | Proposed Rule Stage |
| 77 | Vetting, Adjudication, and Redress Process and Fees | 1652–AA61 | Proposed Rule Stage |
| 78 | Air Cargo Screening | 1652–AA64 | Final Rule Stage |
| 79 | Clarification of Criteria for Certification, Oversight, and Recertification of Schools by the Student and Exchange Visitor Program (SEVP) To Enroll F or M Nonimmigrant Students | 1653–AA44 | Proposed Rule Stage |
| 80 | Continued Detention of Aliens Subject to Final Orders of Removal | 1653–AA13 | Final Rule Stage |
| 81 | Electronic Signature and Storage of Form I-9, Employment Eligibility Verification | 1653–AA47 | Final Rule Stage |
| 82 | Extending Period for Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding the CAP-GAP Relief for All F-1 Students With Pending H-1B Petitions | 1653–AA56 | Final Rule Stage |
| 83 | Disaster Assistance; Federal Assistance to Individuals and Households | 1660–AA18 | Proposed Rule Stage |
| 84 | Update of FEMA's Public Assistance Regulations | 1660–AA51 | Proposed Rule Stage |
| 85 | Special Community Disaster Loans Program | 1660–AA44 | Final Rule Stage |

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 86 | HOME Investment Partnerships—Improving Performance and Accountability; Updating Property Standards and Instituting Energy Efficiency Standards (FR-5234) | 2501–AC94 | Proposed Rule Stage |
| 87 | Housing Trust Fund Program—Allocation Formula and Program Requirements (FR-5246) | 2506–AC23 | Proposed Rule Stage |
| 88 | Homeless Emergency Assistance and Rapid Transition to Housing Program; Consolidation of HUD Homeless Assistance Programs (FR-5333) | 2506–AC26 | Proposed Rule Stage |

## DEPARTMENT OF JUSTICE

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 89 | Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities | 1190–AA44 | Final Rule Stage |
| 90 | Nondiscrimination on the Basis of Disability in State and Local Government Services | 1190–AA46 | Final Rule Stage |
| 91 | Electronic Prescriptions for Controlled Substances | 1117–AA61 | Final Rule Stage |

## DEPARTMENT OF LABOR

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 92 | The Family and Medical Leave Act of 1993, as Amended | 1215–AB76 | Proposed Rule Stage |

## DEPARTMENT OF LABOR (Continued)

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 93 | Records To Be Kept by Employers Under the Fair Labor Standards Act | 1215–AB78 | Proposed Rule Stage |
| 94 | Interpretation of the ''Advice'' Exemption of Section 203(c) of the Labor-Management Reporting and Disclosure Act | 1215–AB79 | Proposed Rule Stage |
| 95 | Child Labor Regulations, Orders, and Statements of Interpretation | 1215–AB57 | Final Rule Stage |
| 96 | YouthBuild Program Regulation | 1205–AB49 | Proposed Rule Stage |
| 97 | Trade Adjustment Assistance for Workers Program; Regulations | 1205–AB57 | Proposed Rule Stage |
| 98 | Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations | 1205–AB59 | Proposed Rule Stage |
| 99 | Temporary Agricultural Employment of H-2A Aliens in the United States | 1205–AB55 | Final Rule Stage |
| 100 | Lifetime Income Options for Participants and Beneficiaries in Retirement Plans | 1210–AB33 | Prerule Stage |
| 101 | Definition of ''Fiduciary'' — Investment Advice | 1210–AB32 | Proposed Rule Stage |
| 102 | Health Care Arrangements Established by State and Local Governments for Non-Governmental Employees | 1210–AB34 | Proposed Rule Stage |
| 103 | Genetic Information Nondiscrimination | 1210–AB27 | Final Rule Stage |
| 104 | Mental Health Parity and Addiction Equity Act | 1210–AB30 | Final Rule Stage |
| 105 | Metal and Nonmetal Impoundments | 1219–AB70 | Prerule Stage |
| 106 | Respirable Crystalline Silica Standard | 1219–AB36 | Proposed Rule Stage |
| 107 | Occupational Exposure to Coal Mine Dust (Lowering Exposure) | 1219–AB64 | Proposed Rule Stage |
| 108 | Occupational Exposure to Crystalline Silica | 1218–AB70 | Prerule Stage |
| 109 | Hazard Communication | 1218–AC20 | Proposed Rule Stage |
| 110 | Cranes and Derricks in Construction | 1218–AC01 | Final Rule Stage |

## DEPARTMENT OF TRANSPORTATION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 111 | Enhancing Airline Passenger Protections — Part 2 | 2105–AD92 | Proposed Rule Stage |
| 112 | Enhancing Airline Passenger Protections | 2105–AD72 | Final Rule Stage |
| 113 | Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers | 2120–AJ00 | Proposed Rule Stage |
| 114 | Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments | 2120–AJ53 | Proposed Rule Stage |
| 115 | Flight and Duty Time Limitations and Rest Requirements | 2120–AJ58 | Proposed Rule Stage |
| 116 | Automatic Dependent Surveillance — Broadcast (ADS-B) Equipage Mandate To Support Air Traffic Control Service | 2120–AI92 | Final Rule Stage |
| 117 | Carrier Safety Fitness Determination | 2126–AB11 | Proposed Rule Stage |
| 118 | Drivers of Commercial Motor Vehicles: Limiting the Use of Wireless Communication Devices | 2126–AB22 | Proposed Rule Stage |
| 119 | National Registry of Certified Medical Examiners | 2126–AA97 | Final Rule Stage |
| 120 | Commercial Driver's License Testing and Commercial Learner's Permit Standards | 2126–AB02 | Final Rule Stage |
| 121 | Ejection Mitigation | 2127–AK23 | Proposed Rule Stage |
| 122 | Federal Motor Vehicles Safety Standard No. 111, Rearview Mirrors | 2127–AK43 | Proposed Rule Stage |

## DEPARTMENT OF TRANSPORTATION (Continued)

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 123 | Require Installation of Seat Belts on Motorcoaches, FMVSS No. 208 | 2127–AK56 | Proposed Rule Stage |
| 124 | Tire Fuel Efficiency Consumer Information | 2127–AK45 | Final Rule Stage |
| 125 | Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012-2016 | 2127–AK50 | Final Rule Stage |
| 126 | Positive Train Control | 2130–AC03 | Final Rule Stage |
| 127 | Pipeline Safety: Distribution Integrity Management | 2137–AE15 | Final Rule Stage |
| 128 | Regulations To Be Followed by All Departments, Agencies, and Shippers Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels | 2133–AB74 | Proposed Rule Stage |
| 129 | Cargo Preference — Compromise, Assessment, Mitigation, Settlement and Collection of Civil Penalties | 2133–AB75 | Proposed Rule Stage |

## DEPARTMENT OF THE TREASURY

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 130 | Emergency Economic Stabilization Act; Conflicts of Interest | 1505–AC05 | Final Rule Stage |
| 131 | TARP Standards for Compensation and Corporate Governance | 1505–AC09 | Final Rule Stage |
| 132 | S.A.F.E. Mortgage Licensing Act | 1557–AD23 | Final Rule Stage |

## ENVIRONMENTAL PROTECTION AGENCY

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 133 | Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings | 2070–AJ56 | Prerule Stage |
| 134 | CERCLA 108(b) Financial Responsibility | 2050–AG56 | Prerule Stage |
| 135 | Combined Rulemaking for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources of HAP and Industrial, Commercial, and Institutional Boilers at Area Sources | 2060–AM44 | Proposed Rule Stage |
| 136 | Review of the National Ambient Air Quality Standards for Particulate Matter | 2060–AO47 | Proposed Rule Stage |
| 137 | Review of the Primary National Ambient Air Quality Standard for Sulfur Dioxide | 2060–AO48 | Proposed Rule Stage |
| 138 | Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur | 2060–AO72 | Proposed Rule Stage |
| 139 | Clean Air Transport Rule | 2060–AP50 | Proposed Rule Stage |
| 140 | Revision to Pb Ambient Air Monitoring Requirements | 2060–AP77 | Proposed Rule Stage |
| 141 | Prevention of Significant Deterioration/Title V Greenhouse Gas Tailoring Rule | 2060–AP86 | Proposed Rule Stage |
| 142 | Reconsideration of the 2008 Ozone National Ambient Air Quality Standards | 2060–AP98 | Proposed Rule Stage |
| 143 | Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program | 2070–AJ57 | Proposed Rule Stage |
| 144 | Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers | 2050–AE81 | Proposed Rule Stage |
| 145 | Criteria and Standards for Cooling Water Intake Structures | 2040–AE95 | Proposed Rule Stage |
| 146 | Review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide | 2060–AO19 | Final Rule Stage |

## ENVIRONMENTAL PROTECTION AGENCY (Continued)

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 147 | Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder | 2060–AO38 | Final Rule Stage |
| 148 | Renewable Fuels Standard Program | 2060–AO81 | Final Rule Stage |
| 149 | Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act | 2060–AP55 | Final Rule Stage |
| 150 | EPA/NHTSA Joint Rulemaking to Establish Light-Duty Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards | 2060–AP58 | Final Rule Stage |
| 151 | Prevention of Significant Deterioration (PSD): Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program | 2060–AP87 | Final Rule Stage |
| 152 | Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program | 2070–AJ55 | Final Rule Stage |
| 153 | Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule | 2050–AG16 | Final Rule Stage |
| 154 | Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category | 2040–AE91 | Final Rule Stage |

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 155 | Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act | 3046–AA87 | Proposed Rule Stage |
| 156 | Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act | 3046–AA85 | Final Rule Stage |

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 157 | Office of Government Information Services | 3095–AB62 | Proposed Rule Stage |

## SMALL BUSINESS ADMINISTRATION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 158 | 8(a) Business Development | 3245–AF53 | Proposed Rule Stage |
| 159 | Small Business Size Standards: Retail Trade Industries | 3245–AF69 | Proposed Rule Stage |
| 160 | Small Business Size Standards: Other Services | 3245–AF70 | Proposed Rule Stage |
| 161 | Small Business Size Standards: Accommodations and Food Service Industries | 3245–AF71 | Proposed Rule Stage |
| 162 | Women-Owned Small Business Federal Contract Program | 3245–AG06 | Proposed Rule Stage |

## SOCIAL SECURITY ADMINISTRATION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 163 | Revised Medical Criteria for Evaluating Endocrine System Disorders (436P) | 0960–AD78 | Proposed Rule Stage |
| 164 | Revised Medical Criteria for Evaluating Respiratory System Disorders (859P) | 0960–AF58 | Proposed Rule Stage |

## SOCIAL SECURITY ADMINISTRATION (Continued)

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 165 | Revised Medical Criteria for Evaluating Mental Disorders (886P) | 0960–AF69 | Proposed Rule Stage |
| 166 | Revised Medical Criteria for Evaluating Hematological Disorders (974P) | 0960–AF88 | Proposed Rule Stage |
| 167 | Revised Medical Criteria for Evaluating Immune (HIV) System Disorders (3466P) | 0960–AG71 | Proposed Rule Stage |
| 168 | Reestablishing Uniform National Disability Adjudication Provisions (3502P) | 0960–AG80 | Proposed Rule Stage |
| 169 | Disability Determinations by State Agency Disability Examiners (3510P) | 0960–AG87 | Proposed Rule Stage |
| 170 | Temporary Authorization for Federal Disability Examiners to Adjudicate Hearing Requests On-The-Record (3526P) | 0960–AG97 | Proposed Rule Stage |
| 171 | Attorney Advisory Program Permanent Rule (3578P) | 0960–AH05 | Proposed Rule Stage |
| 172 | Revised Medical Criteria for Evaluating Hearing Loss (2862F) | 0960–AG20 | Final Rule Stage |
| 173 | Revisions to Rules on Representation of Parties (3396F) | 0960–AG56 | Final Rule Stage |
| 174 | Setting the Time and Place for a Hearing Before an Administrative Law Judge (3481F) | 0960–AG61 | Final Rule Stage |
| 175 | Amendments to Regulations Regarding Major Life-Changing Events Affecting Income-Related Monthly Adjustments to Medicare Part B Premiums (3574F) | 0960–AH06 | Final Rule Stage |

## NATIONAL INDIAN GAMING COMMISSION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 176 | Tribal Background Investigation Submission Requirements and Timing | 3141–AA15 | Proposed Rule Stage |
| 177 | Class II and Class III Minimum Internal Control Standards | 3141–AA27 | Proposed Rule Stage |

## POSTAL REGULATORY COMMISSION

| Sequence Number | Title | Regulation Identifier Number | Rulemaking Stage |
|---|---|---|---|
| 178 | Periodic Reporting of Service Performance Measurements and Customer Satisfaction | 3211–AA05 | Final Rule Stage |

[FR Doc. E9–28608 Filed 12–04–09; 8:45 am]

**BILLING CODE 6820–27–S**

## DEPARTMENT OF AGRICULTURE (USDA)

### Statement of Regulatory Priorities

USDA's regulatory efforts in 2010 will continue to focus on implementing the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), known as the ''2008 Farm Bill,'' which covers major farm, trade, conservation, rural development, energy, nutrition assistance and other programs. In addition, USDA will implement regulations that will improve program outcomes by achieving the Department's high priority goals as well as reducing burden on stakeholders, program participants, and small businesses. Important areas of activity include the following:

*Nutrition Assistance*

- 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 2010, FNS will continue to promote nutritional knowledge and education while minimizing participant and vendor fraud.

*Food Safety*

- In the area of food safety, USDA will continue to develop science-based regulations that improve the safety of meat, poultry, egg, and farm-raised catfish 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.

*Conservation*

- USDA will continue to focus on implementing the conservation programs authorized in the 2008 Farm Bill. Over the past year, the Natural Resources Conservation Service (NRCS) has promulgated 11 interim and proposed rules and has received public comment on them. In 2010, NRCS will finalize these rules which include the Conservation Stewardship Program and the Environmental Quality Incentives Program.

*Promoting Rural Development and Renewable Energy*

- USDA priority regulatory actions for the Rural Development mission primarily relate to promulgating relations for programs authorized by the 2008 Farm Bill, including the Title 9 Energy programs and the Rural Micro-Entrepreneurship Program. USDA has utilized Notices of Funding Availability implement many of these programs in Fiscal Year 2009. Regulations are needed to maintain them. In addition, USDA needs to finalize the reform of its on-going broadband access program through an interim rule that will combine provisions of a proposed rule published in 2007 and changes in the program that were authorized in the 2008 Farm Bill.
- USDA will continue to promote sustainable economic opportunities to revitalize rural communities through the purchase and use of renewable, environmentally friendly biobased products through its BioPreferred Program (formerly the Federal Biobased Product Preferred Procurement Program). USDA will continue to designate groups of biobased products to receive procurement preference from Federal agencies and contractors. In addition, USDA will finalize a rule establishing the Voluntary Labeling Program for biobased products.

*Trade Promotion, Market Development, Farm Loans, and Disaster Assistance*

- USDA will work to ensure a strong U.S. agricultural system through trade promotion, market development, farm income support, disaster assistance, and farm loan programs. In addition to the regulations already implemented, including those pertaining to the eligibility for farm program payments, the Farm Service Agency will issue new regulations implementing disaster assistance programs to compensate agricultural producers for production losses due to natural disasters. Regulations will also be developed to implement conservation loan programs intended to help producers finance the construction of conservation measures.

*Other Regulatory Activities*

- USDA will work to facilitate a fair, competitive marketplace, support the organic sector, and continue regulatory work to protect the health and value of U.S. agricultural and natural resources. USDA will promulgate regulations to enhance enforcement of the Packers and Stockyards Act. USDA will also finalize a rule specifying access to pasture standards for organically raised ruminants. In addition, USDA will amend regulations related to the importation of nursery products and animals and animal products. Further, USDA will propose specific standards for the humane handling, care, treatment, and transportation of birds under the Animal Welfare Act.

**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.

**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 2010:

*Food and Nutrition Service*

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

*Priorities:* In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS's 2010 regulatory plan supports the goal to ensure that all of

America's children have access to safe, nutritious and balanced meals 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 consumed at home, 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 to simplify program administration, support work, and improve access to benefits in the Supplemental Nutrition Assistance Program (SNAP) formerly the Food Stamp Program. FNS will continue to improve SNAP administration by developing a rule to implement provisions of the Food, Conservation, and Energy Act of 2008 that address eligibility, certification, employment, and training issues. An interim rule implementing provisions of the Child Nutrition and WIC Reauthorization Act of 2004 to establish automatic eligibility for homeless children for school meals further supports this objective.
- *Promote Healthier Eating Habits and Lifestyles*. This objective represents FNS's efforts to improve the diets of its clients through nutrition education, and to ensure that program benefits meet appropriate standards to effectively improve nutrition for program participants. In support of this objective, FNS plans to propose rules updating the nutrition standards in the school meals programs; implement the SNAP nutrition education provisions of the Food, Conservation, and Energy Act of 2008; and establish permanent rules for the Fresh Fruit and Vegetable Program which currently operates in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.
- *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. FNS will also finalize a rule to improve the SNAP quality control process and propose a rule to improve the SNAP retailer sanction process.

*Food Safety and Inspection Service*

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

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

*Non-ambulatory Disabled Cattle*. In March 2009, FSIS published a final rule requiring that all cattle that become non-ambulatory disabled at any time before slaughter, including those that become non-ambulatory disabled after passing ante-mortem inspection, must be condemned and properly disposed of. Under the previous regulations, FSIS inspection personnel determined, on case by-case basis, the disposition of cattle that became non-ambulatory disabled after they had passed ante-mortem inspection. The final rule removed the provision for case-by-case determination by FSIS inspection personnel.

*Country of Origin Labeling*. In March 2009, FSIS affirmed its August 2008 interim final rule requiring country-of-origin labeling (COOL) of any meat or poultry product that is a ''covered commodity'' as defined by the Agricultural Marketing Service (AMS) in the regulations set out in AMS's January 2009 final rule on mandatory country-of-origin labeling (COOL).

*2008 Farm Bill-related Rulemakings*. The 2008 Farm Bill, made several amendments to statutes administered by FSIS and gave the Agency other instructions. As a result, FSIS is developing new regulations to implement: mandatory inspection for catfish; a program for interstate shipment of State-inspected meat and poultry products; and recall procedure and process control reassessment requirements for inspected establishments.

- *Catfish Inspection*. FSIS is developing regulations to implement 2008 Farm Bill amendments of the FMIA (in Pub. L. 110-246, Sec. 11016) to make catfish amenable to the FMIA. The regulations will define ''catfish'' and the scope of coverage of the regulations to apply to establishments that process catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.
- *Interstate shipment of State-inspected meat and poultry products*. FSIS is proposing regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the FMIA and the PPIA. These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State inspection personnel would bear a Federal mark of inspection. Section 11015 of the 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry products from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment.
- *Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments*. FSIS is proposing regulations that will implement Sec. 11017 of the 2008 Farm Bill on notification, documentation, and recordkeeping requirements for inspected establishments. This section amends the FMIA and PPIA to require establishments that are subject to inspection under these Acts to promptly notify the Agency when an adulterated or misbranded product received by or originating from the

establishment has entered into commerce. Section 11017 also requires establishments subject to inspection under the FMIA and PPIA to prepare and maintain current procedures for the recall of all products produced and shipped by the establishment and document each reassessment of the establishment's process control plans.

- *Revision of Egg Products Inspection Regulations.* FSIS 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.
- *Rulemakings in Support of the FSIS Public Health Information System.* To support its food safety inspection activities, FSIS is developing the Public Health Information System (PHIS). PHIS, which is user-friendly and Web-based, will replace many of the Agency's current systems and automate many business processes. Among the many other services it will provide, PHIS will automate and streamline the export and import application and certification processes. To facilitate the implementation of these PHIS applications, FSIS will propose to amend the meat, poultry products, and egg products inspection regulations to provide for electronic export and import application and certification processes as alternatives to the current paper-based systems for these certifications. The new electronic system will enable the Agency to process an establishment's application for export certification, verify that the establishment and product meet the application and certification requirements, approve the application, and process the export certificate. The Agency is proposing the export application and certification service as a reimbursable service under Agricultural Marketing Act authority.
- *Rulemaking to support control of Escherichia coli O157:H7.* FSIS will propose to require that any business that grinds or chops raw beef products, including products that are ground or chopped at the request of an individual consumer, keep records that will fully and correctly disclose all transactions involved in the business that are subject to the FMIA. These records, such as grinding logs, provide critical information about how, when, and where ground product was prepared, shipped, received, stored, and handled, and are essential to illness outbreak investigations, recalls, and other public health activities that FSIS conducts. Businesses that will be required to comply with this proposed rule will be FSIS-inspected establishments and retail facilities that grind or chop raw beef products, including beef manufacturing trimmings derived from cattle not slaughtered on site at the official establishment or retail store. An FSIS-inspected establishment that grinds or chops raw beef products derived from cattle slaughtered at that same establishment will be exempt from the requirements of the proposed rule.

*Other Planned Initiatives:*

*Performance Standards for Ready-to-Eat Products*. FSIS plans to finalize a February 2001 proposed 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 *L. monocytogenes* contamination of RTE products. The Agency is evaluating the effectiveness of this interim final rule, which in 2004 was the subject of a regulatory reform nomination to OMB. FSIS has carefully reviewed its economic analysis of the interim final rule in response to this recommendation and is planning to adjust provisions of the rule to reduce the information collection burden on small businesses. FSIS is also planning further action with respect to other elements of its 2001 proposal on performance standards for processed meat and poultry products, based on quantitative risk assessments of target pathogens in processed products.

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

The chilling performance standard would replace 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. Poultry establishments would have to carry out slaughtering, dressing, and chilling operations in a manner that ensures no significant growth of pathogens.

FSIS is collaborating with the Food and Drug Administration 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. FSIS also plans to clarify that bagel dogs, natural casings, and closed-face meat or poultry sandwiches are subject to the Agency's jurisdiction.

*FSIS Small Business Implications:*

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

FSIS 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.

*Agricultural Marketing Service*

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

*Priorities:* AMS priority items for the next year include a rulemaking required as a result of passage of the 2008 Farm Bill and a final rule for the National Organic Program.

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

The 2008 Farm Bill extended the program to include producers in Alaska, Hawaii, and Puerto Rico who will pay an assessment of $0.15 per hundredweight of milk production. Imported dairy products will be assessed at $0.075 per hundredweight of fluid milk equivalent. AMS published proposed regulations establishing the program in the May 19, 2009, Federal Register. The proposal had a 30-day comment period. Comments received for this rule are currently under review. AMS expects to publish a final rule early next year.

*Access to Pasture.* Since implementation of the NOP, some members of the public have advocated for a more explicit regulatory standard on the relationship between livestock, particularly dairy animals, and grazing land. They have asserted the current regulatory language on access to pasture for ruminants and temporary confinement based on an animal's stage of production, when applied together, do not provide a uniform requirement for the pasturing of ruminant animals that meet the principles underlying an organic management system for livestock and livestock products that consumers expect. AMS published a proposed rule with a request for comment on October 24, 2008. The comment period ended December 23, 2008. AMS received over 80,000 comments. Due to the high volume of comments received, final action on this rule is not expected before December 2009.

*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:* With respect to animal health, APHIS is continuing work to revise its regulations concerning bovine spongiform encephalopathy (BSE) to provide a more comprehensive and universally applicable framework for the importation of certain animals and products. In the area of plant health, APHIS is in the midst of a revision to its regulations for importing nursery stock (plants for planting) to better address plant health risks associated with propagative material. APHIS also plans to propose standards for the humane handling, care, treatment, and transportation of birds covered under the Animal Welfare Act.

*Grain, Inspection, Packers and Stockyards Administration*

*Mission:* The Grain Inspection, Packers and Stockyards Administration facilitates the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products and promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture.

*Priorities:* GIPSA is continuing work that will finalize its August, 2007 proposed rule regarding the records that live poultry dealers must furnish poultry growers, including requirements for the timing and contents of poultry growing arrangements. The requirements contained in the final rule are intended to help both poultry growers and live poultry dealers by providing the growers with more information about the poultry growing arrangement at an earlier stage.

In addition, GIPSA intends to propose a rule that will define practices or conduct that are unfair, unjustly discriminatory, or deceptive, and/or that represent the making or giving of an undue or unreasonable preference or advantage, and ensure that producers and growers can fully participate in any arbitration process that may arise related to livestock or poultry contracts. This regulation is being proposed in accordance with the authority granted to the Secretary by the Packers and Stockyards Act of 1921 and with the requirements of Sections 11005 and 11006 of the 2008 Farm Bill.

*Farm Service Agency*

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

*Priorities:* FSA's priority for 2009 will be to continue implementing the 2008 Farm Bill. The 2008 Farm Bill, which was enacted on June 18, 2008, governs Federal farm programs through the 2012. New regulatory actions include:

- *Disaster Assistance.* The 2008 Farm Bill provides a set of standing disaster assistance programs, including a new revenue based program for supplemental agricultural disaster assistance. These programs require completely new regulations and revision of existing program regulations.
- *Biomass Crop Assistance Program.* In addition, the 2008 Farm Bill adds a new biomass crop assistance program that supports the Administration's energy initiative to accelerate the investment in and production of biofuels. The program will provide financial assistance to agricultural and forest land owners and operators

to establish and produce eligible crops, including woody biomass, for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

- *Farm Loan Programs.* The 2008 Farm Bill also requires changes to farm operating loans, down payment loans, and emergency loans, including expanding to include socially disadvantaged farmers, increasing loan limits, loan size, funding targets, interest rates, and graduating borrowers to commercial credit. In addition, it establishes a new direct and guaranteed loan program to assist farmers in implementing conservation practices. FSA will develop and issue the regulations and make program funds available to eligible clientele in as timely a manner as possible.

*Natural Resources Conservation Service*

*Mission:* The Natural Resources Conservation Service (NRCS) mission is to provide leadership in a partnership effort to help America's private land owners and managers conserve their soil, water, and other natural resources.

*Priorities:* NRCS regulatory priorities for FY 2010 will be to finalize the rules promulgated pursuant to the 2008 Farm Bill. The 2008 Farm Bill, which was enacted on June 18, 2008, governs USDA conservation programs through 2012. NRCS promulgated 11 interim and proposed rulemakings pursuant to the 2008 Farm Bill, and received public comment for each of the regulations. In order to provide certainty and clarity for NRCS program participants, NRCS will address the public comments in final rulemaking and make any necessary clarifications or adjustments in response to those comments.

Among the programs authorized by the 2008 Farm Bill, the Conservation Stewardship Program and Environmental Quality Incentives Program represent a significant public investment in environmental improvement and stewardship. The 2008 Farm Bill also re-authorized and expanded several other financial assistance and conservation easement programs, including the Agricultural Management Assistance program, the Farm and Ranch Lands Protection Program, the Grasslands Reserve Program, the Healthy Forests Reserve Program, the Regional Equity provisions, the State Technical Committee, the Technical Service Provider Assistance Initiative, the Wetlands Reserve Program, and the Wildlife Habitat Incentives Program.

During FY 2009, NRCS promulgated an interim final rule to identify Categorical Exclusions under the National Environmental Policy Act of 1970 to streamline delivery of projects funded by the American Recovery and Reinvestment Act of 2009. NRCS plans to finalize the Categorical Exclusion rule in response to public comments. Finally, NRCS intends to promulgate a program for its ACES program to provide consistency with how ACES is used by other agencies.

*Rural Business-Cooperative Service*

*Mission:* Promoting a dynamic business environment in rural America is the goal of the Rural Business-Cooperative Service (RBS). Business Programs works in partnership with the private sector and the community-based organizations to provide financial assistance and business planning, and helps fund projects that create or preserve quality jobs and/or promote a clean rural environment. The financial resources are often leveraged with those of other public and private credit source lenders to meet business and credit needs in under-served areas. Recipients of these programs may include individuals, corporations, partnerships, cooperatives, public bodies, nonprofit corporations, Indian tribes, and private companies. The mission of Cooperative Program of RBS is to promote understanding and use of the cooperative form of business as a viable organizational option for marketing and distributing agricultural products.

*Priorities:* RBS's priority for 2009 will be to fully implement the 2008 Farm Bill. This includes promulgating regulations for Section 9003 (Biorefinery Assistance Program), Section 9004 (Repowering Assistance Program) Section 9005 (Bioenergy program for Advanced Biofuels) and Section 6022 (Rural Microentrepreneur Assistance Program). The Agency has been administering Sections 9003 and 9004 through the use of various Notices (Notices of Funds Availability and Contract Proposal), rather than regulation. Revisions to Section 9007 (Rural Energy for America Program) will be made to incorporate Energy Audits and Renewable Energy Development Assistance and Feasibility Studies for Rural Energy Systems as eligible grant purposes, as well as other Farm Bill changes to the Section 9007 program. In addition, regulations for the Business and Industry Guaranteed Loan Program will be revised to reflect Farm Bill provisions relating to locally or regionally produced agricultural food products. These rules will be developed to minimize program complexity and burden on the public while enhancing program delivery and Agency oversight.

*Rural Utilities Service*

*Mission:* To improve the quality of life in rural America by providing investment capital for the deployment of critical rural utilities telecommunications, electric and water and waste disposal infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. The public-private partnership which is forged between RUS and these industries results in billions of dollars in rural infrastructure development and creates thousands of jobs for the American economy.

*Priorities:* RUS' priority in 2010 is fulfilling the President's goal of bringing affordable broadband to all rural Americans by continuing to develop a final rule for the Broadband Loan Program, which was authorized by the Farm Security and Rural Investment Act of 2002, P.L. 107-171, (2002 Farm Bill) and subsequently amended by the 2008 Farm Bill. In May 2007, RUS published a proposed rule to improve the focus and strengthen the financial stability of the program that was being administered under regulations developed for the 2002 Farm Bill. Before this proposed rule could be finalized the 2008 Farm Bill became law, significantly changing the statutory requirements of the Broadband Loan Program. Consequently, RUS now plans to publish an interim rule that will combine the provisions of the proposed rule with the changes made by the 2008 Farm Bill.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law. The Recovery Act expanded RUS's existing authority to make loans and provides new authority to make grants to facilitate broadband deployment in rural areas. RUS has been tasked with the time sensitive priority of developing the regulation for this new authority. The Agency will, however, also continue to develop a final rule for the Broadband Program based upon change include in the 2008 Farm Bill.

*Departmental Administration*

*Mission:* Departmental Administration's mission is to provide management leadership to ensure that

USDA administrative programs, policies, advice and counsel meet the needs of USDA program organizations, consistent with laws and mandates; and provide safe and efficient facilities and services to customers.

*Priorities:* In July 2009, USDA's Departmental Administration published the proposed rule to establish a program to label eligible products made from biobased feedstocks. As part of this rulemaking, USDA will be accepting public comments through September 2009 on how to implement a program that promotes the purchase of products made from agricultural and forestry feedstocks. Once the public comment period is closed, USDA will finalize the labeling regulation to allow manufacturers and vendors of biobased products to display the label on their packaging and marketing materials. Once completed, this regulation will implement a section of the 2008 Farm Bill and will promote alternative uses of agriculture and forest materials.

*Aggregate Costs and Benefits*

USDA will ensure that its regulations provide benefits that exceed costs, but are unable to provide an estimate of the aggregated impacts of its regulations. 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; 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. For 2010, the Department's focus on Farm Bill and other regulations will be to implement the changes in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants.

## USDA—Agricultural Marketing Service (AMS)

### FINAL RULE STAGE

### 1. NATIONAL ORGANIC PROGRAM: ACCESS TO PASTURE

**Priority:**

Other Significant

**Legal Authority:**

7 USC 6501 et seq

**CFR Citation:**

7 CFR 205

**Legal Deadline:**

None

**Abstract:**

The National Organic Program (NOP) is administered by the Agricultural Marketing Service (AMS). Under the NOP, AMS established national standards for the production and handling of organically produced agricultural products. Since implementation of the NOP, some members of the public have advocated for a more explicit regulatory standard on the relationship between livestock, particularly dairy animals, and grazing land. They have asserted the current regulatory language on access to pasture for ruminants and temporary confinement based on an animal's stage of production, when applied together, do not provide a uniform requirement for the pasturing of ruminant animals that meet the principles underlying an organic management system for livestock and livestock products that consumers expect. Comments received as a result of the proposed rule will assist in determining the Agency's next steps in rulemaking on this issue.

**Statement of Need:**

AMS has determined that current regulations regarding access to pasture and the contribution of grazing to the diet of organically raised livestock lack sufficient specificity and clarity to enable AMS to efficiently administer the Program. Organic System Plans (OSPs) dealing with livestock management reflect different application of existing regulations and interpretations of requirements across Accredited Certifying Agents (ACAs). AMS has received 11 complaints requesting enforcement actions for alleged violations of the pasture provisions of the NOP livestock standards.

Furthermore, over the period 1994 to 2005, the National Organic Standards Board (NOSB) made six recommendations regarding access to the outdoors for livestock, pasture, and conditions for temporary confinement of animals. The NOSB process for the development of recommendations consists of: (1) identification of a need by members of the public, the NOSB, or the NOP; (2) development of a draft NOSB recommendation; (3) public meeting notice published by the NOP on its website and in the Federal Register; (4) solicitation of public comments on the recommendation through regulations.gov and at the NOSB's public meetings; (5) finalization of the recommendation; (6) NOSB approval of the recommendation; and (7) NOSB referral to the Secretary for the Secretary's consideration and any appropriate action (e.g., rulemaking, policy development, guidance).

In response, on April 13, 2006, NOP published an Advanced Notice of Proposed Rulemaking (ANPRM) (71 FR 19131) seeking input on the role of pasture in the NOP regulations and what parts of the NOP regulations should be amended to address the role of pasture in organic livestock management.

More than 80,500 comments were received on the ANPRM. Support for strict standards and greater detail on the role of pasture in organic livestock production was nearly unanimous with just 28 of the comments opposing changes to the pasture requirements. Organic consumers have clearly stated in comments that they expect organic ruminants to graze pasture and receive not less than 30 percent of their Dry Matter Intake (DMI) needs from grazing. Nearly all of the over 80,500 comments were received from consumers requesting regulations that would clearly establish grazing as a primary source of nourishment. Approximately 80,250 of these comments were in a modified form letter. Many of these consumers requested that grazing account for at least 30 percent of the ruminant's DMI needs.

AMS published a proposed rule with a request for comment on October 24, 2008. The comment period ended December 23, 2008. AMS received more than 80,000 comments. Due to the high volume of comments received, final action on this rule is not expected before December 2009.

**Summary of Legal Basis:**

The NOP is authorized by the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. section 6501 et. seq.). The AMS administers the NOP. Under the NOP, AMS oversees national standards for the production and handling of organically produced agricultural products. This action is being taken by AMS to ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and accredited certifying agents to efficiently administer the NOP

and to facilitate and improve compliance and enforcement. This action is also intended to satisfy consumer expectations that ruminant livestock animals graze pastures during the growing season.

**Alternatives:**

Alternatives to this proposed rulemaking are to: (1) Make no changes to the existing regulations; (2) adopt a reduced pasturing period, such as the 120-day minimum period recommended by the NOSB and some commenters; or (3) adopt a three ruminants per acre stocking rate measure as suggested by some commenters.

**Anticipated Cost and Benefits:**

Costs:

This action will increase the cost of production for producers who currently do not pasture their animals and those producers who do not manage their pastures at a sufficient level to provide at least 30 percent DMI. For organic slaughter stock producers, an increase in costs might result in a greater volume of slaughter animals, at least in the short term, entering the market driving down prices. Longer term these increased costs could result in increased consumer prices unless the increased costs are off set by reductions in other costs of production. Other costs of production that could be expected to go down are costs associated with producer harvest and purchase of feed and the cost of herd health.

Benefits:

This final rule brings uniformity in application to the livestock regulations; especially as they relate to the pasturing of ruminants. This uniformity will create equitable, consistent, performance standards for all ruminant livestock producers. Producers who currently operate based on grazing will perceive a benefit because these producers claim an economic disadvantage in competing with livestock operations that do not provide pasture. This proposed rule would also bring uniformity in application to the livestock regulations. This uniformity in application will allow the ACAs and AMS to administer the livestock regulations in a way that reflects consumer preferences regarding the production of organic livestock and their products. Commenters have clearly stated that they expect organic ruminants to graze pasture and receive not less than 30 percent of their dry matter needs from grazing. Because of this, it is crucial that consumer expectations are met. This proposed rulemaking is intended to reflect consumer expectations and producer perspectives. This action makes clear what access to pasture means under the NOP.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 04/13/06 | 71 FR 19131 |
| ANPRM Comment Period End | 06/12/06 | |
| NPRM | 10/24/08 | 73 FR 63583 |
| NPRM Comment Period End | 12/23/08 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

Federal, Local, State

**Agency Contact:**

Richard H. Mathews
Chief of Standards Development and Review Branch
Department of Agriculture
Agricultural Marketing Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–3252
Fax: 202 205–7808
Email: richard.mathews@usda.gov

**RIN:** 0581–AC57

---

**USDA—AMS**

**2. NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM; FINAL RULE ON AMENDMENTS TO THE ORDER**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 4501 to 4514; 7 USC 7401

**CFR Citation:**

7 CFR 1150

**Legal Deadline:**

Final, Statutory, September 19, 2008, Assessments on imported dairy products must be implemented by deadline.

With the passage of Section 1507 in the 2008 Farm Bill, the Dairy Act was amended to apply certain assessments to Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico. The 2008 Farm Bill authorized the Secretary to issue regulations to implement the mandatory dairy import assessment without providing a notice and comment period. However, due to the interest of affected parties a notice and comment period was provided.

**Abstract:**

The Dairy Act authorizes the Order for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products and to reduce milk surpluses. The program functions to strengthen the dairy industry's position in the marketplace by maintaining and expanding domestic and foreign consumption of fluid milk and dairy products. Amendments to the Order are pursuant to the 2002 and 2008 Farm Bills. The 2002 Farm Bill mandates that the Order be amended to implement an assessment on imported dairy products to fund promotion and research. The 2008 Farm Bill specifies a mandatory assessment rate of 7.5-cent per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. Additionally, in accordance with the 2008 Farm Bill, the term ''United States'' is the Dairy Act is amended to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Producers in these areas will be assessed 15 cents per hundredweight for all milk produced and marketed.

**Statement of Need:**

In response to the May 19, 2009 (74 FR 23359) proposed rule (National Dairy Promotion and Research Program; Proposed Rule on Amendments to the Order), AMS received 189 timely comments from consumers, dairy producers, foreign governments, importers, exporters, manufacturers, members of Congress, trade associations, and other interested parties.

The comments covered a wide range of topics, including 39 in opposition to the proposal and 150 in support of the proposal. Opponents of the proposal expressed concern over the lack of a referendum requirement among those affected; default assessment rates; lack of ability to no longer promote State-branded dairy products; lack of importer organizations eligible to become a Qualified Program; disputed the cost-benefit analysis for

importers and producers; and cited unreasonable importer paperwork and record keeping burdens.

Proponents of the proposal expressed support for an expedited implementation of the dairy import assessment; cited the enhanced benefits both domestic producers and importers will receive as a result of implementation; recommended new Harmonized Tariff Schedule codes; use of a default assessment rate; recommended regular reporting of the products and assessments on imports; and all thresholds for compliance with U.S. trade obligations have been met.

AMS plans to issue a final rule implementing the dairy import assessment in the near future. In response to the comments received and after consultation with USTR, AMS is addressing, in the final rule, referenda, alternative assessment rates, and compliance and enforcement activity. All remaining changes are miscellaneous and minor in nature in order to clarify regulatory text.

**Summary of Legal Basis:**

The National Dairy Promotion and Research Program (National Program) is authorized under the authorized under the provisions of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501-4514), and the Dairy Promotion and Research Order (7 CFR Part 1150). The Dairy Programs unit of USDA's Agricultural Marketing Service has day—to—day oversight responsibilities for the National Program.

**Alternatives:**

There are no alternatives, as this rulemaking is a matter of law based on the 2002 and 2008 Farm Bills.

**Anticipated Cost and Benefits:**

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of $0.15 per hundredweight of milk marketed in 2007, it is estimated that $1.1 million would have been paid. This is about 0.6 percent of the $192 million total value of milk produced and marketed in these areas.

Benefits to producers in these areas are assumed to be similar to those benefits received by producers of other U.S. geographical regions. Cornell University has conducted an independent economic analysis of the Program that is included in the annual report to Congress. Cornell determined that from 1998 through 2007, each dollar invested in generic dairy marketing by dairy farmers during the period would return between $5.52 and $5.94, on average, in net revenue to farmers.

Assessments collected from importers under the National Program will be relatively small compared to the value of dairy imports. If importers had been assessed $0.075 per hundredweight, or equivalent thereof, for imported dairy products in 2007 as specified in this rule, it is estimated that less than $6.1 million would have been paid. This is about 0.3 percent of the $2.4 billion value of the dairy products imported in 2007.

**Risks:**

If the amendments are not implemented, USDA would be in violation of the 2002 and 2008 Farm Bills.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/19/09 | 74 FR 23359 |
| NPRM Comment Period End | 06/18/09 | |
| Final Action | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Organizations

**Government Levels Affected:**

None

**Agency Contact:**

Whitney Rick
Promotion and Research Branch Chief
Department of Agriculture
Agricultural Marketing Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–6909
Fax: 202 720–0285
Email: whitney.rick@usda.gov

**RIN:** 0581–AC87

## USDA—Animal and Plant Health Inspection Service (APHIS)

### PROPOSED RULE STAGE

### 3. ANIMAL WELFARE; REGULATIONS AND STANDARDS FOR BIRDS

**Priority:**

Other Significant

**Legal Authority:**

7 USC 2131 to 2159

**CFR Citation:**

9 CFR 1 to 3

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

To be identified.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/10 | |
| NPRM Comment Period End | 04/00/10 | |

**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.

**Agency Contact:**

Gerald Rushin
Veterinary Medical Officer, Animal Care
Department of Agriculture
Animal and Plant Health Inspection Service
4700 River Road, Unit 84
Riverdale, MD 20737–1234
Phone: 301 734–0954

**RIN:** 0579–AC02

**USDA—APHIS**

**4. BOVINE SPONGIFORM ENCEPHALOPATHY; IMPORTATION OF BOVINES AND BOVINE PRODUCTS**

**Priority:**

Other Significant

**Legal Authority:**

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

**CFR Citation:**

9 CFR 92 to 96; 9 CFR 98

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

We could leave the current bovine regulations unchanged, but maintaining the status quo would not provide an opportunity to apply the latest scientific evidence to our BSE-related import conditions. Another alternative—modifying the BSE regulations related to the importation of bovines and bovine-derived products to precisely match the OIE guidelines without allowing for modification deemed necessary by APHIS—would not allow APHIS to independently interpret the scientific literature or reflect current USDA regulations and policies. Making no changes to the current regulations that govern the importation of cervids and camelids would perpetuate an unnecessary constraint on trade in those commodities, because cervids and camelids pose an extremely low BSE risk.

**Anticipated Cost and Benefits:**

Undetermined.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |
| NPRM Comment Period End | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**International Impacts:**

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

**Additional Information:**

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

**Agency Contact:**

Christopher Robinson
Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS
Department of Agriculture
Animal and Plant Health Inspection Service
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Phone: 301 734–7837

**RIN:** 0579–AC68

**USDA—APHIS**

**FINAL RULE STAGE**

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

**Priority:**

Other Significant

**Legal Authority:**

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

**CFR Citation:**

7 CFR 319

**Legal Deadline:**

None

**Abstract:**

This action would establish a new category in the regulations governing the importation of nursery stock, also known as plants for planting. This category would list taxa of plants for planting whose importation is not authorized pending risk assessment. We would allow foreign governments to request that a pest risk assessment be conducted for a taxon whose importation is not authorized pending risk evaluation. After the pest risk assessment was completed, we would conduct rulemaking to remove the

taxon from the proposed category if determined appropriate by the risk assessment. We are also proposing to expand the scope of the plants regulated in the plants for planting regulations to include non-vascular plants. These changes would allow us to react more quickly to evidence that a taxon of plants for planting may pose a pest risk while ensuring that our actions are based on scientific evidence.

**Statement of Need:**

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

**Summary of Legal Basis:**

The Secretary of Agriculture may prohibit or restrict the importation or entry of any plant if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States of a plant pest or noxious weed (7 U.S.C. 7712).

**Alternatives:**

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

**Anticipated Cost and Benefits:**

Undetermined.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/23/09 | 74 FR 36403 |
| NPRM Comment Period End | 10/21/09 | |
| Final Rule | 07/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**Additional Information:**

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

**Agency Contact:**

Arnold T. Tschanz
Senior Risk Manager, Commodity Import Analysis and Operations, PPQ
Department of Agriculture
Animal and Plant Health Inspection Service
4700 River Road, Unit 133
Riverdale, MD 20737–1231
Phone: 301 734–5306

**RIN:** 0579–AC03

## USDA—Grain Inspection, Packers and Stockyards Administration (GIPSA)

### PROPOSED RULE STAGE

### 6. ENFORCEMENT OF THE PACKERS AND STOCKYARDS ACT

**Priority:**

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

**Legal Authority:**

7 USC 181

**CFR Citation:**

9 CFR 201

**Legal Deadline:**

Final, Statutory, June 18, 2010.

**Abstract:**

GIPSA is proposing regulations under the Packers & Stockyards Act, 1921, that clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria GIPSA will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract. The Farm Bill also instructed the Secretary to promulgate regulations to ensure that producers and growers are afforded the opportunity to fully participate in the arbitration process if they so choose.

**Statement of Need:**

In enacting Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill) (P.L. 110-246), Congress recognized the nature of problems encountered in the livestock and poultry industries and amended the Packers and Stockyards Act (P&S Act). These amendments established new requirements for participants in the livestock and poultry industries and required the Secretary of Agriculture (Secretary) to establish criteria to consider when determining that certain other conduct is in violation of the P&S Act.

The Grain Inspection, Packers and Stockyards Administration's (GIPSA) attempts to enforce the broad prohibitions of the P&S Act have been frustrated, in part because it has not previously defined what conduct

constitutes an unfair practice or the giving of an undue preference or advantage. The new regulations that GIPSA is proposing describe and clarify conduct that violates the P&S Act and allow for more effective and efficient enforcement by GIPSA. They will clarify conditions for industry compliance with the P&S Act and provide for a fairer market place.

In accordance with the Farm Bill, GIPSA is proposing regulations under the P&S Act that would clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria that GIPSA will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of a suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a packer, swine contractor or live poultry dealer has provided a reasonable period of time for a grower or a swine producer to remedy a breach of contract that could lead to termination of the growing arrangement or production contract.

The Farm Bill also instructed the Secretary to promulgate regulations to ensure that poultry growers, swine production contract growers and livestock producers are afforded the opportunity to fully participate in the arbitration process, if they so choose. We are proposing a required format for providing poultry growers, swine production contract growers and livestock producers the opportunity to decline the use of arbitration in contracts requiring arbitration. We are also proposing criteria that we will consider in finding that poultry growers, swine production contract growers and livestock producers have a meaningful opportunity to participate fully in the arbitration process if they voluntarily agree to do so. We will use these criteria to assess the overall fairness of the arbitration process.

In addition to proposing regulations in accordance with the Farm Bill, GIPSA is proposing regulations that would prohibit certain conduct because it is unfair, unjustly discriminatory or deceptive, in violation of the P&S Act. These additional proposed regulations are promulgated under the authority of § 407 of the P&S Act, and complement those required by the Farm Bill to help ensure fair trade and competition in the livestock and poultry industries.

These regulations are intended to address the increased use of contracting in the marketing and production of livestock and poultry by entities under the jurisdiction of the P&S Act, and practices that result from the use of market power and alterations in private property rights, which violate the spirit and letter of the P&S Act. The effect increased contracting has had, and continues to have, on individual agricultural producers has significantly changed the industry and the rural economy as a whole, making these proposed regulations necessary.

**Summary of Legal Basis:**

Section 407 of the P&S Act (7 U.S.C. 228) provides that the Secretary ''may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act.'' Sections 11005 and 11006 of the Farm Bill became effective June 18, 2008, and instruct the Secretary to promulgate additional regulations as described in this notice of proposed rulemaking.

**Alternatives:**

The Farm Bill explicitly directs the Secretary to promulgate certain regulations. GIPSA determined that additional regulations are necessary to provide notice to all regulated entities of types of practices and conduct that GIPSA considers ''unfair'' so that regulated entities are fully informed of actions or practices that are considered ''unfair'' and therefore, prohibited. Within both the mandatory and discretionary regulatory provisions we considered alternative options.

For example, GIPSA considered shorter notice periods in situations when a live poultry dealer suspends delivery of birds to a poultry grower. These alternatives would not have provided adequate trust and integrity in the livestock and poultry markets. Other alternatives may have been more restrictive. We considered prohibiting the use of arbitration to resolve disputes; however, that option goes against a popular method of dispute resolution in other industries and is not in line with the spirit of the 2008 Farm Bill. GIPSA believes that this proposed rule represents the best option to level the playing field between packers, swine contractors, live poultry dealers, and the nation's poultry growers, swine production contract growers, or livestock producers for the benefit of more efficient marketing and public good.

**Anticipated Cost and Benefits:**

Costs:

Costs are aggregated into three major types: 1) administrative costs, which include items such as office work, postage, filing, and copying; 2) costs of analysis, such as a business conducting a profit-loss analysis; and 3) adjustment costs, such as costs related to changing business behavior to achieve compliance with the proposed regulation.

Benefits:

Benefits are also aggregated into three major groups: 1) increased pricing efficiency; 2) allocation efficiency; and 3) competitive efficiency.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

H. Tess Butler
Regulatory Liaison
Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–7486
Fax: 202 690–2173
Email: h.tess.butler@usda.gov

**RIN:** 0580–AB07

**USDA—GIPSA**

**FINAL RULE STAGE**

**7. POULTRY CONTRACTS; INITIATION, PERFORMANCE, AND TERMINATION**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 221

**CFR Citation:**

9 CFR 201

**Legal Deadline:**

None

**Abstract:**

GIPSA is amending the regulations issued under the Packers and Stockyards Act, 1921, regarding the records that live poultry dealers must furnish poultry growers, including requirements for the timing and contents of poultry growing arrangements. The amendments to the regulatlions will require that live poultry dealers timely deliver a copy of an offered poultry growing arrangement to growers; include information about any Performance Improvement Plan in poultry growing arrangements; include provisions for written termination notices in poultry growing arrangements; and notwithstanding a confidentiality provision, allow growers to discuss the terms of poultry growing arrangements with designated individuals.

**Statement of Need:**

The Grain Inspection Packers and Stockyards Administration (GIPSA) believes that the failure to disclose certain terms in a poultry growing arrangement constitutes an unfair, discriminatory, or deceptive practice in violation of section 202 (7 U.S.C. 192) of the Packers and Stockyards Act (P&S Act).

Because of vertical integration and high concentration within the poultry industry, poultry growers do not realistically have the option of negotiating more favorable poultry growing arrangement terms with competing live poultry dealers because there may be no other live poultry dealers in the poultry grower's immediate geographic area or there may be significant differences in equipment requirements among live poultry dealers. There is considerable asymmetry of information and an imbalance in market power. This final rule will level the playing field by requiring that all live poultry dealers adopt fair and transparent practices when dealing with poultry growers.

**Summary of Legal Basis:**

One of GIPSA's primary functions is the enforcement of the P&S Act, (7 U.S.C. 181 et seq.) (P&S Act). Under authority granted to us by the Secretary of Agriculture, GIPSA is authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

**Alternatives:**

GIPSA collected input on several alternatives like issuing policy guidance to GIPSA employees, providing public notice that failure to provide growers with additional contract information was an unfair practice in violation of § 202 of the P&S Act, or recommending that growers seek redress of grievances through civil court action or arbitration. GIPSA determined that none of these alternatives will meet the needs of poultry growers. We believe, however, that this final rule will provide the best means of achieving statutory intent at the lowest cost to poultry growers and live poultry dealers.

**Anticipated Cost and Benefits:**

Costs:

The costs to both poultry growers and live poultry dealers are negligible, as the rule does not impose significant additional requirements that increase actions that the poultry grower and the live poultry dealer must enact; they merely affect the timeliness of those actions. In some cases, the final rule requires that the poultry grower and the live poultry dealer commit to writing terms and conditions that are already in effect, but do not mandate what those terms and conditions must be. Thus, the only additional cost is the cost of producing and transmitting the printed document.

Benefits:

Collectively, the regulatory provisions in the final rule mitigate potential asymmetries of information between poultry growers and the live poultry dealers, which will lead to better decisions on the terms of compensation and reduce the potential for the expression of anti-competitive market power. The provisions achieve this primarily by improving the quality and timeliness of information to growers, and to some extent to live poultry dealers as well. Benefits should accrue to poultry growers from an enhanced basis for making the decision as to whether to enter into a growout contract, and from additional time available to make plans for any necessary adjustments in those instances when the poultry grower is subject to a contract termination. Net social welfare will benefit from improved accuracy in the value (pricing) decisions involved in transactions between poultry growers and live poultry dealers as they negotiate contract terms.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/01/07 | 72 FR 41952 |
| NPRM Comment Period End | 10/30/07 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

H. Tess Butler
Regulatory Liaison
Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–7486
Fax: 202 690–2173
Email: h.tess.butler@usda.gov

**RIN:** 0580–AA98

## USDA—Food and Nutrition Service (FNS)

### PROPOSED RULE STAGE

### 8. ELIGIBILITY, CERTIFICATION, AND EMPLOYMENT AND TRAINING PROVISIONS OF THE FOOD, CONSERVATION AND ENERGY ACT OF 2008

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 110–246; PL 104–121

**CFR Citation:**

7 CFR Part 273

**Legal Deadline:**

None

**Abstract:**

This proposed rule would amend the regulations governing the Supplemental Nutrition Assistance Program (SNAP) to implement provisions from the Food, Conservation and Energy Act of 2008 (Public Law 110-246) (FCEA) concerning the eligibility and

certification of SNAP applicants and participants and SNAP employment and training. In addition, this proposed rule would revise the SNAP regulations throughout 7 CFR Part 273 to change the program name from the Food Stamp Program to SNAP and to make other nomenclature changes as mandated by the FCEA. The statutory effective date of these provisions was October 1, 2008. Food and Nutrition Service (FNS) is also proposing two discretionary revisions to SNAP regulations to provide State agencies options that are currently available only through waivers. These provisions would allow State agencies to average student work hours and to provide telephone interviews in lieu of face-to-face interviews. FNS anticipates that this rule would impact the associated paperwork burdens. (08-006)

**Statement of Need:**

This proposed rule would amend the regulations governing the Supplemental Nutrition Assistance Program (SNAP) to implement provisions from the Food, Conservation and Energy Act of 2008 (Public Law 110-246) (FCEA) concerning the eligibility and certification of SNAP applicants and participants and SNAP employment and training. In addition, this proposed rule would revise the SNAP regulations throughout 7 CFR Part 273 to change the program name from the Food Stamp Program to SNAP and to make other nomenclature changes as mandated by the FCEA. The statutory effective date of these provisions was October 1, 2008. Food and Nutrition Service (FNS) is also proposing 2 discretionary revisions to SNAP regulations to provide State agencies options that are currently available only through waivers. These provisions would allow State agencies to average student work hours and to provide telephone interviews in lieu of face-to-face interviews. FNS anticipates that this rule would impact the associated paperwork burdens.

**Summary of Legal Basis:**

Food, Conservation, and Energy Act of 2008 (Public Law 110-246) and 7 CFR Part 273.

**Alternatives:**

Not applicable.

**Anticipated Cost and Benefits:**

Anticipated costs have not been determined; however, it is anticipated that this rule would impact the associated paperwork burdens.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**RIN:** 0584–AD87

**USDA—FNS**

**9. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: FARM BILL OF 2008 RETAILER SANCTIONS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

PL 110–246

**CFR Citation:**

7 CFR 276

**Legal Deadline:**

None

**Abstract:**

This proposed rule would implement provisions under Section 4132 of the Food, Conservation and Energy Act of 2008, also referred to as the Farm Bill of 2008. Under Section 4132, the Department of Agriculture's Food and Nutrition Service (FNS) is provided with greater authority and flexibility when sanctioning retail or wholesale food stores that violate Supplemental Nutrition Assistance Program (SNAP) rules. Specifically, the Department is authorized to assess a civil penalty and to disqualify a retail or wholesale food store authorized to participate in SNAP. Previously, the Department could assess a civil penalty or disqualification, but not both. Section 4132 also eliminates the minimum disqualification period which was previously set at six months.

In addition to implementing statutory provisions, this rule proposes to provide a clear administrative penalty when an authorized retailer or wholesale food store redeems a SNAP participant's Program benefits without the knowledge of the participant. All Program benefits are issued through the Electronic Benefits Transfer (EBT) system. The EBT system establishes data that may be used to identify fraud committed by retail food stores. While stealing Program benefits could be prosecuted under current statute, Program regulations do not provide a clear penalty for these thefts. The proposed rule would establish an administrative penalty for such thefts equivalent to the penalty for trafficking in Program benefits, which is the permanent disqualification of a retailer or wholesale food store from SNAP participation.

Finally, the Department proposes to identify additional administrative retail violations and the associated sanction that would be imposed against the retail food store for committing the violation. For instance, to maintain integrity, FNS requires retail and wholesale food stores to key enter EBT card data in the presence of the actual EBT card. The proposed rule would codify this requirement and identify the specific sanction that would be imposed if retail food stores are found to be in violation. (08-007)

**Statement of Need:**

This proposed rule would implement provisions under Section 4132 of the Food, Conservation and Energy Act of 2008, also referred to as the Farm Bill of 2008. Under Section 4132, the Department of Agriculture's Food and Nutrition Service (FNS) is provided with greater authority and flexibility when sanctioning retail or wholesale food stores that violate Supplemental Nutrition Assistance Program (SNAP) rules. Specifically, the Department is authorized to assess a civil penalty and to disqualify a retail or wholesale food store authorized to participate in SNAP. Previously, the Department could assess a civil penalty or disqualification, but not both. Section 4132 also eliminates the minimum disqualification period which was previously set at six months. In addition to implementing statutory provisions, this rule proposes to provide a clear administrative penalty when an authorized retailer or

wholesale food store redeems a SNAP participant's Program benefits without the knowledge of the participant. All Program benefits are issued through the Electronic Benefits Transfer (EBT) system. The EBT system establishes data that may be used to identify fraud committed by retail food stores. While stealing Program benefits could be prosecuted under current statute, Program regulations do not provide a clear penalty for these thefts. The proposed rule would establish an administrative penalty for such thefts equivalent to the penalty for trafficking in Program benefits, which is the permanent disqualification of a retailer or wholesale food store from SNAP participation. Finally, the Department proposes to identify additional administrative retail violations and the associated sanction that would be imposed against the retail food store for committing the violation. For instance, to maintain integrity, FNS requires retail and wholesale food stores to key enter EBT card data in the presence of the actual EBT card. The proposed rule would codify this requirement and identify the specific sanction that would be imposed if retail food stores are found to be in violation.

**Summary of Legal Basis:**

Section 4132, Food, Conservation, and Energy Act of 2008 (Public Law 110-246).

**Alternatives:**

Not applicable.

**Anticipated Cost and Benefits:**

Anticipated costs are undetermined at this time until more research is conducted.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

Note: This RIN replaces the previously issued RIN 0584-AD78.

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**RIN:** 0584–AD88

**USDA—FNS**

**10. ● FRESH FRUIT AND VEGETABLE PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

Food, Conservation, and Energy Act of 2008; National School Lunch Act (NSLA); 42 U.S.C. 1769(a)

**CFR Citation:**

7 CFR Part 211

**Legal Deadline:**

None

**Abstract:**

The Food, Conservation, and Energy Act of 2008 amended the National School Lunch Act (NSLA) to add section 19, the Fresh Fruit and Vegetable Program (FFVP). Section 19 establishes the FFVP as a permanent national program in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Schools in all States must apply annually for FFVP funding.

This proposed rule would implement statutory requirements currently established through program policy and guidance for operators at the State and local level. The proposed rule would set forth requirements detailed in the statute for school selection and participation, State agency outreach to needy schools, the yearly application process, and the funding and allocation processes for schools and States. The proposed rule would also include the statutory per student funding range and the requirement for a program evaluation.

In addition, the proposed rule would establish oversight activity and reporting and record keeping requirements that are not included in FFVP statutory requirements. Implementation of this rule is not expected to result in expenses for program operators because they receive funding to cover food purchases and administrative costs. (09-007)

**Statement of Need:**

The Food, Conservation, and Energy Act of 2008 amended the National School Lunch Act (NSLA) to add section 19, the Fresh Fruit and Vegetable Program (FFVP). Section 19 establishes the FFVP as a permanent national program in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Schools in all States must apply annually for FFVP funding. This proposed rule would implement statutory requirements currently established through program policy and guidance for operators at the State and local level. The proposed rule would set forth requirements detailed in the statute for school selection and participation, State agency outreach to needy schools, the yearly application process, and the funding and allocation processes for schools and States. The proposed rule would also include the statutory per student funding range and the requirement for a program evaluation.

**Summary of Legal Basis:**

Section 19, Food, Conservation, and Energy Act of 2008. National School Lunch Act (NSLA). 42 U.S.C. 1769(a).

**Alternatives:**

Because this proposed rule would implement statutory requirements set forth by the Food, Conservation, and Energy Act of 2008 by adding section 19, the Fresh Fruit and Vegetable Program (FFVP), to the National School Lunch Act, alternatives to this process are not known or being pursued at this time.

**Anticipated Cost and Benefits:**

Implementation of this rule is not expected to result in expenses for program operators because they receive funding to cover food purchases and administrative costs.

**Risks:**

No risks by implementing this proposed rule have been identified at this time.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**RIN:** 0584–AD96

**USDA—FNS**

**FINAL RULE STAGE**

**11. 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 Part 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 mis-categorized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP. Based on its findings, OIG recommended changes to CACFP review requirements and management controls.

**Summary of Legal Basis:**

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

**Alternatives:**

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

**Anticipated Cost and Benefits:**

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

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/12/00 | 65 FR 55103 |
| NPRM Comment Period End | 12/11/00 | |
| Interim Final Rule | 06/27/02 | 67 FR 43448 |
| Interim Final Rule Effective | 07/29/02 | |
| Interim Final Rule Comment Period End | 12/24/02 | |
| Interim Final Rule | 09/01/04 | 69 FR 53502 |
| Interim Final Rule Effective | 10/01/04 | |
| Interim Final Rule Comment Period End | 09/01/05 | |
| Final Action | 03/00/10 | |

**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.

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**Related RIN:** Merged with 0584–AC94

**RIN:** 0584–AC24

**USDA—FNS**

## 12. SNAP: 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, sections 4101 to 4109, 4114, 4115, and 4401

**CFR Citation:**

7 CFR Part 273

**Legal Deadline:**

None

**Abstract:**

This rulemaking will amend the regulations of the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, 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 were implemented by State agencies prior to publication of this rule.

**Anticipated Cost and Benefits:**

The provisions of this rule simplify State administration of SNAP, 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:**

SNAP 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. SNAP 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 SNAP, 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.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/16/04 | 69 FR 20724 |
| NPRM Comment Period End | 06/15/04 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**RIN:** 0584–AD30

**USDA—FNS**

## 13. QUALITY CONTROL PROVISIONS

**Priority:**

Other Significant

**Legal Authority:**

7 USC 2011 to 2032; PL 107–171

**CFR Citation:**

7 CFR 273; 7 CFR 275

**Legal Deadline:**

None

**Abstract:**

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

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

1) Timeframes for completing quality control reviews;

2) Timeframes for completing the arbitration process;

3) Timeframes for determining final error rates;

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

5) The calculation of State error rates;

6) The formula for determining States' liability amounts;

7) Sanction notification and method of payment; and

8) Corrective action plans.

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

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

1) Eliminate enhanced funding;

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

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

Policy and technical changes:

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

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

3) Revise procedures for conducting negative case reviews;

4) Revise timeframes 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 differences resulting from Federal information exchange systems (FIX) errors;

7) Eliminate references to integrated QC; and

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

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

**Anticipated Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

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

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal, Local, State

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**Related RIN:** Merged with 0584–AD37

**RIN:** 0584–AD31

**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 Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 02/00/10 | |
| Interim Final Rule Comment Period End | 05/00/10 | |
| Final Action | 05/00/11 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

**Agency Contact:**

James F. Herbert
Regulatory Review Specialist
Department of Agriculture
Food and Nutrition Service
10th Floor
3101 Park Center Drive
Alexandria, VA 22302
Phone: 703 305–2572
Email: james.herbert@fns.usda.gov

**Related RIN:** Merged with 0584–AD62

**RIN:** 0584–AD60

## USDA—Food Safety and Inspection Service (FSIS)

### PROPOSED RULE STAGE

### 15. 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 Cost 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 | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Federal, State

**Federalism:**

Undetermined

**Agency Contact:**

Victoria Levine
Program Analyst, Policy Issuances Division
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–5627
Fax: 202 690–0486
Email: victoria.levine@fsis.usda.gov

**RIN:** 0583–AC58

---

**USDA—FSIS**

## 16. PRIOR LABELING APPROVAL SYSTEM: GENERIC LABEL APPROVAL

**Priority:**

Other Significant

**Legal Authority:**

21 USC 451 to 470; 21 USC 601 to 695

**CFR Citation:**

9 CFR 317; 9 CFR 327; 9 CFR 381; 9 CFR 412

**Legal Deadline:**

None

**Abstract:**

This rulemaking will continue an effort initiated several years ago by amending FSIS' regulations to expand the types of labeling that are generically approved. FSIS plans to propose that the submission of labeling for approval prior to use be limited to certain types of labeling, as specified in the regulations. In addition, FSIS plans to reorganize and amend the regulations by consolidating the nutrition labeling rules that currently are stated separately for meat and poultry products (in part 317, subpart B, and part 381, subpart Y, respectively) and by amending their provisions to set out clearly various circumstances under which these products are misbranded.

**Statement of Need:**

Expanding the types of labeling that are generically approved would permit Agency personnel to focus their resources on evaluating only those claims or special statements that have health and safety or economic implications. This would essentially eliminate the time needed for FSIS personnel to evaluate labeling features and allocate more time for staff to work on other duties and responsibilities. A major advantage of this proposal is that it is consistent with FSIS' current regulatory approach, which separates industry and Agency responsibilities.

**Summary of Legal Basis:**

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

**Alternatives:**

FSIS considered several options. The first was to expand the types of labeling that would be generically approved and consolidate into one part, all of the labeling regulations applicable to products regulated under the FMIA and PPIA and the policies currently contained in FSIS Directive 7220.1, Revision 3. The second option FSIS considered was to consolidate only the meat and poultry regulations that are similar and to expand the types of generically approved labeling that can be applied by Federal and certified foreign establishments. The third option and the one favored by FSIS was to amend the prior labeling approval system in an incremental three-phase approach.

**Anticipated Cost and Benefits:**

The proposed rule would permit the Agency to realize an estimated cost savings of $670,000 over 10 years. The proposed rule would be beneficial because it would streamline the generic labeling process, while imposing no additional cost burden on establishments. Consumers would benefit because industry would have the ability to introduce products into the marketplace more quickly.

**Risks:**

None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

**Agency Contact:**

Jeff Canavan
Labeling and Program Delivery Division
Department of Agriculture
Food Safety and Inspection Service
5601 Sunnyside Ave
Beltsville, MD 20705–4576
Phone: 301 504–0878
Fax: 301–504–0872
Email: jeff.canavan@fsis.usda.gov

**RIN:** 0583–AC59

---

**USDA—FSIS**

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

**Priority:**

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

**Legal Authority:**

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

**CFR Citation:**

9 CFR 303.1; 9 CFR 381.15

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

According to the provisions of the FMIA and PPIA, the Secretary has the authority to exempt certain human food products from the definition of a meat food product (21 U.S.C. 601(j)) or a poultry product (20 U.S.C. 454(f)) based on either of two factors: (1) The product contains only a relatively small proportion of livestock ingredients or poultry ingredients, or (2) the product historically has not been considered by consumers as a product of the meat food or poultry industry, and under such conditions as he or she may prescribe to ensure that the livestock or poultry ingredients are not adulterated and that the products are not represented as meat food or poultry products.

**Alternatives:**

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

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

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

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

**Anticipated Cost and Benefits:**

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

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

**Risks:**

None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Charles Gioglio
Labeling and Program Delivery Division
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 205–0279
Fax: 202 205–3625
Email: charles.gioglio@fsis.usda.gov

**RIN:** 0583–AD28

**USDA—FSIS**

**18. NEW POULTRY SLAUGHTER INSPECTION**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

21 USC 451 et seq

**CFR Citation:**

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

**Legal Deadline:**

None

**Abstract:**

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

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

**Statement of Need:**

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

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

**Summary of Legal Basis:**

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

**Alternatives:**

FSIS considered the following options in developing this proposal:

1) No action.

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

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

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

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

**Anticipated Cost and Benefits:**

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

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

**Risks:**

Salmonella and other pathogens are present on a substantial portion of poultry carcasses inspected by FSIS. Foodborne salmonella cause a large number of human illnesses that at times lead to hospitalization and even death. There is an apparent relationship between human illness and prevalence levels for salmonella in young chicken

carcasses. FSIS believes that through better allocation of inspection resources and the use of performance standards, it would be able to reduce the prevalence of salmonella and other pathogens in young chickens.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State

**Agency Contact:**

Dr. Daniel L. Engeljohn
Deputy Assistant Administrator, Office of Policy and Program Development
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 205–0495
Fax: 202 401–1760
Email: daniel.engeljohn@fsis.usda.gov

**RIN:** 0583–AD32

**USDA—FSIS**

**19. NOTIFICATION, DOCUMENTATION, AND RECORDKEEPING REQUIREMENTS FOR INSPECTED ESTABLISHMENTS**

**Priority:**

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

**Legal Authority:**

21 USC 612 to 613; 21 USC 459

**CFR Citation:**

9 CFR 417.4; ; 9 CFR 418

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

The option of no rulemaking is unavailable.

**Anticipated Cost and Benefits:**

Approximate costs: $5.0 million for labor and costs; $5.2 million for first year costs; $0.7 million average costs adjusted with a 3% inflation rate for following years. Total approximate costs: $10.2 million. The average cost of this proposed rule to small entities is expected to be less than one tenth of one cent of meat and poultry food products per annum. Therefore, FSIS has made an initial determination that this rule will not have a significant economic impact on a substantial number of small entities.

Approximate benefits: benefits have not been monetized because quantified data on benefits attributable to this proposed rule are not available. Non-monetary benefits include improved protection of the public health, improved HACCP plans, and improved recall effectiveness.

**Risks:**

In preparing regulations on the shipment of adulterated meat and poultry products by meat and poultry establishments, the preparation and maintenance of procedures for recalled products produced and shipped by establishments, and the documentation of each reassessment of the process control plans by the establishment, the Agency will consider any risks to public health or other pertinent risks associated with these actions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Victoria Levine
Program Analyst, Policy Issuances Division
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–5627
Fax: 202 690–0486
Email: victoria.levine@fsis.usda.gov

**RIN:** 0583–AD34

**USDA—FSIS**

**20. MANDATORY INSPECTION OF CATFISH AND CATFISH PRODUCTS**

**Priority:**

Other Significant

**Legal Authority:**

21 USC 601 et seq PL 110–249, sec 11016

**CFR Citation:**

9 CFR ch III, subchapter F (new)

**Legal Deadline:**

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

**Abstract:**

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. Amenable species must be inspected, so this rule will define inspection

requirements for catfish. The regulations will define ''catfish'' and the scope of coverage of the regulations to apply to establishments that process farm-raised species of catfish and to catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

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

**Anticipated Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Agency Contact:**

William Milton
Assistant Office of Catfish Inspection Programs
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–5735
Fax: 202 690–1742
Email: william.milton@fsis.usda.gov

**RIN:** 0583–AD36

---

**USDA—FSIS**

**21. ● ELECTRONIC FOREIGN IMPORT CERTIFICATES AND SANITATION STANDARD OPERATING PROCEDURES (SOPS) REQUIREMENTS FOR OFFICIAL IMPORT ESTABLISHMENTS**

**Priority:**

Other Significant

**Legal Authority:**

Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470);; Egg Products Inspection Act (EPIA)(21 U.S.C. 1031–1056)

**CFR Citation:**

9 CFR 304.3; 9 CFR 327.2, 327.4, ; 9 CFR 381.196, 391.197, 381.198;; 9 CFR 590.915, 590.920

**Legal Deadline:**

None

**Abstract:**

FSIS is proposing to amend meat, poultry, and egg products regulations to provide for the electronic submission of import product and establishment applications and certificates and delete the ''streamlined'' inspection procedures for Canadian product. In addition, FSIS is amending its regulations to require Sanitation Standard Operating Procedures (Sanitation SOPs) in official import inspection establishments.

**Statement of Need:**

FSIS is proposing these regulations to provide for the electronic submission of import product and establishment certificates to allow the electronic interchange and transmission of data to Agency's computer-based Public Health Information System (PHIS), which is currently under development. Providing an electronic format for imported certificates will enable the government-to-government exchange of data between FSIS and foreign customs and inspection authorities. Sanitation SOPs are written procedures that are developed and implemented by establishments to prevent direct contamination or adulteration of meat or poultry products. Sanitation SOPs are required at official (domestic) establishments. Current regulations are ambiguous concerning Sanitation SOP requirements for official import inspection establishments. FSIS is proposing to require that official import inspection establishments comply with the Sanitation SOPs regulations to eliminate that ambiguity and ensure that products do not become contaminated as they enter this country.

**Summary of Legal Basis:**

The authorities for this proposed rule are: the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470), Egg Products Inspection Act (EPIA)(21 U.S.C. 1031-1056) and the regulations that implement these Acts.

**Alternatives:**

The electronic processing of import certifications is voluntary, therefore, importers still have the option of using the current paper-based system. The Agency is proposing to require that official import inspection establishments adopt Sanitation SOPs to prevent direct contamination or adulteration of product. Therefore, no alternatives were considered.

**Anticipated Cost and Benefits:**

The opportunity cost of not amending the regulations would hinder the Agency's implementation of PHIS. The amendments that provide for the electronic interchange of data are voluntary, so establishments will not take them on unless the benefits outweigh the costs. It has been the Agency's expectation that official import establishments will maintain Sanitation SOPs, this proposed rule codifies that expectation. Therefore, the proposed amendment on sanitation requirements will have no costs to the industry. The proposed rule will facilitate FSIS's use of the PHIS system, enabling the electronic transmission, issuance, and authorization of imported product data. The PHIS will enable FSIS import inspection personnel to

verify and authorize shipments using electronic data, reducing inspector workload. The electronic exchange of certificate data will help to reduce the fraudulent alteration or reproduction of certificates. The Agency estimates that the electronic processing of import certificates will reduce the data-entry time for import inspectors, by 50 to 60 percent.

**Risks:**

None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**Agency Contact:**

Clark Danford
Director, International Policy Division, Office of Policy and Program Development
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–9824

**RIN:** 0583–AD39

---

**USDA—FSIS**

## 22. ● ELECTRONIC EXPORT APPLICATION AND CERTIFICATION AS A REIMBURSABLE SERVICE AND FLEXIBILITY IN THE REQUIREMENTS FOR OFFICIAL EXPORT INSPECTION MARKS, DEVICES, AND CERTIFICATES

**Priority:**

Other Significant

**Legal Authority:**

Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695); Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470); Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056)

**CFR Citation:**

9 CFR 312.8; 9 CFR 322.1. 322.2, ; 9 CFR 381.104, 381.105, 381.106; 9 CFR 590; 9 CFR 350.3

**Legal Deadline:**

None

**Abstract:**

The Food Safety and Inspection Service (FSIS) is proposing to amend the meat, poultry, and egg product inspection regulations to provide an electronic export application and certification process that will be available as an alternative to the paper-based application and certification method currently in use. The electronic export application and certification process will be available as a reimbursable inspection service. FSIS is also proposing to provide establishments that export meat, poultry, and egg products with flexibility in the official export inspection marks, and devices used and how the products are marked for export.

**Statement of Need:**

FSIS is proposing these regulations to implement the Public Health Information System (PHIS), a computer-based inspection information system currently under development. The PHIS will include automation of the export application and certification process. The current export application and certification regulations provide only for a paper-based process, this proposed rule will amend the regulations to provide for the electronic process. Additionally, this rule is needed to provide this automated services as a reimbursable certification service charged to the exporter.

**Summary of Legal Basis:**

The authorities for this proposed rule are: the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470), the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031-1056), and the regulations that implement these Acts. FSIS is proposing the electronic export application and certification process as a reimbursable service under the Agricultural Marketing Act 7 U.S.C. 1622(h), that provides the Secretary of Agriculture with the authority to: ''inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire.''

**Alternatives:**

The electronic processing of export applications and certifications is being proposed as a voluntary service, therefore, exporters have the option of continuing to use the current paper-based system. Therefore, no alternatives were considered.

**Anticipated Cost and Benefits:**

FSIS estimates that it will take inspection personnel 1 hour to process an electronic application and issue an electronic certificate. Based on a workload of accessing and processing an estimated 350,000 applications/certificates per year, at a base time rate of $49.93 per hour, the cost of recouping the inspector's labor costs for 2009 would be $17.4 million. The amount charged to the exporter depends upon the number of electronic applications submitted. The use of the electronic export application and certificate system is voluntary. Therefore, exporters will not use this service unless the benefits outweigh the cost. The electronic export application and certificate process will reduce and expedite industry workload by eliminating the physical handling and processing of paperwork. The electronic exchange of export information between the U.S. and foreign governments will help reduce the fraudulent alternation or reproduction of certificates. The electronic system will process the applications and certificates will permit exporters to move their products faster, thereby increasing the amount of revenues received at a faster rate. The electronic system will provide a streamlined and integrated method of processing export applications and certificates.

**Risks:**

None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**Agency Contact:**

Clark Danford
Director, International Policy Division, Office of Policy and Program Development
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–9824

**RIN:** 0583–AD41

**USDA—FSIS**

**FINAL RULE STAGE**

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

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

21 USC 451 et seq; 21 USC 601 et seq

**CFR Citation:**

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

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

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

**Anticipated Cost and Benefits:**

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

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

**Risks:**

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

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/27/01 | 66 FR 12590 |

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End | 05/29/01 | |
| NPRM Comment Period Extended | 07/03/01 | 66 FR 35112 |
| NPRM Comment Period End | 09/10/01 | |
| Interim Final Rule | 06/06/03 | 68 FR 34208 |
| Interim Final Rule Effective | 10/06/03 | |
| Interim Final Rule Comment Period End | 01/31/05 | |
| NPRM Comment Period Reopened | 03/24/05 | 70 FR 15017 |
| NPRM Comment Period End | 05/09/05 | |
| Affirmation of Interim Final Rule | 03/00/10 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**Agency Contact:**

Dr. Daniel L. Engeljohn
Deputy Assistant Administrator, Office of Policy and Program Development
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 205–0495
Fax: 202 401–1760
Email: daniel.engeljohn@fsis.usda.gov

**RIN:** 0583–AC46

---

**USDA—FSIS**

## 24. FEDERAL–STATE INTERSTATE SHIPMENT COOPERATIVE INSPECTION PROGRAM

**Priority:**

Other Significant

**Legal Authority:**

PL 110–246 (section 11015)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, December 18, 2009.

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

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

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

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

**Anticipated Cost and Benefits:**

FSIS is analyzing the costs of this proposed rule to industry, FSIS, State and local governments, small entities, and foreign countries. Participation in the new Federal-State cooperative program will be optional. Thus, the costs and benefits associated with the proposed rule will depend on the number of States and establishments that chose to participate. Very small and certain small establishments State-

inspected establishments that are selected to participate in the program are likely to benefit from the program because they will be permitted sell their products to consumers in other States and foreign countries.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/16/09 | 74 FR 47648 |
| NPRM Comment Period End | 11/16/09 | |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Federalism:**

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

**Agency Contact:**

Rachel Edelstein
Director, Policy Issuances Division
Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–0399
Fax: 202 690–0486
Email: rachel.edelstein@fsis.usda.gov

**RIN:** 0583–AD37

## USDA—Rural Business-Cooperative Service (RBS)

### PRERULE STAGE

### 25. RURAL ENERGY SELF–SUFFICIENCY INITIATIVE—SECTION 9009

**Priority:**

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

**Legal Authority:**

PL 110–246

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Secretary shall establish a Rural Energy Self-Sufficiency Initiative (grant program) to provide financial assistance for the purpose of enabling eligible rural communities to substantially increase the energy self-sufficiency of the eligible rural communities.

Business Programs has the primary role in program implementation and will work in consultation with the Forest Service on Community Wood Energy Program. The Forest Service has operated a program in the past to assist rural school systems in the use of alternative fuels for heating physical plants. Their expertise will assist Rural Development in promulgating a valuable program, well suited to the needs of rural communities.

**Statement of Need:**

This is a new grant program authorized by the Farm Bill. The purpose of Section 9009, Rural Energy Self-Sufficiency Initiative, is to provide financial assistance to enable eligible rural communities to substantially increase the energy self-sufficiency.

**Summary of Legal Basis:**

The Rural Energy Self-Sufficiency Initiative was authorized by the Food, Conservation, and Energy Act of 2008, which made available $5 million annually in discretionary funding through 2012, but no funds have been made available to date.

**Alternatives:**

An alternative would be to publish a proposed rule without an Advance Notice of Proposed Rulemaking. The Farm Bill currently does not clearly define eligible rural communities or what eligible entities can apply on behalf of an eligible community. There are no maximum or minimum grant amounts set in this program. Additionally, the Farm Bill does not include any scoring requirements to determine who would receive a grant under the program. There are other program components not defined in the statute. Because of the limited discretionary funding for this program, scoring requirements would need to be determined based on extremely focused parameters. A determination would need to be made as to the size of the average project, particularly when you are considering a community submitting an application to develop and install an integrated renewable energy system. The program will need to clearly define an eligible rural community and what type of applicants would be eligible.

**Anticipated Cost and Benefits:**

It is anticipated that there will be costs directly attributable to the contractor, which is assisting with drafting the notice. Other costs would be internal costs associated with the promulgation of the rule. The Agency is confident that the regulations will contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for assistance under this program. Benefits accruing to the publishing of an advance notice would enable the Agency to use the public comments to develop a more focused proposed rule.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 12/00/09 | |
| NPRM | 07/00/10 | |
| NPRM Comment Period End | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Local

**Federalism:**

Undetermined

**Agency Contact:**

Anthony Ashby
Loan Specialist
Department of Agriculture
STOP 3224
1400 Independence Avenue SW, DC 20250
Phone: 202 720–0661
Fax: 202 720–6003
Email: anthony.ashby@wdc.usda.gov

**RIN:** 0570–AA77

**USDA—RBS**

**PROPOSED RULE STAGE**

### 26. GRANTS FOR EXPANSION OF EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES IN RURAL AREAS—SECTION 6023

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This is a new program created by the Food, Conservation and Energy Act of 2008 (2008 Farm Bill). The purpose of the section is to provide grants to nonprofit organizations to expand and enhance employment opportunities for individuals with disabilities in rural areas.

**Statement of Need:**

There is no existing program regulation. USDA Rural Business-Cooperative Service (RBS) is promulgating regulations to implement section 6023. The regulation will provide assistance, which includes grants to nonprofit organizations or consortium of nonprofit organization that have a significant focus on serving the needs of individuals with disabilities. Assistance will be awarded on a competitive basis. Regulatory implementation may include certain existing requirements identified in 7 CFR for civil rights requirements, grant servicing requirements, and so forth.

**Summary of Legal Basis:**

The Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas is authorized by the Food, Conservation and Energy Act of 2008. The purpose of the section is to provide grants to nonprofit organizations to expand and enhance employment opportunities for individuals with disabilities in rural areas.

**Alternatives:**

There are no alternatives to issuing a proposed regulation in order to allow the public opportunity to provide comments on the program requirements.

**Anticipated Cost and Benefits:**

The only costs, aside from contractor costs, are internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulation will contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the Agency as well as organizations who utilize the program.

**Risks:**

None noted.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/10 | |
| NPRM Comment Period End | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Andrew Jermolowicz
Assistant Deputy Administrator
Department of Agriculture
Rural Business–Cooperative Service
STOP 3250
1400 Independence Avenue, SW
Washington, DC 20250–3250
Phone: 202 720–8460
Fax: 202–720–4641

**RIN:** 0570–AA72

**USDA—RBS**

### 27. BIOREFINERY ASSISTANCE PROGRAM—SECTION 9003

**Priority:**

Other Significant

**Legal Authority:**

PL 110–246

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The purpose of section 9003 is to assist in the development of new and emerging technologies for the development of advanced biofuels. Advanced biofuels are fuels derived from renewable biomass other than corn kernel starch. The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. Assistance includes grants and guaranteed loans. Grants will be awarded on a competitive basis. Eligible entities include individuals, entities, Indians tribes, units of State or local governments, farm cooperatives, farmer cooperative organizations, association of agricultural producers, National Laboratories, institutions of higher learning, rural electric cooperatives, public power entities, or a consortium of any of the entities. Regulatory implementation may include certain requirements identified in existing Rural Business-Cooperative Service regulations for the Business and Industry Guaranteed Loan and the Rural Energy for America programs.

**Statement of Need:**

The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. The program was originally announced in the Federal Register as an Advanced Notice of Proposed Rulemaking on November 20, 2008.

**Summary of Legal Basis:**

The Biorefinery Assistance program was authorized by the Food, Conservation, and Energy Act of 2008, which made available $75,000,000 in mandatory funding for 2009 and $245,000,000 in mandatory funding for 2010, till expended. Additionally, the 2008 Farm Bill provided an authorization to appropriate up to $150,000,000 in discretionary funding for each fiscal year 2009 through 2012. The program provides loan guarantees for the development, construction and retrofitting of commercial-scale biorefineries, and grants to help pay for the development and construction costs of demonstration-scale biorefineries. The purpose is to assist in the development of new and emerging technologies for the development of advanced biofuels.

**Alternatives:**

A Notice of Funding Availability was published in the Federal Register on November 20, 2008, to implement the program for fiscal year 2009. Permanent regulation need to be implemented to provide funding in 2010 and further clarify of the program

**Anticipated Cost and Benefits:**

It is anticipated that there will be costs directly attributable to the contractor, which is assisting with drafting the proposed rule. Other costs would be internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing of a proposed rule would clarify the process, payments, eligibility and understanding of any ambiguity conveyed in the initial announcement of the program. Additional benefits stem from the ability of the public and interested parties to comment on program and consider issues concerning the geographic location and demographic composition of locatable projects as well as the ownership criteria.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 11/20/08 | 73 FR 70542 |
| ANPRM Comment Period End | 01/20/09 | |
| NPRM | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

William C. Smith
Loan Specialist
Department of Agriculture
Rural Business–Cooperative Service
STOP 3224
1400 Independence Avenue SW
Washington, DC 20250–3224
Phone: 202 205–0903
Fax: 202 720–6003
Email: william.smith@wdc.usda.gov

**RIN:** 0570–AA73

**USDA—RBS**

## 28. RURAL BUSINESS RE–POWERING ASSISTANCE—SECTION 9004

**Priority:**

Other Significant

**Legal Authority:**

PL 110–246

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The proposed action will encourage biorefineries existing at the time the 2008 Farm Bill became law to replace fossil fuels used to produce heat or power used in their operation by making payments for installation of new systems that use renewable biomass and/or new production of energy from renewable biomass.

Payments may be made under section 9004 to any biorefinery that meets the requirements of this section for a period determined by the Secretary. The Secretary shall determine the amount of payments to be made after considering factors addressing fossil fuel offsets and the cost effectiveness of renewable biomass systems.

**Statement of Need:**

The new regulations for the program will clarify the application process and definitively provide rules and regulation regarding the payment process. These changes are essential to clarify for verification and measurement of the energy produced which is the basis for eighty percent of payments under this program.

**Summary of Legal Basis:**

The Repowering Assistance program was authorized by the Food, Conservation, and, Energy Act of 2008, which made available $35,000,000 in mandatory funding for 2009. A Notice of Funding Availability (NOFA) was published on June 12, 2009, making $20 million available and $35 million will be available in 2010. The 2008 Farm Bill also authorizes $15,000,000 in discretionary funding to be appropriated for each fiscal year 2009 through 2012. The program provides for the payments to provide incentives to biorefineries to use renewable biomass for heat and or power. The purpose is to reduce the dependence of biofuel producers on fossil fuels and to develop renewable biomass as an alternative energy source. The proposed new regulations are an administrative, rather than legislative, initiative.

**Alternatives:**

Other than issuing a NOFA with the possibility that all funds available for this program would be obligated, there is no alternative to issuing a proposed regulation. The proposed regulation provides an opportunity for public comments on aspects of the program such as level of payments, geographical eligibility, time frame of prospective payments and ownership criteria.

**Anticipated Cost and Benefits:**

The only costs, aside from contractor costs, are internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing from a proposed rule would be attributable to the opportunity of public comments which are believed to improve program payment target levels and shed light on the associated needs and applicants. Publication and refinement of measurement and verification protocols used in making payments is expected as result of comments and experience gained from initiating the program.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |
| NPRM Comment Period End | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Frederick Petok
Loan Specialist
Department of Agriculture
Rural Business–Cooperative Service
STOP 3225
1400 Independence Avenue SW
Washington, DC 20250–3225
Phone: 202 690–0784
Fax: 202 720–2213

**RIN:** 0570–AA74

**USDA—RBS**

## 29. RURAL BUSINESS CONTRACTS FOR PAYMENTS FOR THE BIOENERGY PROGRAM FOR ADVANCED BIOFUELS—SECTION 9005

**Priority:**

Other Significant

**Legal Authority:**

PL 110–234

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Bioenergy Program for Advanced Biofuels directs the Secretary of Agriculture to make payments to eligible producers to support and ensure an expanding production of advanced biofuels. Advanced biofuels are defined as 'fuel derived from renewable biomass other than corn kernel starch' in The Food, Conservation, and Energy Act of 2008. The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. To receive a payment, an eligible producer shall enter into a contract with the Secretary of Agriculture for production of advanced biofuels. The basis for payments under this program are the quantity and duration of production of biofuel produced by an eligible producer, the net nonrenewable energy content of the advanced biofuel, and other appropriate factors as determined by the Secretary of Agriculture.

**Statement of Need:**

The new regulations for the program known as the Bioenergy Program for Advanced Biofuels will clarify the application process, eligibility, payment formula's and eligible products and provide substantive rules and regulation regarding the payment process. These regulations are essential to allow for verification and measurement of the advanced biofuel development promoted by this program.

**Summary of Legal Basis:**

The Bioenergy Program for Advanced Biofuels program was authorized by the Food, Conservation, and Energy Act of 2008, which made mandatory funding available of $55,000,000 in for fiscal year (FY) 2009, $55,000,000 in FY 2010, $85,000,000 in FY 2011 and $105,000,000 in FY 2012. A Notice of Funding Availability (NOFA) was published on June 12, 2009 and that made $35 million available in 2009. The remaining $20 million will be available in 2010 in addition to $55 million for 2010, included in the Farm Bill. An additional $25,000,000 in discretionary funding is authorized to be appropriated for each fiscal year 2009 through 2012 may be made available. The program provides for the payments to support and ensure expanding the production of advanced biofuels.

**Alternatives:**

A NOFA was published in June 2009 for immediate program implementation. Permanent regulations are required to provide funding for 2010.

**Anticipated Cost and Benefits:**

It is anticipated that there will be costs directly attributable to the contractor, which is assisting with drafting the proposed rule. Other costs would be internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing of a proposed rule would clarify the process, payments, eligibility and understanding of any ambiguity conveyed in the initial announcement of the program. Additional benefits stem from the ability of the public and interested parties to comment on program and consider issues concerning the geographic location and demographic composition of locatable projects as well as the ownership criteria.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |
| NPRM Comment Period End | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Diane Berger
Loan/Grant Analyst
Department of Agriculture
Rural Business–Cooperative Service
STOP 3225
1400 Independence Avenue SW
Washington, DC 20250–3225
Phone: 202 260–1508
Fax: 202–720–6003
Email: diane.berger@wdc.usda.gov

**RIN:** 0570–AA75

**USDA—RBS**

## 30. RURAL ENERGY FOR AMERICA PROGRAM—SECTION 9007

**Priority:**

Other Significant

**Legal Authority:**

PL 110–246

**CFR Citation:**

7 CFR 4280–B; 7 CFR 4280–D

**Legal Deadline:**

None

**Abstract:**

The Renewable Energy and Energy Efficiency Program (section 9006 of the Farm Security and Rural Investment Act of 2002 (FSRIA)) is being replaced with a new program titled the Rural Energy for America Program (REAP), section 9007 of The Food, Conservation, and Energy Act of 2008. The new program will provide grants for energy audits and renewable energy development assistance; and financial assistance for energy efficiency improvements and renewable energy

systems. The program will increase energy independence, promote resource conservation, diversify markets for agricultural and forestry products, create jobs, and enhance economic development in rural economies. Eligible entities based on the sub-program of the sub-section include units of State, tribal, or local government; land grant or other institutions of higher education; rural electric cooperatives or public power entities; agricultural producers; rural small businesses; and any similar entity as determined by the Secretary. The bill directs that at least 20 percent of funds be used for grants of up to $20,000 each. The bill merges the energy audit program and the Renewable Energy Systems and Energy Efficiency Improvements programs.

The Rural Business-Cooperative Service (RBS) intends to publish a proposed rule to implement changes to RD Instruction 4280-B and the Energy Audit and Renewable Energy Development Assistance grant regulations in RD Instruction 4280-C. The changes will incorporate provisions from the Farm Bill and other initiatives intended to enhance program delivery and Agency oversight.

**Statement of Need:**

Changes are needed to the regulation for the program known as the Rural Energy for America Program (REAP), due to the changes required by the 2008 Farm Bill. The program was previously called the Renewable Energy Systems and Energy Efficiency Improvement program and was created by the 2002 Farm Bill. In addition to the change in the title of the program, several regulatory changes are needed for REAP as outlined above. These changes are required to comply with current statutes. The program was implemented utilizing a notice of funding availability in FY 2009. Permanent regulation is required to implement the program in 2010.

**Summary of Legal Basis:**

The Rural Energy for America program was authorized by the Food, Conservation, and Energy Act of 2008, which made available $55,000,000 in mandatory funding for 2009, $60,000,000 mandatory funding for 2010, $70,000,000 mandatory funding for 2011 and 2012. The Farm Bill authorized to be appropriated $25,000,000 in discretionary funding for each fiscal year 2009 through 2012. The program provides for grants and guaranteed loan for renewable energy systems and energy efficiency improvements, and grants for feasibility studies and energy audit and renewable energy development assistance. The purpose of the program is to reduce the energy consumption and increase renewable energy production. The regulations are an administrative and a legislative initiative.

**Alternatives:**

There is no alternative to issuing a proposed regulation, which allows the public an opportunity to provide comments on the program requirements. Permanent regulations are required to provide funding in 2010.

**Anticipated Cost and Benefits:**

The only costs, aside from contractor costs, are internal costs associated with the promulgation of the proposed rule. The Agency is confident that the regulations contain sufficient safeguards to mitigate any risk associated with a proposed rule and would be a benefit to the agency as well as potential applicants considering applying for payments under this program. Benefits accruing to the publishing from a proposed rule would be attributable to the opportunity of public comments which are believed to improve program implementation and impact.

**Risks:**

The proposed action does not mitigate risk to the public health or safety or to the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |
| NPRM Comment Period End | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Kelley Oehler
Deputy Loan Specialist
Department of Agriculture
Rural Business–Cooperative Service
STOP 3225
1400 Independence Avenue SW
Washington, DC 20250–3225
Phone: 202 720–6819
Email: kelley.oehler@wdc.usda.gov

**RIN:** 0570–AA76

**USDA—RBS**

## FINAL RULE STAGE

### 31. RURAL MICROENTREPRENEUR ASSISTANCE PROGRAM—SECTION 6022

**Priority:**

Other Significant

**Legal Authority:**

PL 110–246

**CFR Citation:**

None

**Legal Deadline:**

None

**Abstract:**

The Food Conservation, and Energy Act of 2008 (the Act) includes Section 6022 establishing the Rural Microentrepreneur Assistance Program (RMAP). The Act mandates that the Secretary of Agriculture establish a program to make loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. The Act further mandates that entities will use funds borrowed from the Agency to make microloans of not more than $50,000 to rural microenterprises for eligible purposes; that the Agency will make grants to provide business based training and technical assistance; and that the Agency will provide funding to improve the capacity of rural Microenterprise Development Organizations (MDOs) to provide services to rural microenterprise clients.

Upon enactment of the Act, a committee was formed to discuss policy, implementation, and processes needed to move the program forward. In mid-January, 2009 a listening forum was held at USDA. The object of the listening forum was to allow public comment regarding the statute and to obtain opinions regarding the implementation of the program. The Rural Business-Cooperative Service, Business Programs is currently preparing a proposed rule with an anticipated publication date of late December 2009. The proposed rule is based on verbiage in the statute, comments made at the listening forum, research of similar-but not the same-types of programs within USDA and at other agencies, and the experience of the writers, one of whom worked in or managed Federal

microentrepreneurship programs for 13 years. The goal of the proposed rule is to obtain public comment, revise the rule accordingly, and ensure a sound program. Comments received from the proposed rule will be used as a basis for publication of a final rule which is anticipated for the spring of 2010.

The proposed rule will include instructions for the management of loan and grant programming and for the management of the ultimate recipient microloan portfolio. Any organization receiving a loan under the program will be expected to capitalize a revolving loan fund which will make loans of $50,000 or less to ultimate recipients. Any organization that receives a loan will also be automatically eligible to receive a grant so that it may provide an integrated program of micro-level lending coupled with business based training and technical assistance for its microborrowers. Grants will also be provided to build the capacity of rural MDOs so that they may improve their operations and services for the end users, or so that they may improve the operational capacity of other MDOs to provide services to end users.

This program will require a complete new set of regulations.

**Statement of Need:**

The new regulation for the program will be user friendly and responsive to industry comments. Publication of the proposed rule is crucial to program implementation. The program will directly create new businesses, assist with the expansion of existing microbusinesses (for purposes of this program, a microenterprise is a rural business that employs 10 or fewer Full Time Employees (FTE)), create jobs, increase the flow of tax dollars to rural communities, and add lasting value in terms of rural community impact.

**Summary of Legal Basis:**

The RMAP was authorized by the Food Conservation and Energy Act of 2008. The Act establishes the Rural Microentrepreneur Assistance Program and mandates that the new program will make loans and grants to support microentrepreneurs in the development and ongoing success of rural microenterprises. It further mandates that entities will use funds borrowed from the Agency to make microloans of not more than $50,000 to rural microenterprises for eligible purposes; that the Agency will make grants to provide business based training and technical assistance; and that the Agency will provide funding to improve the capacity of rural MDOs to provide services to rural microenterprise clients.

The purpose of the program is to increase access to capital and business based training in rural areas for rural business owners and potential business owners at the start up and micro levels.

**Alternatives:**

The proposed rule process is our only current route for implementation. Funding for the initial four years (2009-2012) of the program is mandatory and FY2009 funding will be expendable in FY2010. The proposed rule will allow the Agency to use both years' funding in the inaugural year of program implementation.

**Anticipated Cost and Benefits:**

Costs:

Initial costs include the cost of the listening conference; staff time; and the cost of the regulation writing contractor that works in close concert with staff.

Ongoing costs include a minimal increase of one FTE, and space for same, at the National Office level. The state offices are not currently under consideration for more FTEs as a result of this program.

Other costs will/do include the cost of automation of distribution of funding, loan servicing, grant servicing, repayment systems, and oversight systems. The assigned office (Specialty Programs Division) has been working with the Information Technology (IT) offices to implement the program through RULSS which is the newer generation of agency automation systems and is the most flexible in terms of meeting the needs of the statute. Finally, Training will be required for field staff.

Cost Mitigation—To mitigate implementation costs the proposed rule has considered existing programs to ensure that implementation will be less process based and more results driven when compared to other programs. Automated processes will help ensure efficiency. Use of existing field staff will keep new FTEs to a minimum.

Benefits:

The initial benefits to program implementation include the addition of a small rural business lending program that increases access to Rural Development programming by adding to the starting end of the business financing continuum of services. The program allows Rural Development to open its doors to rural clients at the very beginning level of the business start-up and initial growth phases, and provide assistance to businesses that are often too small to be considered viable for a bank loan. The long term benefits to program implementation include long term availability of this new pathway to assist rural start-up businesses; increased access to business capital in rural areas, at a grass roots level, and often to pre-bankable ultimate recipients; expansion of business opportunities in rural areas; increased tax flow as businesses become profitable; increased job creation and rural job retention as new and existing microbusinesses sprout and grow; support of micro level entities producing organic food product, locally grown food product, and locally manufactured goods for intra and interstate export; service industry growth; increased opportunity for rural youth; and legal immigrants; and increased exposure of Rural Development funding programs to the target constituency.

Mandatory funding is set at $4 million for FY2009; $4 million for FY2010; $4 million for FY2011; and $3 million for FY2012. The statute authorizes up to $40 million per year for each of the years in addition to mandatory funding.

**Risks:**

Program risks include making of loans and grants to multiple types of entities for multiple purposes with a singular goal; ability to select appropriately capable lending and training entities; reliance on selected entities for sound microloan underwriting and appropriate portfolio management; and availability of enough grant funding for ongoing technical assistance in the out years. We anticipate mitigating these risks via sound regulatory guidance, appropriate training, and clear communication of expectations to selected participants. Further, the statute is based in part on a successful non-USDA program of a similar nature with which many of the stakeholders and selected participants will be familiar providing this agency with a level of confidence.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/07/09 | 74 FR 51714 |
| NPRM Comment Period End | 11/23/09 | |
| Final Rule | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Jody Raskind
Director, Specialty Lenders Division
Department of Agriculture
Rural Business–Cooperative Service
STOP 3225
1400 Independence Avenue SW
Washington, DC 20250–3224
Phone: 202 690–1400
Email: jody.raskind@wdc.usda.gov

Lori Washington
Loan Specialist, Specialty Lenders Division
Department of Agriculture
Rural Business–Cooperative Service
STOP 3225
1400 Independence Avenue SW
Washington, DC 20250
Phone: 202 720–9815
Fax: 202 720–2213
Email: lori.washington@wdc.usda.gov

**RIN:** 0570–AA71

BILLING CODE 3410–90–S

## DEPARTMENT OF COMMERCE (DOC)

### Statement of Regulatory and Deregulatory Priorities

The President's Fiscal Year (FY) 2010 Budget details how this Administration plans to lift our economy out of recession, and lay a new foundation for long-term growth and prosperity. The Department of Commerce (the ''Department'' or ''Commerce'') is aligning itself to contribute to both of these goals.

Established in 1903, the Department of Commerce is one of the oldest Cabinet-level agencies in the Federal Government. The Department's mission is to create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which are responsible for managing a diverse portfolio of programs and services, ranging from trade promotion and economic development assistance to broadband and the National Weather Service. The Department currently employs approximately 53,000 people around the world, although this workforce will more than double temporarily in 2010, due to the decennial census.

The Department touches Americans daily, in many ways — making possible the daily weather reports and survey research; facilitating technology that all of us use in the workplace and in the home each day; supporting the development, gathering, and transmission of information essential to competitive business; enabling the diversity of companies and goods found in America's and the world's marketplace, and supporting environmental and economic health for the communities in which Americans live.

Commerce has a clear and compelling vision for itself, for its role in the federal government, and for its roles supporting the American people, now and in the future. To achieve this vision, the Department works in partnership with businesses, universities, communities, and workers to:

- **Innovate** by creating new ideas through cutting-edge science and technology from advances in nanotechnology, to ocean exploration, to broadband deployment and by protecting American innovations through the patent and trademark system;
- Support **entrepreneurship and commercialization** by enabling community development and strengthening minority businesses and small manufacturers;
- Maintain U.S. economic **competitiveness** in the global marketplace by promoting exports, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;
- Provide effective management and **stewardship** of our nation's resources and assets to ensure sustainable economic opportunities; and
- Make informed policy decisions and enable better understanding of the economy by providing **accurate economic and demographic data**.

The Department is a vital resource base, a tireless advocate, and Cabinet-level voice for job creation.

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

### Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only the National Oceanic and Atmospheric Administration (NOAA) will be planning actions that are considered the ''most important'' significant preregulatory or regulatory actions for FY 2010. 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.

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

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 and climate services vital to public safety and to the Nation's economy, such as weather forecasts, drought forecasts and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving the departmental goal of promoting stewardship by providing assessments of the global environment.

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

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

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

The 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, adaptation and other societal decisions can be made.

In the environmental stewardship area, NOAA's goals include: rebuilding and maintaining strong U.S. fisheries by using market-based ecosystem approaches to management; increasing the populations of depleted, threatened, or endangered species and marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: understanding climate change science and impacts, and communicating that understanding to government and private sector stakeholders enabling them to adapt; continually improving the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

*Magnuson-Stevens Fishery Conservation and Management Act*

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3-200 nautical miles). Among the several hundred rulemakings that NOAA plans to issue in fiscal year 2010, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. NOAA issues regulations to implement FMPs and FMP amendments. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NOAA by which it must exercise its rulemaking responsibilities. FMPs and FMP amendments for Atlantic highly migratory species, such as bluefin tuna, swordfish, and sharks, are developed directly by NOAA, not by FMCs.

FMPs address a variety of issues including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by market-based systems such as catch shares, which permit share holders to harvest a quantity of fish and which can be traded on the open market. Harvest limits based on the best available scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds, and establishing seasonal and area closures to protect fishery stocks.

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

*Marine Mammal Protection Act*

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

*Endangered Species Act*

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

*NOAA's Regulatory Plan Actions*

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in the Department's Regulatory Plan, NMFS is undertaking four actions that rise to the level of ''most important'' of the Department's significant regulatory actions, and thus are included in this year's Regulatory Plan. The four actions implement provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as reauthorized in 2006. The first action may be of particular interest to international

trading partners as it concerns the Certification of Nations Whose Fishing Vessels are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources. A description of the four Regulatory Plan actions is provided below.

**Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported or Unregulated Fishing or Bycatch of Protected Living Marine Resources** (0648-AV51). NOAA's 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 would be identified in a biennial report to Congress, as required under Section 403 of the Magnuson-Stevens Fishery Conservation and Management Act. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels.

**Magnuson-Stevens Fishery Conservation and Management Act Provisions and Interjurisdictional Fisheries Act Disaster Assistance Programs** (0648-AW38). This final rule would clarify the fishery disaster assistance provisions under both the Magnuson-Stevens Fishery Conservation and Management Act and the Interjurisdictional Fisheries Act. The regulations would establish definitions, characteristics of commercial fishery failures and fishery resource disasters, and the administrative process NMFS will follow in processing disaster assistance requests.

**Amendment 16 to the Northeast Multispecies Fishery Management Plan** (0648-AW72). The Northeast Multispecies Fishery Management Plan includes species such as cod, haddock and various flounders. This long-term plan will implement the necessary reductions to end overfishing as required by the Magnuson-Stevens Fishery Conservation and Management Act.

**Provide Guidance for the Limited Access Privilege Program** (0648-AX13). The Magnuson-Stevens Fishery Conservation and Management Act as reauthorized in 2006, included a section on Limited Access Privilege Programs (LAPPs). To assist the Councils in developing and implementing LAPPs, this rulemaking includes guidance on: (1) procedures for developing LAPPs; (2) eligibility criteria; (3) Council approval of LAPP programs; (4) initial allocations; (5) restrictions on the sale and lease of privileges; (6) recovery of administrative costs; and (7) program review and monitoring.

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

**Bureau of Industry and Security**

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

*Major Programs and Activities*

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

BIS is also responsible for:

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

## DOC—National Oceanic and Atmospheric Administration (NOAA)

### PROPOSED RULE STAGE

### 32. AMENDMENT 16 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

**Priority:**

Other Significant

**Legal Authority:**

16 USC 1801 et seq

**CFR Citation:**

50 CFR 648

**Legal Deadline:**

None

**Abstract:**

This action would implement management measures to continue rebuilding overfished stocks, revise biological reference points, and develop annual catch limits and accountability measures. This action would also adopt new sectors as an alternative effort control to days-at-sea restrictions.

**Statement of Need:**

Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) was developed by the New England Fishery Management Council (Council) as part of the biennial adjustment process established in the

FMP to evaluate the status of the all NE multispecies stocks; update status determination criteria for all NE multispecies stocks based upon the best scientific information available; and to revise management measures necessary to end overfishing, rebuild overfished NE multispecies stocks, and mitigate the adverse economic impacts of increased effort controls. In addition, this action would adopt rebuilding programs for four NE multispecies stocks newly classified as being overfished and subject to overfishing and incorporate Atlantic wolffish into the management unit. Finally, Amendment 16 would establish procedures for specifying allowable biological catch (ABC) and annual catch limits (ACLs) and implement accountability measures (AMs) for each stock managed by the FMP, as required by recent revisions to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Summary of Legal Basis:**

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

**Alternatives:**

Amendment 16 includes numerous measures designed to achieve the goals and objectives of the FMP and the Magnuson-Stevens Act, including reporting and record keeping requirements, allocation criteria, effort controls, and administrative and enforcement provisions. Each measure includes a range of alternatives, including the no action alternative. Of particular note, Amendment 16 authorizes 17 new sectors and revises measures for the existing two sectors and. In addition, Amendment 16 includes six options for potential sector contributions (i.e., the stock allocations that each individual vessel could bring to a particular sector). Amendment 16 also includes four options for non-sector effort controls and three alternatives for commercial non-sector accountability measures. Finally, the Council considered several additional management measures under Amendment 16, including several alternative management regimes such as area-based management and a days-at-sea (DAS) performance plan, but these provisions were not included in this action at this time.

**Anticipated Cost and Benefits:**

The costs and benefits associated with measures under Amendment 16 are described in detail within the associated draft environmental impact statement (EIS). A final EIS that would include updated analysis of economic impacts of this action is currently being developed for submission and review by NMFS. Due to uncertainty in the number of vessels that may participate in sectors, it is difficult to precisely quantify the economic impacts of this action. However, should all affected vessels elect not to participate in sectors and remain under the current DAS management regime, the potential adverse economic impacts are expected to be about $15.5 million. Potential benefits of Amendment 16 include: Ending overfishing and ensuring that overfished stocks rebuild within established rebuilding time periods, developing a comprehensive procedure to establish ABCs and ACLs for each stock that more systematically incorporates both biological and management uncertainty into the FMP, increasing the accuracy and timeliness of catch monitoring data throughout the fishery, and increasing the efficiency and economic return of vessel operations by promoting participation in sectors. Costs associated with this action include additional monitoring and reporting costs for vessels; additional administration and membership costs to vessels participating in sectors; costs associated with complying with new gear requirements in some areas; opportunity costs associated with continued effort controls necessary to rebuild overfished stocks; and increased administration, monitoring, and enforcement costs to implement sector management.

**Risks:**

The risks associated with not implementing measures proposed in Amendment 16 include the potential for continued overfishing on several stocks and delayed rebuilding of overfished stocks beyond established rebuilding timelines. Moreover, the continuation of existing measures would maintain exclusive reliance upon DAS measures to manage the fishery, forgoing efficiency gains resulting from expanded participation in sectors, one form of a catch-share management regime. Further, without this rulemaking, the NE Multispecies FMP would not be able to establish a process for setting ABCs, ACLs, and AMs for managed stocks by 2011, as required by the Magnuson-Stevens Act. Finally, because this action would incorporate Atlantic wolffish into the FMP and specify management measures to rebuild this species, failure to implement this action could increase the likelihood that this species would be listed under the Endangered Species Act and result in substantial economic impacts beyond those considered under this action.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 10/23/09 | 74 FR 54773 |
| Comment Period End | 12/22/09 | |
| NPRM | 12/00/09 | |
| NPRM Comment Period End | 01/00/10 | |
| Final Rule | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Patricia A. Kurkul
Regional Administrator, Northeast Region, NMFS
Department of Commerce
National Oceanic and Atmospheric Administration
55 Great Republic Way
Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AW72

---

**DOC—NOAA**

**33. PROVIDE GUIDANCE FOR THE LIMITED ACCESS PRIVILEGE PROGRAM**

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

**Summary of Legal Basis:**

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

**Alternatives:**

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

**Anticipated Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Alan Risenhoover
Director, Office of Sustainable Fisheries
Department of Commerce
National Oceanic and Atmospheric Administration
1315 East–West Highway
Room 13362
Silver Spring, MD 20910
Phone: 301 713–2334
Fax: 301 713–0596
Email: alan.risenhoover@noaa.gov

**Related RIN:** Previously reported as 0648–AV48

**RIN:** 0648–AX13

**DOC—NOAA**

## FINAL RULE STAGE

### 34. CERTIFICATION OF NATIONS WHOSE FISHING VESSELS ARE ENGAGED IN ILLEGAL, UNREPORTED OR UNREGULATED FISHING OR BYCATCH OF PROTECTED LIVING MARINE RESOURCES

**Priority:**

Other Significant

**Legal Authority:**

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

**CFR Citation:**

50 CFR 300

**Legal Deadline:**

None

**Abstract:**

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

**Summary of Legal Basis:**

NOAA is proposing these regulations pursuant to its rulemaking authority under sections 609 and 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 USC 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 Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 06/11/07 | 72 FR 32052 |
| ANPRM Comment Period End | 07/26/07 | |
| NPRM | 01/14/09 | 74 FR 2019 |
| NPRM Comment Period End | 05/14/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Christopher Rogers
Division Chief
Department of Commerce
National Oceanic and Atmospheric Administration
1315 East–West Highway
Silver Spring, MD 20910
Phone: 301 713–9090
Fax: 301 713–9106
Email: christopher.rogers@noaa.gov

**Related RIN:** Related to 0648–AV23

**RIN:** 0648–AV51

**DOC—NOAA**

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

**Priority:**

Other Significant

**Legal Authority:**

16 USC 1861; 16 USC 4107

**CFR Citation:**

50 CFR 600

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

N/A

**Anticipated Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/15/09 | 74 FR 2478 |
| NPRM Comment Period Extended | 02/06/09 | 74 FR 6257 |
| NPRM Comment Period End | 02/17/09 | |
| NPRM Comment Period End | 04/20/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State, Tribal

**Agency Contact:**

Charles L. Cooper
Program Leader
Department of Commerce
National Oceanic and Atmospheric Administration
1315 East–West Highway
Silver Spring, MD 20910
Phone: 301 713–2396
Email: charles.cooper@noaa.gov

**RIN:** 0648–AW38
**BILLING CODE 3510–12–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), ten Unified Combatant Commands, fourteen Defense Agencies, and ten DoD Field Activities. It has 1,417,747 military personnel and 731,592 civilians assigned as of June 30, 2009, and over 200 large and medium installations in the continental United States, U. S. territories, and foreign countries. The overall size, composition, and dispersion of DoD, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order 12866 ''Regulatory Planning and Review'' of September 30, 1993.

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

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

#### Overall Priorities

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

#### Administration Priorities:

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

The Department plans to:

- Revise the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete restrictions on contracting with foreign entities for the performance of research and development in connection with any weapon system or other military equipment for DoD.
- Review of the DFARS requirements for reporting the loss, theft, damage, or destruction of Government property.
- Review of the DFARS requirements for reporting Government Furnished Equipment and Government Furnished Material in the DoD Item Unique Identification (IUID) registry.
- Review of the DFARS requirements for Unique Item Identifier marking of Government-furnished Equipment.
- Simplify and clarify the DFARS coverage of patents, data, and copyrights, dramatically reducing the amount of regulatory text and the number of required clauses.
- Simplify and clarify the DFARS coverage of multiyear acquisitions.
- Finalize the DFARS rule that makes the required changes to conform the DFARS to the Federal Acquisition Regulation (FAR) implementation of the OFPP waivers of certain statutory requirements when acquiring of COTS items.
- Improve the contract closeout process.

**2. Regulations of Particular Interest to Small Business**

Of interest to Small Businesses are regulations to:

- Revise the FAR and DFARS to implement the use of Electronic Subcontracting Reporting System for both summary and individual subcontracting reporting.
- Consider revisions to the FAR to address the findings of the Rothe case that Federal contracting programs for minority-owned and other small businesses that implement 10 U.S.C. 2323 are ''facially unconstitutional.''
- Revise the FAR to implement changes in the HUBZone Program, in accordance with Small Business Administration regulations.
- Revise the FAR to clarify the criteria for sole source awards to service-disabled veteran-owned small businesses concerns.

**3. Regulations with International Effects or Interest**

Of international effect or interest are regulations to:

- Finalize the FAR rule implementing the American Recovery and Reinvestment Act of 2009 buy American requirements for construction material.
- Finalize the DFARS rule that prohibits procurement of steel for construction projects or activities for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.
- Implement in the DFARS the determinations regarding participation of South Caucasus/Central and South Asian states in acquisitions in support of operations in Afghanistan.
- Finalize the DFARS rule that provides authority to limit competition in the acquisition of products or services, other than small arms, acquired in support of operations in Iraq or Afghanistan.
- Clarify in the DFARS the criteria for deciding whether a company is located in Iraq or Afghanistan.
- Consider whether to revise the DFARS regulations relating to acquisition of spare or replacement parts from the original foreign manufacturer.
- Revise the DFARS to implement the pending Defense Procurement Trade Cooperation Treaties with the United Kingdom and Australia, upon ratification.
- Finalize the DFARS rule that implements the determination that authorizes acquisition of articles containing para-aramid fibers and yarns manufactured in a qualifying country, in accordance with section 807 of the National Defense Authorization Act for FY 1999.
- Revise the FAR and DFARS list of least designated countries under the Trade Agreements Act to add Taiwan,

Peru, Costa Rica, and Oman (FAR only).

- Revise the FAR list of articles that are domestically non-available.
- Finalize the FAR rule that prohibits Federal contractors from restricted business operations in Sudan and imports from Burma.
- Finalize the FAR rule that prohibits Government contracts with any foreign incorporated entity that is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002 or any subsidiary of such entity.

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

*Rulemaking Actions in Response to Public Nominations*

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

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

**Specific DoD Priorities:**

For this Regulatory Plan, there are six 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 acquisition, security, homeowners, education, health affairs, and the National Security Personnel System.

**1. Defense Procurement and Acquisition Policy**

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

- Finalize the FAR rules that implement the regulations relating to the American Recovery and Reinvestment Act of 2009 — Reporting Requirements, Publicizing Contract Actions, Whistleblower Protection, and GAO/IG Access to Contractor Employees.
- Revise the DFARS to implement the Weapons System Acquisition Reform Act of 2009 — including acquisition strategies to ensure competition throughout life-cycle of major defense acquisition programs and address organizational conflicts of interest in major defense acquisition programs.
- Revise DFARS to ensure continuation of contractor services in support of mission essential functions during an emergency, such as an influenza pandemic.
- Revise the FAR to implement the Executive Orders relating to project labor agreements, allowability of labor relations costs, non-displacement of qualified workers, and notification of employee rights under Federal labor laws.
- Revise the FAR to address service contractor employee personal conflicts of interest and organizational conflicts of interest and limit contractor access to information.
- Revise the FAR to establish a Federal database for Federal agency contract and grant officers and suspension and debarment officials, to track information relating to awardees of Federal contracts and grants.
- Revise the FAR to require contractors to verify, through the use of the E-Verify System, that certain of their employees are eligible to work in the United States.
- Enhance competition by:

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

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

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

  — Requiring public disclosure of justification and approval documents for noncompetitive contracts.
- Provide enhanced competition for task and delivery order contracts and additional market research before awarding a task or delivery order in excess of the simplified acquisition threshold.

**2. Logistics and Materiel Readiness, Department of Defense**

The Department of Defense published or plans to publish rules on contractors supporting the military in contingency operations:

- Interim Final Rule: Private Security Contractors (PSCs) Operating in Contingency Operations. In order to meet the mandate of Section 862 of the 2008 National Defense Authorization Act, this rule establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract during contingency operations. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel. DoD published an interim final rule on July 17, 2009 (74 FR 34690-34694) with an effective date of July 17, 2009. The comment period ended August 31, 2009.
- Proposed Rule: Program Management of Operational Contract Support for Contingency Operations. This rule will incorporate the latest changes and lessons learned into policy and procedures for program management for the preparation and execution of contracted support and the integration of DoD contractor personnel into military contingency operations outside the United States. DoD anticipates publishing the proposed rule in the first or second quarter of FY 2010.

**3. Installations and Environment, Department of Defense**

The Department of Defense has published a rule to assist eligible military and civilian Federal employee homeowners:

- Interim Final Rule: This rule continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. In accordance with DoD Directive 5101.1, DoD Executive Agent,'' designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP. Additionally, this rule will allow the Department of Defense to temporarily expand the existing HAP in compliance with section 1001 of the American Recovery and Reinvestment Act of 2009. This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station orders, and certain wounded persons and surviving spouses. This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP. This is an economically significant rule. The interim final rule was published September 30, 2009 (74 FR 50109), with an effective date of September 30, 2009. The comment period ended October 30, 2009. DoD anticipates publishing a final rule in the third quarter of FY 2010.

**4. Personnel and Readiness, Department of Defense**

The Department of Defense published or plans to publish a rule implementing the Post-9/11 Veterans Educational Assistance Act of 2008, title V, P.L. 110-252 (the ''Post-9/11 GI Bill''):

- Interim Final Rule: This rule establishes policy, assigns responsibilities, and prescribes procedures for carrying out the Post-9/11 GI Bill. It establishes policy for the use of supplemental educational assistance ''kickers,'' for members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits; and for the DoD Education Benefits Fund Board of Actuaries. DoD published an interim final rule on June 25, 2009 (74 FR 30212-30220) with an effective date of June 25, 2009. The comment period ended July 27, 2009.

**5. Health Affairs, Department of Defense**

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

The TRICARE Management Activity has published or plans to publish the following rules:

- Final rule on CHAMPUS/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals. This rule implements changes directed by the enactment of National Defense Authorization Act for Fiscal Year 2008 (NDAA-08), Pub. L. 110-181, to the extent necessary to ensure pharmaceuticals, paid for by the DoD that are provided by pharmacies under the TRICARE Retail Pharmacy Program (TRRx) to eligible beneficiaries, are subject to the pricing standards under section 8126 of title 38 United States Code. This is an economically significant rule. The proposed rule was published July 25, 2008 (73 FR 43394). The comment period ended September 23, 2008. The final rule published March 17, 2009 (74 FR 11279-11293) with an effective date of May 26, 2009.
- Final rule on TRICARE: Outpatient Prospective Payment System (OPPS). The rule implements a prospective payment system for hospital outpatient services similar to that furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. The rule also recognizes applicable statutory requirements and changes arising from Medicare's continuing experience with its system, including certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. While TRICARE intends to remain as true as possible to Medicare's basic OPPS methodology (i.e., adoption and updating of the Medicare data elements used in calculating the prospective payment amounts), there will be some significant deviations required to accommodate the uniqueness of the TRICARE program. These deviations have been designed to accommodate existing TRICARE benefit structure and claims processing procedures implemented under the TRICARE Next Generation Contracts (T-NEX) while at the same time eliminating any undue financial burden to TRICARE Prime, Extra and Standard beneficiary populations. The proposed rule was published April 1, 2008 (73 FR 17271). The comment period ended June 2, 2008. The final rule published December 10, 2008 (73 FR 74945-74966) with an effective date of February 9, 2009. DoD published a notice on February 6, 2009 (74 FR 6228) delaying the effective date of the final rule to May 1, 2009 and re-opening the final rule for comment. The comment period ended March 9, 2009. DoD then published a notice May 8, 2009 (74 FR 21547) responding to the comments received. The effective date of the final rule remained May 1, 2009.
- Final rule on TRICARE: Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage. This rule implements section 1097c of title 10, United States Code. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible so long as the plan treats all employees the same and does not illegally take TRICARE eligibility into account. The proposed rule was published March 28, 2008 (73 FR 16612). The comment period ended May 27, 2008. DoD anticipates publishing a final rule in the first quarter of FY 2010.
- Final rule on TRICARE: Authorization of Forensic Examinations. This rule implements section 701 of the John Warner National Defense Authorization Act for FY 2007, Public Law 109-364. Section 701 amends Title 10 of the United States Code (U.S.C.), Chapter 55, Section 1079(a) by authorizing coverage for forensic examinations following a sexual assault or domestic violence for eligible beneficiaries. This authorizes forensic examinations provided in civilian health care facilities (e.g., civilian rape crisis facilities) following sexual assault or domestic

violence, which is consistent with the services that are authorized in Military Medical Treatment Facilities for all beneficiaries who are victims of sexual assault or domestic violence. The proposed rule was published July 7, 2008 (73 FR 38348-38350). The comment period ended September 5, 2008. The final rule published July 17, 2009 (74 FR 34649-34696) with an effective date of August 17, 2009.

**6. National Security Personnel System, Department of Defense**

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

Subsequent legislation in the National Defense Authorization Act (Pub. L. 110-181, January 28, 2008) required revision of the NSPS regulation. DoD and OPM published a proposed rule on May 22, 2008 (73 FR 29882-29927). The period for public comment ended on June 23, 2008. The final rule published September 26, 2008 (73 FR 56344-56420) with an effective date of October 7, 2008. A correction to the final rule effective date published on October 7, 2008 (73 FR 58435). The effective date was corrected to November 25, 2009.

DoD and OPM published a proposed rule on December 3, 2008 (73 FR 73606-73716) to add a Staffing and Employment subpart to the final rule that was published on September 26, 2008. The period for public comment ended on January 2, 2009. The final rule published January 16, 2009 (74 FR 2757-2770) with an effective date of March 17, 2009.

On July 16, 2009, a task group under the Defense Business Board (DBB) made recommendations to significantly alter the National Security Personnel System (NSPS). The final report of the DBB will be to the Department of Defense and the Office of Personnel Management (OPM). The recommendations may be adopted or rejected. If adopted, some of the recommendations may be implemented under the current regulation. However, it is likely that the regulation will require substantial revision

DoD and OPM anticipate publishing a proposed rule in late winter 2010 and a final rule in the fall of 2010, to be effective 60 days after final action.

## DOD—Office of the Secretary (OS)

### FINAL RULE STAGE

### 36. ● HOMEOWNERS ASSISTANCE PROGRAM (HAP)

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 3374

**CFR Citation:**

32 CFR 239

**Legal Deadline:**

None

**Abstract:**

This rule continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. In accordance with DoD Directive 5101.1, DoD Executive Agent,'' designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP.

Additionally, this rule will allow the Department of Defense to temporarily expand the existing Homeowners Assistance Program (HAP) in compliance with The American Recovery and Reinvestment Act of 2009 (ARRA). This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station (PCS) orders, and certain wounded persons and surviving spouses. This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP.

**Statement of Need:**

This rule continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. It updates policy, delegates authority, and assigns responsibilities for managing HAP. In accordance with DoD Directive 5101.1, ''DoD Executive Agent,'' designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP.

Additionally, this rule will allow the Department of Defense to temporarily expand the existing HAP in compliance with section 1001 of the American Recovery and Reinvestment Act of 2009 (ARRA). This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP.

**Summary of Legal Basis:**

42 U.S.C. 3374

**Alternatives:**

Required by 42 U.S.C. 3374. No alternatives considered.

**Anticipated Cost and Benefits:**

There is no cost to the public. Administrative costs to the Department of Defense for implementation of the authorities under this rule are eight percent of the $555 million appropriated to fund the Expanded HAP. Workload will be accomplished with additional staffing and will be integrated into normal business.

**Risks:**

The rule will allow the Department of Defense to expand HAP to assist military families and DoD civilians who recently sold their homes at a loss. This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station orders, and certain wounded persons and surviving spouses.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/30/09 | 74 FR 50109 |
| Interim Final Rule Effective | 09/30/09 | |
| Interim Final Rule Comment Period End | 10/30/09 | |
| Interim Final Rule Comment Period Extended | 11/16/09 | 74 FR 58846 |
| Interim Final Rule Comment Period End | 01/15/10 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

**Agency Contact:**

Deanna Buchner
Department of Defense
Office of the Secretary
3000 Defense Pentagon
Washington, DC 20301–3000
Phone: 703 602–4353

**RIN:** 0790–AI58

BILLING CODE 5001–06–S

## DEPARTMENT OF EDUCATION (ED)

### Statement of Regulatory Priorities

#### I. Introduction

We support States, local communities, institutions of higher education, and others in improving education nationwide and in helping to ensure that all Americans receive a quality education. We provide leadership and financial assistance pertaining to education at all levels to a wide range of stakeholders and individuals including State educational agencies, early childhood programs, elementary and secondary schools, institutions of higher education, vocational schools, nonprofit organizations, members of the public, and many others. These efforts are helping to ensure that all students will be ready for college and careers, and that all students have an open path towards postsecondary education. We also vigorously monitor and enforce the implementation of Federal civil rights laws in education programs and activities that receive Federal financial assistance, and support innovation and research, evaluation, and dissemination of findings to improve the quality of education.

Overall, the programs we administer will affect nearly every American during his or her life. Indeed, in the 2009-2010 school year about 50 million students will attend an estimated 100,000 elementary and secondary schools in approximately 13,900 public school districts, and about 19 million students will enroll in degree-granting postsecondary schools. All of these students may benefit from some degree of financial assistance or support from the Department.

In developing and implementing regulations, guidance, technical assistance, and approaches to compliance related to our programs, we are committed to working closely with affected persons and groups. Specifically, we work with a broad range of interested parties and the general public 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.

We also 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 it is necessary to develop regulations, 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), an electronic single Governmentwide access point (www.regulations.gov) that enables the public to submit comments on different types of Federal regulatory documents and read and respond to comments submitted by other members of the public during the public comment period. This system provides the public the opportunity to submit 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.

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

#### II. Regulatory Priorities

*A. American Recovery and Reinvestment Act of 2009*

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. The ARRA lays the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for students, long-term gains in school and school system capacity, and increased productivity and effectiveness.

The ARRA provides funding for several key formula and discretionary grant programs for which the Department will be issuing final regulatory requirements in the next several months. These programs are as follows:

1. *Investing in Innovation Fund.* The Investing in Innovation Fund, established under section 14007 of the ARRA, provides $650 million to support (a) local educational agencies (LEAs), and (b) nonprofit organizations in partnership with one or more LEAs or a consortium of schools. The purpose of the program is to provide competitive grants to applicants with strong track records in improving student achievement, in order to expand what works and invest in promising practices that significantly improve student achievement in kindergarten through grade 12, as well as help close achievement gaps, decrease drop-out rates, increase high school graduation rates, and improve the effectiveness of teachers and school leaders.
2. *School Improvement Grants.* In conjunction with Title I funds for school improvement reserved under section 1003(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), School Improvement Grants under section 1003(g) of the ESEA are used to improve student achievement in Title I schools identified for improvement, corrective action, or restructuring in order to enable those schools to make adequate yearly progress and exit improvement status. Appropriations for School Improvement Grants have grown from $125 million in fiscal year (FY) 2007 to $546 million in FY 2009. The ARRA provides an additional $3 billion for School Improvement Grants in FY 2009. The Department is finalizing requirements that will govern the total $3.546 billion in FY 2009 school improvement funds. This unprecedented investment of Federal money has the potential to support implementation of fundamental changes needed to turn around some of the Nation's lowest-achieving schools.
3. *Teacher Incentive Fund.* The Teacher Incentive Fund, established in 2006, supports performance-based teacher and principal compensation systems in high-need schools, primarily through grants to school districts and consortia of school districts. The combined ARRA and FY 2009 appropriation for this program is approximately $300 million.

*B. Elementary and Secondary Education Act of 1965, as Amended*

We look forward to congressional reauthorization of the ESEA that will build on many of the reforms States and LEAs will be implementing under the ARRA grant programs described above. As necessary, we intend to amend current regulations to reflect the reauthorization of this statute. In the interim we may propose other amendments to the current regulations.

*C. Student Aid and Fiscal Responsibility Act of 2009*

We expect Congress to enact, and appropriate funds for, several components of the President's education

agenda. The House passed H.R. 3221, the Student Aid and Fiscal Responsibility Act of 2009, in September, and the Senate is expected to move similar legislation this year. If the legislation is passed, we expect to propose regulations in the coming months to implement it.

*New Programs*: The new programs included in the House bill that would require regulations include the following:

- *The College Access and Completion Fund*, to build a Federal-State-local partnership to improve college success and completion, particularly for students from disadvantaged backgrounds.
- *The American Graduation Initiative*, to promote innovations and reforms in our nation's community colleges, including modernization of community college facilities and the development of online educational resources.
- *The Early Learning Challenge Fund*, to provide competitive grants to States for the development of statewide infrastructure of integrated early-learning supports and services for children from birth through age 5.

*Student Loans*: H.R. 3221 would also enact the President's proposal to originate 100 percent of new student loans under the Direct Loan program, under which the Federal Government provides capital for student loans. The bill would terminate the origination of loans under the Federal Family Education Loan program, under which the Federal Government currently guarantees loans made by the private sector. This bill also includes a proposal to transform the current Perkins Loan program from a separate program of revolving funds based at individual institutions of higher education into a subset of the Direct Loan program.

*D. Higher Education Opportunity Act*

The Higher Education Opportunity Act (HEOA), enacted on August 14, 2008, amended and extended the Higher Education Act of 1965 (HEA). During the coming year, we plan to amend our regulations to address several key issues, including issues related to program integrity and foreign schools. As necessary we may also amend our regulations for several discretionary grant programs to reflect changes made by the HEOA.

Unless subject to an exemption, regulations to carry out changes to the student financial aid programs under Title IV of the HEA must generally go through the negotiated rulemaking process.

*E. Individuals with Disabilities Education Act*

We plan to issue final regulations implementing changes to the Part C program—the early intervention program for infants and toddlers with disabilities—under the IDEA.

*F. Family Educational Rights and Privacy Act*

Given the President's emphasis on improving the collection and use of data as a key element of educational reform, we are reviewing the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations to ensure that States are able to effectively establish and expand robust statewide longitudinal data systems while protecting student privacy. If necessary, we will amend our current FERPA regulations.

*G. Other Potential Regulatory Activities*

Congress may take up legislation to reauthorize the Adult Education and Family Literacy Act (AEFLA) (Title II of the Workforce Investment Act of 1998) and the Rehabilitation Act of 1973. The Administration is working with Congress to ensure that any changes to these laws (1) improve 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 (2) 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.

**III. Principles for Regulating**

Over the next year, other regulations may be needed because of new legislation or programmatic changes. In developing and promulgating regulations we follow our Principles for Regulating, which 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 regulations or with limited regulatory action.

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 subject to regulation are so diverse that a uniform approach through regulation does more harm than good.
- Whether regulations are needed to protect the Federal interest; that is, to ensure that Federal funds are used for their intended purpose, and to eliminate fraud, waste, and abuse.

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 coordination of federally funded activities with State and local reform activities.
- Ensure that benefits justify costs of regulation.
- To the extent possible, establish performance objectives rather than specify compliance behavior.
- Encourage flexibility, to the extent possible, so institutional forces and incentives achieve desired results.

## ED—Office of Elementary and Secondary Education (OESE)

### PROPOSED RULE STAGE

### 37. ● TEACHER INCENTIVE FUND—PRIORITIES, REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 111–5; ESEA title V, part D, subpart 1 (20 USC 7243); PL 111–8, division F, title III

**CFR Citation:**

None

**Legal Deadline:**

None

**Abstract:**

The Secretary proposes priorities, requirements, definitions, and selection

criteria for the Teacher Incentive Fund, which supports performance-based teacher and principal compensation systems in high-need schools, primarily through grants to school districts and consortia of school districts.

**Statement of Need:**

The proposed priorities, requirements, definitions, and selection criteria are needed to implement the TIF program and to conduct a competition to award funds under this program.

**Summary of Legal Basis:**

American Recovery and Reinvestment Act of 2009, PL 111-5.

**Alternatives:**

The Department is still developing this proposed rule; our discussion of alternatives will be included in the notice of proposed priorities, requirements, definitions, and selection criteria.

**Anticipated Cost and Benefits:**

Estimates of the costs and benefits are currently under development and will be published in the proposed rule.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Agency Contact:**

James Butler
Department of Education
Office of Elementary and Secondary Education
Room 3E108
400 Maryland Avenue SW
Washington, DC 20202
Phone: 202 260–2274
Email: james.butler@ed.gov

**RIN:** 1810–AB08

**ED—OESE**

---

**FINAL RULE STAGE**

---

**38. ● SCHOOL IMPROVEMENT GRANTS—NOTICE OF PROPOSED REQUIREMENTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

20 USC 6303(g)

**CFR Citation:**

None

**Legal Deadline:**

None

**Abstract:**

The Secretary has proposed requirements for School Improvement Grants authorized under section 1003(g) of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and funded through both the Department of Education Appropriations Act, 2009, and the American Recovery and Reinvestment Act of 2009. The proposed requirements would define the criteria that a State educational agency (SEA) must use to implement the statutory priority that the SEA award school improvement funds to local educational agencies (LEAs) with the lowest-achieving title I schools that demonstrate (a) the greatest need for the funds and (b) the strongest commitment to use those funds to provide adequate resources to their lowest-achieving title I schools to raise substantially the achievement of their students. The proposed requirements also would require an SEA to give priority, through a waiver under section 9401 of the ESEA, to LEAs that wish to serve the lowest-achieving secondary schools that are eligible for, but do not receive, title I funds. The proposed requirements would require an SEA to award school improvement funds to eligible LEAs in amounts sufficient to enable the targeted schools to implement one of four specific proposed interventions.

**Statement of Need:**

The proposed requirements are needed to implement the School Improvement Grants program in a manner that the Department believes will best enable the program to achieve its objective of supporting comprehensive and effective efforts by LEAs to overcome the challenges faced by low-achieving schools that educate concentrations of children living in poverty.

**Summary of Legal Basis:**

20 USC 6303(g).

**Alternatives:**

A likely alternative to promulgation of the proposed requirements would be for the Secretary to allocate the FY 2009 school improvement funds without setting any regulatory requirements governing their use. Under such an alternative, States and LEAs would be required to meet the statutory requirements, but funds likely would not be targeted to the very lowest-achieving schools and LEAs would likely not use all the funds for activities most likely to result in a real turn-around of those schools and significant improvement in the educational outcomes for the students they educate.

**Anticipated Cost and Benefits:**

The Department believes that the proposed requirements will not impose significant costs on States, LEAs, or other entities that receive school improvement funds. These proposed requirements would drive school improvement funds to LEAs that have the lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. They would also require participating LEAs to adopt the most effective approaches to turning around low-achieving schools. In short, the Department believes that the proposed requirements would ensure that limited school improvement funds are put to their optimum use—that is, that they would be targeted to where they are most needed and used in the most effective manner possible. The benefits, then, would be more effective schools serving children from low-income families and a better education for those children.

The Department believes that the State and local costs of implementing the proposed requirements (including State costs of applying for grants, distributing the grants to LEAs, ensuring compliance with the proposed requirements, and reporting to the

Department; and LEA costs of applying for subgrants and implementing the interventions) will be financed through the grant funds. The Department does not believe that the proposed requirements would impose a financial burden that States and LEAs would have to meet from non-Federal sources.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/26/09 | 74 FR 43101 |
| NPRM Comment Period End | 09/25/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Zollie Stevenson Jr.
Department of Education
Office of Elementary and Secondary Education
Room 3W230
400 Maryland Avenue SW
Washington, DC 20202–6132
Phone: 202 260–1824
Email: zollie.stevenson@ed.gov

**RIN:** 1810–AB06

---

**ED—Office of Innovation and Improvement (OII)**

**PROPOSED RULE STAGE**

**39. ● INVESTING IN INNOVATION—PRIORITIES, REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 111–5

**CFR Citation:**

None

**Legal Deadline:**

None

**Abstract:**

The Secretary of Education proposes priorities, requirements, definitions, and selection criteria under the Investing in Innovation Fund, authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). These priorities, requirements, definitions, and selection criteria are intended to support the efforts of local educational agencies and nonprofit organizations that have strong records of improving student achievement to develop, implement, evaluate, and replicate innovative programs and practices.

**Statement of Need:**

These proposed priorities, requirements, definitions, and selection criteria are needed to implement the Investing in Innovation Fund and to conduct a competition to award funds under this program.

**Summary of Legal Basis:**

American Recovery and Reinvestment Act of 2009, PL 111-5.

**Alternatives:**

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in the notice. The proposed priorities, requirements, definitions, and selection criteria are those that the Department believes best capture the purposes of the program while clarifying what the Secretary expects the program to accomplish and ensuring that program activities are aligned with Departmental priorities. The proposals would also provide eligible applicants with flexibility in selecting activities to apply to carry out under the program.

**Anticipated Cost and Benefits:**

The Department believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to have a significant national impact on educational reform and improvement. Through these proposals, the Department seeks to provide clarity as to the scope of activities we expect to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. The pool of possible applicants is very large; during school year 2007-08, 9,729 LEAs across the country (about 65 percent of all LEAs) made adequate yearly progress. Although not every one of those LEAs would necessarily meet all the eligibility requirements, the number of LEAs that would meet them is likely to be in the thousands.

The Department believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds and with matching funds provided by private-sector partners. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Margo Anderson
Department of Education
Office of Innovation and Improvement
Room 4W311
400 Maryland Avenue SW
Washington, DC 20202
Phone: 202 205–3010
Email: margo.anderson@ed.gov

**RIN:** 1855–AA06

**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;
- Advance energy efficiency and conservation;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Provide a responsible resolution to the environmental legacy of nuclear weapons production;
- Strengthen U.S. scientific discovery, economic competitiveness, and improving quality of life through innovations in science and technology.

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

The Energy Policy and Conservation Act (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. The standards already issued in 2009 have a net benefit to the nation of up to $84 billion over 30 years. By 2042, these standards will have saved enough energy to operate all U.S. homes for over two years.

On February 5, 2009, the President issued a memorandum noting that the Department is subject to a consent decree as a result of litigation in which 14 States and various other entities brought suit alleging that the Department had failed to comply with deadlines and other requirements in the EPCA. The President noted further that the Department remained subject to outstanding deadlines with respect to 15 of the 22 product categories covered by the consent decree, as well as statutory deadlines for a number of additional product categories. As a result, the President requested that the Department take all necessary steps, consistent with the consent decree and applicable law, to finalize legally required efficiency standards as expeditiously as possible and consistent with all applicable judicial and statutory deadlines. Most immediate were the five energy efficiency rules with deadlines prior to and including August 8, 2009; with respect to standards subject to judicial and statutory deadlines later than August 8, 2009, the President requested that the Department work to complete prior to the applicable deadline those standards that will result in the greatest energy savings.

On August 5, 2009, DOE issued a final rule establishing energy conservation standards for bottled or canned beverage vending machines. Issuance of this rulemaking marked the completion, either on or prior to the required deadline, of the five energy efficiency rules with legal deadlines prior to and including August 8, 2009, as set forth in the President's February 2009 memorandum.

In response to the President's request regarding rulemakings with deadlines later than August 8, 2009, the Department continues to follow its schedule for setting new appliance efficiency standards. These rulemakings are expected to save American consumers billions of dollars in energy costs. The five-year plan to implement the schedule outlines how DOE will address the appliance standards rulemaking backlog and meet the statutory requirements established in EPCA and the Energy Policy Act of 2005 (EPACT 2005). 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 20 products in the backlog. The plan also provides for setting appliance standards for products required under EPACT 2005.

The overall plan for implementing the schedule is contained in the Report to Congress under section 141 of EPACT 2005 that was released on January 31, 2006. This plan was last updated in the August 2009 report to Congress and now includes the requirements of the Energy Independence and Security Act of 2007 (EISA 2007). The reports to Congress are posted at: http://www.eere.energy.gov/buildings/appliance__standards/schedule__setting.html.

The August 2009 report identifies all products for which DOE has complied with or 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. 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

The regulatory actions included in this Regulatory Plan for small electric motors and commercial clothes washers provide significant benefits to the Nation. DOE believes that the benefits to the Nation of the proposed energy standards for small electric motors (energy savings, consumer average life-cycle cost savings, national net present value increase, and emission reductions) outweigh the costs (loss of industry net present value and life-cycle cost increases for some consumers). DOE estimates that these regulations will produce an energy savings for polyphase motors between 0.08 quads (seven-percent discount rate) and 0.17 quads (three-percent discount rate) over thirty years and an energy savings for capacitor-start motors between 0.51 quads (seven-percent discount rate) and 1.11 quads (three-percent discount rate) over thirty years. The benefit to the Nation for polyphase motors will be between $60 million (seven-percent discount rate) and $560 million (three-percent discount rate). The benefit to the Nation for capacitor-start motors will be between $1.47 billion (seven-percent discount rate) and $13.59 billion (three-percent discount rate).

DOE believes that the benefits to the Nation of the proposed energy standards for commercial clothes washers (energy and water savings, consumer average life-cycle cost savings, national net present value increase, and emission reductions) also outweigh the costs (loss of industry net present value and life-cycle cost increases for some consumers). DOE estimates that these regulations will produce an energy savings up to 0.15 quads over thirty years and national water savings up to

190 billion gallons of water consumption over thirty years. The benefit to the Nation will be between $500 million (seven-percent discount rate) and $1.2 billion (three-percent discount rate).

**DOE—Energy Efficiency and Renewable Energy (EE)**

**PROPOSED RULE STAGE**

### 40. ENERGY CONSERVATION STANDARDS FOR SMALL ELECTRIC MOTORS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 6291 to 6309; 41 USC 6311 to 6317

**CFR Citation:**

10 CFR 431

**Legal Deadline:**

Final, Judicial, February 28, 2010, Consent Decree.

**Abstract:**

The Energy Policy Act of 1992 amended the Energy Policy and Conservation Act to provide that the Secretary of Energy prescribe testing requirements and energy conservation standards for those small electric motors for which the Secretary determines that standards would be technologically feasible and economically justified, and would result in significant energy savings. As a result of DOE's analysis, on July 10, 2006 (71 FR 38799), the Secretary made such a determination for small electric motors. This rulemaking will determine whether it is appropriate to establish energy conservation standards for small electric motors.

**Statement of Need:**

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

**Summary of Legal Basis:**

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291-6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. Part A-1 of Title III (42 U.S.C. 6311—6317) establishes a similar program for certain types of commercial and industrial equipment, which includes small electric motors. Currently, no mandatory Federal energy conservation standards apply to small electric motors.

**Alternatives:**

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

**Anticipated Cost and Benefits:**

DOE believes that the benefits to the Nation of the proposed energy standards for small electric motors (energy savings, consumer average life-cycle cost (LCC) savings, national net present value (NPV) increase, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some small electric motor users). DOE estimates that energy savings from electricity will be between 0.59 quads and 1.23 quads over 30 years and the benefit to the Nation will be between $1.53 billion and $14.15 billion.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice: Public Meeting, Framework Document Availability | 08/10/07 | 72 FR 44990 |
| Notice: Public Meeting, Data Availability | 12/30/08 | 73 FR 79723 |
| NPRM | 12/00/09 | |
| Final Action | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

**Additional Information:**

Comments pertaining to this rule may be submitted electronically to small__electric __motors__std.rulemaking @ee.doe.gov.

**URL For More Information:**

www1.eere.energy.gov/buildings/appliance__standards/commercial/small__electric__motors.html

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

James Raba
Office of Building Technologies Program, EE–2J
Department of Energy
Energy Efficiency and Renewable Energy
1000 Independence Avenue SW.
Washington, DC 20585
Phone: 202 586–8654
Email: jim.raba@ee.doe.gov

**Related RIN:** Related to 1904–AB71

**RIN:** 1904–AB70

**DOE—EE**

**FINAL RULE STAGE**

### 41. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CLOTHES WASHERS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 6313(e)(2)(A)

**CFR Citation:**

10 CFR 431

**Legal Deadline:**

Final, Statutory, January 1, 2010.

**Abstract:**

The Energy Policy and Conservation Act (EPCA) requires DOE to determine whether the existing standards for commercial clothes washers should be amended. Commercial clothes washers were previously included in a rulemaking with residential electric and gas ranges and ovens and Microwave ovens. On October 17, 2008, DOE published a NPRM for these products (73 FR 62034). Commenters subsequently alleged certain data problems affecting DOE's rulemaking analyses. DOE's preliminary assessment suggested that these concerns might be valid, thereby necessitating additional, supplemental rulemaking analyses. DOE is separating the commercial clothes washers energy conservation standard from the cooking products rulemaking and plans to issue

standards for commercial clothes washers by the statutory deadline.

**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:**

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A-1 of Title III (42 U.S.C. 6311—6317) establishes an energy conservation program for a variety of commercial and industrial equipment including commercial clothes washers. (42 U.S.C. 6312; 6313(e)) EPCA sets both energy and water efficiency standards for commercial clothes washers, and authorizes DOE to amend both. (42 U.S.C. 6313(e)) Section 136(a) and (e) of the Energy Policy Act of 2005 (EPACT 2005) added commercial clothes washers as equipment covered under EPCA and established standards for such equipment that is manufactured on or after January 1, 2007. (42 U.S.C. 6311(1) and 6313(e)) These amendments to EPCA also require that DOE issue a final rule by January 1, 2010, to determine whether these standards should be amended. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e)) If amended standards are justified, they would become effective no later than January, 2013.

**Alternatives:**

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

**Anticipated Cost and Benefits:**

DOE believes that the benefits to the Nation of the proposed energy standards for commercial clothes washers (energy and water savings, consumer average life-cycle cost (LCC) savings, national net present value (NPV) increase, and emissions reductions) outweigh the costs (loss of INPV and LCC increases for some consumers). DOE estimates that energy savings from electricity and natural gas will be up to 0.15 quads over 30 years and the national water savings will range up to 190 billion gallons over 30 years. The benefit to the Nation will be between $500 million and $1.2 billion.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/17/08 | 73 FR 62033 |
| NPRM Comment Period End | 12/16/08 | |
| Supplemental NPRM | 11/09/09 | 74 FR 57738 |
| Supplemental NPRM Comment Period End | 12/09/09 | |
| Final Action | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Undetermined

**URL For More Information:**

www1.eere.gov/buildings/appliance__standards/commercial/clothes__washers.html

**URL For Public Comments:**

http://www.regulations.gov/

**Agency Contact:**

Stephen Witkowski
Office of Building Technologies Program, EE–2J
Department of Energy
Energy Efficiency and Renewable Energy
1000 Independence Avenue SW.
Washington, DC 20585
Phone: 202 586–7463
Email: stephen.witkowski@ee.doe.gov

**Related RIN:** Split from 1904–AB49

**RIN:** 1904–AB93

BILLING CODE 6450–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Statement of Regulatory Priorities

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

These programs constitute a substantial portion of the priorities of the federal government, and, as such, the HHS budget represents almost a quarter of all federal outlays, and the Department administers more grant dollars than all other agencies combined.

Since assuming the leadership of HHS this year, Secretary Kathleen G. Sebelius has sought to prioritize efforts to prepare the country for H1N1 influenza, enhance security of the nation's food supply, implement regulation of tobacco, stop the spread of HIV/AIDS and ensure that those affected get the care and support they need, and successfully build the country's healthcare infrastructure through distribution of $167 billion in funding from the American Recovery and Reinvestment Act of 2009. Further, the Secretary has worked closely with the President on the Administration's efforts to enact meaningful reform of the country's health care system, and the Department will focus considerable effort on implementation of health care reform once passed by the Congress.

The Department's regulatory priorities in the upcoming fiscal year reflect the above goals, and include:

*Tobacco Regulation*

Each year in the United States, over 440,000 people die as a result of cigarette smoking. This represents one in every five deaths in adults. Reducing our nation's tobacco use will save lives, reduce health care costs, and help reduce suffering from heart and lung diseases, cancer, and other tobacco-related illnesses. As directed by the Family Smoking Prevention and Tobacco Control Act, the Secretary would re-establish the bulk of the provisions of the August 1996 final rule restricting access to and promotion of tobacco products to minors when many adult smokers begin their tobacco use habits.

*Food Safety*

The Department is committed to making dramatic improvements in our food safety system. These efforts are guided in part by the recent findings of the President's Food Safety Working Group which adopted a public-health approach based on three core principles: prioritizing prevention, strengthening surveillance and enforcement, and improving response and recovery if prevention fails. The goal of this new agenda is to shift emphasis away from mitigating public health harm by removing unsafe products from the market place, to a new overriding objective — preventing harm by keeping unsafe food from entering commerce in the first place. Progress has already begun on this new strategy. One example is the recent egg safety rule, which requires science-based measures to prevent *Salmonella Enteritidis* contamination of shell eggs at the farm, as well as safe handling temperature controls throughout the distribution chain. We intend to continue this focus on prevention with upcoming rules on produce safety and Good Manufacturing Practices modernization. The Department also looks forward to continuing work with the Congress to transform our nation's approach to food safety and strengthen our ability to prevent foodborne illness.

*Mental Health Parity*

Congress passed and the President signed legislation in October of 2008 that was a major step forward in improving access to mental health and substance abuse services for those who need them by requiring that all financial requirements and treatment limitations applicable to mental health and substance use disorders are no more restrictive than those requirements and limitations placed on physical benefits. Critical to the implementation of the law is the issuance of regulations to help employers and insurers understand what is required of them. The Secretary has directed the Centers for Medicare & Medicaid Services (CMS) to work with the Departments of Treasury and Labor to craft these regulations so as to guide employers and insurers on how to implement this statute and meet the important goal of furthering the integration of mental health and substance abuse services into primary health care.

*Medicare Modernization*

The Regulatory Plan highlights three final rules that would adjust payment amounts under Medicare for physicians' services, hospital inpatient and hospital outpatient services for fiscal year 2011. These new payment rules reflect continuing experience with regulating these systems, and will implement modernizations to ensure that the Medicare program best serves its beneficiaries, fairly compensates providers, and remains fiscally sound.

*Healthcare Information Technology*

Broad use of electronic health records has the potential to improve health care quality, prevent medical errors, increase the efficiency of care provision and reduce unnecessary health care costs, increase administrative efficiencies, decrease paperwork, and improve population health. Towards achieving these benefits, the Department will promulgate a proposed rule that would provide financial incentives to certain providers that meaningfully implement electronic health records, and an interim final rule that sets standards for such records that will enhance their interoperability, functionality, and utility.

Additionally, the Department will issue a proposed rule to implement privacy provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act that will strengthen privacy and security protections that govern how health information is used and disclosed in the face of the modernization of health recordkeeping.

*Streamlining Drug & Device Requirements*

Three Food and Drug Administration (FDA) proposed rules would standardize the electronic submission of clinical study data, medical device registrations, and adverse event reports. These rules will enable the FDA to more quickly and efficiently process and review information submitted, furthering their ability to both better protect the public safety and more rapidly advance new innovations to the market.

**HHS—Office of the Secretary (OS)**

**PROPOSED RULE STAGE**

### 42. STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION; MODIFICATIONS TO THE HIPAA PRIVACY RULE UNDER THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

PL 111–5, secs 13400 to 13410

**CFR Citation:**

45 CFR 160; 45 CFR 164

**Legal Deadline:**

NPRM, Statutory, February 17, 2010.

**Abstract:**

The Department of Health and Human Services Office for Civil Rights will issue rules to modify the HIPAA Privacy Rule as necessary to implement the accounting provisions of Section 13405(c) of the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009).

**Statement of Need:**

The Office for Civil Rights will issue rules to modify the HIPAA Privacy rule to implement the privacy provisions in sections 13400-13410 of the Health Information technology for economic and clinical health Act (Title XIII of division a of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5). these regulations will improve the privacy and security protection of health information.

**Summary of Legal Basis:**

Subtitle D of the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) requires the Office for Civil Rights to modify certain provisions of the HIPAA Privacy and Security Rules to implement sections 13400-13410 of the Act.

**Alternatives:**

The Office for Civil Rights is statutorily mandated to make modifications to the HIPAA Privacy and Security Rules to implement the privacy provisions at sections 13400-13410 of the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009).

**Anticipated Cost and Benefits:**

These modifications to the HIPAA Privacy Rule are intended to benefit health care consumers by strengthening the privacy and security protections that govern how their health information is used and disclosed by HIPAA covered entities and their business associates. The Agency believes that there may be costs associated with the regulations that will affect HIPAA covered entities and their business associates. These may include costs to redraft existing business associate contracts as well as for the training on new policies and procedures as a result of these regulations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

State

**Federalism:**

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

**Agency Contact:**

Andra Wicks
Department of Health and Human Services
200 Independence Avenue SW.
Washington, DC 20201
Phone: 202 205–2292
Fax: 202 205–4786
Email: andra.wicks@hhs.gov

**RIN:** 0991–AB57

**HHS—OS**

**FINAL RULE STAGE**

### 43. ● HEALTH INFORMATION TECHNOLOGY: INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA FOR ELECTRONIC HEALTH RECORD TECHNOLOGY (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

**Priority:**

Other Significant

**Legal Authority:**

42 USC 300jj–14

**CFR Citation:**

45 CFR 170

**Legal Deadline:**

Other, Statutory, December 31, 2009, Interim final rule.

**Abstract:**

The Department of Health and Human Services (HHS), Office of the National Coordinator for Health Information Technology, will issue an interim final rule with a request for comments to adopt an initial set of standards, implementation specifications, and certification criteria, as required by section 3004(b)(1) of the Public Health Service Act.

**Statement of Need:**

This interim final rule represents the first round of what will be an incremental approach to adopting standards, implementation specifications, and certification criteria for health information technology. The certification criteria adopted in this initial set establish the technical capabilities and related standards that certified electronic health record (EHR) technology will need to include in support of the Medicare and Medicaid EHR Incentive Programs.

**Summary of Legal Basis:**

Section 3004(b)(1) of the PHSA requires the Secretary to adopt an initial set of standards, implementation specifications, and certification criteria by 12/31/09. This interim final rule is being published to meet this requirement.

**Alternatives:**

No alternatives are available because the issuance of this regulation is required by statute.

**Anticipated Cost and Benefits:**

We anticipate that there will be costs incurred as a result of the interim final rule to prepare health information technology for certification.

Benefits include improved interoperability and increased health information technology adoption.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

**Agency Contact:**

Steven Posnack
Policy Analyst
Department of Health and Human Services
Office of the Secretary
Office of the National Coordinator for Health Information Technology
200 Independence Avenue SW
Washington, DC 20201
Phone: 202 690–7151

**RIN:** 0991–AB58

## HHS—Food and Drug Administration (FDA)

## PROPOSED RULE STAGE

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

**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 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.

**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. 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 Cost 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 | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Martha Nguyen
Regulatory Counsel
Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research
10903 New Hampshire Avenue
Bldg. 51, Room 6224
Silver Spring, MD 20993–0002
Phone: 301 796–3471
Fax: 301 847–8440
Email: martha.nguyen@fda.hhs.gov

**RIN:** 0910–AC52

**HHS—FDA**

**45. ELECTRONIC REGISTRATION AND LISTING FOR DEVICES**

**Priority:**

Other Significant

**Legal Authority:**

PL 110–85; PL 107–188, sec 321; PL 107–250, sec 207; 21 USC 360(a) through 360(j); 21 USC 360(p)

**CFR Citation:**

21 CFR 807

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

The alternatives to this rulemaking include not updating the registration and listing regulations. Because of the new FDAAA statutory requirements, and the advances in data collection and transmission technology, FDA believes this rulemaking is the preferable alternative.

**Anticipated Cost and Benefits:**

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

**Risks:**

None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**Agency Contact:**

Myrna Hanna
Regulations Staff
Department of Health and Human Services
Food and Drug Administration
Center for Devices and Radiological Health
10903 New Hampshire Avenue
WO–66 Room 4436
Silver Spring, MD 20993
Phone: 301 796–5739
Fax: 301 847–8144
Email: myrna.hanna@fda.hhs.gov

**RIN:** 0910–AF88

**HHS—FDA**

**46. ● PRODUCE SAFETY REGULATION**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

21 USC 342; 21 USC 371; 42 USC 264

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Food and Drug Administration is proposing to promulgate regulations setting enforceable standards for fresh produce safety at the farm and packing house. The purpose of the proposed rule is to reduce the risk of illness associated with contaminated fresh produce. The proposed rule will be based on prevention-oriented public health principles and incorporate what we have learned in the past decade since the agency issued general good agricultural practice guidelines entitled ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' (GAPs Guide). The proposed rule also will reflect comments received on the agency's 1998 update of its GAPs guide and its July 2009 draft commodity specific

guidances for tomatoes, leafy greens, and melons. Although the proposed rule will be based on recommendations that are included in the GAPs guide, it does not make the entire guidance mandatory. FDA's proposed rule would, however, set out clear standards for implementation of modern preventive controls. The proposed rule also would emphasize the importance of environmental assessments to identify hazards and possible pathways of contamination and provide examples of risk reduction practices recognizing that operators must tailor their preventive controls to particular hazards and conditions affecting their operations. The requirements of the proposed rule would be scale appropriate and commensurate with the relative risks and complexity of individual operation. FDA intends to issue guidance after the proposed rule is finalized to assist industry in complying with the requirements of the new regulation.

**Statement of Need:**

FDA has determined that enforceable standards (as opposed to voluntary recommendations) for the production and packing of fresh produce are necessary to ensure best practices are commonly adopted.

**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)). The agency has promulgated regulations that respond to a number of the provisions of the 1986 amendments. This final rule would address additional provisions of these amendments.

**Alternatives:**

An alternative to this rulemaking would be to update FDA's 1998 GAPs Guide. However, even though the 1998 guidance has been well received and widely adopted, outbreaks associated with fresh produce continue. Outbreak investigations also continue to observe conditions and practices that are not consistent with the voluntary recommendations. FDA believes a regulation containing clear, enforceable standards would be more effective in ensuring best practices are widely adopted.

**Anticipated Cost and Benefits:**

FDA estimates that the costs to more than 300,000 domestic and foreign producers and packers of fresh produce from the proposal would include one-time costs (e.g., new tools and equipment) and recurring costs (e.g., monitoring, training, recordkeeping). FDA anticipates that the benefits would be a reduction in foodborne illness and deaths associated with fresh produce. Monetized estimates of costs and benefits are not available at this time.

**Risks:**

This regulation would directly and materially advance the Federal Government's substantial interest in reducing the risks for illness and death associated with foodborne infections resulting from the consumption of contaminated fresh produce. Less restrictive and less comprehensive approaches have not been effective in reducing the problems addressed by this regulation. FDA anticipates that the regulation would lead to a significant decrease in foodborne illness associated with fresh produce in the U.S.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Federalism:**

Undetermined

**International Impacts:**

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

**Agency Contact:**

Samir Assar
Department of Health and Human Services
Food and Drug Administration
Center for Food Safety and Applied Nutrition
Office of Food Safety
5100 Paint Branch Parkway
College Park, MD 20740
Phone: 301 436–1636
Email: samir.assar@fda.hhs.gov

**RIN:** 0910–AG35

**HHS—FDA**

## 47. ● MODERNIZATION OF THE CURRENT FOOD GOOD MANUFACTURING PRACTICES REGULATION

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

21 USC 342; 21 USC 371; 42 USC 264

**CFR Citation:**

21 CFR 110

**Legal Deadline:**

None

**Abstract:**

The Food and Drug Administration (FDA) is proposing to amend its current good manufacturing practices (CGMP) regulations (21 CFR part 110) for manufacturing, packing, or holding human food. This proposed rule would require food facilities to address issues such as environmental pathogens, food allergens, mandatory employee training, and sanitation of food contact surfaces. The proposed rule also would require food facilities to develop and implement preventive control systems. FDA is taking this action to better address changes that have occurred in the food industry and thereby protect public health.

**Statement of Need:**

FDA last updated its food CGMP regulations for manufacturing, packing or holding of human food in 1986. Modernizing these food CGMP regulations to more explicitly address issues such as environmental pathogens, food allergens, mandatory employee training, and sanitation of food contact surfaces, as well as risk-based preventive controls, would be a critical step in raising the standards for food production and distribution. By amending 21 CFR 110 to modernize good manufacturing practices, the agency could focus the attention of food processors on measures that have been proven to significantly reduce the risk of food-borne illness. An amended regulation also would allow the agency to better focus its regulatory efforts on ensuring industry compliance with controls that have a significant food safety impact.

**Summary of Legal Basis:**

FDA's legal authority to amend its CGMP regulations derives in part from sections 402(a)(3), (a)(4) and 701(a) of the Federal Food, Drug, and Cosmetic

Act (the Act) (21 U.S.C. 342(a)(3), (a)(4), and 371(a)). Under section 402(a)(3) of the Act, a food is adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Under section 402(a)(4), a food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become 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:**

An alternative to this rulemaking is not to update the CGMP regulations, and instead to issue guidance on best practices regarding environmental pathogens, food allergens, mandatory employee training, sanitation of food contact surfaces, and risk-based preventive controls. However, guidance is voluntary and unenforceable. FDA believes a regulation containing clear, enforceable standards would be more effective in ensuring protection of public health.

**Anticipated Cost and Benefits:**

FDA estimates that the costs from the proposal to domestic and foreign producers and packers of processed foods would include new one-time costs (e.g., adoption of written food safety plans, setting up training programs, implementing allergen controls, and purchasing new tools and equipment) and recurring costs (e.g., auditing and monitoring suppliers of sensitive raw materials and ingredients, training employees, and completing and maintaining records used throughout the facility). FDA anticipates that the benefits would be a reduced risk of foodborne illness and deaths from processed foods and from a reduction in the number of safety related recalls.

**Risks:**

This regulation will directly and materially advance the federal government's substantial interest in reducing the risks for illness and death associated with foodborne infections. Less restrictive and less comprehensive approaches have not been effective in reducing the problems addressed by this regulation. The regulation will lead to a significant decrease in foodborne illness in the U.S.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Federalism:**

Undetermined

**International Impacts:**

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

**Agency Contact:**

Paul South
Department of Health and Human Services
Food and Drug Administration
Center for Food Safety and Applied Nutrition (HFS–317)
Office of Food Safety
5100 Paint Branch Parkway
College Park, MD 20740
Phone: 301 436–1640
Email: paul.south@fda.hhs.gov

**RIN:** 0910–AG36

---

**HHS—FDA**

## FINAL RULE STAGE

### 48. INFANT FORMULA: CURRENT GOOD MANUFACTURING PRACTICES; QUALITY CONTROL PROCEDURES; NOTIFICATION REQUIREMENTS; RECORDS AND REPORTS; AND QUALITY FACTORS

**Priority:**

Other Significant

**Legal Authority:**

21 USC 321; 21 USC 350a; 21 USC 371; . . .

**CFR Citation:**

21 CFR 106 and 107

**Legal Deadline:**

None

**Abstract:**

The agency published a proposed rule on July 9, 1996, that would establish current good manufacturing practice regulations, quality control procedures, quality factors, notification requirements, and records and reports for the production of infant formula. This proposal was issued in response to the 1986 Amendments to the Infant Formula Act of 1980. On April 28, 2003, FDA reopened the comment period to update comments on the proposal. The comment period was extended on June 27, 2003, to end on August 26, 2003. The comment period was reopened on August 1, 2006, to end on September 15, 2006.

**Statement of Need:**

The Food and Drug Administration (FDA) is revising its infant formula regulations in 21 CFR Parts 106 and 107 to establish requirements for current good manufacturing practices (CGMP), including audits; to establish requirements for quality factors; and to amend FDA's quality control procedures, notification, and record and reporting requirements for infant formula. FDA is taking this action to improve the protection of infants who consume infant formula products.

**Summary of Legal Basis:**

The Infant Formula Act of 1980 (the 1980 act) (Pub. L. 96-359) amended the Federal Food, Drug, and Cosmetic Act (the act) to include § 412 (21 U.S.C. 350a). This law is intended to improve protection of infants consuming infant formula products by establishing greater regulatory control over the formulation and production of infant formula. In 1982, FDA adopted infant formula recall procedures in subpart D of 21 CFR part 107 of its regulations (47 FR 18832, April 30, 1982), and infant formula quality control procedures in subpart B of 21 CFR Part 106 (47 FR 17016, April 20, 1982). In 1985, FDA further implemented the 1980 act by establishing subparts B, C, and D in 21 CFR Part 107 regarding the labeling of infant formula, exempt infant formulas, and nutrient requirements for infant formula, respectively (50 FR 1833, January 14, 1985; 50 FR 48183, November 22, 1985; and 50 FR 45106, October 30, 1985).

In 1986, Congress, as part of the Anti-Drug Abuse Act of 1986 (PL 99-570) (the 1986 amendments), amended § 412 of the act to address concerns that had been expressed by Congress and consumers about the 1980 act and its implementation related to the

sufficiency of quality control testing, CGMP, recordkeeping, and recall requirements. The 1986 amendments: (1) state that an infant formula is deemed to be adulterated if it fails to provide certain required nutrients, fails to meet quality factor requirements established by the Secretary (and, by delegation, FDA), or if it is not processed in compliance with the CGMP and quality control procedures established by the Secretary; (2) require that the Secretary issue regulations establishing requirements for quality factors and CGMP, including quality control procedures; (3) require that infant formula manufacturers regularly audit their operations to ensure that those operations comply with CGMP and quality control procedure regulations; (4) expand the circumstances in which firms must make a submission to the agency to include when there is a major change in an infant formula or a change that may affect whether the formula is adulterated; (5) specify the nutrient quality control testing that must be done on each batch of infant formula; (6) modify the infant formula recall requirements; and (7) give the Secretary authority to establish requirements for retention of records, including records necessary to demonstrate compliance with CGMP and quality control procedures. In 1989, the agency implemented the provisions on recalls (sections 412(f) and (g) of the act) by establishing subpart E in 21 CFR part 107 (54 FR 4006, January 27, 1989). In 1991, the agency implemented the provisions on record and record retention requirements by revising 21 CFR 106.100 (56 FR 66566, December 24, 1991).

The agency has already promulgated regulations that respond to a number of the provisions of the 1986 amendments. The final rule would address additional provisions of these amendments.

**Alternatives:**

The 1986 amendments require the Secretary (and, by delegation, FDA) to establish, by regulation, requirements for quality factors and CGMPs, including quality control procedures. Therefore, there are no alternatives to rulemaking.

**Anticipated Cost and Benefits:**

FDA estimates that the costs from the final rule to producers of infant formula would include first year and recurring costs (e.g., administrative costs, implementation of quality controls, records, audit plans and assurances of quality factors in new infant formulas). FDA anticipates that the primary benefits would be a reduced risk of illness due to Cronobacter sakazakii and Salmonella spp in infant formula. Additional benefits stem from the quality factors requirements that would assure the healthy growth of infants consuming infant formula. Monetized estimates of costs and benefits for this final rule are not available at this time. The analysis for the proposed rule estimated costs of less than $1 million per year. FDA was not able to quantify benefits in the analysis for the proposed rule.

**Risks:**

Special controls for infant formula manufacturing are especially important because infant formula, particularly powdered infant formula, is an ideal medium for bacterial growth and because infants are at high risk of foodborne illness because of their immature immune systems. In addition, quality factors are of critical need to assure that the infant formula supports healthy growth in the first months of life when infant formula may be an infant's sole source of nutrition. The provisions of this rule will address weaknesses in production that may allow contamination of infant formula, including, contamination with C. sakazakii and Salmonella spp which can lead to serious illness with devastating sequelae and/or death. The provisions would also assure that new infant formulas support healthy growth in infants.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/09/96 | 61 FR 36154 |
| NPRM Comment Period End | 12/06/96 | |
| NPRM Comment Period Reopened | 04/28/03 | 68 FR 22341 |
| NPRM Comment Period Extended | 06/27/03 | 68 FR 38247 |
| NPRM Comment Period End | 08/26/03 | |
| NPRM Comment Period Reopened | 08/01/06 | 71 FR 43392 |
| NPRM Comment Period End | 09/15/06 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**Agency Contact:**

Benson Silverman
Department of Health and Human Services
Food and Drug Administration
Center for Food Safety and Applied Nutrition (HFS–850)
5100 Paint Branch Parkway
College Park, MD 20740
Phone: 301 436–1459
Email: benson.silverman@fda.hhs.gov

**Related RIN:** Split from 0910–AA04

**RIN:** 0910–AF27

---

**HHS—FDA**

**49. MEDICAL DEVICE REPORTING; ELECTRONIC SUBMISSION REQUIREMENTS**

**Priority:**

Other Significant

**Legal Authority:**

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

**CFR Citation:**

21 CFR 803

**Legal Deadline:**

None

**Abstract:**

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

**Statement of Need:**

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

**Summary of Legal Basis:**

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

**Alternatives:**

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

**Anticipated Cost and Benefits:**

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

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

**Risks:**

None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/21/09 | 74 FR 42310 |
| NPRM Comment Period End | 11/19/09 | |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**International Impacts:**

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

**Agency Contact:**

Myrna Hanna
Regulations Staff
Department of Health and Human Services
Food and Drug Administration
Center for Devices and Radiological Health
10903 New Hampshire Avenue
WO–66 Room 4436
Silver Spring, MD 20993
Phone: 301 796–5739
Fax: 301 847–8144
Email: myrna.hanna@fda.hhs.gov

**RIN:** 0910–AF86

---

**HHS—FDA**

**50. ● REGULATIONS RESTRICTING THE SALE AND DISTRIBUTION OF CIGARETTES AND SMOKELESS TOBACCO TO PROTECT CHILDREN AND ADOLESCENTS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

21 USC 301 et seq., The Federal Food, Drug, and Cosmetic Act; PL 111–31, Family Smoking Prevention and Tobacco Control Act

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, March 22, 2010, Public Law 111–30 sections 6(c)(1) and 102(a)(1).

Family Smoking Prevention and Tobacco Control Act §§ 6(c)(1) and 102(a)(1) require publication of this final rule within 270 days of enactment.

**Abstract:**

This rule establishes regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents, implementing section 102 of the Family Smoking Prevention and Tobacco Control Act (FSPTCA). FSPTCA sections 102 and 6(c)(1) require the Secretary to publish, within 270 days of enactment, a final rule regarding cigarettes and smokeless tobacco. This final rule must be identical, except for several changes identified in section 102(a)(2) of FSPTCA, to part 897 of the regulations promulgated by the Secretary of HHS in the August 28, 1996 issue of the Federal Register (61 FR 44396).

This final rule prohibits the sale of cigarettes and smokeless tobacco to individuals under the age of 18 and requires manufacturers, distributors, and retailers to comply with certain conditions regarding access to, and promotion of, these products. Among other things, the final rule requires retailers to verify a purchaser's age by photographic identification. It also prohibits, with limited exception, free samples and prohibits the sale of these products through vending machines and self-service displays except in facilities where individuals under the age of 18 are not present or permitted at any time. The rule also limits the advertising and labeling to which children and adolescents are exposed. The rule accomplishes this by generally restricting advertising to which children and adolescents are exposed to a black-and-white, text-only format. The rule also prohibits the sale or distribution of brand-identified promotional, non-tobacco items such as hats and tee shirts. Furthermore, the rule prohibits sponsorship of sporting and other events, teams, and entries in a brand name of a tobacco product, but permits such sponsorship in a corporate name.

**Statement of Need:**

FDA is issuing this regulation as required in section 102 of FSPTCA.

**Summary of Legal Basis:**

The legal authority to issue this regulation includes section 102 of FSPTCA.

**Alternatives:**

FDA's statutory requirement to issue this rule, in its current form, does not provide for the consideration of any alternatives.

**Anticipated Cost and Benefits:**

Congress has recognized that tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year, and approximately 8,600,000 Americans have chronic illnesses related to smoking.

Based on FDA's prior analysis of a similar rule, implementing nearly

identical provisions (61 FR 44396), the Food and Drug Administration (FDA) believes this rulemaking will have a significant economic impact.

Costs associated with this rulemaking will include one-time costs to manufacturers to remove prohibited point-of-sale promotional items and self-service displays. Most costs to retail establishments are attributable to the new labor costs associated with the self-service restrictions, costs for training employees to verify customer ages, for routinely checking I.D.'s of young purchasers. There are also costs seen by consumers in delay in checkout lines. Distributional and transitional costs are also expected.

**Risks:**

Congress has found that these regulations will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion play a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, Local, State, Tribal

**Federalism:**

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

**Agency Contact:**

Philip R. Desjardins
Department of Health and Human Services
Food and Drug Administration
WO66, Room 5449
10903 New Hampshire
Silver Spring, MD 20993
Phone: 301 796–5683
Email: philip.desjardins@fda.hhs.gov

**RIN:** 0910–AG33

## HHS—Centers for Medicare & Medicaid Services (CMS)

### PROPOSED RULE STAGE

### 51. ● ELECTRONIC HEALTH RECORD (EHR) INCENTIVE PROGRAM (CMS–0033–P)

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

PL 111–5 (The American Recovery and Reinvestment Act of 2009, Title IV of Division B, Medicare and Medicaid Health Information Technology)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Other, Statutory, October 1, 2010, Date can start incentive payments to hospitals (Medicare).

Other, Statutory, January 1, 2011, Date can start incentive payments to eligible professionals (Medicare).

Establishes policies and procedures required before the incentive program can begin. Additionally supplemental payments are available in 2011 and 2012. If eligible professionals and hospitals are not meaningful Electronic Health Record users by 2015 there will be a Medicare payment adjustment imposed.

**Abstract:**

The Medicare and Medicaid Health IT provisions in the American Recovery and Reinvestment Act of 2009 promote the adoption and meaningful use of certified electronic health records (EHRs). The Recovery Act authorized incentive payments for eligible professionals (EPS) and hospitals participating in Medicare and Medicaid for becoming meaningful users of certified EHRs. The law established maximum annual incentive amounts and includes Medicare penalties for failing to meaningfully use EHRs beginning in 2015 for professionals and hospitals that fail to adopt certified EHRs.

**Statement of Need:**

This rule would implement provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) that authorizes incentive payments to EPS and eligible hospitals participating in the Medicare and Medicaid programs for adopting and becoming meaningful users of certified EHR technology.

**Summary of Legal Basis:**

Title IV of Division B of the Recovery Act includes provisions to promote the adoption of interoperable health information technology (HIT) to promote the meaningful use of health information technology to improve the quality and value of American health care. These provisions together with Title XIII of Division A of the Recovery Act may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''. CMS is charged with developing the incentive programs outlined in Division B, Title IV of the HITECH Act.

**Alternatives:**

There are no alternatives; this is a statutory requirement.

**Anticipated Cost and Benefits:**

Under Medicare, payment adjustments will be made starting in 2015 if EPs and eligible hospitals are not meaningful users of certified EHR technology. The benefits of the adoption of HIT are difficult to quantify. There is the potential of reduced medical costs through efficiency improvements. Additionally, HIT could help prevent medical errors and adverse drug interactions.

**Risks:**

If this rule is not published, CMS will be unable to pay incentives for the adoption and meaningful use of EHRs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

State

**Federalism:**

Undetermined

**Agency Contact:**

Elizabeth S. Holland
Health Insurance Specialist
Department of Health and Human Services
Centers for Medicare & Medicaid Services
Mailstop S2–26–17
7500 Security Blvd.
Baltimore, MD 21244
Phone: 410 786–1309
Email: elizabeth.holland@cms.hhs.gov

**Related RIN:** Related to 0991–AB58

**RIN:** 0938–AP78

---

**HHS—CMS**

**52. ● REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE AND PART B FOR CY 2011 (CMS–1503–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, 2010.

**Abstract:**

This major proposed rule would revise payment polices under the physician fee schedule, as well, as other policy changes to payment under Part B for CY 2011. (The statute requires the proposed and subsequent final rule publish by 11/1/10.)

**Statement of Need:**

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

The final rule has a statutory publication date of November 1, 2010, an implementation date of January 1, 2011.

**Summary of Legal Basis:**

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

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for CY 2011.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Cassandra Black
Director, Division of Practitoner Services
Department of Health and Human Services
Centers for Medicare & Medicaid Services
Mail Stop C4–01–26
7500 Security Blvd
Baltimore, MD 21244
Phone: 410 786–4545
Email: cassandra.black@cms.hhs gov

**RIN:** 0938–AP79

---

**HHS—CMS**

**53. ● PROPOSED CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS FOR ACUTE CARE HOSPITALS AND FY 2011 RATES AND TO THE LONG–TERM CARE HOSPITAL PPS AND RY 2011 RATES (CMS–1498–P)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Sec 1886(d) of the Social Security Act

**CFR Citation:**

42 CFR 412

**Legal Deadline:**

NPRM, Statutory, April 1, 2010.

Final, Statutory, August 1, 2010.

**Abstract:**

Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2011 Rates and to the Long Term Care Hospital PPS and RY 2011 Rates

**Statement of Need:**

CMS annually revises the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs to implement changes arising from our continuing experience with these systems. In addition, we describe the proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. Also, CMS annually updates the payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). The proposed rule solicits comments on the proposed IPPS and LTCH payment rates and new policies. CMS will issue a final rule containing the payment rates for the 2011 IPPS and LTCHs at least 60 days before October 1, 2010.

**Summary of Legal Basis:**

The Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. The Act requires the Secretary to pay for the capital-related costs of hospital inpatient and Long Term Care stays under a prospective payment system (PPS). Under these PPSs, Medicare payment for hospital inpatient and Long Term Care operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. These changes would be applicable to services furnished on or after October 1, 2010.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for FY 2011.

**Risks:**

If this regulation is not published timely, inpatient hospital and LTCH

services will not be paid appropriately beginning October 1, 2010

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**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.

**Agency Contact:**

Tiffany Swygert
Health Insurance Specialist
Department of Health and Human Services
Centers for Medicare & Medicaid Services
Mailstop C4–25–11
7500 Security Blvd.
Baltimore, MD 21244
Phone: 410 786–4642
Email: tiffany.swygert@cms.hhs.gov

**RIN:** 0938–AP80

**HHS—CMS**

**54. ● CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEM FOR CY 2011 (CMS–1504–P)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Sec 1833 of the Social Security Act

**CFR Citation:**

42 CFR 410 to 413; 42 CFR 416

**Legal Deadline:**

Final, Statutory, November 1, 2010.

**Abstract:**

This major proposed rule would revise the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. 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. (The proposed and subsequent final rule must publish by 11/1/10.)

**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 classification groups (APCs). CMS annually revises the APC payment amounts based on claims data, proposes new payment polices, and updates the payments for inflation using the hospital operating market basket. The proposed rule solicits comments on the proposed OPPS payment rates and new policies. This rule does not impact payments to critical access hospitals as they are not paid under the OPPS. Medicare pays roughly 5,000 Ambulatory Surgical Centers (ASCs) under the ASC payment system. CMS annually revises the payment under the ASC payment system, proposes new policies, and updates payments for inflation using the Consumer Price Index for All Urban Consumers (CPI-U). CMS will issue a final rule containing the payment rates for the 2011 OPPS and ASC payment system at least 60 days before January 1, 2011.

**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. 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 as well as changes to the rates and services paid under the ASC payment system. These changes would be applicable to services furnished on or after January 1, 2011.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for CY 2011.

**Risks:**

If this regulation is not published timely, outpatient hospital and ASC services will not be paid appropriately beginning January 1, 2011.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Federalism:**

Undetermined

**Agency Contact:**

Alberta Dwived
Health Insurance Specialist
Department of Health and Human Services
Centers for Medicare & Medicaid Services
Mail Stop C5–01–26
7500 Security Blvd,
Baltimore,, MD 21244
Phone: 410 786–0763
Email: alberta.dwived@cms.hhs.gov

**RIN:** 0938–AP82

**HHS—CMS**

## FINAL RULE STAGE

**55. HIPAA MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008 AMENDMENTS (CMS–4140–IFC)**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Mental Health Parity and Addication Equity Act of 2008 (P.L.110–343)

**CFR Citation:**

45 CFR 146.136

**Legal Deadline:**

Final, Statutory, October 3, 2009, Interim final regulation.

**Abstract:**

This rule implements statutory changes to the Public Health Services Act (PHSA) affecting the group health insurance markets and non-federal governmental plans, made by the Mental Health Parity and Addiction Equity Act of 2008.

**Statement of Need:**

This rule is needed to implement MHPAEA, which expands the existing Mental Health parity law to include substance abuse disorders and to require parity for mental health and substance abuse disorder benefits in treatment limitations and financial requirements.

**Summary of Legal Basis:**

The Public Health Service Act and MHPAEA provide the authority to implement this rule.

**Alternatives:**

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

**Anticipated Cost and Benefits:**

Promulgation of this rule will provide greater access to mental health and substance abuse disorder treatments by requiring group health plans to provide better coverage for those treatments.

**Risks:**

This rule addresses the risk of individuals not being able to obtain necessary mental health and/or substance abuse disorder treatment because of limited health coverage for those treatments. By increasing access to treatment for mental health conditions and substance abuse disorders, this rule will also reduce the stigma experienced by millions of Americans who are afflicted with these conditions and allow them to remain in the workforce.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Request for Information | 04/28/09 | 74 FR 19155 |
| RFI Comment Period End | 05/28/09 | |
| Interim Final Rule | 01/00/10 | |
| Interim Final Rule Comment Period End | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Jim Mayhew
Department of Health and Human Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Phone: 410 786–9244
Email: jim.mayhew@cms.hhs.gov

**Related RIN:** Related to 1210–AB30, Related to 1545–BI70

**RIN:** 0938–AP65

**BILLING CODE 4150–24–S**

## DEPARTMENT OF HOMELAND SECURITY (DHS)

### Statement of Regulatory Priorities

The Department of Homeland Security (DHS) was created in 2003 pursuant to the Homeland Security Act of 2002, Pub. L. 107-296. DHS has a vital mission: to secure the nation from the many threats we face. This requires the dedication of more than 225,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. Our duties are wide-ranging, but our goal is clear — keeping America safe.

Our mission gives us five main areas of responsibility:

1. Guarding against Terrorism,
2. Securing our Borders,
3. Enforcing our Immigration Laws,
4. Improving our Readiness for, Response to and Recovery from Disasters, and
5. Maturing and Unifying the Department.

In achieving these goals, we are continually strengthening our partnerships with communities, first responders, law enforcement, and government agencies — at the State, local, tribal, Federal and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure. And we are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. For a further discussion of our five main areas of responsibility, see the DHS website at http://www.dhs.gov/xabout/responsibilities.shtm.

The regulations we have summarized below in the Department's Fall 2009 Regulatory Plan and in the Unified Agenda support the Department's five responsibility areas listed above. These regulations will improve the Department's ability to accomplish its mission.

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

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

DHS 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. DHS is also committed to the principles described in Executive Order 12,866, as amended, such as promulgating regulations that are cost-effective and maximizing the net benefits of regulations. The Department values public involvement in the development of its Regulatory Plan, Unified Agenda, and regulations, and takes particular concern with the impact its rules have on small businesses. DHS and each of its components continue to emphasize the use of plain language in our notices and rulemaking documents to promote a better understanding of regulations and increased public participation in the Department's rulemakings.

The Fall 2009 Regulatory Plan for DHS includes regulations from the Department's major offices and directorates such as the National Protection and Programs Directorate (NPPD). In addition, it includes regulations from DHS components — including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (Coast Guard), U.S. Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), the U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA) — that have active regulatory programs. Below is a discussion of the Fall 2009 Regulatory Plan for DHS offices and directorates as well as DHS regulatory components.

### United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) administers immigration services and benefits through the rule of law while ensuring that no one is admitted to the United States who is a threat to public safety or national security. As a nation of immigrants, the United States has a strong commitment to welcoming those individuals who seek legal entry through our immigration system, and to also assist those in need of humanitarian protection against harm. USCIS seeks to welcome lawful immigrants while preventing exploitation of the immigration system and to create and maintain a high-performing, integrated, public service organization.

Based on a comprehensive review of the USCIS planned regulatory agenda, USCIS will promulgate several rulemakings to directly support these commitments and goals.

*Regulations Related to the Commonwealth of Northern Mariana Islands*

During 2009, USCIS issued a series of regulations to implement the transition of U.S. immigration law to the Commonwealth of Northern Mariana Islands (CNMI) as required under title VII of the Consolidated Natural Resources Act of 2008. USCIS will be issuing the following CNMI final rules during Fiscal Year 2010: ''CNMI Transitional Worker Classification,'' E-2 Nonimmigrant Status for Aliens of the CNMI with Long-Term Investor Status, and the joint USCIS/Department of Justice regulation ''Application of Immigration Regulations to the CNMI.''

*Improvements to the Immigration System*

USCIS strives to provide efficient, courteous, accurate, and responsive services to those who seek and qualify to come to our country, as well as to provide seamless, transparent, and dedicated customer support services. To improve our customer service goals, USCIS is pursuing a regulatory initiative that will provide for visa number lottery selection of H-1B petitions based on electronic registration.

*Registration Requirements for Employment-Based Categories Subject to Numerical Limitations.* USCIS is considering proposing a revised registration process for cap-subject H-1B petitioners. The rule would propose to create a process by which USCIS would randomly select a sufficient number of

timely filed registrations to meet the applicable cap. Only those petitioners whose registrations are randomly selected would be eligible to file an H-1B petition for a cap-subject prospective worker. Enhancing customer service, the rule would eliminate the need for petitioning employers to prepare and file complete H-1B petitions before knowing whether a prospective worker has ''won'' the H-1B lottery. The rule would also reduce the burden on USCIS of entering data and subsequently returning non-selected petitions to employers once the cap is reached.

*Regulatory Changes Involving Humanitarian Benefits*

USCIS offers protection to individuals who face persecution by adjudicating applications for refugees and asylees. Other humanitarian benefits are available to individuals who have been victims of severe forms of trafficking or criminal activity.

*Asylum and Withholding Definitions.* USCIS plans a regulatory effort to amend the regulations that govern asylum eligibility. The amendments are expected to focus on portions of the regulations that deal with determinations of whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This effort should provide greater stability and clarity in this important area of the law.

*''T'' and ''U'' Nonimmigrants.* USCIS plans additional regulatory initiatives related to T nonimmigrants (victims of trafficking), U nonimmigrants (victims of criminal activity), and Adjustment of Status for T and U status holders. By promulgating additional regulations related to these victims of specified crimes or severe forms of trafficking in persons, USCIS hopes to provide greater stability for these vulnerable groups, their advocates, and the community. These rulemakings will contain provisions that seek to ease documentary requirements for this vulnerable population and provisions that provide clarification to the law enforcement community. As well, publication of these rules will inform the community on how their petitions are adjudicated.

**United States Coast Guard**

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

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

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

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

The rulemaking projects identified for the Coast Guard in the Unified Agenda, and the two rules appearing in the Fall 2009 Regulatory Plan below, contribute to the fulfillment of those responsibilities and reflect our regulatory policies. The Coast Guard has issued many rules supporting maritime safety, security and environmental protection as indicated by the wide range of topics covered in its rulemaking projects in this Unified Agenda.

*Inspection of Towing Vessels.* In 2004, Congress amended U.S. law by adding towing vessels to the types of commercial vessels that must be inspected by the Coast Guard. Congress also provided guidance relevant to the use of a safety management system as part of the inspection regime. The intent of the proposed rule is to promote safer work practices and reduce casualties on towing vessels by ensuring that towing vessels adhere to prescribed safety standards and safety management systems. The proposed rule was developed in cooperation with the Towing Vessel Safety Advisory Committee (TSAC). It would establish a new subchapter dedicated to towing vessels and covering vessel equipment, systems, operational standards, and inspection requirements. To implement this change, the Coast Guard is developing regulations to prescribe standards, procedures, tests, and inspections for towing vessels. This rulemaking supports maritime safety and maritime stewardship.

*Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters.* This rule would set performance standards for the quality of ballast water discharged in U.S. waters and require that all vessels that operate in U.S. waters, are bound for ports or places in the U.S., and are equipped with ballast tanks, install and operate a Coast Guard approved Ballast Water Management System (BWMS) before discharging ballast water into U.S. waters. This would include vessels bound for offshore ports or places. As the effectiveness of ballast water exchange varies from vessel to vessel, the Coast Guard believes that setting performance standards would be the most effective way for approving BWMS that are environmentally protective and scientifically sound. Ultimately, the approval of BWMS would require procedures similar to those located in title 46, subchapter Q, of the Code of Federal Regulations, to ensure that the BWMS works not only in the laboratory but under shipboard conditions. These would include: pre-approval requirements, application requirements, land-based/shipboard testing requirements, design and construction requirements, electrical requirements, engineering requirements, and piping requirements. This requirement is intended to meet the directive from the National Invasive Species Act (NISA) requiring the Coast Guard to ensure to the maximum extent practicable that nonindigenous species (NIS) are not discharged into U.S. waters. This rulemaking supports maritime stewardship. As well, this rulemaking provides additional benefits. Ballast water discharged from ships is a

significant pathway for the introduction and spread of non-indigenous aquatic nuisance species. These organisms, which may be plants, animals, bacteria or pathogens, have the potential to displace native species, degrade native habitats, spread disease and disrupt human economic and social activities that depend on water resources.

The Coast Guard has supported the e-rulemaking initiative and, starting on the day of the first Federal Register publication in a rulemaking project, the public can submit comments electronically and view agency documents and public comments on the Federal Register's Document Management System, which is available online at http://www.regulations.gov/search/Regs/home.html#home. The Coast Guard endeavors to reduce the paperwork burden it places on the public and strives to issue only necessary regulations that are tailored to impose the least burden on society.

**United States Customs and Border Protection**

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

CBP 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.

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

*Electronic System for Travel Authorization.* On June 9, 2008, CBP published an interim final rule amending DHS regulations to implement the Electronic System for Travel Authorization (ESTA) for aliens who wish to enter the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. This rule is intended to fulfill the requirements of section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act). The rule establishes ESTA and delineates the data fields DHS has determined will be collected by the system. The rule requires that each alien traveling to the United States under the VWP must obtain electronic travel authorization via the ESTA System in advance of such travel. VWP travelers may obtain the required ESTA authorization by electronically submitting to CBP biographic and other information as currently required by the I-94W Nonimmigrant Alien Arrival/Departure Form (I-94W). By Federal Register notice dated November 13, 2008, the Secretary of Homeland Security informed the public that ESTA would become mandatory beginning January 12, 2009. This means that all VWP travelers must either obtain travel authorization in advance of travel under ESTA or obtain a visa prior to traveling to the United States.

By shifting from a paper to an electronic form and requiring the data in advance of travel, CBP will be able to determine before the alien departs for the U.S., the eligibility of nationals from VWP countries to travel to the United States and to determine whether such travel poses a law enforcement or security risk. By modernizing the VWP, the ESTA is intended to increase national security and provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays based on lengthy processes at ports of entry. CBP intends to issue a final rule during the next fiscal year.

*Importer Security Filing and Additional Carrier Requirements.* The Security and Accountability for Every Port Act of 2006 (SAFE Port Act), calls for CBP to promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting. See Pub. L. No. 109-347, § 203 (Oct. 13, 2006). This includes appropriate security elements of entry data for cargo destined for the United States by vessel prior to loading of such cargo on vessels at foreign seaports. Id. The SAFE Port Act requires that the information collected reasonably improve CBP's ability to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. Id.

On November 25, 2008, CBP published an interim final rule ''Importer Security Filing and Additional Carrier Requirements,'' amending 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. This rule, which became effective on January 26, 2009, improves CBP's risk assessment and targeting capabilities, facilitates the prompt release of legitimate cargo following its arrival in the United States, and assists CBP in increasing the security of the global trading system. The comment period for the interim final rule concluded on June 1, 2009. CBP is analyzing comments and conducting a structured review of certain flexibilities provided in the interim final rule. CBP intends to publish a final rule during the next fiscal year.

*Implementation of the Guam-CNMI Visa Waiver Program.* CBP published an interim final rule in November 2008 amending the DHS Regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver program. This rule implements portions of the Natural Resources Act of 2008 (CNRA), which extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and among other things, provides for a visa waiver program for travel to Guam and the CNMI. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI

without a visa. The rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver program.

*Global Entry Program.* Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, in the fall of 2009, CBP issued a notice of proposed rulemaking (NPRM), proposing to establish an international trusted traveler program, called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP now proposes to establish Global Entry as a permanent voluntary regulatory program. CBP will evaluate the public comments received in response to the NPRM, in order to develop a final rule.

The rules discussed above foster DHS's mission. Under section 403(1) of the Homeland Security Act of 2002, 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 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 2010, expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. CBP regulations regarding the customs revenue function are discussed in the Regulatory Plan of the Department of the Treasury.

**Federal Emergency Management Agency**

FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. In fiscal year 2010, FEMA will continue to serve that mission and promote the Department of Homeland Security's goals. In furtherance of the Department and agency's goals, in the upcoming fiscal year, FEMA will be working on regulations to implement provisions of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (Public Law 109-295, Oct. 4, 2006), the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28, May 25, 2007), and to implement lessons learned from past events.

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

*Public Assistance Program regulations.* FEMA will also work to revise the Public Assistance Program regulations in 44 CFR part 206 to reflect changes made to the Stafford Act by PKEMRA, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act) (Public Law 109-308, Oct., 2006), the Local Community Recovery Act of 2006 (Public Law 109-218, Apr. 20, 2006), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Public Law 109-347, Oct. 13, 2006), and to make other substantive and nonsubstantive clarifications and corrections to the Public Assistance regulations. The proposed changes would expand eligibility to include performing arts facilities and community arts centers pursuant to section 688 of PKEMRA; include education in the list of critical services pursuant to section 689h of PKEMRA, thus allowing private nonprofit educational facilities to be eligible for restoration funding; add accelerated Federal assistance to available assistance and precautionary evacuations to activities eligible for reimbursement pursuant to section 681 of PKEMRA; include household pets and service animals in essential assistance pursuant to section 689 of PKEMRA and section 4 of the PETS Act; provide for expedited payments of grant assistance for the removal of debris pursuant to section 610 of the SAFE Port Act; and allow for a contract to be set aside for award based on a specific geographic area pursuant to section 2 of the Local Community Recovery Act of 2006. Other changes would include adding or changing requirements to improve and streamline the Public Assistance grant application process.

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

**Federal Law Enforcement Training Center**

The Federal Law Enforcement Training Center (FLETC) does not have any significant regulatory actions planned for fiscal year 2010.

**United States Immigration and Customs Enforcement**

The mission of the U.S. Immigration and Customs Enforcement (ICE) is to protect national security by enforcing our nation's customs and immigration laws. During fiscal year 2010, ICE will

pursue rulemaking actions that improve three critical subject areas: the processes for the Student and Exchange Visitor Program (SEVP); the detention of aliens who are subject to final orders of removal; and the electronic signature and storage of Form I-9, Employment Eligibility Verification.

*Processes for the Student and Exchange Visitor Program.* ICE will improve SEVP processes by publishing the Optional Practical Training (OPT) final rule, which will respond to comments on the OPT interim final rule (IFR). The IFR increased the maximum period of OPT from 12 months to 29 months for nonimmigrant students who have completed a science, technology, engineering, or mathematics (STEM) degree and who accept employment with employers who participate in the U.S. Citizenship and Immigration Services E-Verify employment verification program.

In addition, ICE will publish proposed revisions of 8 CFR 214.1-4 in a regulation that will clarify the criteria for F, M and J nonimmigrant status and for schools certified by SEVP, update policy and procedure for SEVP, remove obsolete provisions, and support the implementation of a major reprogramming of the Student and Exchange Visitor Information System (SEVIS), known as ''SEVIS II.''

*Detention of Aliens Subject to Final Orders of Removal.* ICE will also improve the post order custody review process in the final rule related to the Continued Detention of Aliens Subject to Final Orders of Removal in light of the Supreme Court's decisions in *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Clark v. Martinez*, 543 U.S. 371 (2005). ICE will also make conforming changes as required by the Homeland Security Act of 2002.

*Electronic Signature and Storage of Form I-9, Employment Eligibility Verification.* A final rule on the Electronic Signature and Storage of Form I-9, Employment Eligibility Verification will respond to comments and make minor changes to the IFR that was published in 2006.

**National Protection and Programs Directorate**

The goal of the National Protection and Programs Directorate (NPPD) is to advance the Department's risk-reduction mission. Reducing risk requires an integrated approach that encompasses both physical and virtual threats and their associated human elements.

*Secure Handling of Ammonium Nitrate Program*

The Secure Handling of Ammonium Nitrate Act, section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act, P.L. 110-161, amended the Homeland Security Act of 2002 to provide DHS with the authority to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.''

The Secure Handling of Ammonium Nitrate Act directs DHS to promulgate regulations requiring potential buyers and sellers of ammonium nitrate to register with DHS. As part of the registration process, the statute directs DHS to screen registration applicants against the Federal Government's Terrorist Screening Database. The statute also requires sellers of ammonium nitrate to verify the identities of those seeking to purchase it; to record certain information about each sale or transfer of ammonium nitrate; and to report thefts and losses of ammonium nitrate to DHS.

The rule would aid the Federal Government in its efforts to prevent the misappropriation of ammonium nitrate for use in acts of terrorism. By preventing such misappropriation, this rule will limit terrorists' abilities to threaten the public and to threaten the Nation's critical infrastructure and key resources. By securing the nation's supply of ammonium nitrate, it will be more difficult for terrorists to obtain ammonium nitrate materials for use in terrorist acts.

DHS published an advance notice of proposed rulemaking (ANPRM) for the Secure Handling of Ammonium Nitrate Program on October 29, 2008, and has received a number of public comments on that ANPRM. DHS is presently reviewing those comments and is in the process of developing a notice of proposed rulemaking (NPRM), which the Department hopes to issue in Spring 2010.

*US-VISIT*

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

The US-VISIT program, through CBP officers or Department of State (DOS) consular offices, collects biometrics (digital fingerprints and photographs) from aliens seeking to enter the United States. DHS checks that information against government databases to identify suspected terrorists, known criminals, or individuals who have previously violated U.S. immigration laws. This system assists DHS and DOS in determining whether an alien seeking to enter the United States is, in fact, admissible to the United States under existing law. No biometric exit system currently exists, however, to assist DHS or DOS in determining whether an alien has overstayed the terms of his or her visa or other authorization to be present in the United States.

NPPD published an NPRM on April 24, 2008, proposing to establish an exit program at all air and sea ports of departure in the United States. Congress subsequently enacted the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110-329, 122 Stat. 3574, 3669 – 70 (Sept. 30, 2008), requiring DHS to delay issuance of a final rule until the conclusion of pilot tests to analyze the collection of biometrics from at least two air exit scenarios. DHS currently is reviewing the results of those tests. DHS continues to work to ensure that the final air/sea exit rule will be issued during fiscal year 2010.

**Transportation Security Administration**

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

In fiscal year 2010, TSA will promote the DHS mission by emphasizing regulatory efforts that allow TSA to better identify, detect, and protect against threats against various modes of the transportation system, while facilitating the efficient movement of the traveling public, transportation workers, and cargo.

*Screening of Air Cargo.* TSA will finalize an interim final rule that codifies a statutory requirement of Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act)

that TSA establish a system to screen 100 percent of cargo transported on passenger aircraft by August 3, 2010. TSA is working to finalize the interim rule by November 2010. To assist in carrying out this mandate, TSA is establishing a voluntary program under which it will certify cargo screening facilities to screen cargo according to TSA standards prior to its being tendered to aircraft operators for carriage on passenger aircraft.

*Large Aircraft Security Program (General Aviation).* TSA plans to issue a supplemental notice of proposed rulemaking (SNPRM) to propose amendments to 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 General Aviation (GA) aircraft operators. To date, the government's focus with regard to aviation security generally has been on air carriers and commercial operators. As vulnerabilities and risks associated with air carriers and commercial operators have been reduced or mitigated, terrorists may perceive that GA aircraft are more vulnerable and may view them as attractive targets. This rule would yield benefits in the areas of security and quality governance by expanding the mandatory use of security measures to certain operators of large aircraft that are not currently required to have a security plan. TSA published a notice of proposed rulemaking on October 30, 2008, and received over 7,000 public comments, generally urging significant changes to the proposal. The SNPRM will respond to the comments and contain proposals on addressing security in the GA sector.

*Security Training for Non-Aviation Modes.* TSA will propose regulations to enhance the security of several non-aviation modes of transportation, in accordance with the requirements of the 9/11 Act. In particular, TSA will propose regulations requiring freight railroads, passenger railroads, public transportation system operators, over-the-road bus operators, and motor carriers transporting certain hazardous materials to conduct security training for certain of their employees. Requiring security training programs of these employees is important, because it will prepare these employees, including frontline employees, for potential security threats and conditions.

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

*Vetting, Adjudication, and Redress Process and Fees.* TSA is developing a proposed rule to revise and standardize the procedures, adjudication criteria, and fees for most of the security threat assessments (STA) of individuals for which TSA is responsible. The scope of the rulemaking will include transportation workers from all modes of transportation who are required to undergo an STA in other regulatory programs. In addition, TSA will propose fees to cover the cost of the STAs, and credentials for some personnel. TSA plans to improve efficiencies in processing STAs and streamline existing regulations by simplifying language and removing redundancies. Standardized procedures and adjudication criteria will allow TSA to reduce the need for certain individuals to undergo multiple STAs; streamlined processes are intended to reduce the time needed for TSA to complete the adjudication of STAs.

**United States Secret Service**

The United States Secret Service does not have any significant regulatory actions planned for fiscal year 2010.

**DHS Regulatory Plan for Fiscal Year 2010**

A more detailed description of the priority regulations that comprise DHS's Fall 2009 Regulatory Plan follows.

---

## DHS—Office of the Secretary (OS)

### PROPOSED RULE STAGE

### 56. SECURE HANDLING OF AMMONIUM NITRATE PROGRAM

**Priority:**

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

**Legal Authority:**

Sec 563 of the 2008 Consolidated Appropriations Act, Subtitle J—Secure Handling of Ammonium Nitrate, PL 110–161

**CFR Citation:**

6 CFR 31

**Legal Deadline:**

NPRM, Statutory, May 26, 2008, Publication of Notice of Proposed Rulemaking.

**Abstract:**

This rulemaking will implement the December 2007 amendment to the Homeland Security Act entitled the Secure Handling of Ammonium Nitrate. The amendment requires the Department of Homeland Security to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . .to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.''

**Statement of Need:**

Pursuant to section 563 of the 2008 Consolidated Appropriations Act, the Secure Handling of Ammonium Nitrate Act, P.L. 110-161, the Department of Homeland Security is required to promulgate a rulemaking to create a registration regime for certain buyers and sellers of ammonium nitrate. The rule, as proposed by this NPRM, would create that regime, and will aid the Federal Government in its efforts to prevent the misappropriation of ammonium nitrate for use in acts of terrorism. By preventing such misappropriation, this rule will limit terrorists' abilities to threaten the public and to threaten the Nation's critical infrastructure and key resources. By securing the nation's supply of ammonium nitrate, it will be much more difficult for terrorists to obtain ammonium nitrate materials for use in improvised explosive devices (IEDs). As a result, there is a direct value in the deterrence of a catastrophic terrorist attack using ammonium nitrate such as the Oklahoma City attack that killed over 160, injured 853 people, and is estimated to have caused $652 million in damages ($921 million in $2009).

**Summary of Legal Basis:**

Section 563 of the 2008 Consolidated Appropriations Act, Subtitle J — Secure Handling of Ammonium Nitrate, PL 110-161, authorizes and requires this rulemaking.

**Alternatives:**

The Department of Homeland Security is required by statute to publish regulations implementing the Secure

Handling of Ammonium Nitrate Act. As part of its notice of proposed rulemaking, the Department will seek public comment on the numerous alternative ways in which the final Secure Handling of Ammonium Nitrate Program could carry out the requirements of the Secure Handling of Ammonium Nitrate Act.

**Anticipated Cost and Benefits:**

There will be costs to ammonium nitrate (AN) purchasers, including farms, fertilizer mixers, farm supply wholesalers and coops, golf courses, landscaping services, explosives distributors, mines, retail garden centers, and lab supply wholesalers. There will also be costs to AN sellers, such as ammonium nitrate fertilizer and explosive manufacturers, fertilizer mixers, farm supply wholesalers and coops, retail garden center, explosives distributors, fertilizer applicator services, and lab supply wholesalers. Costs will relate to the point of sale requirements, registration activities, recordkeeping, inspections/audits, and reporting of theft or loss. DHS plans to provide an initial regulatory flexibility analysis, which covers the populations and cost impacts on small business.

Because the value of the benefits of reducing risk of a terrorist attack is a function of both the probability of an attack and the value of the consequence, it is difficult to identify the particular risk reduction associated with the implementation of this rule. When the proposed rule is published, DHS will provide a break even analysis. The program elements that would help achieve the risk reductions will be discussed in the break even analysis. These elements and related qualitative benefits include point of sale identification requirements and requiring individuals to be screened against the TSDB resulting in known bad actors being denied the ability to purchase ammonium nitrate.

**Risks:**

Explosives containing ammonium nitrate are commonly used in terrorist attacks. Such attacks have been carried out both domestically and internationally. The 1995 Murrah Federal Building attack in Oklahoma City claimed the lives of 167 individuals and demonstrated firsthand to America how ammonium nitrate could be misused by terrorists. In addition to the Murrah Building attack, the Provisional Irish Republican Army used ammonium nitrate as part of its London, England bombing campaign in the early 1980s. More recently, ammonium nitrate was used in the 1998 East African Embassy bombings and in November 2003 bombings in Istanbul, Turkey. Additionally, since the events of 9/11, stores of ammonium nitrate have been confiscated during raids on terrorist sites around the world, including sites in Canada, England, India, and the Philippines.

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By preventing the misappropriation or use of ammonium nitrate in acts of terrorism, this rulemaking will support the Department's efforts to prevent terrorist attacks and to reduce the Nation's vulnerability to terrorist attacks. This rulemaking is complementary to other Department programs seeking to reduce the risks posed by terrorism, including the Chemical Facility Anti-terrorism Standards program (which seeks in part to prevent terrorists from gaining access to dangerous chemicals) and the Transportation Worker Identification Credential program (which seeks in part to prevent terrorists from gaining access to certain critical infrastructure), among other programs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 10/29/08 | 73 FR 64280 |
| Correction | 11/05/08 | 73 FR 65783 |
| ANPRM Comment Period End | 12/29/08 | |
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Federalism:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Dennis Deziel
Infrastructure Security Compliance Division
Department of Homeland Security
Washington, DC 20528
Phone: 703 235–5263
Email: dennis.deziel@dhs.gov

**RIN:** 1601–AA52

**DHS—OS**

## FINAL RULE STAGE

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

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

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

**CFR Citation:**

8 CFR 215.1; 8 CFR 231.4

**Legal Deadline:**

None

**Abstract:**

DHS established the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) in accordance with a series of legislative mandates requiring that DHS create an integrated automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates travel documents. This rule requires aliens to provide biometric identifiers at entry and upon departure at any air and sea port of entry at which facilities exist to collect such information.

**Statement of Need:**

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

**Alternatives:**

The proposed rule would require aliens who are subject to US-VISIT biometric requirements upon entering the United

States to provide biometric information before departing from the United States at air and sea ports of entry. The rule proposed a performance standard for commercial air and vessel carriers to collect the biometric information and to submit this information to DHS no later than 24 hours after air carrier staff secure the aircraft doors on an international departure, or for sea travel, no later than 24 hours after the vessel's departure from a U.S. port. DHS is considering numerous alternatives based upon public comment on the alternatives in the NPRM. Alternatives included various points in the process, kiosks, and varying levels of responsibility for the carriers and government. DHS may select another variation between the outer bounds of the alternatives presented or another alternative if subsequent analysis warrants.

**Anticipated Cost and Benefits:**

The proposed rule expenditure and delay costs for a ten-year period are estimated at $3.5 billion. Alternative costs range from $3.1 billion to $6.4 billion. US-VISIT assessed seven categories of economic impacts other than direct expenditures. Of these two are economic costs: social costs resulting from increased traveler queue and processing time; and social costs resulting from increased flight delays. Ten-year benefits are estimated at $1.1 billion. US-VISIT assessed seven categories of economic impacts other than direct expenditures. Of these five are benefits, which include costs that could be avoided, for each alternative: cost avoidance resulting from improved detection of aliens overstaying visas; cost avoidance resulting from improved U.S. Immigrations and Customs Enforcement (ICE) efficiency attempting apprehension of overstays; cost avoidance resulting from improved efficiency processing Exit/Entry data; improved compliance with NSEERS requirements due to the improvement in ease of compliance; and improved National Security Environment. These benefits are measured quantitatively or qualitatively.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/24/08 | 73 FR 22065 |
| NPRM Comment Period End | 06/23/08 | |
| Final Rule | 07/00/10 | |

**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

**Agency Contact:**

Helen DeThomas
Management and Program Analyst
Department of Homeland Security
1616 N. Fort Myer Drive
Arlington, VA 22203
Phone: 202 298–5173
Email: helen.dethomas@dhs.gov

**Related RIN:** Previously reported as 1650–AA04

**RIN:** 1601–AA34

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

### PROPOSED RULE STAGE

### 58. ASYLUM AND WITHHOLDING DEFINITIONS

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

**CFR Citation:**

8 CFR 208

**Legal Deadline:**

None

**Abstract:**

This rule proposes to amend Department of Homeland Security regulations that govern asylum eligibility. The amendments focus on portions of the regulations that deal with the definitions of membership in a particular social group, the requirements for failure of State protection, and determinations about whether persecution is inflicted on account of a protected ground. This rule codifies long-standing concepts of the definitions. It clarifies that gender can be a basis for membership in a particular social group. It also clarifies that a person who has suffered or fears domestic violence may under certain circumstances be eligible for asylum on that basis. After the Board of Immigration Appeals published a decision on this issue in 1999, Matter of R-A-, Int. Dec. 3403 (BIA 1999), it became clear that the governing regulatory standards required clarification. The Department of Justice began this regulatory initiative by publishing a proposed rule addressing these issues in 2000.

**Statement of Need:**

This rule provides guidance on a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal (withholding) claims. The interpretive issues include whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This rule will aid in the adjudication of claims made by applicants whose claims fall outside of the rubric of the protected grounds of race, religion, nationality, or political opinion. One example of such claims which often fall within the particular social group ground concerns people who have suffered or fear domestic violence. This rule is expected to consolidate issues raised in a proposed rule in 2000 and to address issues that have developed since the publication of the proposed rule. This should provide greater stability and clarity in this important area of the law.

**Summary of Legal Basis:**

The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees (1951 Convention) contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin ''who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' Section 101(a)(42) of the Immigration and Nationality Act.

**Alternatives:**

A sizable body of interpretive case law has developed around the meaning of the refugee definition. Historically, much of this case law has addressed

more traditional asylum and withholding claims based on the protected grounds of race, religion, nationality, or political opinion. In recent years, however, the United States increasingly has encountered asylum and withholding applications with more varied bases, related, for example, to an applicant's gender or sexual orientation. Many of these new types of claims are based on the ground of ''membership in a particular social group,'' which is the least well-defined of the five protected grounds within the refugee definition.

On December 7, 2000, a proposed rule was published in the Federal Register providing guidance on the definitions of ''persecution'' and ''membership in a particular social group.'' Prior to publishing a final rule, the Department will be considering how the nexus between persecution and a protected ground might be further conceptualized; how membership in a particular social group might be defined and evaluated; and what constitutes a State's inability or unwillingness to protect the applicant where the persecution arises from a non-State actor. This rule will provide guidance to the following adjudicators: USCIS asylum officers, Department of Justice Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals. The alternative to publishing this rule would be to allow the standards governing this area of law to continue to develop piecemeal through administrative and judicial precedent. This approach has resulted in inconsistent and confusing standards and the Department has therefore determined that promulgation of the final rule is necessary.

**Anticipated Cost and Benefits:**

By providing a clear framework for key asylum and withholding issues, we anticipate that adjudicators will have clear guidance, increasing administrative efficiency and consistency in adjudicating these cases. The rule will also promote a more consistent and predictable body of administrative and judicial precedent governing these types of cases. We anticipate that this will enable applicants to better assess their potential eligibility for asylum and to present their claims more efficiently when they believe that they may qualify, thus reducing the resources spent on adjudicating claims that do not qualify. In addition, a more consistent and predictable body of law on these issues will likely result in fewer appeals, both administrative and judicial, and reduce the associated litigation costs. The Department has no way of accurately predicting how this rule will impact the number of asylum applications filed in the US. Based on anecdotal evidence and on the reported experience of other nations that have adopted standards under which the results are similar to those we anticipate from this rule, we do not believe this rule will cause a large change in the number of asylum applications filed.

**Risks:**

The failure to promulgate a final rule in this area presents significant risks of further inconsistency and confusion in the law. The government's interests in fair, efficient and consistent adjudications would be compromised.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/07/00 | 65 FR 76588 |
| NPRM | 09/00/10 | |
| NPRM Comment Period End | 11/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

CIS No. 2092-00

Transferred from RIN 1115-AF92

**Agency Contact:**

Jedidah Hussey
Deputy Chief, Asylum Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 3300
Washington, DC 20529
Phone: 202 272–1663
Email: jedidah.m.hussey@dhs.gov

**RIN:** 1615–AA41

---

**DHS—USCIS**

## 59. REGISTRATION REQUIREMENTS FOR EMPLOYMENT–BASED CATEGORIES SUBJECT TO NUMERICAL LIMITATIONS

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1184(g)

**CFR Citation:**

8 CFR 103; 8 CFR 299

**Legal Deadline:**

None

**Abstract:**

The Department of Homeland Security is proposing to amend its regulations governing petitions filed on behalf of alien workers subject to annual numerical limitations. This rule proposes an electronic registration program for petitions subject to numerical limitations contained in the Immigration and Nationality Act (the Act). Initially, the program would be for the H-1B nonimmigrant classification; however, other nonimmigrant classifications will be added as needed. This action is necessary because the demand for H-1B specialty occupation workers by U.S. companies generally exceeds the numerical limitation. This rule is intended to allow USCIS to more efficiently manage the intake and lottery process for these H-1B petitions.

**Statement of Need:**

U.S. Citizenship and Immigration Services (USCIS) proposes to establish a mandatory Internet-based electronic registration process for U.S. employers seeking to file H-1B petitions for alien workers subject to either the 65,000 or 20,000 caps. This registration process would allow U.S. employers to electronically register for consideration of available H-1B cap numbers. The mandatory proposed registration process will alleviate administrative burdens on USCIS service centers and eliminate the need for U.S. employers to needlessly prepare and file H-1B petitions without any certainty that an H-1B cap number will ultimately be allocated to the beneficiary named on that petition.

**Summary of Legal Basis:**

Section 214(g) of the Immigration and Nationality Act provides limits on the number of alien temporary workers who may be granted H-1B nonimmigrant status each fiscal year (commonly known as the ''cap''). USCIS has responsibility for monitoring the requests for H-1B workers and administers the distribution of available H-1B cap numbers in light of these limits.

**Alternatives:**

To ensure a fair and orderly distribution of H-1B cap numbers, USCIS evaluated its current random selection process, and has found that when it receives a significant number of H-1B petitions within the first few days of the H-1B filing period, it is extremely difficult to handle the volume of petitions received in advance of the H-1B random selection process. Further, the current petition process of preparing and mailing H-1B petitions, with the required filing fee, can be burdensome and costly for employers, if the petition is returned because the cap was reached and the petition was not selected in the random selection process.

Accordingly, this rule proposes to implement a new process to allow U.S. employers to electronically register for consideration of available H-1B cap numbers without having to first prepare and submit the petition.

**Risks:**

There is a risk that a petitioner will submit multiple petitions for the same H-1B beneficiary so that the U.S. employer will have a better chance of his or her petition being selected. Accordingly, should USCIS receive multiple petitions for the same H-1B beneficiary by the same petitioner, the system will only accept the first petition and reject the duplicate petitions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |
| NPRM Comment Period End | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

2443-08

**Agency Contact:**

Greg Richardson
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
2nd Floor
Washington, DC 20529
Phone: 202 272–8465
Email: gregory.richardson@dhs.gov

**RIN:** 1615–AB71

**DHS—USCIS**

**FINAL RULE STAGE**

**60. NEW CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS ELIGIBLE FOR THE T 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 to 1227; 8 USC 1252 to 1252a; 22 USC 7101; 22 USC 7105; . . .

**CFR Citation:**

8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

**Legal Deadline:**

None

**Abstract:**

T classification was created by 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386. The T nonimmigrant classification was designed for eligible victims of severe forms of trafficking in persons who aid the Government with their case against the traffickers and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States after having completed their assistance to law enforcement. The rule establishes application procedures and responsibilities for the Department of Homeland Security and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

**Statement of Need:**

T nonimmigrant status is available to eligible victims of severe forms of trafficking in persons who have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, and who can demonstrate that they would suffer extreme hardship involving unusual and severe harm if removed from the United States. This rule addresses the essential elements that must be demonstrated for classification as a T nonimmigrant alien; the procedures to be followed by applicants to apply for T nonimmigrant status; and evidentiary guidance to assist in the application process.

**Summary of Legal Basis:**

Section 107(e) of the Trafficking Victims Protection Act (TVPA), Public Law 106-386, established the T classification to create a safe haven for certain eligible victims of severe forms of trafficking in persons, who assist law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.

**Alternatives:**

To develop a comprehensive Federal approach to identifying victims of severe forms of trafficking in persons, to provide them with benefits and services, and to enhance the Department of Justice's ability to prosecute traffickers and prevent trafficking in persons in the first place, a series of meetings with stakeholders were conducted with representatives from key Federal agencies; national, state, and local law enforcement associations; non-profit, community-based victim rights organizations; and other groups. Suggestions from these stakeholders were used in the drafting of this regulation.

**Anticipated Cost and Benefits:**

There is no cost associated with this regulation. Applicants for T nonimmigrant status do not pay application or biometric fees.

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

Benefits which 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 by the law enforcement community of trafficking in persons;

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:**

There is a 5,000-person limit to the number of individuals who can be granted T-1 status per fiscal year. Eligible applicants who are not granted T-1 status due solely to the numerical limit will be placed on a waiting list to be maintained by U.S. Citizenship and Immigration Services (USCIS).

To protect T-1 applicants and their families, USCIS will use various means to prevent the removal of T-1 applicants on the waiting list, and their family members who are eligible for derivative T status, including its existing authority to grant deferred action, parole, and stays of removal.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/31/02 | 67 FR 4784 |
| Interim Final Rule Effective | 03/04/02 | |
| Interim Final Rule Comment Period End | 04/01/02 | |
| Interim Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

CIS No. 2132-01; AG Order No. 2554-2002

There is a related rulemaking, CIS No. 2170-01, the new U nonimmigrant status (RIN 1615-AA67).

Transferred from RIN 1115-AG19

**Agency Contact:**

Laura M. Dawkins
Chief, Family Immigration and Victim Protection Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 2304
Washington, DC 20529
Phone: 202 272–8398
Email: laura.dawkins@dhs.gov

**RIN:** 1615–AA59

---

**DHS—USCIS**

## 61. 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 to 1227; 8 USC 1252 to 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105

**CFR Citation:**

8 CFR 204; 8 CFR 214; 8 CFR 245

**Legal Deadline:**

None

**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. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

**Statement of Need:**

This regulation is necessary to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to that of lawful permanent residents. T nonimmigrant status is available to aliens who are victims of a severe form of trafficking in persons and who are assisting law enforcement in the investigation or prosecution of the acts of trafficking. U nonimmigrant status is available to aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes.

**Summary of Legal Basis:**

This rule implements the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386, 114 Stat. 1464 (Oct. 28, 2000), as amended, to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to that of lawful permanent residents.

**Alternatives:**

USCIS did not consider alternatives to managing T and U applications for adjustment of status. Ease of administration dictates that adjustment of status applications from T and U nonimmigrants would be best handled on a first in, first out basis, because that is the way applications for T and U status are currently handled.

**Anticipated Cost and Benefits:**

USCIS uses fees to fund the cost of processing applications and associated support benefits. The fees to be collected resulting from this rule will be approximately $3 million dollars in the first year, $1.9 million dollars in the second year, and an average about $32 million dollars in the third and subsequent years. To estimate the new fee collections to be generated by this rule, USCIS estimated the fees to be collected for new applications for adjustment of status from T and U nonimmigrants and their eligible family members. After that, USCIS estimated fees from associated applications that are required such as biometrics, and others that are likely to occur in direct connection with applications for adjustment, such as employment authorization or travel authorization.

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:**

Congress created the U nonimmigrant status (''U visa'') to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Although there are no specific data on alien crime victims, statistics maintained by the Department of Justice have shown that aliens, especially those aliens without legal status, are often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 12/12/08 | 73 FR 75540 |
| Interim Final Rule Effective | 01/12/09 | |
| Interim Final Rule Comment Period End | 02/10/09 | |
| Interim Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

CIS No. 2134-01

Transferred from RIN 1115-AG21

**Agency Contact:**

Laura M. Dawkins
Chief, Family Immigration and Victim Protection Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 2304
Washington, DC 20529
Phone: 202 272–8398
Email: laura.dawkins@dhs.gov

**RIN:** 1615–AA60

**DHS—USCIS**

## 62. NEW CLASSIFICATION FOR VICTIMS OF CERTAIN CRIMINAL ACTIVITY; ELIGIBILITY FOR THE U NONIMMIGRANT STATUS

**Priority:**

Other Significant

**Legal Authority:**

5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; . . .

**CFR Citation:**

8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

**Legal Deadline:**

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

Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005.

**Abstract:**

This rule sets forth application requirements for a new nonimmigrant status. The U classification is for non-U.S. Citizen/Lawful Permanent Resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per year.

This rule establishes the procedures to be followed in order to petition for the U nonimmigrant classifications. Specifically, the rule addresses the essential elements that must be demonstrated to receive the nonimmigrant classification; procedures that must be followed to make an application and evidentiary guidance to assist in the petitioning process. Eligible victims will be allowed to remain in the United States.The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

**Statement of Need:**

This rule provides requirements and procedures for aliens seeking U nonimmigrant status. U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in the investigation or prosecution of that criminal activity. The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States

**Summary of Legal Basis:**

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes, while offering protection to victims of such crimes. Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.

**Alternatives:**

USCIS has identified four alternatives, the first being chosen for the rule:

1. USCIS would adjudicate petitions on a first in, first out basis. Petitions received after the limit has been reached would be reviewed to determine whether or not they are approvable but for the numerical cap. Approvable petitions that are reviewed after the numerical cap has been reached would be placed on a waiting list and written notice sent to the petitioner. Priority on the waiting list would be based upon the date on which the petition is filed. USCIS would provide petitioners on the waiting list with interim relief until the start of the next fiscal year in the form of deferred action, parole, or a stays of removal.

2. USCIS would adjudicate petitions on a first in, first out basis, establishing a waiting list for petitions that are pending or received after the numerical cap has been reached. Priority on the waiting list would be based upon the date on which the petition was filed. USCIS would not provide interim relief to petitioners whose petitions are placed on the waiting list.

3. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be reviewed to identify particularly compelling cases for adjudication. New filings would be rejected once the numerical cap is reached. No official waiting list would be established; however, interim relief until the start of the next fiscal year would be provided for some compelling cases. If a case was not particularly

compelling, the filing would be denied or rejected.

4. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be rejected once the numerical cap is reached. No waiting list would be established, nor would interim relief be granted.

**Anticipated Cost and Benefits:**

USCIS estimates the total annual cost of this interim rule to be $6.2 million. This cost includes the biometric services fee that petitioners must pay to USCIS, the opportunity cost of time needed to submit the required forms, the opportunity cost of time required for a visit to an Application Support Center, and the cost of traveling to an Application Support Center.

This rule will strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.

**Risks:**

In the case of witness tampering, obstruction of justice, or perjury, the interpretive challenge for USCIS was to determine whom the BIWPA was meant to protect, given that these criminal activities are not targeted against a person. Accordingly it was determined that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of, or undue control over, the alien through manipulation of the legal system.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/17/07 | 72 FR 53013 |
| Interim Final Rule Effective | 10/17/07 | |
| Interim Final Rule Comment Period End | 11/17/07 | |
| Interim Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

Transferred from RIN 1115-AG39

**Agency Contact:**

Laura M. Dawkins
Chief, Family Immigration and Victim Protection Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 2304
Washington, DC 20529
Phone: 202 272–8398
Email: laura.dawkins@dhs.gov

**RIN:** 1615–AA67

---

**DHS—USCIS**

## 63. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL NONIMMIGRANT INVESTOR CLASSIFICATION

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a

**CFR Citation:**

8 CFR 214

**Legal Deadline:**

None

**Abstract:**

On May 8, 2008, Public Law 110-229, Commonwealth Natural Resources Act, established a transitional period for the application of the Immigration and Nationality Act (INA) to the Commonwealth of the Northern Mariana Islands (CNMI). Although the CNMI is subject to most U.S. laws, the CNMI has administered its own immigration system under the terms of its 1976 covenant with the United States. The Department of Homeland Security is proposing to amend its regulations by creating a new E2 CNMI Investor classification for the duration of the transition period. These temporary provisions are necessary to reduce the potential harm to the CNMI economy before these foreign workers and investors are required to convert into U.S. immigrant or nonimmigrant visa classifications.

**Statement of Need:**

This final rule responds to a Congressional mandate that requires the Federal Government to assume responsibility for visas for entry to CNMI by foreign investors.

**Anticipated Cost and Benefits:**

Public Costs: This rule reduces the employer's annual cost by $200 per year ($500 - $300), plus any further reduction caused by eliminating the paperwork burden associated with the CNMI's process. In 2006 - 2007, there were 464 long-term business entry permit holders and 20 perpetual foreign investor entry permit holders and retiree investor permit holders, totaling 484, or approximately 500 foreign registered investors. The total savings to employers from this rule is thus expected to be $100,000 per year ($500 x $200). Cost to the Federal Government: The yearly Federal Government cost is estimated at $42,310.

Benefits: The potential abuse of the visa system by those seeking to illegally emigrate from the CNMI to Guam or elsewhere in the United States reduces the integrity of the United States immigration system by increasing the ease by which aliens may unlawfully enter the United States through the CNMI. Federal oversight and regulations of CNMI foreign investors should help reduce abuse by foreign employees in the CNMI, and should help reduce the opportunity for aliens to use the CNMI as an entry point into the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/14/09 | 74 FR 46938 |
| NPRM Comment Period End | 10/14/09 | |
| Final Action | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Local, State

**Additional Information:**

CIS No. 2458-08

**Agency Contact:**

Steven Viger
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Washington, DC 20529
Phone: 202 272–1470
Email: steven.w.viger@dhs.gov

**RIN:** 1615–AB75

**DHS—USCIS**

## 64. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL WORKERS CLASSIFICATION

**Priority:**

Other Significant

**Legal Authority:**

PL 110–229

**CFR Citation:**

8 CFR 214.2

**Legal Deadline:**

None

**Abstract:**

The Department of Homeland Security (DHS) is creating a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification (CW classification) in accordance with title VII of the Consolidated Natural Resources Act of 2008 (CNRA). The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act (INA). A CW transitional worker is an alien worker who is ineligible for another classification under the INA and who performs services or labor for an employer in the CNMI. The CNRA imposes a five-year transition period before the INA requirements become fully applicable in the CNMI. The new CW classification will be in effect for the duration of that transition period, unless extended by the Secretary of Labor. The rule also establishes employment authorization incident to CW status.

**Statement of Need:**

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) created a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification. The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act.

**Anticipated Cost and Benefits:**

Each of the estimated 22,000 CNMI transitional workers will be required to pay a $320 fee per year, for an annualized cost to the affected public of $7 million. However, since these workers will not have to pay CNMI fees, the total present value costs of this rule are a net cost savings ranging from $9.8 million to $13.4 million depending on the validity period of CW status (1 or 2 years), whether out-of-status aliens present in the CNMI are eligible for CW status, and the discount rate applied. The intended benefits of the rule include improvements in national and homeland security and protection of human rights.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 10/27/09 | 74 FR 55094 |
| Interim Final Rule Comment Period End | 11/27/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

State

**Agency Contact:**

Greg Richardson
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
2nd Floor
Washington, DC 20529
Phone: 202 272–8465
Email: gregory.richardson@dhs.gov

**RIN:** 1615–AB76

**DHS—USCIS**

## 65. REVISIONS TO FEDERAL IMMIGRATION REGULATIONS FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS; CONFORMING REGULATIONS

**Priority:**

Other Significant

**Legal Authority:**

PL 110–229

**CFR Citation:**

8 CFR 208 and 209; 8 CFR 214 and 215; 8 CFR 217; 8 CFR 235; 8 CFR 248; 8 CFR 264; 8 CFR 274a

**Legal Deadline:**

Final, Statutory, November 28, 2009, Consolidated Natural Resources Act (CNRA) of 2008.

**Abstract:**

The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act (CNRA) of 2008. The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing asylum and credible fear of persecution determinations; references to the geographical ''United States'' and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Form I-9, Employment Eligibility Verification (Form I-9); employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program. Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal. The purpose of this rule is to ensure that the regulations apply to persons and entities arriving in or physically present in the CNMI to the extent authorized by the CNRA.

**Statement of Need:**

The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing: asylum and credible fear of persecution determinations; references to the geographical ''United States'' and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Employment Eligibility Verification; employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program.

Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal.

**Anticipated Cost and Benefits:**

The stated goals of the CNRA are to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth. While those goals are expected to be partly facilitated by the changes made in this rule, they are general and qualitative in nature. There are no specific changes made by this rule with sufficiently identifiable direct or indirect economic impacts so as to be quantified.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 10/28/09 | 74 FR 55725 |
| Interim Final Rule Comment Period End | 11/27/09 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Additional Information:**

CIS 2460-08

**Agency Contact:**

Evelyn Sahli
Chief, Policy and Regulation Management Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Washington, DC 20529
Phone: 202 272–1722

**RIN:** 1615–AB77

## DHS—U.S. Coast Guard (USCG)

### PROPOSED RULE STAGE

### 66. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG–2001–10486)

**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 4711

**CFR Citation:**

33 CFR 151

**Legal Deadline:**

None

**Abstract:**

This rulemaking would propose to add performance standards to 33 CFR part 151, subparts C and D, for all discharges of ballast water. It supports the Coast Guard's broad roles and responsibilities of maritime safety and maritime stewardship. This project is significant due to high interest from Congress and several Federal and State agencies, as well as costs imposed on industry.

**Statement of Need:**

The unintentional introductions of nonindigenous species into U.S. waters via the discharge of vessels' ballast water has had significant impacts to the nation's aquatic resources, biological diversity, and coastal infrastructures. This rulemaking would amend the ballast water management requirements (33 CFR part 151 subparts C and D) and establish standards that specify the level of biological treatment that must be achieved by a ballast water treatment system before ballast water can be discharged into U.S. waters. This would increase the Coast Guard's ability to protect U.S. waters against the introduction of nonindigenous species via ballast water discharges.

**Summary of Legal Basis:**

Congress has directed the Coast Guard to develop ballast water regulations to prevent the introduction of nonindigenous species into U.S. waters under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and reauthorized and amended it with the National Invasive Species Act of 1996. This rulemaking does not have a statutory deadline.

**Alternatives:**

We would use the standard rulemaking process to develop regulations for ballast water discharge standards. Nonregulatory alternatives such as navigation and vessel inspection circulars and the Marine Safety Manual have been considered and may be used for the development of policy and directives to provide the maritime industry and our field offices guidelines for implementation of the regulations. Nonregulatory alternatives cannot be substituted for the standards we would develop with this rule. Congress has directed the Coast Guard to review and revise its BWM regulations not less than every three years based on the best scientific information available to the Coast Guard at the time of that review.

This proposed rule includes a phase-in schedule (Phase-one and Phase-two) for the implementation of ballast water discharge standards based on vessel's ballast water capacity and build date. The proposed phase-one standard is the same standard adopted by the International Maritime Organization (IMO) for concentration of living organisms in ballast water discharges. For phase-two, we propose incorporating a practicability review to determine whether technology to achieve a more stringent standard than the IMO can practicably be implemented.

**Anticipated Cost and Benefits:**

This proposed rule would affect vessels operating in U.S. waters that are equipped with ballast tanks. Owners and operators of these vessels would be required to install and operate Coast Guard approved ballast water management systems before discharging ballast water into U.S. waters. Cost estimates for individual vessels vary due to the vessel class, type and size, and the particular technology of the ballast water management system installed. We expect the highest annual costs of this rulemaking during the periods of installation as the bulk of the existing fleet of vessels must meet the standards according to proposed phase-in schedules. The primary cost driver of this rulemaking is the installation costs for all existing vessels. Operating and maintenance costs are substantially less than the installation costs.

We evaluated the benefits of this rulemaking by researching the impact of aquatic nonindigenous species (NIS) invasions in the U.S. waters, since ballast water discharge is one of the main vectors of NIS introductions in the marine environment. The primary benefit of this rulemaking would be the economic and environmental damages avoided from the reduction in the number of new invasions as a result of the reduction in concentration of organisms in discharged ballast water. We expect that the benefits of this rulemaking would increase as the technology is developed to achieve more stringent ballast water discharge standards.

At this time, we estimate that this rulemaking would have annual impacts that exceed $100 million and result in an economically significant regulatory action.

**Risks:**

Ballast water discharged from ships is a significant pathway for the introduction and spread of non-indigenous aquatic nuisance species. These organisms, which may be plants, animals, bacteria or pathogens, have the potential to displace native species, degrade native habitats, spread disease and disrupt human economic and social activities that depend on water resources. It is estimated that for areas such as the Great Lakes, San Francisco Bay, and Chesapeake Bay, one nonindigenous species becomes established per year. At this time, it is difficult to estimate the reduction of risk that would be accomplished by promulgating this rulemaking; however, it is expected a major reduction will occur. We are currently requesting information on costs and benefits of more stringent ballast water discharge standards.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/04/02 | 67 FR 9632 |
| ANPRM Comment Period End | 06/03/02 | |
| NPRM | 08/28/09 | 74 FR 44632 |
| Public Meeting | 09/14/09 | 74 FR 46964 |
| Public Meeting | 09/22/09 | 74 FR 48190 |
| Public Meeting | 09/28/09 | 74 FR 49355 |
| Notice—Extension of Comment Period | 10/15/09 | 74 FR 52941 |
| Public Meeting | 10/22/09 | 74 FR 54533 |
| Public Meeting Correction | 10/26/09 | 74 FR 54944 |
| NPRM Comment Period End | 12/04/09 | 74 FR 52941 |
| Final Rule | 12/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Mr. John C Morris
Project Manager
Department of Homeland Security
U.S. Coast Guard
2100 2nd Street, SW, STOP 7126
Washington, DC 20593–7126
Phone: 202 372–1433
Email: john.c.morris@uscg.mil

**RIN:** 1625–AA32

---

**DHS—USCG**

## 67. INSPECTION OF TOWING VESSELS (USCG–2006–24412)

**Priority:**

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

**Legal Authority:**

46 USC 3301, 46 USC 3305, 46 USC 3306, and 46 USC 3103; 46 USC 3703 [DHS Delegation No 0170.1]

**CFR Citation:**

33 CFR 156 and 157; 33 CFR 163 and 164; 46 CFR 135 to 146

**Legal Deadline:**

None

**Abstract:**

This rulemaking would implement a program of inspection for certification of towing vessels, which were previously uninspected. It would prescribe standards for safety management systems and third-party entities along with standards for construction, operation, vessel systems, safety equipment, and recordkeeping. Due to the costs imposed on an entire uninspected segment of the marine industry, the Coast Guard projects that this will be a significant rulemaking, especially for small entities.

**Statement of Need:**

This rulemaking would implement sections 409 and 415 of the Coast Guard and Maritime Transportation Act of 2004. The intent of the proposed rule is to promote safer work practices and reduce casualties on towing vessels by ensuring that towing vessels adhere to prescribed safety standards and safety management systems. This proposed rule was developed in cooperation with the Towing Vessel Safety Advisory Committee. It would establish a new subchapter dedicated to towing vessels and covering vessel equipment, systems, operational standards and inspection requirements.

**Summary of Legal Basis:**

Proposed new Subchapter Authority: 46 U.S.C. 3103, 3301, 3306, 3308, 3316, 8104, 8904; 33 CFR 1.05; DHS Delegation 0170.1.

The Coast Guard and Maritime Transportation Act of 2004 (CGMTA 2004), Pub. L. 108-293, 118 Stat. 1028, (Aug. 9, 2004), established new authorities for towing vessels as follows:

Section 415 added towing vessels, as defined in section 2101 of title 46, United States Code (U.S.C.), as a class of vessels that are subject to safety inspections under chapter 33 of that title (Id. at 1047).

Section 415 also added new section 3306(j) of title 46, authorizing the Secretary of Homeland Security to establish, by regulation, a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels (Id.).

Section 409 added new section 8904(c)of title 46, U.S.C., authorizing the Secretary to establish, by regulation, ''maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).'' (Id. at 1044-45).

**Alternatives:**

We considered the following alternatives for the notice of proposed rulemaking (NPRM):

One regulatory alternative would be the addition of towing vessels to one or more existing subchapters that deal with other inspected vessels, such as cargo and miscellaneous vessels (subchapter I), offshore supply vessels (subchapter L), or small passenger vessels (subchapter T). This option would involve very minimal regulatory work. We do not believe, however, that this approach would recognize the

often ''unique'' nature and characteristics of the towing industry in general and towing vessels in particular.

In addition to inclusion in a particular existing subchapter (or subchapters) for equipment-related concerns, the same approach could be adopted for use of a safety management system by merely requiring compliance with Title 33, Code of Federal Regulations, part 96 (Rules for the Safe Operation of Vessels and Safety Management Systems). Adoption of these requirements, without an alternative safety management system, would also not be''appropriate for the characteristics, methods of operation, and nature of service of towing vessels.''

The Coast Guard has had extensive public involvement (four public meetings, over 100 separate comments submitted to the docket, as well as extensive ongoing dialogue with members of the Towing Safety Advisory Committee (TSAC)) regarding development of these regulations. Adoption of one of the alternatives discussed above would likely receive little public or industry support, especially considering the TSAC efforts toward development of standards to be incorporated into a separate subchapter dealing specifically with the inspection of towing vessels.

An approach that would seem to be more in keeping with the intent of Congress would be the adoption of certain existing standards from those applied to other inspected vessels. In some cases, these existing standards would be appropriately modified and tailored to the nature and operation of certain categories of towing vessels. The adopted standards would come from inspected vessels that have demonstrated ''good marine practice'' within the maritime community. These regulations would be incorporated into a subchapter specifically addressing the inspection for certification of towing vessels. The law requiring the inspection for certification of towing vessels is a statutory mandate, compelling the Coast Guard to develop regulations appropriate for the nature of towing vessels and their specific industry.

**Anticipated Cost and Benefits:**

We estimate that 1,059 owners and operators (companies) would incur additional costs from this rulemaking. The rulemaking would affect a total of 5,208 vessels owned and operated by these companies. We estimate that 232 of the companies, operating 2,941 vessels, already use some type of safety management system. We estimate that 827 of the companies, operating 2,267 vessels, do not currently use a safety management system. Our cost assessment includes existing and new vessels. We are currently developing cost estimates for the proposed rule.

The Coast Guard developed the requirements in the proposed rule by researching both the human factors and equipment failures that caused towing vessel accidents. We believe that the proposed rule would address a wide range of causes of towing vessel accidents and supports the main goal of improving safety in the towing industry. The primary benefit of the proposed rule is an increase in vessel safety and a resulting decrease in the risk of towing vessel accidents and their consequences.

**Risks:**

This regulatory action would reduce the risk of towing vessel accidents and their consequences. Towing vessels accidents result in fatalities, injuries, property damage, pollution, and delays.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

State

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Dave Dolloff
Program Manager, CG–5222
Department of Homeland Security
U.S. Coast Guard
2100 Second Street SW. STOP 7126
Washington, DC 20593–7126
Phone: 202 372–1415

**RIN:** 1625–AB06

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

### PROPOSED RULE STAGE

### 68. ESTABLISHMENT OF GLOBAL ENTRY PROGRAM

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1365b(k)(1); 8 USC 1365b(k)(3); 8 USC 1225; 8 USC 1185(b)

**CFR Citation:**

8 CFR 235; 8 CFR 103

**Legal Deadline:**

None

**Abstract:**

CBP already operates several regulatory and non-regulatory international registered traveler programs, also known as trusted traveler programs. In order to comply with the Intelligence Reform Terrorism Prevention Act of 2004 (IRPTA), CBP is proposing to amend its regulations to establish another international registered traveler program called Global Entry. The Global Entry program would expedite the movement of low-risk, frequent international air travelers by providing an expedited inspection process for pre-approved, pre-screened travelers. These travelers would proceed directly to automated Global Entry kiosks upon their arrival in the United States. This Global Entry Program, along with the other programs that have already been established, are consistent with CBP's strategic goal of facilitating legitimate trade and travel while securing the homeland. A pilot of Global Entry has been operating since June 6, 2008.

**Statement of Need:**

CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008, and the pilot has been very successful. As a result, there is a desire on the part of the public that the program be established as a permanent program, and expanded, if possible. By establishing this program, CBP will make great strides toward facilitating the movement of people in a more efficient manner, thereby accomplishing our strategic goal of balancing legitimate travel with security. Through the use of biometric and record-keeping technologies, the risk of terrorists entering the United

States would be reduced. Improving security and facilitating travel at the border, both of which are accomplished by Global Entry, are primary concerns within CBP jurisdiction.

**Anticipated Cost and Benefits:**

Global Entry is a voluntary program that provides a benefit to the public by speeding the CBP processing time for participating travelers. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. CBP estimates that over a five year period, 250,000 enrollees will be processed (an annual average of 50,000 individuals). CBP will charge a fee of $100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the enrollee's time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an ''opportunity cost of time'' to travel to an Enrollment Center upon acceptance of the initial application. We assume that one hour will be required for this time spent at the Enrollment Center and travel to and from the Center, though we note that during the pilot program, many applicants coordinated their trip to an Enrollment Center with their travel at the airport. We have used one hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of $28.60 for the opportunity cost for this time, which is taken from the Federal Aviation Administration's ''Economic Values for FAA Investment and Regulatory Decisions, A Guide.'' (July 3, 2007). This value is the weighted average for U.S. business and leisure travelers. For this evaluation, we assume that all enrollees will be U.S. citizens, U.S. nationals, or Lawful Permanent Residents.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/19/09 | 74 FR 59932 |
| NPRM Comment Period End | 01/19/10 | |
| Final Rule | 11/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

www.globalentry.gov

**Agency Contact:**

John P. Wagner
Director, Trusted Traveler Programs
Department of Homeland Security
U.S. Customs and Border Protection
Office of Field Operations
1300 Pennsylvania Avenue NW.
Washington, DC 20229
Phone: 202 344–2118

**RIN:** 1651–AA73

**DHS—USCBP**

**FINAL RULE STAGE**

**69. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

PL 109–347, sec 203; 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433 to 1434; 19 USC 1624; 19 USC 2071 note; 46 USC 60105

**CFR Citation:**

19 CFR 4; 19 CFR 12.3; 19 CFR 18.5; 19 CFR 103.31a; 19 CFR 113; 19 CFR 123.92; 19 CFR 141.113; 19 CFR 146.32; 19 CFR 149; 19 CFR 192.14

**Legal Deadline:**

None

**Abstract:**

This interim final rule implements the provisions of section 203 of the Security and Accountability for Every Port Act of 2006. It amends 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 insure cargo safety and security. Under the rule, importers and carriers must submit specified information to CBP before the cargo is brought into the United States by vessel. This advance information will improve CBP's risk assessment and targeting capabilities, assist CBP in increasing the security of the global trading system, and facilitate the prompt release of legitimate cargo following its arrival in the United States.

**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 requiring 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 regulations.

This rule improves CBP's risk assessment and targeting capabilities and enables 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 and evaluated the following four alternatives:

Alternative 1 (the chosen alternative): Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is exempt from the Importer Security Filing requirements;

Alternative 2: Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is not exempt from the Importer Security Filing requirements;

Alternative 3: Only Importer Security Filings are required. Bulk cargo is exempt from the Importer Security Filing requirements; and

Alternative 4: Only the Additional Carrier Requirements are required.

**Anticipated Cost and Benefits:**

When the NPRM was published, CBP estimated that approximately 11 million import shipments conveyed by 1,000 different carrier companies operating 37,000 unique voyages or vessel-trips to the United States will be subject to the rule. Annualized costs range from $890 million to $7.0 billion (7 percent discount rate over 10 years).

The annualized cost range results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to carriers for transmitting additional data to CBP.

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the regulation. CBP would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of direct benefits. However, existing data limitations and a lack of complete understanding of the true risks posed by terrorists prevent us from establishing the incremental risk reduction attributable to this rule. As a result, CBP has undertaken a ''break-even'' analysis to inform decision-makers of the necessary incremental change in the probability of such an event occurring that would result in direct benefits equal to the costs of the proposed rule. CBP's analysis finds that the incremental costs of this regulation are relatively small compared to the median value of a shipment of goods despite the rather large absolute estimate of present value cost.

The 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 2 days for the first year of implementation (2008) and a delay of 1 day for years 2 through 10 (2009 to 2017).

The benefit of this rule is the improvement of CBP's risk assessment and targeting capabilities, while at the same time, enabling CBP to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system, and thereby reducing the threat to the United States and the world economy.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/02/08 | 73 FR 90 |
| NPRM Comment Period End | 03/03/08 | |
| NPRM Comment Period Extended | 02/01/08 | 73 FR 6061 |
| NPRM Comment Period End | 03/18/08 | |
| Interim Final Rule | 11/25/08 | 73 FR 71730 |
| Interim Final Rule Effective | 01/26/09 | |
| Interim Final Rule Comment Period End | 06/01/09 | |
| Final Action | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Richard DiNucci
Department of Homeland Security
U.S. Customs and Border Protection
Office of Field Operations
1300 Pennsylvania Avenue, NW.
Washington, DC 20229
Phone: 202 344–2513
Email: richard.dinucci@dhs.gov

**RIN:** 1651–AA70

---

**DHS—USCBP**

## 70. CHANGES TO THE VISA WAIVER PROGRAM TO IMPLEMENT THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) PROGRAM

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

8 USC 1103; 8 USC 1187; 8 CFR 2

**CFR Citation:**

8 CFR 217.5

**Legal Deadline:**

None

**Abstract:**

This rule implements the Electronic System for Travel Authorization (ESTA) for aliens who travel to the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. Under the rule, VWP travelers are required to provide certain biographical information to CBP electronically before departing for the United States. This allows CBP to determine before their departure, whether these travelers are eligible to travel to the United States under the VWP and whether such travel poses a security risk. The rule is intended to fulfill the requirements of section 711 of the Implementing recommendations of the 9/11 Commission Act of 2007 (9/11 Act). In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, the ESTA is intended to increase national security and to provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays at the ports of entry.

**Statement of Need:**

Section 711 of the 9/11 Act requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system that will collect biographical and other information in advance of travel to determine the eligibility of the alien to travel to the United States and to determine whether such travel poses a law enforcement or security risk. ESTA is intended to fulfill these statutory requirements.

Under this rule, VWP travelers provide certain information to CBP electronically before departing for the United States. VWP travelers who receive travel authorization under ESTA are not required to complete the paper Form I-94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status. By automating the I-94W process and establishing a system to provide VWP traveler data in advance of travel, CBP is able to determine the eligibility of citizens and eligible nationals from VWP countries to travel to the United States and to determine whether such travel poses a law enforcement or security risk, before such individuals begin travel to the United States. ESTA provides for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry.

**Summary of Legal Basis:**

The ESTA program is based on congressional authority provided under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 and section 217 of the Immigration and Nationality Act (INA).

**Alternatives:**

CBP considered three alternatives to this rule:

1. The ESTA requirements in the rule, but with a $1.50 fee per each travel authorization (more costly)

2. The ESTA requirements in the rule, but with only the name of the passenger and the admissibility questions on the I-94W form (less burdensome)

3. The ESTA requirements in the rule, but only for the countries entering the VWP after 2009 (no new requirements for VWP, reduced burden for newly entering countries)

CBP determined that the rule provides the greatest level of enhanced security and efficiency at an acceptable cost to traveling public and potentially affected air carriers.

**Anticipated Cost and Benefits:**

The purpose of ESTA is to allow DHS and CBP to establish the eligibility of certain foreign travelers to travel to the United States under the VWP, and whether the alien's proposed travel to the United States poses a law enforcement or security risk. Upon review of such information, DHS will determine whether the alien is eligible to travel to the United States under the VWP.

Impacts to Air & Sea Carriers

CBP estimated that eight U.S.-based air carriers and eleven sea carriers will be affected by the rule. An additional 35 foreign-based air carriers and five sea carriers will be affected. CBP concluded that costs to air and sea carriers to support the requirements of the ESTA program could cost $137 million to $1.1 billion over the next 10 years depending on the level of effort required to integrate their systems with ESTA, how many passengers they need to assist in applying for travel authorizations, and the discount rate applied to annual costs.

Impacts to Travelers

ESTA will present new costs and burdens to travelers in VWP countries who were not previously required to submit any information to the U.S. Government in advance of travel to the United States. Travelers from Roadmap countries who become VWP countries will also incur costs and burdens, though these are much less than obtaining a nonimmigrant visa (category B1/B2), which is currently required for short-term pleasure or business to travel to the United States. CBP estimated that the total quantified costs to travelers will range from $1.1 billion to $3.5 billion depending on the number of travelers, the value of time, and the discount rate. Annualized costs are estimated to range from $133 million to $366 million.

Benefits

As set forth in section 711 of the 9/11 Act, it was the intent of Congress to modernize and strengthen the security of the Visa Waiver Program under section 217 of the Immigration and Nationality Act (INA, 8 USC 1187) by simultaneously enhancing program security requirements and extending visa-free travel privileges to citizens and eligible nationals of eligible foreign countries that are partners in the war on terrorism.

By requiring passenger data in advance of travel, CBP may be able to determine, before the alien departs for the United States, the eligibility of citizens and eligible nationals from VWP countries to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for the screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at U.S. ports of entry.

CBP concluded that the total benefits to travelers could total $1.1 billion to $3.3 billion over the period of analysis. Annualized benefits could range from $134 million to $345 million.

In addition to these benefits to travelers, CBP and the carriers should

also experience the benefit of not having to administer the I-94W except in limited situations. While CBP has not conducted an analysis of the potential savings, it should accrue benefits from not having to produce, ship, and store blank forms. CBP should also be able to accrue savings related to data entry and archiving. Carriers should realize some savings as well, though carriers will still have to administer the I-94 for those passengers not traveling under the VWP and the Customs Declaration forms for all passengers aboard the aircraft and vessel.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Action | 06/09/08 | 73 FR 32440 |
| Interim Final Rule Effective | 08/08/08 | |
| Interim Final Rule Comment Period End | 08/08/08 | |
| Notice – Announcing Date Rule Becomes Mandatory | 11/13/08 | 73 FR 67354 |
| Final Action | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Additional Information:**

http://www.cbp.gov/xp/cgov/travel/id__visa/esta/

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Suzanne Shepherd
Director, Electronic System for Travel Authorization
Department of Homeland Security
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229
Phone: 202 344–2073
Email: cbp.esta@dhs.gov

**RIN:** 1651–AA72

---

**DHS—USCBP**

**71. IMPLEMENTATION OF THE GUAM–CNMI VISA WAIVER PROGRAM**

**Priority:**

Other Significant. Major under 5 USC 801.

**Legal Authority:**

PL 110–229, sec 702

**CFR Citation:**

8 CFR 100.4; 8 CFR 212.1; 8 CFR 233.5; 8 CFR 235.5; 19 CFR 4.7b; 19 CFR 122.49a

**Legal Deadline:**

Final, Statutory, November 4, 2008, Public Law 110–229.

**Abstract:**

This rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program.

**Statement of Need:**

Currently, aliens who are citizens of eligible countries may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen (15) days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission. Section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), supersedes the Guam visa waiver program by providing for a visa waiver program for Guam and the Commonwealth of the Northern Mariana Islands (Guam-CNMI Visa Waiver Program). Section 702(b) requires DHS to promulgate regulations within 180 days of enactment of the CNRA to allow nonimmigrant visitors from eligible countries to apply for admission into Guam and the CNMI, for business or pleasure, without a visa, for a period of authorized stay of no longer than forty-five (45) days.

**Summary of Legal Basis:**

The Guam-CNMI Visa Waiver Program is based on congressional authority provided under 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA).

**Alternatives:**

None

**Anticipated Cost and Benefits:**

The most significant change for admission to the CNMI as a result of the rule will be for visitors from those countries who are not included in either the existing U.S. Visa Waiver Program or the Guam-CNMI Visa Waiver Program established by the rule. These visitors must apply for U.S. visas, which require in-person interviews at U.S. embassies or consulates and higher fees than the CNMI currently assesses for its visitor entry permits. CBP anticipates that the annual cost to the CNMI will be $6 million. These are losses associated with the reduced visits from foreign travelers who may no longer visit the CNMI upon implementation of this rule.

The anticipated benefits of the rule are enhanced security that will result from the federalization of the immigration functions in the CNMI.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/16/09 | 74 FR 2824 |
| Interim Final Rule Effective | 01/16/09 | |
| Interim Final Rule Comment Period End | 03/17/09 | |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**Agency Contact:**

Cheryl C. Peters
Department of Homeland Security
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW.
Washington, DC 20229
Phone: 202 344–1707
Email: cheryl.c.peters@dhs.gov

**RIN:** 1651–AA77

**DHS—Transportation Security Administration (TSA)**

**PROPOSED RULE STAGE**

**72. AIRCRAFT REPAIR STATION SECURITY**

**Priority:**

Other Significant. Major under 5 USC 801.

**Legal Authority:**

49 USC 114; 49 USC 44924

**CFR Citation:**

49 CFR 1554

**Legal Deadline:**

Final, Statutory, August 8, 2004, Rule within 240 days of the date of enactment of Vision 100.

Final, Statutory, August 3, 2008, Rule within 1 year after the date of enactment of 9/11 Commission Act.

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; Dec. 12, 2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations.'' Section 1616 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110—531; Aug. 3, 2007; 21 Stat. 266) requires TSA issue a final rule on foreign repair station security.

**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 and section 1616 of the 9/11 Commission Act of 2007. The regulation will propose general requirements for security programs to be adopted and implemented by repair stations certificated 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. The delay in publication of the notice of proposed rulemaking has been due to TSA scoping out the project, including making site visits to repair stations in different locations around the world.

**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:**

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; 12/12/2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA to issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations'' within 240 days from date of enactment of Vision 100. Section 1616 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266) requires that the FAA may not certify any foreign repair stations if the regulations are not issued within one year after the date of enactment of the 9/11 Commission Act unless the repair station was previously certificated or is in the process of certification.

**Alternatives:**

TSA is required by statute to publish regulations requiring security programs for aircraft repair stations. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous alternative ways in which the final rule could carry out the requirements of the statute.

**Anticipated Cost and Benefits:**

TSA anticipates costs to aircraft repair stations mainly related to the establishment of security programs, which may include adding such measures as access controls, a personnel identification system, security awareness training, the designation of a security coordinator, employee background verification, and a contingency plan.

It is difficult to identify the particular risk reduction associated with the implementation of this rule because the nature of value of the benefits of reducing risk of a terrorist attack is a function of both the probability of an attack and the value of the consequence. When the proposed rule is published, DHS will provide a break even analysis discussing the program elements that would help achieve risk reductions. These elements and related qualitative benefits include a reduction in the risk of an aircraft being sabotaged, resulting in potential injury or loss of life for the passengers and crew, or reduction in the risk of being hijacked, resulting in the additional potential for the aircraft being used as a weapon of mass destruction.

**Risks:**

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By requiring security programs for aircraft repair stations, TSA will focus on preventing unauthorized access to repair work and to aircraft to prevent sabotage or hijacking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice—Public Meeting; Request for Comments | 02/24/04 | 69 FR 8357 |
| Report to Congress | 08/24/04 | |
| NPRM | 11/18/09 | 74 FR 59873 |
| NPRM Comment Period End | 01/19/10 | |
| Final Rule | 11/00/10 | |

**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

**Agency Contact:**

Celio Young
Program Manager, Repair Stations
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management, General Aviation Division
TSA–28, HQ, E5
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3580
Fax: 571 227–1362
Email: celio.young@dhs.gov

Thomas (Tom) Philson
Manager, Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–411N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3236
Fax: 571 227–1362
Email: thomas.philson@dhs.gov

Linda L. Kent
Assistant Chief Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–126S
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2675
Fax: 571 227–1381
Email: linda.kent@dhs.gov

**RIN:** 1652–AA38

---

**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:**

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

**Legal Authority:**

6 USC 469; 18 USC 842; 18 USC 845; 46 USC 70102 to 70106; 46 USC 70117; 49 USC 114; 49 USC114(f)(3); 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:**

On October 30, 2008, the Transportation Security Administration (TSA) issued a Notice of Proposed Rulemaking, 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. TSA also proposed that all aircraft operations, including corporate and private charter operations, with aircraft having a maximum certificated takeoff weight (MTOW) above 12,500 pounds (''large aircraft'') be required to adopt a large aircraft security program. TSA also proposed to require certain airports that serve large aircraft to adopt security programs. TSA is preparing a supplemental NPRM (SNPRM), which will include a comment period for public comments.

After considering comments received on the NPRM and meeting with stakeholders, TSA decided to revise the original proposal to tailor security requirements to the general aviation industry. TSA is considering alternatives to the following proposed provisions in the SNPRM: (1) the weight threshold for aircraft subject to TSA regulation; (2) compliance oversight; (3) watch list matching of passengers; (4) prohibited items; (5) scope of the background check requirements and the procedures used to implement the requirement; and (6) other issues.

**Statement of Need:**

This rule would enhance current security measures, and would apply security measures currently in place for operators of certain types of aircraft, to operators of other aircraft. While the focus of TSA's existing aviation security programs has been on air carriers and commercial operators, TSA is aware that general aviation aircraft of sufficient size and weight may inflict significant damage and loss of lives if they are hijacked and used as missiles. TSA has current regulations that apply to large aircraft operated by air carriers and commercial operators, including the twelve five program, the partial program, and the private charter program. However, the current regulations do not cover all general aviation operations, such as those operated by corporations and individuals, and such operations do not have the features that are necessary to enhance security.

**Alternatives:**

DHS considered continuing to use voluntary guidance to secure general aviation, but determined that to ensure that each aircraft operator maintains an appropriate level of security, these security measures would need to be mandatory requirements.

**Anticipated Cost and Benefits:**

This proposed rule would yield benefits in the areas of security and quality governance. 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.

In the NPRM, TSA estimated the total 10-year cost of the program would be $1.3 billion, discounted at 7 percent. Aircraft operators, airport operators, and TSA would incur costs to comply with the requirements of the proposed Large Aircraft Security Program rule. Aircraft operator costs comprise 85 percent of all estimated expenses. TSA estimated approximately 9,000 general aviation aircraft operators use aircraft with a maximum takeoff weight exceeding 12,500 pounds, and would be newly subjected to the proposed rule.

**Risks:**

This rulemaking addresses the national security risk of general aviation aircraft being used as a weapon or as a means to transport persons or weapons that could pose a threat to the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/30/08 | 73 FR 64790 |
| NPRM Comment Period End | 12/29/08 | |
| Notice—NPRM Comment Period Extended | 11/25/08 | 73 FR 71590 |
| NPRM Extended Comment Period End | 02/27/09 | |

| Action | Date | FR Cite |
|---|---|---|
| Notice—Public Meetings; Requests for Comments | 12/28/08 | 73 FR 77045 |
| Supplemental NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Local

**Additional Information:**

Public Meetings held on: Jan. 6, 2009 at White Plains, NY; Jan. 8, 2009, at Atlanta, GA; Jan 16, 2009, at Chicago, IL; Jan. 23, 2009, at Burbank, CA; and Jan. 28, 2009, at Houston, TX.

Additional Comment Sessions held in Arlington, VA, on April 16, 2009, May 6, 2009, and June 15, 2009.

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Erik Jensen
Assistant General Manager, General Aviation Security
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–132S
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–2154
Fax: 571 227–1923
Email: erik.jensen@dhs.gov

Holly Merwin
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–343N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–4656
Fax: 571 227–1362
Email: holly.merwin@dhs.gov

Mai Dinh
Assistant Chief Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–309N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2725
Fax: 571 227–1378
Email: mai.dinh@dhs.gov

Kiersten Ols
Attorney, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–316N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2403
Fax: 571 227–1378
Email: kiersten.ols@dhs.gov

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

**RIN:** 1652–AA53

---

**DHS—TSA**

## 74. PUBLIC TRANSPORTATION AND PASSENGER RAILROADS—SECURITY TRAINING OF EMPLOYEES

**Priority:**

Other Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

49 USC 114; PL 110–53, secs 1408 and 1517

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, November 1, 2007, Interim Rule for public transportation agencies is due 90 days after date of enactment.

Final, Statutory, February 3, 2008, Rule for railroads is due 6 months after date of enactment.

Final, Statutory, August 3, 2008, Rule for public transportation agencies is due 1 year after date of enactment.

According to section 1408 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), interim final regulations for public transportation agencies are due 90 days after the date of enactment (Nov. 1, 2007), and final regulations are due 1 year after the date of enactment of this Act.According to section 1517 of the same Act, final regulations for railroads are due no later than 6 months after the date of enactment of this Act.

**Abstract:**

The Transportation Security Administration (TSA) will propose a new regulation to improve the security of public transportation and passenger railroads 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 and a passenger railroad training program to prepare public transportation and passenger railroad employees, including frontline employees, for potential security threats and conditions.

**Statement of Need:**

A security training program for public transportation agencies and for passenger railroads is proposed to prepare public transportation and passenger railroad employees, including frontline employees, for potential security threats and conditions.

**Summary of Legal Basis:**

49 U.S.C. 114; sections 1408 and 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

**Alternatives:**

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

**Anticipated Cost and Benefits:**

Economic analysis under development.

**Risks:**

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By providing for security training for personnel, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Thomas L. Farmer
Deputy General Manager–Mass Transit
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, E10–219S
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3552
Email: tom.farmer@dhs.gov

Shaina Pereira
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–339N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–5138
Fax: 571 227–1362
Email: shaina.pereira@dhs.gov

David Kasminoff
Sr. Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–310N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–3583
Fax: 571 227–1378
Email: david.kasminoff@dhs.gov

**Related RIN:** Related to 1652–AA57, Related to 1652–AA59

**RIN:** 1652–AA55

---

**DHS—TSA**

**75. FREIGHT 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:**

Final, Statutory, February 3, 2008, Rule is due 6 months after date of enactment.

According to section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), TSA must issue a regulation no later than 6 months after the date of enactment of this Act.

**Abstract:**

The Transportation Security Administration (TSA) will propose new regulations to improve the security of freight railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. The rulemaking will propose general requirements for a security training program to prepare freight railroad employees, including frontline employees, for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

**Statement of Need:**

The rulemaking will propose general requirements for a security training program to prepare freight railroad employees, including frontline employees, for potential security threats and conditions.

**Summary of Legal Basis:**

49 U.S.C. 114; section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

**Alternatives:**

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

**Anticipated Cost and Benefits:**

Economic analysis under development.

**Risks:**

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By providing for security training for personnel, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Scott Gorton
Policy and Plans Branch Chief for Freight Rail
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–423N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–1251
Fax: 571 227–2930
Email: scott.gorton@dhs.gov

Shaina Pereira
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–339N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–5138
Fax: 571 227–1362
Email: shaina.pereira@dhs.gov

David Kasminoff
Sr. Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–310N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–3583
Fax: 571 227–1378
Email: david.kasminoff@dhs.gov

**Related RIN:** Related to 1652–AA55, Related to 1652–AA59

**RIN:** 1652–AA57

**DHS—TSA**

**76. 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:**

Final, Statutory, February 3, 2008, Rule due 6 months after date of enactment.

According to section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007); 121 Stat. 266), TSA must issue a regulation no later than 6 months after date of enactment of this Act.

**Abstract:**

The Transportation Security Administration (TSA) will propose new regulations to improve the security of over-the-road buses in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

**Statement of Need:**

The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions.

**Summary of Legal Basis:**

49 U.S.C. 114; section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

**Anticipated Cost and Benefits:**

Economic analysis under development.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Paul Pitzer
Policy and Planning Branch Chief; Highway and Motor Carrier Programs
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–1233
Email: paul.pitzer@dhs.gov

Shaina Pereira
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–339N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–5138
Fax: 571 227–1362
Email: shaina.pereira@dhs.gov

Denise Starr
Attorney, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, E12–419N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–5130
Email: denise.starr@dhs.gov

**Related RIN:** Related to 1652–AA55, Related to 1652–AA57

**RIN:** 1652–AA59

---

**DHS—TSA**

**77. VETTING, ADJUDICATION, AND REDRESS PROCESS AND FEES**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

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

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Transportation Security Administration (TSA) will propose new regulations to revise and standardize the procedures, adjudication criteria, and fees for most of the security threat assessments (STA) of individuals for which TSA is responsible. In accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007, the scope of the rulemaking will include transportation workers from all modes of transportation who are required to undergo an STA in other regulatory programs, including certain aviation workers and frontline employees for public transportation agencies, railroads, and over-the-road buses.

In addition, TSA will propose fees to cover the cost of the STAs, and credentials for some personnel. TSA plans to improve efficiencies in processing STAs and streamline existing regulations by simplifying language and removing redundancies.

**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 U.S.C. 114; sections 1411, 1414, 1520, 1522, and 1602 of Public Law 110-53, Implementing Recommendation of the 9/11 Commission Act of 2007.

**Anticipated Cost and Benefits:**

Economic analysis under development.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Proposed Rulemaking (NPRM) | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Hao-y Tran Froemling
Program Manager, Maritime and Surface Credentialing
Department of Homeland Security
Transportation Security Administration
Office of Transportation Threat Assessment and Credentialing
TSA–19, HQ, E3–401N
601 South 12th Street
Arlington, VA 20598–6019
Phone: 571 227–2782
Email: hao-y.froemling@dhs.gov

Adam Sicking
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–345N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–2304
Fax: 571 227–1362
Email: adam.sicking@dhs.gov

Christine Beyer
Assistant Chief Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–336N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2657
Email: christine.beyer@dhs.gov

**RIN:** 1652–AA61

**DHS—TSA**

**FINAL RULE STAGE**

**78. AIR CARGO SCREENING**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

PL 110–53, sec 1602; 49 USC 114; 49 USC 40113; 49 USC 44901 to 44905; 49 USC 44913 to 44914; 49 USC 44916; 49 USC 44935 to 44936; 49 USC 46105

**CFR Citation:**

49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1544; 49 CFR 1548; 49 CFR 1549

**Legal Deadline:**

Other, Statutory, February 3, 2009, Screen 50 percent of cargo on passenger aircraft.

Final, Statutory, August 3, 2010, Screen 100 percent of cargo on passenger aircraft.

Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, Aug. 3, 2007) requires that the Secretary of Homeland Security establish a system to screen 50 percent of cargo on passenger aircraft not later than 18 months after the date of enactment and 100 percent of such cargo not later than 3 years after the date of enactment.

**Abstract:**

The Transportation Security Administration (TSA) is establishing the Certified Cargo Screening Program that will certify shippers, manufacturers, and other entities to screen air cargo intended for transport on a passenger aircraft. This will be the primary means through which TSA will meet the requirements of section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 that mandates that 100 percent of air cargo transported on passenger aircraft, operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation, must be screened by August 2010, to ensure the security of all such passenger aircraft carrying cargo.

Under this rulemaking, each certified cargo screening facility (CCSF) and their employees and authorized representatives that will be screening cargo must successfully complete a security threat assessment. The CCSF must also submit to an audit of their security measures by TSA-approved auditors, screen cargo using TSA-approved methods, and initiate strict chain of custody measures to ensure the security of the cargo throughout the supply chain prior to tendering it for transport on passenger aircraft.

**Statement of Need:**

TSA is establishing a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

The system shall require, at a minimum, that equipment, technology, procedures, personnel, or other methods approved by the Administrator of TSA, used to screen cargo carried on passenger aircraft, provide a level of security commensurate with the level of security for the screening of passenger checked baggage.

**Summary of Legal Basis:**

49 U.S.C. 114; section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, 10/3/2007), codified at 49 U.S.C. 44901(g).

**Alternatives:**

The Interim Final Rule (IFR) states that as an alternative to establishing the CCSP, TSA considered meeting the statutory requirements by having aircraft operators screen cargo intended for transportation on passenger aircraft—that is, continuing the current cargo screening program but expanding it to 85 percent of air cargo on passenger aircraft. Under this alternative, the cost drivers for this alternative are screening equipment, personnel for screening, training of personnel, and delays. Delays are the largest cost component, totaling $7.0 billion over 10 years, undiscounted. In summary, the undiscounted 10 year cost of the alternative is $11.1 billion, and discounted at 7 percent, the cost is 7.7 billion.

**Anticipated Cost and Benefits:**

TSA estimates the cost of the rule will be $1.9 billion (discounted at 7 percent) over 10 years. TSA analyzed the alternative of not establishing the Certified Cargo Screening Program (CCSP) and, instead, having aircraft operators and air carriers perform screening of all cargo transported on passenger aircraft. Absent the CCSP, the estimated cost to aircraft operators and air carriers is $7.7 billion (discounted at seven percent) over ten years. The bulk of the costs for both the CCSP and the alternative are attributed to personnel and the impact of cargo delays resulting from the addition of a new operational process.

The benefits of the IFR are four fold. First, passenger air carriers will be more firmly protected against an act of terrorism or other malicious behaviors by the screening of 100 percent of cargo shipped on passenger aircraft. Second, allowing the screening process to occur throughout the supply chain via the Certified Cargo Screening Program will reduce potential bottlenecks and delays at the airports. Third, the IFR will allow market forces to identify the most efficient venue for screening along the supply chain, as entities upstream from

the aircraft operator may apply to become CCSFs and screen cargo. Finally, validation firms will perform assessments of the entities that become CCSFs, allowing TSA to set priorities for compliance inspections.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/16/09 | 74 FR 47672 |
| Interim Final Rule Comment Period End | 11/16/09 | |
| Interim Final Rule Effective | 11/16/09 | |
| Final Rule | 11/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal

**Agency Contact:**

Robert S. Hyde
Branch Chief, Air Cargo Policy & Plans
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E4–417N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3943
Fax: 571 227–1923
Email: rsh@dhs.gov

Adam Sicking
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–345N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–2304
Fax: 571 227–1362
Email: adam.sicking@dhs.gov

Alice Crowe
Sr. Attorney, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–320N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2652
Fax: 571 227–1379
Email: alice.crowe@dhs.gov

**RIN:** 1652–AA64

## DHS—U.S. Immigration and Customs Enforcement (USICE)

### PROPOSED RULE STAGE

### 79. CLARIFICATION OF CRITERIA FOR CERTIFICATION, OVERSIGHT, AND RECERTIFICATION OF SCHOOLS BY THE STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP) TO ENROLL F OR M NONIMMIGRANT STUDENTS

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1356(m); PL 107–56; PL 107–173

**CFR Citation:**

8 CFR 103; 8 CFR 214.3; 8 CFR 214.4

**Legal Deadline:**

None

**Abstract:**

This proposed rule would clarify the criteria for nonimmigrant academic (F visa) and vocational (M visa) students and exchange aliens (J visa) to maintain visa status, and for the schools certified by the Student and Exchange Visitor Program (SEVP) to enroll F or M nonimmigrant students to fulfill their recordkeeping, retention, and reporting requirements to SEVP. The proposed rule would incorporate significant refinements in policy and procedures that have evolved since the last major regulatory update in 2002 and since the establishment of SEVP nearly 6 years ago. The proposed rule would remove obsolete provisions in the regulations used prior to and during implementation of the Student and Exchange Visitor Information Program (SEVIS). In anticipation of the implementation of a major reprogramming of SEVIS, referred to as SEVIS II, that will begin in late 2009, the proposed rule would incorporate language to support that transition.

**Statement of Need:**

ICE will publish this proposed rule that will incorporate significant refinements in policy and procedures that have evolved since the last major regulatory update in 2002, and since the establishment of SEVP nearly six years ago. These revisions of 8 CFR 214.1-4 will clarify the criteria for F, M and J nonimmigrant status and for schools certified by SEVP, update policy and procedure for SEVP, remove obsolete provisions and support the implementation of a major reprogramming of the Student and Exchange Visitor Information System (SEVIS), known as ''SEVIS II.''

**Anticipated Cost and Benefits:**

Under development. It is difficult to quantify monetarily the benefits of the Clarification of Criteria for Certification, Oversight and Recertification of Schools by the Student and Exchange Visitor Program (SEVP) To Enroll F or M Nonimmigrant Students regulation using standard economic accounting techniques. Nonimmigrant students, the schools that serve them, and the communities in which they live will benefit from the improvements and clarifications to the rules governing the certification, oversight, and recertification of schools certified by SEVP.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Sharon Snyder
Acting Branch Chief, SEVP Policy, Student and Exchange Visitor Program
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th Street SW.
Washington, DC 20024–6121
Phone: 703 603–3415

**Related RIN:** Related to 1653–AA42

**RIN:** 1653–AA44

## DHS—USICE

### FINAL RULE STAGE

### 80. CONTINUED DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253; . . .

**CFR Citation:**

8 CFR 241

**Legal Deadline:**

None

**Abstract:**

The U.S. Department of Homeland Security is finalizing, with amendments, the interim rule that was published on November 14, 2001, by the former Immigration and Naturalization Service (Service). The interim rule included procedures for conducting custody determinations in light of the U.S. Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001), which held that the detention period of certain aliens who are subject to a final administrative order of removal is limited under section 241(a)(6) of the Immigration and Nationality Act (Act) to the period reasonably necessary to effect their removal. The interim rule amended section 241.4 of title 8, Code of Federal Regulations (CFR), in addition to creating two new sections: 8 CFR 241.13 (establishing custody review procedures based on the significant likelihood of the alien's removal in the reasonably foreseeable future) and 241.14 (establishing custody review procedures for special circumstances cases). Subsequently, in the case of Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court clarified a question left open in Zadvydas, and held that section 241(a)(6) of the Act applies equally to all aliens described in that section. This rule amends the interim rule to conform to the requirements of Martinez. Further, the procedures for custody determinations for post-removal period aliens who are subject to an administratively final order of removal, and who have not been released from detention or repatriated, have been revised in response to comments received and experience gained from administration of the interim rule published in 2001. This final rule also makes conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). Additonally, certain portions of the Final Rule were determined to require public comment and, for this reason, have been developed into a separate/companion Notice of Proposed Rulemaking; RIN 1653-AA60.

**Statement of Need:**

This rule will improve the post order custody review process in the Final Rule related to the Detention of Aliens Subject to Final Orders of Removal in light of the U.S. Supreme Court's decisions in Zadvydas v. Davis, 533 U.S. 678 (2001), Clark v. Martinez, 543 U.S. 371 (2005) and conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). A companion Notice of Proposed Rulemaking (NPRM) will amend 8 CFR 241.1(g) to provide for a new 90-day removal period once an alien comes into compliance with his or her obligation to make timely application in good faith for travel or other documents and not conspire or act to prevent removal. The NPRM adds new subparagraph (iii) to 8 CFR 241.4(g)(1) to provide for a 90-day removal period once the alien is taken into custody if at liberty or in another agency's custody at the time the removal order becomes administratively final and amends 8 CFR 241.13(b)(3) to clarify that aliens who fall within the provisions of 236A of the Act, 8 U.S.C. 1226a, are not covered by the provisions of 8 CFR 241.13(a) (such alien covered by the specific provisions of section 236A).

**Anticipated Cost and Benefits:**

Under development; this rule is not significant for economic reasons.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 11/14/01 | 66 FR 56967 |
| Interim Final Rule Comment Period End | 01/14/02 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

INS No. 2156-01

Transferred from RIN 1115-AG29

**Agency Contact:**

Jason Johnsen
Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street SW.
Washington, DC 20024
Phone: 202 732–4245
Email: jason.johnsen@dhs.gov

**RIN:** 1653–AA13

**DHS—USICE**

## 81. ELECTRONIC SIGNATURE AND STORAGE OF FORM I–9, EMPLOYMENT ELIGIBILITY VERIFICATION

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 CFR 2

**CFR Citation:**

8 CFR 274a

**Legal Deadline:**

None

**Abstract:**

Department of Homeland Security (DHS) regulations provide that employers and recruiters or referrers for a fee required to complete and retain Forms I-9, Employment Eligibility Verification, may sign and retain these forms electronically.

**Statement of Need:**

This final rule on the Electronic Signature and Storage of Form I-9, Employment Eligibility Verification will respond to comments and make minor changes to the IFR that was published in 2006.

**Anticipated Cost and Benefits:**

Under development.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/15/06 | 71 FR 34510 |
| Interim Final Rule Effective | 06/15/06 | |
| Interim Final Rule Comment Period End | 08/14/06 | |
| Final Rule | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

ICE 2345-05

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Allan Vanscoy
Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street SW.
Washington, DC 20025
Phone: 202 732–5798

**RIN:** 1653–AA47

**DHS—USICE**

**82. EXTENDING PERIOD FOR OPTIONAL PRACTICAL TRAINING BY 17 MONTHS FOR F–1 NONIMMIGRANT STUDENTS WITH STEM DEGREES AND EXPANDING THE CAP–GAP RELIEF FOR ALL F–1 STUDENTS WITH PENDING H–1B PETITIONS**

**Priority:**

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

**Legal Authority:**

8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184 to 1187; 8 USC 1221; 8 USC 1281 and 1282; 8 USC 1301 to 1305

**CFR Citation:**

8 CFR 214

**Legal Deadline:**

None

**Abstract:**

Currently, foreign students in F-1 nonimmigrant status who have been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by U.S. Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) are eligible for 12 months of optional practical training (OPT) to work for a U.S. employer in a job directly related to the student's major area of study. The maximum period of OPT is 29 months for F-1 students who have completed a science, technology, engineering, or mathematics (STEM) degree and accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program. Employers of F-1 students with an extension of post-completion OPT authorization must report to the student's designated school official (DSO) within 48 hours after the OPT student has been terminated from, or otherwise leaves, his or her employment with that employer prior to end of the authorized period of OPT. The final rule will respond to public comments and may make adjustments to the regulations.

**Statement of Need:**

ICE will improve SEVP processes by publishing the Final Optional Practical Training (OPT) rule, which will respond to comments on the OPT interim final rule (IFR). The IFR increased the maximum period of OPT from 12 months to 29 months for nonimmigrant students who have completed a science, technology, engineering, or mathematics (STEM) degree and who accept employment with employers who participate in the U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program.

**Alternatives:**

DHS is considering several alternatives to the 17-month extension of OPT and cap-gap extension, ranging from taking no action to further extension for a larger populace. The interim final rule addressed an immediate competitive disadvantage faced by U.S. industries and ameliorated some of the adverse impacts on the U.S. economy. DHS continues to evaluate both quantitative and qualitative alternatives.

**Anticipated Cost and Benefits:**

Based on an estimated 12,000 students per year that will receive an OPT extension and an estimated 5,300 employers that will need to enroll in E-verify, DHS projects that this rule will cost students approximately $1.49 million per year in additional information collection burdens, $4,080,000 in fees, and cost employers $1,240,000 to enroll in E-Verify and $168,540 per year thereafter to verify the status of new hires. However, this rule will increase the availability of qualified workers in science, technology, engineering, and mathematical fields; reduce delays that place U.S. employers at a disadvantage when recruiting foreign job candidates, thereby improving strategic and resource planning capabilities; increase the quality of life for participating students, and increase the integrity of the student visa program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/08/08 | 73 FR 18944 |
| Interim Final Rule Comment Period End | 06/09/08 | |
| Final Rule | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**URL For More Information:**

www.dhs.gov/sevis/

**Agency Contact:**

Sharon Snyder
Acting Branch Chief, SEVP Policy, Student and Exchange Visitor Program
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th Street SW.
Washington, DC 20024–6121
Phone: 703 603–3415

**RIN:** 1653–AA56

**DHS—Federal Emergency Management Agency (FEMA)**

**PROPOSED RULE STAGE**

**83. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 5174

**CFR Citation:**

44 CFR 206

**Legal Deadline:**

Final, Statutory, October 15, 2002.

**Abstract:**

This rulemaking implements section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In doing so, the notice of proposed rulemaking would propose further revisions to 44 CFR part 206, subpart D (the Individuals and Households Program (IHP)) and remove subpart E (Individual and Family Grant Programs). Among other things, it would propose to implement section 686 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) to remove the IHP subcaps; and PKEMRA section 685 regarding semi-permanent and permanent housing construction eligibility. It would revise FEMA's regulations related to individuals with disabilities pursuant to PKEMRA section 689; and

revise FEMA's regulations to allow for the payment of security deposits and the costs of utilities, excluding telephone service, in accordance with section 689d of PKEMRA. The rule would propose to implement section 689f of PKEMRA by authorizing assistance to relocate individuals displaced from their predisaster primary residence, to and from alternate locations for short- or long-term accommodations.

**Statement of Need:**

FEMA needs to revise its IHP regulations to reflect lessons learned, from Hurricane Katrina and subsequent events, to address comments received on the interim regulations, and to implement recent legislative changes (i.e. Post-Katrina Emergency Management Reform Act of 2006). These changes are intended to provide clear information to disaster assistance applicants, implement new authorities, and help ensure the consistent administration of the Individuals and Households Program.

**Summary of Legal Basis:**

This rulemaking is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended by the Post-Katrina Emergency Management Reform Act of 2006.

**Alternatives:**

The rule is under development.

**Anticipated Cost and Benefits:**

The economic analysis for this rule is under development.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/23/02 | 67 FR 3412 |
| NPRM Comment Period End | 03/11/02 | |
| Interim Final Rule | 09/30/02 | 67 FR 61446 |
| Corrections | 10/09/02 | 67 FR 62896 |
| Corrections Effective | 10/09/02 | |
| Interim Final Rule Effective | 10/15/02 | |
| Interim Final Rule Comment Period End | 04/15/03 | |
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

Transferred from RIN 3067-AD25; Docket ID FEMA-2008-0005

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Julia Chiu
Disaster Assistance Directorate
Department of Homeland Security
Federal Emergency Management Agency
500 C Street SW.
Washington, DC 20472–3100
Phone: 202 212–1100
Fax: 202 212–1002
Email: fema-ia-regulations@dhs.gov

**RIN:** 1660–AA18

---

**DHS—FEMA**

## 84. UPDATE OF FEMA'S PUBLIC ASSISTANCE REGULATIONS

**Priority:**

Other Significant

**Legal Authority:**

42 USC 5121–5207

**CFR Citation:**

44 CFR 206

**Legal Deadline:**

None

**Abstract:**

This proposed rule would revise the Federal Emergency Management Agency's Public Assistance program regulations. Many of these changes reflect amendments made to the Robert T. Stafford Disaster Relief and Emergency Assistance Act by the Post-Katrina Emergency Management Reform Act of 2006 and the Security and Accountability For Every Port Act of 2006. The proposed rule also proposes to reflect lessons learned from recent events, and propose further substantive and non-substantive clarifications and corrections to improve upon the Public Assistance regulations. This proposed rule is intended to improve the efficiency and consistency of the Public Assistance program, as well as implement new statutory authority by expanding Federal assistance, providing for precautionary evacuations, improving the Project Worksheet process, empowering grantees, and improving State Administrative Plans.

**Statement of Need:**

The proposed changes implement new statutory authorities and incorporate necessary clarifications and corrections to streamline and improve the Public Assistance program. Portions of FEMA's Public Assistance regulations have become out of date and do not implement all of FEMA's available statutory authorities. The current regulations inhibit FEMA's ability to clearly articulate its regulatory requirements, and the Public Assistance applicants' understanding of the program. The proposed changes are intended to improve the efficiency and consistency of the Public Assistance program.

**Summary of Legal Basis:**

The legal authority for the changes in this proposed rule is contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 to 5207, as amended by the Post-Katrina Emergency Management Reform Act of 2006, 6 U.S.C. 701 et seq., the Security and Accountability for Every Port Act of 2006, 6 U.S.C. 901 note, the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333, and the Pets Evacuation and Transportation Standards Act of 2006, Public Law 109-308, 120 Stat. 1725.

**Alternatives:**

One alternative is to revise some of the current regulatory requirements (such as application deadlines) in addition to implementing the amendments made to the Stafford Act by (1) the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) Public law 109-295, 120 Stat. 1394; 2) the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109-347, 120 Stat. 1884, 3) the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333; and 4) the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109-308, 120 Stat. Another alternative is to expand funding by expanding force account labor cost eligibility to Category A Projects (debris removal) as well as Category B Projects (emergency protective measures).

**Anticipated Cost and Benefits:**

The proposed rule is expected to have economic impacts on the public, grantees, subgrantees, and FEMA. The expected benefits are a reduction in property damages, societal losses, and losses to local businesses, as well as improved efficiency and consistency of the Public Assistance program. The

expected cost impact of the proposed rule is mainly the costs to FEMA in administering the Public Assistance program of approximately $60 million per year. Less than $1 million per year is expected to be attributed to grantees, and FEMA estimates the rule will have no costs added to subgrantees. These costs to FEMA are expected to accrue from the inclusion of education to the list of eligible private nonprofit critical services; expansion of force account labor cost eligibility; the inclusion of durable medical equipment; the evacuation, care, and sheltering of pets; as well as providing for precautionary evacuation measures. However, most of the proposed changes are not expected to result in any additional cost to FEMA or any changes in the eligibility of assistance. For example, the proposed rule would provide for accelerated Federal assistance and expedited payment of Federal share for debris removal. These are expected to improve the agency's ability to quickly provide funding to grantees and subgrantees without affecting Public Assistance funding amounts.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Governmental Jurisdictions

**Government Levels Affected:**

Federal, Local, State

**Federalism:**

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

**Agency Contact:**

James A. Walke
Disaster Assistance Directorate
Department of Homeland Security
Federal Emergency Management Agency
500 C Street SW.
Washington, DC 20472–3100
Phone: 202 646–2751
Fax: 202 646–3304
Email: james.walke@dhs.gov

**RIN:** 1660–AA51

**DHS—FEMA**

## FINAL RULE STAGE

### 85. SPECIAL COMMUNITY DISASTER LOANS PROGRAM

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 5121 to 5207

**CFR Citation:**

44 CFR 206

**Legal Deadline:**

None

**Abstract:**

This rule amends FEMA's regulations to implement loan cancellation provisions for Special Community Disaster Loans (Special CDLs), which were provided by FEMA to local governments in the Gulf region following Hurricanes Katrina and Rita. This rule would not automatically cancel all Special CDLs, but would establish the procedures and requirements for governments who received Special CDLs to apply for cancellation of loan obligations as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Troop Act). With the passage of the Troop Act, FEMA has the discretionary ability to cancel Special CDLs subject to the limitations of section 417(c)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Under section 417 of the Stafford Act, FEMA is authorized to cancel a loan if it determines that the ''revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character.'' Since the cancellation provisions of section 417 of the Stafford Act already exist in the Traditional CDL Program regulations at 44 CFR 206.366, and section 417 of the Stafford Act provides the basis for cancellation of loans under both the Special CDL Program and the Traditional CDL Program, FEMA proposed to mirror the Traditional CDL cancellation provisions for Special CDLs. This rule will not affect the cancellation provisions for the Traditional CDL Program.

**Statement of Need:**

This rulemaking is needed to address the needs of the communities affected by Hurricanes Katrina and Rita in 2005. This rule would provide for the alleviation of financial hardship on those communities who can demonstrate that in the three full fiscal years after the disaster they have not recovered to the point that their revenues are sufficient to meet their operating budget. This rule is needed to help those communities recover from that catastrophic disaster by offering the potential for relief of an additional financial burden.

**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:**

FEMA considered creating new and different cancellation application requirements for these communities but decided against that method as the cancellation authority is the same as the authority for traditional CDLs and the regulations currently used to cancel traditional CDLs has been in place and working for 19 years. New requirements may be confusing, additionally burdensome, or insufficient. FEMA is also considering the alternatives proposed by the commenters in drafting the final rule.

**Anticipated Cost and Benefits:**

The overall impact of this rule is the cost to the applicant to apply for the cancellation, as well as the impact on the economy of potentially forgiving all Special Community Disaster Loans and any related interest and costs. As the total amount of loans approved in the SCDL program reached almost $1.3 billion, therefore, the maximum total economic impact of this rule is approximately $1.3 billion. However, without knowing which communities will apply for cancellation and the dollar amount of the loans that will be cancelled, it is impossible to predict the amount of the economic impact of this rule with any precision. Although the impact of the rule could be spread over multiple years as applications are

received, processed, and loans cancelled, the total economic effect of a specific loan cancellation would only occur once, rather than annually.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 10/18/05 | 70 FR 60443 |
| Interim Final Rule Effective | 10/18/05 | |
| Interim Final Rule Comment Period End | 12/19/05 | |
| NPRM | 04/03/09 | 74 FR 15228 |
| NPRM Comment Period End | 06/02/09 | |
| Final Rule | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

Docket ID FEMA-2005-0051

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

James A. Walke
Disaster Assistance Directorate
Department of Homeland Security
Federal Emergency Management Agency
500 C Street SW.
Washington, DC 20472–3100
Phone: 202 646–2751
Fax: 202 646–3304
Email: james.walke@dhs.gov

**RIN:** 1660–AA44

BILLING CODE 9110–9B–S

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

### Statement of Regulatory Priorities

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2010 highlights the most significant regulations and policy initiatives that HUD seeks to complete during the upcoming fiscal year. As the federal agency that serves as the nation's housing agency, committed to addressing the housing needs of Americans, promoting economic and community development, and enforcing the nation's fair housing laws, HUD plays a significant role in the lives of families and in communities throughout America. The Department's program and initiatives help to provide decent, safe, and sanitary housing, and create suitable living environments for all Americans. HUD expands housing opportunities for Americans by enforcing fair housing laws that operate to eliminate housing discrimination. HUD also provides housing and other essential support to a wide range of individuals and families with special needs, including homeless individuals, the elderly, and persons with disabilities.

Secretary Donovan has directed that HUD must have a balanced, comprehensive national housing policy, one that supports and preserves sustainable homeownership, but also provides affordable rental housing, with a focus on preservation of developments that are integral to sustainability, such as those adjacent to significant transportation options, or with great access to jobs. Increasing the availability of affordable rental housing provides a means of addressing the increase in homelessness.

HUD's Regulatory Plan for FY2010 reflects one step in achieving this balanced, comprehensive national housing policy, and is based on major legislation recently enacted that supports such a policy.

**Priority: Preserving and Expanding Affordable Rental Housing and Increasing Homeownership**

The Housing and Economic Recovery Act of 2008 (HERA) establishes a Housing Trust Fund to be administered by HUD, for the purpose of providing grants to states to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families. Although the Housing Trust Fund supports both increases in rental housing and homeownership, the primary focus of the Housing Trust Fund is rental housing for extremely low- and very low-income households, since HERA provides that no more than 10 percent of each formula allocation may be expended on homeownership.

HERA charges HUD to establish, through regulation, the formula for distribution of Housing Trust Fund grants to states. HERA specifies that only certain factors are to be part of the formula, and it designates certain factors as priority factors. In addition to the charge to establish a formula by rule, the statute also directs HUD to issue regulations to carry out the statutory requirements applicable to use of Housing Trust Fund grants. Eligible trust fund activities include production, preservation, and rehabilitation of housing for rental housing and homeownership through new construction, acquisition, and acquisition and rehabilitation.

*Regulatory Action: Housing Trust Fund – Allocation Formula and Program Requirements*

HUD will issue two rules, as provided by statute. The first rule will address the formula by which Housing Trust Fund grant will be allocated to the states. The second rule will provide for implementation of the program requirements. Both rules will provide the opportunity for public comment. The Housing Trust Fund represents a bipartisan enactment of possibly the most significant new federal housing production program since the creation of the HOME Investment Partnerships program in 1990. Capitalization of this fund through appropriations and regulatory implementation will constitute a major step toward increasing the supply of affordable housing.

**Priority: Expanding Affordable Housing by Building Upon Success**

The HOME Investment Partnerships (HOME) Program, authorized by the Cranston-Gonzales National Affordable Housing Act, is the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. Each year, the HOME program allocates approximately $2 billion among the states and hundreds of localities nationwide. The program was designed to reinforce several important values and principles of community development, including empowering people and communities to design and implement strategies tailored to their own needs and priorities; emphasizing the importance of consolidated planning, which expands and strengthens partnerships among all levels of government and the private sector in the development of affordable housing; and, through matching funds, mobilizing community resources in support of affordable housing. HOME is a highly successful program through which nearly 912,000 affordable housing units for low- and very low-income households have been provided since 1992.

*Regulatory Action: HOME Investment Partnerships – Improving Performance and Accountability; Updating Property Standards and Instituting Energy Efficiency Standards*

The Department will publish significant proposed amendments to the HOME Program regulations. These regulations were last revised in 1996. This proposed rule would establish new performance standards for the use of HOME program funds, including establishing expeditious but responsible use of funds to provide new affordable housing opportunities, and would ensure that future HOME units are energy efficient and incorporate green building techniques.

**Priority: Housing the Homelessness**

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) was enacted on May 20, 2009. The HEARTH Act reauthorizes the homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act, and consolidates these programs into a single grant program. The consolidated program, which consists of an Emergency Solutions Grant program, a Continuum of Care program, and a Rural Housing Stability program, is designed to ensure that the range of needs of homeless persons continue to be addressed while providing for consolidated application and administration to ease administrative burden and improve coordination among providers and, consequently, increase the effectiveness of responding to the needs of homeless persons.

In addition to consolidating HUD's Supportive Housing Program, Shelter Plus Care, and the Moderate Rehabilitation/Single Room Occupancy Program into a single Continuum of Care program, key features of the HEARTH Act include: revising HUD's definition of homelessness by including people at imminent risk of losing their

housing, as well as families or youth who live in precarious situations and are unlikely to become stable; establishing the Rural Housing Stability Assistance Program, which provides rural communities with greater flexibility in using homeless assistance funds to address the needs of homeless people or those in the worst housing situations in their communities; authorizing that up to 20 percent of funds may be used to prevent homelessness or rapidly re-house people who become homeless through the new Emergency Solution Grants; and codifying HUD's Continuum of Care process, established administratively by HUD in 1995.

*Regulatory Action: Homeless Emergency Assistance and Rapid Transition to Housing Program; Consolidation of HUD Homeless Assistance Programs*

The HEARTH Act directs HUD to implement this program through rulemaking. HUD will issue two rules to implement this new program. The definition of homelessness, which is key to ensuring that the goals and objectives of the new statute are met, will be issued first as a separate rule for comment. HUD will follow this single issue rule with a larger rule that provides for HUD's implementation of the program requirements. The funding for this new program and HUD's implementation through rulemaking, as directed by statute, will provide communities with new resources and better tools to prevent and end homelessness.

**Aggregate Costs and Benefits**

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be made effective in calendar year 2010. HUD expects that the neither the total economic costs nor the total efficiency gains will exceed $100 million. HUD anticipates that, over the next twelve months, only one rule included in its Regulatory Plan, the Housing Trust Fund will have an economically significant impact. HUD's choice of an allocation formula has an impact on the distribution of over $100 million of transfers. The two additional rules on the Regulatory Plan are not anticipated to have an economically significant impact. HUD believes that the HOME Investment Partnerships will impose only minor costs in the form performance standards and economically insignificant benefits in the form of energy savings. The Homeless Emergency Assistance and Rapid Transition to Housing Program will lead to greater efficiency in the administration of housing assistance programs, but these savings are not expected to be economically significant.

**The Priority Regulations That Comprise HUD's FY 2010 Regulatory Plan**

A more detailed description of the priority regulations that comprise HUD's FY 2010 Regulatory Plan follows.

## HUD—Office of the Secretary (HUDSEC)

### PROPOSED RULE STAGE

### 86. HOME INVESTMENT PARTNERSHIPS—IMPROVING PERFORMANCE AND ACCOUNTABILITY; UPDATING PROPERTY STANDARDS AND INSTITUTING ENERGY EFFICIENCY STANDARDS (FR–5234)

**Priority:**

Other Significant

**Legal Authority:**

42 USC 12701 to 12839; 42 USC 3535(d)

**CFR Citation:**

24 CFR 92

**Legal Deadline:**

None

**Abstract:**

The Cranston-Gonzalez National Affordable Housing Act of 1990 authorized the HOME Investment Partnerships (HOME) Program, an affordable housing block grant under which funds are allocated to states and units of local government by formula. The program has been funded each year since 1992. The program operated under a series of interim rules until 1996, when a final rule was promulgated. This rule would amend HOME regulations to implement performance standards and require more timely housing production. It would also update the property standards to incorporate green building techniques and energy-efficiency standards for HOME-assisted units.

**Statement of Need:**

The Cranston-Gonzales National Affordable Housing Act notes that there is critical need to increase the supply of decent, safe, and sanitary housing for all Americans, particularly among low-income families. HOME funds may be used for a variety of housing activities, including rental assistance, housing rehabilitation, assistance to homebuyers, new construction, and to support states and units of local government implement local housing strategies designed to increase homeownership and affordable housing opportunities. The HOME program is now in its 18th year of funding. This rulemaking is needed to move the program forward by providing greater clarity, establishing and improving performance standards, and providing participating jurisdictions with the tools they need to address troubled projects. The rule would update builder standards for HOME-assisted facilities to incorporate energy efficiency and green building standards.

**Summary of Legal Basis:**

Title II of the Cranston-Gonzalez National Affordable Housing Act authorizes funding to participating jurisdictions for various housing purposes, including strengthening public-private partnerships to increase the supply of affordable housing, including homeownership. The goals of the program include expanding the supply of decent, safe, sanitary, and affordable housing, primarily for very low-income and low-income Americans and to strengthen the abilities of states and units of local government to design and implement local strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing.

**Alternatives:**

These changes can be implemented only by regulatory amendment. Other options considered included maintaining the status quo. However, after eleven years of experience under the currently codified rule, HUD has identified a need to increase accountability with respect to performance. Moreover, to ensure that these performance standards are effective, the program will need clear regulatory requirements to base an action against a grantee. The rule would reflect these policy goals.

**Anticipated Cost and Benefits:**

No increased costs are anticipated as a result of the changes related to performance standards. There may be some incremental costs associated with the imposition of green building technologies and energy-efficiency measures. However, those costs will be offset by lower operating costs for

energy-efficient housing and increased affordability for low- and very low-income families.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Virginia Sardone
Deputy Director, Office of Community Planning and Development, Office of Affordable Housing Programs
Department of Housing and Urban Development
HUD, 451 7th St SW
Washington, DC 20410
Phone: 202 708–2470

**RIN:** 2501–AC94

## HUD—Office of Community Planning and Development (CPD)

### PROPOSED RULE STAGE

### 87. HOUSING TRUST FUND PROGRAM—ALLOCATION FORMULA AND PROGRAM REQUIREMENTS (FR–5246)

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

12 USC 4568; 42 USC 3535(d)

**CFR Citation:**

24 CFR 93

**Legal Deadline:**

Final, Statutory, June 30, 2009, Regulations describing Formula Distribution; however, funds are not available to or appropriated for the Housing Trust Fund.

**Abstract:**

The Housing and Economic Recovery Act of 2008 (HERA) establishes a Housing Trust Fund. Section 1338 of HERA directs HUD to establish and manage a Housing Trust Fund, which is to be funded with amounts allocated by the government-sponsored enterprises or by any amounts that may be appropriated, transferred, or credited to the Housing Trust Fund under any other provision of law. The purpose of the Housing Trust Fund is to provide grants to states for use to: (1) increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and (2) increase homeownership for extremely low- and very low-income families. The primary focus of the Housing Trust Fund is rental housing for extremely low- and very low-income households. HERA provides that no more than 10 percent of each formula allocation may be expended on homeownership.

HERA charges HUD to establish, by July 2009, and, through regulation, the formula for the distribution of the Housing Trust Fund grants to states, and to follow that rule with one that implements the Housing Trust Fund program requirements.

**Statement of Need:**

In enacting Housing Trust Fund legislation, Congress determined that the national housing policy of the past several years was overly focused on homeownership and did not provide adequate attention to the need of renters and the need for affordable rental housing. The Housing Trust Fund legislation, as signed into law, provides increased resources to be directed to the preservation and expansion of affordable rental housing.

**Summary of Legal Basis:**

The rules implementing the Housing Trust Fund formula allocation and establishing the program requirements are mandated by HERA.

**Alternatives:**

HERA requires implementation of both the formula and the program requirements by regulation. Accordingly, this rule fulfills a statutory mandate to proceed with rulemaking to codify the policies and procedures governing the HTF. The prescriptive statutory language of HERA limits the policy options considered by HUD. Areas in which the statute provides some discretion and the Department is considering alternatives include: (1) the contents of the statutorily mandated allocation plans to be submitted by states and state designated entities; (2) the eligible activities that may be carried out with HTF funds; and (3) appropriate benchmarks and performance goals for the use of HTF funds.

**Anticipated Cost and Benefits:**

The benefit of this program is the increase in affordable rental housing, which will present savings to low-income and very low-income individuals with respect to amount of income they spend on housing, and contribution to the prevention of homelessness, which has increased as the unemployment rate has risen. The economic impact of the Housing Trust Fund consists of a transfer from the taxpayer, through State governments, to extremely low- and very low-income families. By expanding and preserving the supply of housing and lowering financial barriers to homeownership, the Housing Trust Fund will reduce the housing costs of extremely low- and very low-income families, and thus raise the consumer surplus of the program's beneficiaries.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State, Tribal

**Agency Contact:**

Marcia Sigal
Director, Program Policy Division, Office of Affordable Housing Programs
Department of Housing and Urban Development
Office of Community Planning and Development
HUD, 451 7th St. Street
Washington, DC 20410
Phone: 202 708–2470
Fax: 202 708–1744

**RIN:** 2506–AC23

**HUD—CPD**

**88. ● HOMELESS EMERGENCY ASSISTANCE AND RAPID TRANSITION TO HOUSING PROGRAM; CONSOLIDATION OF HUD HOMELESS ASSISTANCE PROGRAMS (FR–5333)**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 11371 et seq.; 42 USC 3535(d)

**CFR Citation:**

24 CFR 577 to 579

**Legal Deadline:**

Final, Statutory, May 20, 2010, Regulations governing operation of programs created or affected by HEARTH Act of 2009.

**Abstract:**

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) reauthorizes the homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act, and consolidates these programs into a single grant program. The consolidated program, which consists of an Emergency Solutions Grant Program, a Continuum of Care Program, and a Rural Housing Stability Program, is designed to ensure that the range of needs of homeless persons continue to be addressed, but provides for consolidated grant application and administration to ease administrative burden and improve coordination among providers and, consequently, increase the effectiveness of responses to the needs of homeless persons. HUD will issue two rules to implement this new program. One rule will solely address the definitions of ''homeless,'' ''homeless individual,'' and ''homeless person,'' the meaning of which are essential to the coverage provided by this program. The second rule will establish the regulatory framework to implement the program.

**Statement of Need:**

These rules are needed to fully implement the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act requires that HUD issue implementing regulations governing the operations of the programs it creates or modifies by no later than twelve months after the date of enactment.

**Summary of Legal Basis:**

The rules implementing the consolidated McKinney-Vento Homeless Assistance programs are mandated by the HEARTH Act.

**Alternatives:**

The HEARTH Act requires implementation of the program by rulemaking. Accordingly, this rule will assist in meeting the statutory mandate to proceed with rulemaking to codify the policies and procedures governing the HEARTH Act. The prescriptive statutory language of the HEARTH Act limits policy options available; however, HUD is considering options where the HEARTH Act provides discretion including: (1) determining the appropriate remedial action to ensure the fair distribution of assistance for geographic areas that do not meet the requirements for funding or where there is no collaborative applicant for a geographic area, and (2) establishing the dates by which the recipient or project sponsor must expend grants for a homeless assistance.

**Anticipated Cost and Benefits:**

The consolidated homeless assistance program authorized by the HEARTH Act is designed to more rapidly respond to the needs of the homeless and, therefore, prevent homelessness and, initially, prevent the rise in the number of homeless persons.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Ann Marie Oliva
Director, Office of Special Needs Assistance Program
Department of Housing and Urban Development
Office of Community Planning and Development
HUD, 451 7th St. Street
Washington, DC 20410
Phone: 202 402–4497

**RIN:** 2506–AC26

**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 are responsible for relations with the island territories under United States jurisdiction. We manage more than 500 million acres of Federal lands, including 391 park units, 548 wildlife refuges, and approximately 1.7 billion of submerged offshore acres. This includes some of the highest quality renewable energy resources available to help the United States achieve the President's goal of energy independence, including geothermal, solar, and wind. On March 30, 2009, President Barack Obama signed into law the Omnibus Public Land Management Act of 2009. The Act Congressionally established the Bureau of Land Management's National Landscape Conservation System (NLCS). The new law brings into NLCS nearly 928,000 acres of wilderness, one national monument, four conservation areas, 363 miles of wild and scenic rivers, and 40 miles of national scenic trails.

The Department protects and recovers endangered species; protects natural, historic, and cultural resources; manages water projects that are a life line and economic engine for many communities in the West; manages forests and fights wildfires; manages Federal energy resources; educates children in Indian schools; and provides recreational opportunities for over 400 million visitors annually in our national parks, public lands, national wildlife refuges, and recreation areas.

We will continue to review and update our regulations and policies to ensure that they are effective and efficient, and that they promote accountability and sustainability. We will emphasize regulations and policies that:

- Promote environmentally responsible and balanced development of renewable and conventional energy on our public lands and the Outer Continental Shelf;
- Use the best available science to ensure that public resources are protected, conserved, and used wisely;
- Adopt performance approaches focused on achieving cost-effective, timely results;
- Improve the nation-to-nation relationship with American Indian tribes;
- Promote partnerships with States, tribes, local governments, other groups, and individuals to achieve common goals;
- Promote transparency, fairness, accountability, and the highest ethical standards while maintaining performance goals.

**Major Regulatory Areas**

DOI bureaus implement legislatively mandated programs through their regulations. Some of these regulatory activities include:

- Developing onshore and offshore energy, including renewable energy, minerals, oil and gas, and other energy resources;
- Managing migratory birds and preservation of certain marine mammals and endangered species;
- Managing dedicated lands, such as national parks, wildlife refuges, NLCS lands, and American Indian trust lands;
- Managing public lands open to multiple use;
- Managing revenues from American Indian and Federal minerals;
- Fulfilling trust and other responsibilities pertaining to American Indians;
- Managing natural resource damage assessments; and
- Managing assistance programs.

**Regulatory Policy**

*How DOI Regulatory priorities support the President's energy, resource management, environmental sustainability, and economic recovery goals*

Within the requirements and guidance in various Executive Orders, DOI's regulatory programs seek to operate programs transparently, efficiently, and cooperatively while maximizing protection of our land, resources, and environment in a fiscally responsible way by:

*(1) Protecting Natural, Cultural and Heritage 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. Our 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.

The Bureau of Land Management (BLM) Wildlife Program continues to focus on maintenance and management of wildlife habitat to help ensure self-sustaining populations and a natural abundance and diversity of wildlife resources on public lands. BLM-managed lands are vital to game species and hundreds of species of non-game mammals, reptiles, and amphibians. In order to provide for long-term protection of wildlife resources, especially given other mandated land use requirements, the Wildlife Program supports aggressive habitat conservation and restoration activities, many funded by partnerships with Federal, State, and non-governmental organizations. For instance, the Wildlife Program is restoring wildlife habitat across a multi-state region to support species that depend upon sagebrush vegetation. Projects are tailored to address regional issues such as fire (as in the western portion of the sagebrush biome) or habitat degradation and loss (as in the eastern portion of the sagebrush biome). Additionally, BLM undertakes habitat improvement projects in partnership with a variety of stakeholders and consistent with State fish and game wildlife action plans and local working group plans.

The National Park Service (NPS) is working with BLM and the U.S. Fish and Wildlife Service (FWS) to finalize a rule to implement Public Law 106-206, which directs the Secretary to establish a system of location fees for commercial filming and still photography activities on public lands. While commercial filming and still photography are generally allowed on Federal lands, managing this activity through a permitting process will minimize damage to cultural or natural resources and interference with other visitors to the area. This regulation would standardize the collection of location fees by DOI agencies.

In 2007, the National Park Service developed a new winter use regulation for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway. This 2007 regulation replaced an interim rule that expired at the end of the 2006-2007 winter season. It established an average daily entrance limit of 540 snowmobiles

(compared to 720 under the interim rule), continued the limit of 10 snowmobiles for groups and guided tours, and established daily limits on snow coach entrances to the park. As required by court orders, NPS has reinstated the old interim rule pending development of an acceptable new rule to take its place. As the first steps toward developing this new rule, NPS published a proposed rule on November 5, 2008, and reopened comment on this rule on July 24, 2009. The Service intends to issue a final rule that will remain in effect through the 2010-2011 winter season and will allow 318 snowmobiles and 78 snow coaches per day.

In 2008, in consultation with an interagency work group, NPS began developing a proposed rule to provide more efficient and cost-effective management of federally owned archeological collections. At present, there is no legal procedure to deaccession items in Federal collections that are of ''insufficient archeological interest,'' i.e., they are of no further value to the science of archaeology, or to the integrity of the collection in which they are contained. This rule would free up space in collections and allow custodians to allocate more time and effort to care of remaining items. To ensure proper disposition of those archaeological items, the regulation contains:

- Criteria to determine when material remains are of insufficient archeological interest and may be disposed;
- Appropriate methods by which to dispose of archeological material remains in priority order;
- Conditions that must be met in order to determine that if disposal is appropriate;
- Procedures to notify concerned parties and solicit comments regarding a proposed disposition;
- A requirement to publish in the *Federal Register* the disposition determination and a process to dispute it; and
- Documentary requirements for full accountability of the disposition.

The rule also requires assignment of a specific individual to be accountable for proper disposition. The rule is now undergoing final review and should be ready for publication in early 2010.

*(2) Sustainably Using Energy, Water, and Natural Resources.*

BLM has identified a total of approximately 20.6 million acres of public land with wind energy potential in the 11 western states and approximately 29.5 million acres with solar energy potential in the six southwestern states. There are over 140 million acres of public land in western states and Alaska with geothermal resource potential. There is also significant wind and wave potential in our offshore waters. The National Renewable Energy Lab, a Department of Energy national laboratory, has identified more than 1,000 gigawatts of wind potential off the Atlantic coast - roughly equivalent to the Nation's existing installed electric generating capacity - and more than 900 gigawatts of wind potential off the Pacific Coast. Due to the extent and distribution of public lands, the Department has an important role, in consultation with relevant Federal, State, regional, and local authorities, in siting new transmission lines needed to bring renewable energy assets to load centers.

Since the beginning of the Obama Administration, the Department has focused on renewable energy issues and has established priorities for environmentally responsible development of renewable energy on our public lands and the outer continental shelf. Industry has started to respond by investing in development of wind farms off the Atlantic seacoast, solar facilities in the southwest, and geothermal energy projects throughout the west. Power generation from these new energy sources produces virtually no greenhouse gases and, when done in an environmentally sensitive manner, harnesses with minimum impact abundant renewable energy that nature itself provides.

On March 11, 2009, the Secretary issued his first Secretarial Order that made facilitating the production, development, and delivery of renewable energy on public lands and the OCS top priorities at the Department. These goals will be accomplished in a manner that does not ignore, but instead protects, our signature landscapes, natural resources, wildlife, and cultural resources, and works in close collaboration with all relevant Federal, state, Tribal and other agencies. The order also established an energy and climate change task force within the Department, drawing from the leadership of each of the bureaus. The task force is responsible for, among other things, quantifying the potential contributions of renewable energy resources on our public lands and the OCS and identifying and prioritizing specific ''zones'' on our public lands where the Department can facilitate a rapid and responsible move to significantly increase production of renewable energy from solar, wind, geothermal, and biomass sources, and incremental or small hydroelectric power on existing structures.

On April 29, 2009, the Minerals Management Service published a final rule to establish a program to grant leases, easements, and rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). These regulations will ensure the orderly, safe, and environmentally responsible development of renewable energy sources on the OCS.

*(3) Empowering People and Communities.*

The Department encourages public participation in the regulatory process by seeking public input on a variety of regulatory issues. For example, every year FWS establishes migratory bird hunting seasons in partnership with flyway councils composed of State fish and wildlife agencies. FWS also 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.

The National Park Service has begun revising its rules on non-Federal development of gas and oil in units of the National Park System. Of the approximately 700 gas and oil wells in 13 NPS units, 55 per cent, or 385 wells, are exempt from current regulations. In order to improve protection of NPS resources, and bring those 385 wells under the regulatory umbrella, revision of the regulation is necessary. NPS is encouraging public input into designing the rule by publishing an advance notice of proposed rulemaking. Interested members of the public will be able to make suggestions on the content of the regulation, which NPS will consider in writing the proposed rule. After developing a proposed rule, NPS will solicit further public comment. Publishing an advance notice of proposed rulemaking should result in a regulation that will minimize impacts from drilling, improve operating standards for oil and gas operations, and allow recovery of administrative costs.

**Accountability and Sustainability Through Regulatory Efficiency**

We are using the regulatory process to improve results while easing regulatory burdens. For instance, the Endangered Species Act (ESA) allows for delisting threatened and endangered species if they no longer need the protection of the ESA. We are working to identify species for which delisting or downlisting (reclassification from endangered to threatened) may be appropriate.

The Fish and Wildlife Service has found that making listing decisions under the Endangered Species Act in Hawaii on a traditional, species-by-species basis is inefficient, since very similar information and analysis would be repeated in each rule. To improve efficiency, FWS has taken an approach that includes consideration of 48 species in one regulatory package. This allows the Service to address the existing backlog of candidate species more quickly. Most candidate species on the Hawaiian Islands face nearly identical threats and are only found in the few remaining native-dominated ecological communities. The impacts of these threats are well understood at the community level, while their impacts to the individual candidate species are relatively less studied. Because this approach focuses on conserving the key physical and biological components of native communities and ecosystems, it may preclude the need to list additional species found in the same ecological communities. Recovery plans developed in response to the Kauai listing will focus conservation efforts on protection and restoration of ecosystem processes, allowing us to more efficiently address common threats in the most important areas.

DOI bureaus work to make our regulations easier to comply with and understand. 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. Results include:

- Effective stewardship of our Nation's resources in a way that is responsive to the needs of small businesses;
- Increased benefits per dollar spent by carefully evaluating the economic effects of planned rules; and
- Improved compliance and transparency by use of plain language in our regulations and guidance documents.

**Bureaus and Offices Within DOI**

*Bureau of Indian Affairs*

The Bureau of Indian Affairs (BIA) administers and manages 56 million acres of land held in trust by the United States for Indians and Indian tribes, providing services to approximately 1.9 million Indians and Alaska Natives, and maintaining a government-to-government relationship with the 564 federally recognized Indian tribes. BIA's mission is to ''... enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives,'' as well as to provide quality education opportunities to students in Indian schools.

In fiscal year 2010, BIA will continue its regulatory focus on improved management of trust responsibilities and promotion of economic development in Indian communities. In addition, we will focus on updating Indian education regulations and on other regulatory changes to increase transparency in support of the President's Open Government Initiative.

With the input of tribal leaders, individual Indian beneficiaries, and other subject matter experts, BIA has been examining ways to better serve its beneficiaries. The American Indian Probate Reform Act of 2004 (AIPRA) made clear that regulatory changes were necessary to update the manner in which we meet our trust management responsibilities. We have promulgated regulations implementing the probate-related provisions of AIPRA and will now focus on regulations to implement other AIPRA provisions related to managing Indian land.

The focus on promoting economic development in Indian communities, including development of renewable and conventional energy resources on tribal lands, is a core component of BIA's mission. Economic development initiatives can attract businesses to Indian communities and fund services that support the health and well-being of tribal members. By providing the tools necessary to promote economic development, economic development can enable tribes to attain self-sufficiency, strengthen their governments, and reduce crime.

Indian education is a top priority of the Assistant Secretary – Indian Affairs. For this reason, we will review Indian education regulations to ensure that they adequately support efforts to provide students of BIA-funded schools with the best education possible.

Finally, BIA's regulatory focus on increasing transparency implements the President's Open Government Initiative. We will ensure that all regulations that we draft or revise meet high standards of readability, and accurately and clearly describe BIA processes.

*Bureau of Land Management*

The Bureau of Land Management (BLM) manages 256 million acres of public lands, located primarily in the western states and Alaska, and the 700-million-acre subsurface mineral estate located throughout the Nation. Our complex mission to manage public lands for multiple uses means that we affect not only the many Americans who live near or visit public lands, but also millions more who benefit from minerals, energy, and timber produced from the lands' rich resources.

In carrying out our mission, we conserve natural and cultural resources and sustain the health and productivity of our public lands for the use and enjoyment of present and future generations. We manage such varied uses as energy and mineral development, outdoor recreation, livestock grazing, and forestry and woodlands products. In 2010 we will celebrate the tenth anniversary of the National Landscape Conservation System (NLCS), created to highlight the conservation side of our multiple-use mandate. Earlier this year, Congress, by passing the Omnibus Public Land Management Act (P.L. 111-11), affirmed its support of the NLCS in statute and added 929,000 acres of wilderness, one national monument, four national conservation areas, 363 miles of wild and scenic rivers, and 40 miles of national scenic and historic trails to the NLCS. There are now more than 880 NLCS treasured landscapes spanning the Nation from Florida to Alaska.

The diverse public lands managed by BLM contain vast potential for developing renewable energy resources such as wind, solar, and geothermal energy, as well as oil, gas, coal, and timber. We are analyzing proposals with the goal of increasing renewable energy development on public lands. We are also establishing transmission corridors to move renewable energy from production sites to market, and have taken a significant step in this direction by designating more than 5,000 miles of energy transport corridors as west-wide energy corridors. The next step is authorizing rights-of-way across public lands.

We have identified several emphasis areas to help explain our regulatory

priorities. The narrative below describes these emphasis areas and explains their relationship with the Secretary of the Interior's priorities in the areas of energy independence, treasured landscapes, and Native American issues.

*(1) Energy Independence*

The quality of life that Americans enjoy today depends upon a stable and abundant supply of affordable energy. Because BLM manages more Federal land than any other agency — 256 million surface acres and 700 million sub-surface acres of mineral estate - we play a key role in ensuring that our country's energy needs are met by managing both renewable and non-renewable sources. We do this in an environmentally balanced and fiscally sound way that protects our natural resources and critical wildlife habitat for such species as the sage grouse and lynx.

*(2) Treasured Landscapes*

Protecting the landscape means moving toward a holistic, landscape-level approach to managing multiple public land uses. To implement this approach, we work with partners interested in working on a broader scale across jurisdictional lines to achieve a common landscape vision. Our focus on restoring healthy landscapes includes:

- Reducing the number of wild horses and burros on the public lands, particularly in areas most affected by drought and wildfire. Maintaining the wild horse and burro population at appropriate levels is critical to conserving forage resources that sustain native wildlife and livestock.
- Restoring habitat for sensitive, rare, threatened, and endangered species, such as the sage grouse, desert tortoise, and salmon.
- Supporting greater biodiversity through noxious weed and invasive species control to allow native plants to thrive.
- Improving water quality by restoring riparian areas and protecting watersheds. Enhanced water quality aids in restoring habitat for fish and other aquatic and riparian species.
- Conducting post-fire recovery efforts to promote healthy landscapes and to discourage the spread of invasive species.

*(3) Native American Issues*

BLM consults with Indian Tribes on a government-to-government basis, and we are comprehensively assessing and improving our tribal consultation practices. In August 2008, the BLM Director wrote to more than 600 tribal leaders asking about their experiences with BLM and their ideas on how we could improve our working relationship. We then held a follow-up listening session in Anchorage to coincide with the Alaska Federation of Natives Conference. We received many valuable comments at this session, which led to additional listening sessions in May through August 2009.

One area of concern relates to the Native America Graves Protection and Repatriation Act (NAGPRA), which addresses the rights of Indian Tribes and Native Hawaiian organizations to certain human remains and objects of cultural patrimony. To comply with NAGPRA, we are inventorying and repatriating human remains and other cultural items in BLM museum collections. We are also consulting with Indian tribes on actions to take when human remains and cultural items subject to NAGPRA are discovered or excavated on public lands.

We also work with the Bureau of Indian Affairs and the Minerals Management Service to help Indian tribes and individual allottees develop their solid and fluid mineral resources. We are responsible for protecting, developing, measuring, inspecting, and enforcing extraction operations of the mineral estate on properties held in trust for Native Americans.

*BLM's Regulatory Priorities*

Our regulatory focus is directed primarily by the priorities of the President and Congress. These priorities include;

- Facilitating balanced domestic production of various sources of energy, including oil and gas, 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 varied 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 BLM-managed public lands and providing them with quality service;
- Securing the recovery of a fair return for using publicly owned resources and avoiding 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.

In developing regulations, we strive to ensure communication, coordination, and consultation with the public, including affected interests, tribes, and other stakeholders. We also work to draft regulations that are clearly written and easy for the public to understand.

For the coming year, our specific regulatory goals include:

*(1) Revising onshore oil and gas operating standards*

BLM expects to revise existing onshore oil and gas operating orders and propose a new order. Onshore orders establish requirements, minimum standards, and standard operating procedures. They are binding on Federal and Indian (except Osage) oil and gas leases and on all wells and facilities on State or private lands covered by Federal agreements. In order to determine the proper royalty that a lessee must pay, BLM ensures that oil and gas is accurately measured for quantity and quality. To ensure that proper royalties are paid on oil and gas removed from Federal and trust lands, we plan to:

- Revise existing Onshore Orders Numbers 3, 4, and 5 to use new industry standards that reflect current operating procedures and to require consistent use of proper verification and accounting.
- Propose new Onshore Order Number 9 to cover waste prevention and beneficial use.

*(2) Revising coal management regulations*

BLM plans to publish a proposed rule that would amend the coal management regulations governing Federal coal leases and logical mining units. The rule would implement provisions of the Energy Policy Act regarding administration of coal leases and clarify the royalty rate for continuous highwall mining, a new coal mining method used on some Federal coal leases.

*(3) Publishing rules on paleontological resources preservation*

The recently enacted omnibus public lands law included provisions on permits for collecting paleontological resources. BLM and the Park Service are co-leads of a team with the Forest Service that will be drafting a

paleontological resources rule. The rule would address the protection of paleontological resources and how we would permit the collection of these resources. The rule would also address other issues such as the administration of permits, causal collection of rocks and minerals, hobby collection of common invertebrate plants and fossils, and the civil and criminal penalties for violation of these rules.

*(4) Revising timber sale contract extension regulations*

We plan to amend the forest product disposal regulations governing forest product contracts. BLM regulations currently allow timber sale contract extensions under very limited circumstances and do not allow extensions for ''market fluctuations.'' Nor do they allow any reduction of contract value due to declines in the lumber market. The recent decline in the housing industry has resulted in a record decline in the timber market, leaving many purchasers of BLM timber sale contracts without a reasonable market in which to sell harvested timber. The revised rule would allow us to extend contracts under specified circumstances and provide more options to help maintain the logging and sawmilling infrastructure needed to manage the 66 million acres of publicly owned timber and woodland resources.

*Minerals Management Service*

The Minerals Management Service (MMS) collects, accounts for and disburses more than $13 billion per year in revenues from Federal offshore energy and mineral leases and from onshore mineral leases on Federal and Indian lands. The program is national in scope and has two major responsibilities. The first is timely and accurate collection, distribution, and accounting for revenues associated with mineral and energy production. The second is management and stewardship of the resources of the Outer Continental Shelf (OCS) in a manner that provides for safety, protection of the environment, and conservation of valuable natural resources. MMS carries out these broad responsibilities under authority 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.

In 2009, MMS completed a major milestone by developing and codifying the regulatory framework for renewable energy projects on the OCS. We are now beginning to implement the regulatory provisions for developing the Nation's offshore wind, wave, and ocean current resources in a safe and environmentally sound manner. Using cost-effective, targeted regulatory authority, we continue efforts to improve both the safety record and environmental protection of all production operations while ensuring fair value to the Federal Government, Indian Tribes, and taxpayers.

Our regulatory focus for fiscal year 2010 is directed by Presidential and legislative priorities that emphasize contributing to America's energy supply, protecting the environment, and ensuring a fair return for taxpayers for energy production from Federal and Indian lands.

Our regulatory priorities are to:

- *Continue to meet our Indian trust responsibilities*

We have a trust responsibility to accurately collect and disburse oil and gas royalties on Indian lands. MMS will increase royalty certainty by addressing oil valuation for Indian lands through a rulemaking process involving key stakeholders.

- *Determine the proper value of coal for advanced royalty purposes*

Implementing requirements in the Energy Policy Act of 2005, these regulations will provide clarification by redesignating and amending a BLM coal valuation directive. The rule will provide a needed alternative method to determine the value of coal for advanced royalty purposes.

- *Update pipelines and pipeline rights-of-way regulations*

We expect to publish a final rule revising the Outer Continental Shelf pipeline and pipeline rights-of-way regulations. This revised rule will reflect current industry practices and MMS policies for safe operations of pipelines on the OCS.

- *Update Oil and Gas Production Requirements*

The final rule revises requirements for oil and gas production rates, venting and flaring natural gas, and burning oil. The rule, which also adds a requirement to measure flared or vented gas at high volume oil production facilities, is expected to publish in FY 2010.

*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.'' Title V of SMCRA sets minimum requirements for obtaining a permit for surface coal mining operations, sets performance standards for those operations, requires land reclamation once mining ends, and requires enforcement to ensure that the standards are met. Under SMCRA and later amendments we are the primary enforcer of the Act's provisions until a State or Indian tribe achieves ''primacy'' by demonstrating that its regulatory program meets all of the specifications in the Act and is consistent with OSM regulations.

When a primacy State or Indian tribe takes over permitting, inspection, and enforcement activities under its federally approved regulatory program, our role is to regulate mining activities and oversee and evaluate the State or tribal program. Today, 24 of the 26 coal-producing States have primacy. In return for assuming primacy, States are entitled to regulatory grants and abandoned mine lands grants under their abandoned mine lands programs. In addition, under cooperative agreements, some primacy States have agreed to regulate mining on Federal lands within their borders. In 2006, amendments to SMCRA allowed Indian tribes with coal resources to assume primacy. No tribes have done so to date, although three tribes have expressed an interest in submitting a tribal program.

In summary, OSM regulates mining directly only in non-primacy States, on Federal lands in States where no cooperative agreements are in effect, and on Indian lands when the tribe does not have primacy.

OSM has sought to develop and maintain a stable regulatory program for surface coal mining 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 how the program is being implemented and how they can participate. During the development and maintenance of its program, OSM has recognized the need to: (a) respond to local conditions, (b) provide flexibility to react to technological change, (c) be sensitive to geographic diversity, and (d) eliminate burdensome recordkeeping and reporting requirements that, over time, have proved unnecessary to ensure an effective regulatory program.

OSM's major regulatory priorities for the coming year are to:

- *Address issues resulting from the publication of the excess spoil/stream buffer zone rule in December 2008*

The publication of the excess spoil/stream buffer zone rule on December 12, 2008, has raised serious concerns about damage to the environment and has resulted in litigation. We intend to review those concerns and will initiate new rulemaking to address the issues raised.

- *Issue regulations establishing enforceable Federal standards for the placement of coal combustion byproducts (CCBs) in active and abandoned mines*

We intend to publish proposed and final regulations establishing permit application requirements and performance standards for the placement of CCBs on coal mining sites. The requirements will apply to active mining sites with permits for surface coal mining operations under Title V of SMCRA and to abandoned mine sites being reclaimed under Title IV of SMCRA. The rule will be designed to ensure that mining operations or reclamation projects where CCBs are placed incorporate adequate protections to safeguard the public and the environment. The proposed regulations will be based upon existing SMCRA authorities. Our decision to initiate rulemaking is the result of a study conducted by the National Research Council of the National Academies of Science, which recommended the establishment of enforceable Federal standards for the placement of CCBs on mine sites.

*U.S. Fish and Wildlife Service*

The mission of the U.S. Fish and Wildlife Service (FWS) 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. FWS also helps ensure a healthy environment for people by providing opportunities for Americans to enjoy the outdoors and our shared natural heritage.

- FWS fulfills its responsibilities through a diverse array of programs that:
- Protect and recover threatened and endangered species;
- Monitor and manage migratory birds;
- Restore native aquatic populations and nationally significant fisheries;
- Enforce Federal wildlife laws and regulate international trade;
- Conserve and restore wildlife habitat such as wetlands;
- Help foreign governments conserve wildlife through international conservation efforts;
- Distribute Federal funds to States, territories, and tribes for fish and wildlife conservation projects; and
- Manage the 96-million-acre National Wildlife Refuge System, which protects and conserves fish and wildlife and their habitats and allows the public to engage in outdoor recreational activities.

Critical challenges to the work of FWS include: Global climate change; shortages of clean water suitable for wildlife; invasive species that are harmful to our fish, wildlife, and plant resources and their habitats; and the alienation of children and adults from the natural world. To address these challenges, FWS has identified six priorities:

- National Wildlife Refuge System—conserving our lands and resources;
- Landscape conservation—working with others;
- Migratory birds—conservation and management;
- Threatened and endangered species—achieving recovery and preventing extinction;
- Connection between people and nature—ensuring the future of conservation; and
- Aquatic species—the National Fish Habitat Action Plan (a plan that brings public and private partners together to restore U.S. waterways to sustainable health) and trust species.

To carry out these priorities, FWS has a large regulatory agenda. FWS programs will conduct rulemaking to, among other things:

- List, delist, and reclassify species on the List of Threatened and Endangered Species and designate critical habitat for certain listed species;
- Update our regulations to carry out the Convention on International Trade in Wild Fauna and Flora;
- Manage migratory bird populations;
- Administer the subsistence program for harvesting fish and wildlife in Alaska;
- Update our regulations to carry out the Wildlife and Sport Fish Restoration Program; and
- Publish hunting and sport fishing regulations for the National Wildlife Refuge System.

*National Park Service*

NPS currently administers Commercial Use Authorizations (CUAs) under an interim policy, but needs a regulation to standardize fees; allow cost recovery by NPS where appropriate; ensure clear and consistent criteria for issuance of CUAs; and, where necessary, allow parks to limit and set conditions for limiting the number of authorizations issued. The regulation will also allow better enforcement of permit conditions, which promotes protection of park resources and public safety. NPS expects to publish the proposed rule in December 2009.

In November 2006 the National Park Service completed a nearly 10-year public process to develop a management plan for the Colorado River in Grand Canyon National Park. The Service is now implementing the plan by developing regulations that: implement permit requirements for commercial river trips below a specified location in the canyon; update visitor use restrictions and camping closures; and eliminate unnecessary provisions in the current regulation. The proposed rule was published in the Federal Register on July 13, 2009, and the public comment period ended on September 11, 2009.

The National Park Service is working with the Bureau of Land Management and the Fish and Wildlife Service to finalize rules implementing Public Law 106-206, which directs the Secretary to establish a reasonable fee system (location fees) for commercial filming and still photography activities on public lands. Although commercial filming and still photography are generally allowed on Federal lands, it is in the public's interest to manage these activities through a permitting process. This will minimize the possibility of damage to the cultural or natural resources or interference with other visitors to the area. This regulation would standardize the collection of location fees by DOI agencies.

*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, we apply management, engineering, and science to achieve

effective and environmentally sensitive solutions.

Reclamation projects provide: 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. We have increased security at our facilities and implemented our law enforcement authorization received in November 2001.

Our regulatory program focus in fiscal year 2010 is to ensure that our mission and laws that require regulatory actions are carried out expeditiously, efficiently, and with an emphasis on cooperative problem solving by implementing two newly authorized programs:

- Title I of Public Law 109-451 authorizes establishment of a rural water supply program to enable the Bureau of Reclamation to coordinate with rural communities throughout the Western United States to identify their potable water supply needs and evaluate options for meeting those needs. Under the Act, we are finalizing a rule that will define how we will identify and work with eligible rural communities. We published an interim final rule on November 17, 2008, and expect to publish a final rule in 2010.
- Title II of Public Law 109-451 authorizes the Secretary of the Interior, through the Bureau of Reclamation, to issue loan guarantees to assist in financing: (a) rural water supply projects, (b) extraordinary maintenance and rehabilitation of Reclamation project facilities, and (c) improvements to infrastructure directly related to Reclamation projects. This new program will provide an additional funding option to help western communities and water managers to cost effectively meet their water supply and maintenance needs. Under the Act, we are working with the Office of Management and Budget to publish a rule that will establish criteria for administering the loan guarantee program. We published a proposed rule on October 6, 2008, and expect to publish a final rule in 2010.

BILLING CODE 4310–RK–S

## DEPARTMENT OF JUSTICE (DOJ)

### Statement of Regulatory Priorities

The highest priority of the Department is to protect America against acts of terrorism, both foreign and domestic, within the letter and spirit of the Constitution. Without ever relaxing in the fight against terrorism, the Department is also reinvigorating its traditional missions by embracing its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the market place. The Department is working to ensure the fair and impartial administration of justice for all Americans, assist the agency's state and local partners, and defend the interests of the United States according to the law. In addition to using investigative, prosecutorial, and other law enforcement activities, the Department is also using the regulatory process to better carry out the Department's wide-ranging law enforcement missions.

The Department of Justice's regulatory priorities focus in particular on a major regulatory initiative in the area of civil rights. Specifically, the Department is planning to revise its regulations implementing titles II and III of the Americans With Disabilities Act (ADA). However, in addition to this specific initiative, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not singled out for specific attention in this regulatory plan, those components carry out key roles in implementing the Department's anti-terrorism and law enforcement priorities.

### Civil Rights

In June 2008, the Department has published proposed rules to revise its regulations implementing titles II and III of the ADA to amend the ADA Standards for Accessible Design (28 CFR part 36, appendix A) to be consistent with the revised ADA accessibility guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) on July 23, 2004. During FY 2010, the Department expects to complete its work on these regulations and to further amend the Department's regulations to implement the ADA Amendments Act of 2008, which took effect on January 1, 2009.

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. In 2004, the Access Board revised its Accessibility Guidelines 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, to promote greater consistency between the Federal accessibility requirements and the model codes, and to provide greater consistency between the ADA guidelines and the guidelines that implement the Architectural Barriers Act. Therefore, the Department proposed to adopt revised ADA Standards for Accessible Design that are consistent with the revised ADA Accessibility Guidelines.

The Department has also proposed to revise its regulations implementing title II and title III (28 CFR parts 35 and 36) to ensure that the requirements applicable to new construction and alterations under title II are consistent with those applicable under title III, to update the regulations to reflect the current state of law, and to ensure the Department's compliance with the Regulatory Flexibility Act, as amended.

The Department's proposed rules were the second step in a three-step process to adopt and interpret the Access Board's revised and amended guidelines. The first step of the rulemaking process was an advance notice of proposed rulemaking, published in the Federal Register on September 30, 2004, at 69 FR 58768, which the Department believes simplified and clarified the preparation of the proposed rule. In addition to giving notice of the proposed rule that will adopt revised ADA accessibility standards, the advance notice raised two sets of questions for public comment, and proposed a framework for the regulatory analysis that will accompany the proposed rule. The second step of the rulemaking process was the publication of proposed rules that would adopt revised ADA accessibility standards and that will supplement the standards with specifications for prisons, jails, court houses, legislative facilities, building elements designed for use by children, play areas, and recreation facilities. The proposed rule also offered proposed answers to the interpretive questions raised in the advance notice and presented an initial regulatory assessment.

The final step in the process will be the publication of a final rule. Changes mandated by the ADA Amendments Act will be addressed in a separate rulemaking.

### Other Department Initiatives

*1. Prison Rape Elimination*

The National Prison Rape Elimination Commission (NPREC) was created by Congress as a bipartisan panel as part of the Prison Rape Elimination Act of 2003 (PREA.) In June 2009, the NPREC issued its report consisting of findings, conclusions and recommendations to the President, Congress, the United States Attorney General, and other Federal and State officials. The Department is in the process of reviewing the Commission's recommendations, engaging stakeholders, and drafting regulations to adopt national standards for the detection, reduction, and punishment of prison rape, as provided for by the PREA.

2. *Federal Habeas Corpus Review Procedures in Capital Cases*

Pursuant to the USA PATRIOT Improvement and Reauthorization Act of 2005, on December 11, 2008 the Department promulgated a final rule to implement certification procedures for states seeking to qualify for the expedited Federal habeas corpus review procedures in capital cases under chapter 154 of title 28 of the United States Code. On February 5, 2009, the Department published in the *Federal Register* a notice soliciting further public comment on all aspects of the December 2008 final rule. The Department is presently reviewing the comments it received in response to the February 2009 solicitation and will publish a summary and response as appropriate.

*3. Criminal Law Enforcement*

In large part, the Department's criminal law enforcement components do not rely on the rulemaking process to carry out their assigned missions. The Federal Bureau of Investigation (FBI), for example, is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to Federal, State, municipal, and international

agencies and partners. Only in very limited contexts does the FBI rely on rulemaking. For example, the FBI is currently updating its National Instant Criminal Background Check System regulations to allow criminal justice agencies to conduct background checks prior to the return of firearms.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issues regulations to enforce the Federal laws relating to the manufacture and commerce of firearms and explosives. ATF's mission and regulations are designed to:

- Curb illegal traffic in, and criminal use of, firearms, and to assist State, local, and other Federal law enforcement agencies in reducing crime and violence;
- Facilitate investigations of violations of Federal explosives laws and arson-for-profit schemes;
- Regulate the firearms and explosives industries, including systems for licenses and permits;
- Assure the collection of all National Firearms Act (NFA) firearms taxes and obtain a high level of voluntary compliance with all laws governing the firearms industry; and
- Assist the States in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes and alcohol in avoidance of Federal and State taxes.

ATF will continue, as a priority during fiscal year 2010, to seek modifications to its regulations governing commerce in firearms and explosives. ATF plans to issue final regulations implementing the provisions of the Safe Explosives Act, title XI, subtitle C, of Public Law 107-296, the Homeland Security Act of 2002 (enacted November 25, 2002).

Combating the proliferation of methamphetamine and preventing the diversion of prescription drugs for illicit purposes are among the Attorney General's top drug enforcement priorities. The Drug Enforcement Administration (DEA) is responsible for enforcing the Controlled Substances Act and its implementing regulations to prevent the diversion of controlled substances, while ensuring adequate supplies for legitimate medical, scientific, and industrial purposes. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities, development and maintenance of drug intelligence systems, regulation of legitimate controlled substances, and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA continues to develop and enhance regulatory controls relating to the diversion control requirements for controlled substances.

One of DEA's key regulatory initiatives is its Notice of Proposed Rulemaking ''Electronic Prescriptions for Controlled Substances'' [RIN 1117-AA61]. This regulation would provide practitioners with the option of writing prescriptions for controlled substances electronically and permit pharmacies to receive, dispense, and archive electronic prescriptions for controlled substances. This regulation would provide pharmacies, hospitals, and practitioners with the ability to use modern technology for controlled substance prescriptions while maintaining the closed system of controls on controlled substances.

In the past, drug traffickers have been able to easily obtain large quantities of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, and others used in the clandestine production of methamphetamine from both foreign and domestic sources. One of DEA's key regulatory initiatives has been implementation of the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which further regulates the importation, manufacture, and retail sale of ephedrine, pseudoephedrine, and phenylpropanolamine and drug products containing these three chemicals. CMEA imposes sales and purchase limits for over-the-counter ephedrine, pseudoephedrine, and phenylpropanolamine products at the retail level; provides for the establishment of aggregate and individual company import and manufacturing quotas; and limits importation to that which is necessary to provide for medical, scientific, and other legitimate purposes. CMEA also provides investigators with necessary identifying information regarding manufacturers and importers of these chemicals. Regulations pertaining to implementation of CMEA include, but are not limited to:

- ''Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products'' [RIN 1117-AB05]
- ''Implementation of the Combat Methamphetamine Epidemic Act of 2005; Notice of Transfers Following Importation or Exportation'' [RIN 1117-AB06]
- ''Elimination of Exemptions for Chemical Mixtures Containing the List I Chemicals Ephedrine and/or Pseudoephedrine'' [RIN 1117-AB11]
- ''Registration Requirements for Importers and Manufacturers of Prescription Drug Products Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine'' [RIN 1117-AB09]
- ''Removal of Thresholds for the List I Chemicals Pseudoephedrine and Phenylpropanolamine'' [RIN 1117-AB10]

The Federal Bureau of Prisons issues regulations to enforce the Federal laws relating to its mission: To protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. During the next 12 months, in addition to other regulatory objectives aimed at accomplishing its mission, the Bureau will continue its ongoing efforts to: streamline regulations, eliminating unnecessary language and improving readability; improve disciplinary procedures through a revision of the subpart relating to the disciplinary process; reduce the introduction of contraband through various means, such as clarifying drug and alcohol surveillance testing programs and protect the public from continuing criminal activity committed within prison; and enhance the Bureau's ability to more closely monitor the communications of high-risk inmates.

*4. Immigration Matters*

On March 1, 2003, pursuant to the Homeland Security Act of 2002 (HSA), the responsibility for immigration enforcement and for providing immigration-related services and benefits such as naturalization and work authorization was transferred from the Justice Department's Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). However, the immigration judges and the Board of Immigration Appeals in the Executive Office for Immigration Review (EOIR)) remain part of the Department of Justice; the immigration judges adjudicate approximately 300,000 cases each year to determine whether the aliens should be ordered

removed or should be granted some form of relief from removal, and the Board has jurisdiction over appeals from those decisions, as well as other matters. Accordingly, the Attorney General has a continuing role in the conduct of removal hearings, the granting of relief from removal, and the detention or release of aliens pending completion of removal proceedings. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

In several pending rulemaking actions, the Department is working to revise and update the regulations relating to removal proceedings in order to improve the efficiency and effectiveness of the hearings in resolving issues relating to removal of aliens and the granting of relief from removal.

On June 3, 2009, the Attorney General announced his intention to initiate a new rulemaking proceeding for regulations to govern claims of ineffective assistance of counsel in immigration proceedings. The Department is currently drafting regulations to further this goal. The Department is also drafting regulations pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to take into account the specialized needs of unaccompanied alien children in removal proceedings.

## DOJ—Civil Rights Division (CRT)

## FINAL RULE STAGE

### 89. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

**CFR Citation:**

28 CFR 36

**Legal Deadline:**

None

**Abstract:**

In 1991, the Department of Justice published regulations to implement title III of the Americans With Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG) published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board began the process of revising ADAAG a number of years ago. It published new ADAAG in final form on July 23, 2004, after having published guidelines in proposed form in November 1999 and in draft final form in April 2002. In order to maintain consistency between ADAAG and the ADA Standards, the Department is reviewing its title III regulations and expects to propose, in one or more stages, to adopt revised ADA Standards consistent with the final revised ADAAG and to make related revisions to the Department's title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions is to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department's technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The first step in adopting revised Standards was an advance notice of proposed rulemaking that was published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes that the advance notice simplified and clarified the preparation of the proposed rule. In addition to giving notice that the proposed rule will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above described title III rulemaking. This notice proposed to adopt revised ADA Standards for Accessible Design consistent with the minimum guidelines of the revised ADAAG, and initiated the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

**Statement of Need:**

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including title III. Section 306(c) of the ADA requires the Attorney General to promulgate regulations implementing title III that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title III regulation is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by SBREFA.

**Summary of Legal Basis:**

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

**Alternatives:**

The Department is required by the ADA to issue this regulation. Pursuant to SBREFA, the Department's title III regulation will consider whether alternatives to the currently published requirements are appropriate.

**Anticipated Cost and Benefits:**

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute

a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA standards published by the Department.

As part of its revised ADAAG, the Access Board made available in summary form an updated regulatory assessment to accompany the final revised ADAAG. The Department prepared an initial Regulatory Impact Analysis (RIA), pursuant to E.O. 12866, of the combined economic impact of changes contained in this proposed rule and in the companion NPRM to amend the Department's title II regulation (RIN 1190-AA46). The RIA incorporates the elements required for the Initial Regulatory Flexibility Analysis (IRFA) required by the Regulatory Flexibility Act, as amended. A summary of this RIA was published in the Federal Register at 73 FR 37009, 37042 (June 30, 2008). The full analysis is available for public review on www.regulations.gov and on the Department's ADA Home Page, www.ada.gov. A revised RIA will be made available to the public when the final rules are published.

The preliminary RIA indicates that the proposed rules will have a net positive public benefit, i.e., the benefits will exceed the costs over the life of the rule. This concept is expressed as the discounted net present value (NPV) The RIA projects that the NPV will be between $7.5 billion (at a 7% discount rate) and $ 31.1 billion (at a 3% discount rate). The RIA also concludes that the combined effect of the proposed rules would not have a significant economic impact on a substantial number of small entities.

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

**Risks:**

Without the proposed changes to the Department's title III regulation, the ADA Standards will fail to be consistent with the ADAAG.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/30/04 | 69 FR 58768 |
| ANPRM Comment Period End | 01/28/05 | |
| ANPRM Comment Period Extended | 01/19/05 | 70 FR 2992 |
| ANPRM Comment Period End | 05/31/05 | |
| NPRM | 06/17/08 | 73 FR 34508 |
| NPRM Comment Period End | 08/18/08 | |
| NPRM Correction | 06/30/08 | 73 FR 37009 |
| Final Action | 03/00/10 | |

**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).

**Agency Contact:**

John L. Wodatch
Chief, Disability Rights Section
Department of Justice
Civil Rights Division
950 Pennsylvania Avenue NW
Washington, DC 20030
Phone: 800 514–0301
TDD Phone: 800 514–0383
Fax: 202 307–1198

**RIN:** 1190–AA44

---

**DOJ—CRT**

**90. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101–336

**CFR Citation:**

28 CFR 35

**Legal Deadline:**

None

**Abstract:**

On July 26, 1991, the Department published its final rule implementing title II of the Americans With Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. The Access Board published an Availability of Draft Final Guidelines on April 2, 2002, and published the ADA Accessibility Guidelines in final form on July 23, 2004. The ADA (section 204(c)) requires the Department's standards to be consistent with the Access Board's guidelines. In order to maintain consistency between ADAAG and the Standards, the Department is reviewing its title II regulations and expects to propose, in one or more stages, to adopt revised standards consistent with new ADAAG. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The first part of the rulemaking process was an advance notice of proposed rulemaking, published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes the advance notice simplified and clarified the preparation of the proposed rule to

follow. In addition to giving notice of the proposed rule that will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADA Standards consistent with revised ADAAG will also serve to address changes to the ADA Standards previously proposed under RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above-described title III rulemaking. This notice also proposed to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design.

**Statement of Need:**

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including title II. Section 204(c) of the ADA requires the Attorney General to promulgate regulations implementing title II that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title II regulations is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).

**Summary of Legal Basis:**

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

**Alternatives:**

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. Pursuant to SBREFA, the Department's title II regulation will consider whether alternatives to the currently published requirements are appropriate.

**Anticipated Cost and Benefits:**

The Administration is deeply committed to ensuring that the goals of the ADA are met. Promulgating this amendment to the Department's ADA regulations will ensure that entities subject to the ADA will have one comprehensive design standard to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA Standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to persons with disabilities will be better served.

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA Standards published by the Department.

As part of its revised ADAAG, the Access Board made available in summary form an updated regulatory assessment to accompany the final revised ADAAG. The Department prepared an initial Regulatory Impact Analysis (RIA), pursuant to E.O. 12866, of the combined economic impact of changes contained in this proposed rule and in the companion NPRM to amend the Department's title III regulation (RIN 1190-AA44). The RIA incorporates the elements required for the Initial Regulatory Flexibility Analysis (IRFA) required by the Regulatory Flexibility Act, as amended. A summary of this RIA was published in the Federal Register at 73 FR 36964, 36996 (June 30, 2008). The full analysis is available for public review on www.regulations.gov and on the Department's ADA Home Page, www.ada.gov. A revised RIA will be made available to the public when the final rules are published.

The preliminary RIA indicates that the proposed rules will have a net positive public benefit; i.e., the benefits will exceed the costs over the life of the rule. This concept is expressed as the discounted net present value (NPV) The RIA projects that the NPV will be between $ 7.5 billion (at a 7% discount rate) and $ 31.1 billion (at a 3% discount rate). The RIA also concludes that the combined effect of the proposed rules would not have a significant economic impact on a substantial number of small entities.

The Access Board has made every effort to lessen the impact of its proposed guidelines on State and local governments but recognizes that the guidelines will have some federalism effects. These effects are discussed in the Access Board's regulatory assessment, which also applies to the Department's proposed rule. Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

**Risks:**

Without this amendment to the Department's ADA regulations, regulated entities will be subject to confusion and delay as they attempt to sort out the requirements of conflicting design standards. This amendment should eliminate the costs and risks associated with that process.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/30/04 | 69 FR 58768 |
| ANPRM Comment Period End | 01/28/05 | |
| ANPRM Comment Period Extended | 01/19/05 | 70 FR 2992 |
| ANPRM Comment Period End | 05/31/05 | |
| NPRM | 06/17/08 | 73 FR 34466 |
| NPRM Comment Period End | 08/18/08 | |
| NPRM Correction | 06/30/08 | 73 FR 36964 |
| Final Action | 03/00/10 | |

**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.

**Agency Contact:**

John L. Wodatch
Chief, Disability Rights Section
Department of Justice
Civil Rights Division
950 Pennsylvania Avenue NW
Washington, DC 20030
Phone: 800 514–0301
TDD Phone: 800 514–0383
Fax: 202 307–1198

**RIN:** 1190–AA46

## DOJ—Drug Enforcement Administration (DEA)

### FINAL RULE STAGE

### 91. ELECTRONIC PRESCRIPTIONS FOR CONTROLLED SUBSTANCES

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

21 USC 802; 21 USC 821; 21 USC 827; 21 USC 829; 21 USC 871(b)

**CFR Citation:**

21 CFR 1300; 21 CFR 1306; 21 CFR 1311

**Legal Deadline:**

None

**Abstract:**

DEA is revising its regulations to establish the criteria that will allow DEA-registered practitioners to sign and transmit controlled substances prescriptions electronically. The regulations will also permit pharmacies to receive, dispense, and archive these electronic prescriptions. These regulations would not mandate the use of electronic prescriptions, but would establish the requirements that must be met by any registrant that wishes to issue or receive electronic prescriptions for controlled substances. The regulations would establish requirements that practitioners must meet when issuing electronic prescriptions, including requirements for the software applications used to issue those prescriptions; registrants would have to use only those software applications that meet the security requirements if they intend to sign, transmit, or process electronic prescriptions for controlled substances. The regulations would not apply to software used to create a prescription that is then printed and manually signed. These revised regulations would be in addition to, not a replacement of, the existing rules.

**Statement of Need:**

These regulations are needed to give pharmacies, hospitals, and practitioners the ability to use modern technology for controlled substance prescriptions, while maintaining the closed system of distribution of controlled substances dispensing. The regulations are required to ensure, to the extent possible, that non-registrants cannot gain access to electronic prescription software applications to issue illegal prescriptions and that legitimate prescriptions, once written, cannot be altered or repudiated.

**Summary of Legal Basis:**

The Controlled Substances Act (21 U.S.C. 871(b) provides that the Attorney General, DEA by delegation, may promulgate and enforce any rules, regulations, and procedures deemed necessary for the efficient execution of the Attorney General's functions, including general enforcement of the Controlled Substances Act. Specific legal authority for this regulation is provided above.

**Alternatives:**

DEA solicited comments on all aspects of its Notice of Proposed Rulemaking regarding this matter, and also sought specific information on a number of issues and topics. All comments received have been considered. DEA has addressed comments in its Final Rule.

**Anticipated Cost and Benefits:**

The estimated annualized cost of the Final Rule is $34 million (7 percent net present value), which covers the costs for practitioners, pharmacies, and application providers.

Electronic prescriptions provide potential benefits in terms of reduced processing time, reduced callbacks, and fewer medication errors. These benefits of electronic prescriptions are not directly attributable to this rule except to the extent the rule facilitates implementation of electronic prescribing of controlled substances. Pharmacies will directly benefit from the rule as they will not be required to maintain paper copies of electronic prescriptions. Electronic prescriptions for controlled substances will also provide benefits as certain types of forgery or alteration of prescriptions may be less likely to occur.

**Risks:**

Were DEA not to promulgate these regulations, prescribing practitioners would not be permitted to sign and transmit electronic controlled substances prescriptions. Pharmacies would not be permitted to receive, dispense, and archive these electronic prescriptions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/05/01 | 66 FR 13274 |
| NPRM | 06/27/08 | 73 FR 36722 |
| NPRM Comment Period End | 09/25/08 | |
| Final Rule | 03/00/10 | |
| Final Action Effective | 05/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Additional Information:**

DEA-218

**URL For Public Comments:**

www.deadiversion.usdoj.gov

**Agency Contact:**

Mark W. Caverly
Chief, Liaison and Policy Section
Department of Justice
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, VA 22152
Phone: 202 307–7297
Email: dea.diversion.policy@usdoj.gov

**RIN:** 1117–AA61

BILLING CODE 4410–BP–S

## DEPARTMENT OF LABOR (DOL)

### Statement of Regulatory and Deregulatory Priorities

**Executive Summary**

The Department of Labor's (DOL) mission is to protect workers by improving working conditions, advancing opportunities for employment, protecting retirement and health care benefits, helping employers find workers, and strengthening collective bargaining. Secretary of Labor Hilda L. Solis' vision is that the work of the Labor Department will ensure there are *good jobs for everyone.*

To achieve this broad vision, the Secretary has established a series of 12 specific strategic outcomes, which span across all of the Department's agencies. These outcomes are:

- Increasing workers' incomes and narrowing wage and income inequality.
- Securing safe and healthy workplaces, wages and overtime, particularly in high-risk industries.
- Assuring skills and knowledge that prepare workers to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors like ''green'' jobs.
- Breaking down barriers to fair and diverse work places so that every worker's contribution is respected.
- Improving health benefits and retirement security for all workers.
- Providing work place flexibility for family and personal care-giving.
- Facilitating return to work for workers experiencing work place injuries or illnesses who are able to work and sufficient income and medical care for those who are unable to work.
- Income support when work is impossible or unavailable.
- Helping workers who are in low-wage jobs or out of the labor market find a path into middle class jobs.
- Ensuring workers have a voice in the work place.
- Assuring that global markets are governed by fair market rules that protect vulnerable people, including women and children, and provide workers a fair share of their productivity and voice in their work lives.
- Helping middle-class families remain in the middle class.

Critical to this vision is ensuring these outcomes achieve *good jobs for everyone*. This includes vulnerable workers, workers in traditionally less safe industry sectors, farmworkers, health care workers and seniors, and those facing barriers to good employment.

The Secretary has directed each agency to ensure that all priority regulatory projects support achievement of one or more of the strategic outcomes that support the *good jobs for everyone* vision. The DOL Fall 2009 Regulatory Plan reflects this direction.

**Openness and Transparency**

Using regulatory changes to produce greater openness and transparency is an integral part of a Department-wide compliance strategy. These efforts will not only enhance DOL agencies' enforcement tool set, but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits.

The Department's commitment to achieving greater openness and transparency is exemplified in its Regulatory Plan and Agenda. Several proposals from the Employee Benefits Security Administration expand disclosure requirements, substantially enhancing the availability of information to pension plan participants and beneficiaries and employers, and strengthening the retirement security of America's workers. These rulemakings are:

- *Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, which* would increase transparency between individual account pension plans and their participants and beneficiaries by ensuring that participants and beneficiaries are provided the information they need, including information about fees and expenses, to make informed investment decisions.
- *Amendment of Standards Applicable to General Statutory Exemption for Services, which* would require service providers to disclose to plan fiduciaries services, fees, compensation and conflicts of interest information.
- *Annual Funding Notice for Defined Benefit Plans, which* would require defined benefit plan administrators to provide all participants, beneficiaries and other parties with detailed information regarding their plan's funding status.
- *Periodic Pension Benefits Statements, which* would require pension plans to provide participants and certain beneficiaries with periodic benefit statements.
- *Multiemployer Plan Information Made Available on Request, which* would require pension plan administrators to provide copies of financial and actuarial reports to participants and beneficiaries, unions and contributing employers on request.

Several other Labor Department agencies will also be proposing regulatory projects that will foster greater openness and transparency. These include:

- The Mine Safety and Health Administration's proposed regulation on *Notification of Legal Identity,* which aims to require mine operators to provide increased identification information, would allow the agency to better target the most egregious and persistent violators and deter future violations.
- The Office of Labor-Management Standards' proposed regulations on *Notification of Employee Rights Under Federal Labor Laws*, which would implement Executive Order 13496 and require all Government contracting agencies to include a contract clause requiring contractors to inform workers of their rights under Federal labor laws.
- The Wage and Hour Division's rulemaking, *Records to be Kept by Employers Under the Fair Labor Standards Act,* which would update decades old recordkeeping regulations in order to enhance the transparency and disclosure to workers as to how their wages are computed and to allow for new workplace practices such as telework and flexiplace arrangements.
- The Occupational Safety and Health Administration's modification of its *Hazard Communication Standard, which* would adopt standardized labeling requirements and order of information for safety data sheets.
- The Occupational Safety and Health Administration's *Occupational Injury and Illness Recording and Reporting Requirements* rule, which would propose the collection of additional data to help employers and workers track injuries at individual workplaces, improve the Nation's occupational injury and illness information data, and assist the agency in its enforcement of the safety and health workplace requirements.

**The Department's Regulatory Priorities**

The Department of Labor's (DOL) 2009 Regulatory Plan highlights the most noteworthy and significant regulatory projects that will be undertaken by its regulatory agencies: the Employment Standards Administration (ESA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), Employee Benefits Security Administration (EBSA), and Employment and Training Administration (ETA). The initiatives and priorities in the regulatory plan represent those that are essential to the fulfillment of the Secretary's vision for the Department and America's workforce.

**Employment and Training Administration**

ETA is charged with assuring our Nation's workers have the skills and knowledge that will prepare them to succeed in a knowledge-based economy, including high-growth and emerging industry sectors such as ''green jobs.'' For those workers who are in low-wage jobs or out of the labor market, ETA programs will help them find a path to self-sufficiency and good, middle class jobs. And for those who are unable to work, or for whom work is unavailable, ETA programs provide income support and a path to self-sufficiency. ETA is playing a pivotal role in the implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) to jumpstart our economy, create or save millions of jobs, and make a down payment on addressing long-neglected challenges so our country can thrive. Through these efforts and others, ETA is transforming the way it provides services to all workers.

ETA is highlighting four regulatory priorities that reflect the Secretary's vision to advance *good jobs for everyone* with measurable and substantial outcomes. These are:

- The *Trade Adjustment Assistance (TAA) for Workers Program* Regulations propose to implement changes to the TAA program that arose when the program was re-authorized and expanded in the Recovery Act. The Recovery Act amended the certification criteria, expanded the types of workers who may be certified, and expanded the available program benefits. The TAA regulations will help provide opportunities for participants to acquire skills and knowledge needed to become, or remain, employable in the middle-class jobs market. The TAA regulations will also help provide guidance on supplying participants with income support for times when work is impossible or unavailable. The overarching outcomes for the completion of the TAA regulations are to help middle-class families remain middle class and help workers who are out of the labor market find a path into the middle class.
- The *Trade Adjustment Assistance: Merit Staffing of State Administration and Allocation of Training Funds to States Regulation* proposes that personnel carrying out the worker adjustment assistance provisions of the TAA program must be State employees covered by the merit system of personnel administration and addresses how the Department distributes TAA training funds to the States. It will be finalized after the public comments on the regulation have been analyzed and considered. The Allocation of Training Funds portion of this regulation explains, for the first time, the new formula that the Department uses to allocate training funds to the States.
- The *Temporary Agricultural Employment of H-2A Aliens in the United States* regulatory revisions set forth the requirements for using temporary foreign agricultural workers and establish wages and working conditions to cover both U.S. and foreign agricultural workers. The H-2A program assists in achieving the Secretary's goal to increase workers' incomes and narrow wage and income inequality by protecting the wages and working conditions of both American workers and foreign nationals working in the United States.
- The *YouthBuild Program* regulation proposes to implement the YouthBuild Transfer Act of 2006, which transferred the YouthBuild program from the Department of Housing and Urban Development to DOL, and amended certain program features to emphasize skill training and connections to the public workforce system. The YouthBuild regulations will help achieve the Secretary's goals by assuring participants gain the skills and knowledge that will prepare them to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors like ''green jobs.''

In addition, the proposed amendments to regulations for equal employment opportunity (EEO) in apprenticeship and training are a critical second phase of regulatory updates to modernize the National Apprenticeship System. The first phase was completed in October 2008 with the publication of a final rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. The existing companion EEO regulations for apprenticeship were promulgated over 30 years ago. Proposed amendments to these regulations will help achieve the Secretary's goal of a fair and diverse workplace free of discrimination and harassment by reflecting current EEO law.

Finally, the Department proposes amendments to the temporary non-agricultural foreign worker (H-2B Worker) regulations. As part of its statutory responsibility as an advisor to the Department of Homeland Security, the Department certifies that there is not sufficient U.S. worker(s) able, available, willing and qualified at the time of an application for a visa, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. The Department currently administers such certification through an attestation-based program. The regulatory review of the H-2B program will assist in achieving the Secretary's goal to increase workers' incomes and narrow wage and income inequality by protecting the wages and working conditions of both American workers and foreign nationals working in the United States.

**Employee Benefits Security Administration**

The Employee Benefits Security Administration is responsible for administering and enforcing the fiduciary, reporting and disclosure, and health coverage provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). This includes recent amendments and additions to ERISA enacted in the Pension Protection Act of 2006, as well as new COBRA Continuation Coverage Provisions under the Recovery Act. EBSA's regulatory plan initiatives are intended to improve health benefits and retirement security for workers in every type of job at every income level.

*Health Benefits for Workers*

EBSA will issue guidance implementing the Genetic Information Nondiscrimination Act of 2008 (GINA)

amendments to ERISA. Generally, GINA prohibits group health plans from discriminating in health coverage based on genetic information and from collecting genetic information. This rulemaking helps ensure that workers will have access to high quality health coverage, free from discrimination based on a genetic predisposition towards a disease. This is a joint rulemaking with the Departments of Health and Human Services and the Treasury.

EBSA also will be providing guidance regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) amendments to ERISA. MHPAEA creates parity for mental health and substance use disorder benefits under group health plans by mandating that any financial requirements and treatment limitations applicable to mental health and substance abuse disorder benefits to be no more restrictive than predominant requirements or limitations applied to substantially all medical and surgical benefits covered by a plan. EBSA's MHPAEA guidance will help ensure the desired outcome of affording workers access to reliable and high quality health benefits.

EBSA also will issue guidance clarifying the circumstances under which health care arrangements established or maintained by state or local governments for the benefit of non-governmental employees do not constitute an employee welfare benefit plan for purposes of ERISA. Such clarification is intended to remove perceived impediments to state and local government efforts to improve access to and opportunities for quality and affordable health care coverage for vulnerable, uninsured populations. The clarifications provided by this regulation also will reduce uncertainty and, therefore, potential regulatory and litigation costs for both plan sponsors and state and local governments concerning the scope of ERISA regulation.

*Retirement Security for Workers*

EBSA will propose amendments to its regulations to clarify the circumstances under which a person will be considered a fiduciary when providing investment advice to employee benefit plans and their participants and beneficiaries of such plans. EBSA also will explore steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefits distribution options for participants and beneficiaries of defined contribution plans. These initiatives are intended to assure retirement security for workers in all jobs regardless of income level by ensuring that financial advisers and similar persons are required to meet ERISA's strict standards of fiduciary responsibility and helping to ensure that participants and beneficiaries have the benefit of their plan savings throughout retirement.

**Occupational Safety and Health Administration**

The Secretary's vision for workers requires securing a safe and healthy workplace. OSHA's regulatory program is designed to help workers and employers identify hazards in the workplace, prevent the occurrence of injuries and adverse health effects, and communicate with the regulated community regarding hazards and how to effectively control them. Longstanding health hazards such as silica and beryllium and emerging hazards such as food flavorings containing diacetyl and airborne infectious diseases place American workers at risk of serious disease and death and are initiatives on OSHA's regulatory agenda. OSHA's regulatory program demonstrates a renewed commitment to worker health by addressing health hazards and the prevention of construction injuries and fatalities.

First, OSHA is proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard. Exposure to silica causes silicosis, a debilitating respiratory disease, and may cause cancer, other chronic respiratory diseases, and renal and autoimmune disease as well. Over 2 million workers are exposed to crystalline silica in general industry, construction, and maritime industries and workers are often exposed to levels that exceed current OSHA permissible limits, which is frequent in the construction industry where workers are exposed at levels that exceed current limits by several fold. It has been estimated that between 3,500 and 7,000 new cases of silicosis arise each year in the U.S., and that 1,746 workers died of silicosis between 1996 and 2005.

Reducing these hazardous exposures through promulgation and enforcement of a comprehensive health standard supports both the Secretary's vision and will contribute to OSHA's goal of reducing occupational fatalities and illnesses. As a part of the Secretary's strategy for securing safe and healthy workplaces, the Mine Safety and Health Administration will also be undertaking regulatory action related to silica utilizing information provided by OSHA.

OSHA's second health initiative would revise its Hazard Communication Standard (HCS) to make it consistent with a globally harmonized approach to hazard communication. The HCS covers over 945,000 hazardous chemical products in seven million American workplaces and gives workers the ''right to know'' about chemical hazards they are exposed to. 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). Revising the HCS to be consistent with the GHS is expected to significantly improve the communication of hazards to workers in American workplaces, reducing exposures to hazardous chemicals, and reducing occupational illnesses and fatalities.

Workers in construction suffer the most fatalities of any industry. In 2008, OSHA estimated that crane-related accidents in construction cause over 80 fatalities a year. Therefore, OSHA's major construction initiative is an update of the 1971 Cranes and Derricks Standards. Completion of this standard will contribute to a reduction in occupational injuries and fatalities, which helps achieve the Secretary's outcome goal of securing safe and healthy workplaces in high-risk industries. The Agency is currently evaluating the public comments and planning to issue a final rule in July 2010.

**Mine Safety and Health Administration**

MSHA's regulatory projects support the Secretary's vision by protecting the health and safety of the Nation's miners. Despite the agency's past efforts, miners face safety and health hazards daily at levels unknown in most other occupations. While the Federal Mine Safety and Health Act of 1977 (Mine Act) places primary responsibility for preventing unsafe and unhealthful working conditions in mines on the operators, the collective commitment of miners, mine operators, and government is needed to ensure safe workplaces.

The agency's proposed regulatory actions exemplify a commitment to protecting the most vulnerable populations while assuring broad-based compliance. Health hazards are pervasive in both coal and metal/nonmetal mines (including

surface and underground mines) and large and small mines.

Recent data from the National Institute for Occupational Safety and Health indicate increased prevalence of coal workers pneumoconiosis (CWP) ''clusters'' in several geographical areas, particularly in the Southern Appalachian Region. MSHA plans to publish a notice of proposed rulemaking to address continued risk to coal miners from exposure to respirable coal mine dust.

On January 16, 2009, MSHA and NIOSH published a proposed rule that would revise requirements for the approval of coal mine personal dust sampling devices. The proposed rule would also establish performance-based and other requirements for approval of the continuous personal dust monitor (CPDM) and revise requirements for the existing sampler. As a part of the agency's efforts in this area, MSHA plans to publish a Request for Information on the use of the CPDM to measure a miner's exposure to respirable coal mine dust. The CPDM represents advanced technology and the RFI will solicit information from the public to help the Agency determine how to best use the technology to assess coal miners' dust exposures. MSHA is also considering a rulemaking to address ways in which mine operators can improve protections in their dust control plans, emphasizing that the burden of compliance is on the mine operator, rather than relying exclusively on enforcement interventions.

These regulatory actions are a part of MSHA's Comprehensive Black Lung Reduction Strategy for reducing miners' exposure to respirable dust. This strategy includes enhanced enforcement, education and training, and health outreach and collaboration.

As a part of the Secretary's strategy for securing safe and healthy workplaces, both MSHA and OSHA will be undertaking regulatory action related to silica. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease which ultimately may be fatal. Both the coal mine and metal/nonmetal formulas are designed to limit exposures to 0.1 mg/m$^3$ (100 µg) of silica. MSHA plans to follow the recommendation of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, NIOSH, and other industry groups by publishing a proposed rule to address the exposure limit for respirable crystalline silica. To assure consistency within the Department, MSHA intends to use OSHA's work on the health effects of occupational exposure to silica and OSHA's risk assessment, adapting it as necessary for the mining industry.

MSHA is placing an emphasis on routinely evaluating the success of existing enforcement and regulatory strategies and plans to issue an Advance Notice of Proposed Rulemaking (ANPRM) on dams in metal and nonmetal mines. Mining operations regularly find it necessary to construct dams to dispose of large volumes of mine waste from processing operations, or to provide water supply, sediment control, or water treatment. The failure of these structures can have a devastating effect on both the mine and nearby communities. MSHA evaluated its existing requirements for metal and nonmetal dams and has determined that the current standards do not provide sufficient guidance to determine what is needed to effectively design and construct dams with high or significant hazard potential. The ANPRM will solicit information on proper design, construction and other safety issues for impoundments at metal and nonmetal mines whose failure could cause loss of life or significant property damage.

**Employment Standards Administration**

ESA's Wage and Hour Division enforces several statutes that establish minimum labor standards and protect the Nation's workers, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act (FMLA), the Service Contract Act, the Davis-Bacon and Related Acts, the Employee Polygraph Protection Act, and certain provisions of the Immigration and Nationality Act. The regulatory initiatives required to implement these statutory workplace protections represent an important aspect of the Division's work and affect over 130 million workers across all sectors of the economy.

Updating the child labor regulations issued under the FLSA will help meet the challenge of ensuring good jobs for the Nation's working youth, by balancing their educational needs with job-related experiences that are safe, healthy, and fair. This will enhance young workers' opportunities to gain the skills to find and hold good jobs with the potential to increase their earnings over time.

The Wage and Hour Division will review the implementation of the new military family leave amendments to the Family and Medical Leave Act that were included in the National Defense Authorization Act for FY 2008, as well as other provisions of the FMLA regulations that were revised and implemented in January 2009. This regulatory initiative assists in achieving the Secretary's goal of workplace flexibility for family and personal care-giving and, particularly through the job protection and the maintenance of health benefits provisions, helps middle-class families remain in the middle class.

The Wage and Hour Division also intends to initiate rulemaking to update the recordkeeping regulation issued under the Fair Labor Standards Act. Consistent with the Secretary's strategic vision, this proposal will foster more openness and transparency by demonstrating employers' compliance with minimum wage and overtime requirements to workers. In turn, this will better ensure compliance by regulated entities and assist the Department with its enforcement efforts.

ESA's Office of Federal Contract Compliance Programs (OFCCP) is charged with assuring that the door to opportunity is open to every American regardless of race, color, religion, sex, national origin, veteran status, or disability. OFCCP enforces Executive Order 11246, as amended, and selected provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), and Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). Regulations issued under the Executive Order and the two acts govern the nondiscrimination and affirmative action obligations for Federal contractors and subcontractors. OFCCP's enforcement of these statutory obligations contributes to achieving several of the Secretary's desired outcomes, including increasing workers' incomes and narrowing wage and income inequality, breaking down barriers to fair and diverse work places so that every worker's contribution is respected and helping workers who are in low-wage jobs or out of the labor market find a path into middle-class jobs.

OFCCP is highlighting three regulatory initiatives that reflect the Secretary's vision of *good jobs for everyone.* The Evaluation of Recruitment and Placement Results under Section 503 ANPRM will invite the public to provide input on how the Department can strengthen affirmative action requirements by requiring Federal contractors and subcontractors to conduct more substantive analyses and monitoring of their recruitment and

placement efforts targeted to individuals with disabilities.

The Evaluation of Recruitment and Placement Results under VEVRRA NPRM will propose to revise provisions in the regulations to strengthen compliance with affirmative action requirements, including the establishment of outreach, recruitment, and placement goals for the employment and advancement of covered veterans. This effort will help support the creation of good jobs for veterans, especially those returning from recent service in Iraq and Afghanistan. Through this initiative, OFCCP will help servicemen and women successfully transition into civilian life.

The Construction Contractor Affirmative Action Requirements proposed rule would revise the regulations implementing the affirmative action requirements of Executive Order 11246 that are applicable to federal and federally-assisted construction contractors. The initiative would update regulatory provisions that set forth the actions construction contractors are required to take to implement their affirmative action obligations.

ESA's Office of Labor-Management Standards (OLMS) administers and enforces most provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA requires unions, employers, labor-relations consultants, and others to file financial disclosure reports, which are publicly available. The LMRDA includes provisions protecting union member rights to participate in their union's governance, to run for office and fully exercise their union citizenship, as well as procedural safeguards to ensure free and fair union elections.

OLMS intends to publish a Request for Information regarding the use of Internet voting in union officer elections conducted under the LMRDA to better inform the agency in administering its obligation under the union democracy provisions of the Act to ensure that the voting right of each union member is protected. OLMS also will propose a regulatory initiative to better implement the public disclosure objectives of the LMRDA regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203 an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant, also, is required to report concerning such an agreement or arrangement with an employer. An exemption to these reporting requirements is set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. The Department believes that current policy concerning the scope of the ''advice exemption'' is over-broad and that a narrower construction would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace. When workers or union members have more information about what arrangements have been made by their employer to persuade them whether or not to join a union, this information helps them make more informed choices and acts to level the labor-management relations playing field. Both initiatives support the Secretary's vision of good jobs for everyone by advancing the goal to ensure that workers and union members have a voice in the workplace.

ESA's Office of Workers' Compensation Programs (OWCP) administers four major disability compensation programs that provide wage replacement benefits, medical treatment, vocational rehabilitation and other benefits (such as survivors benefits) to certain workers who experience work-related injury or occupational disease. The Federal Employees' Compensation Act (FECA) provides workers' compensation benefits to federal workers for employment related injuries and occupational diseases as well as survivor benefits for a covered employee's employment-related death. The Longshore and Harbor Workers' Compensation Act (LHWCA) provides vocational rehabilitation, medical benefits, and financial compensation to covered maritime workers who incurred occupational injuries or illnesses as a result of exposure to their employment. The LHWCA provides similar coverage for employees covered by the Defense Base Act (DBA).

These programs serve to advance the Secretary's vision of *good jobs for everyone* by securing the desired outcomes of facilitating return to work for workers experiencing workplace injuries or illnesses who are able to work and sufficient income and medical care for those who are unable to work; providing income support when work is impossible or unavailable; and providing compensation to eligible survivors after the death of a covered worker, thereby helping middle class families remain in the middle class.

OWCP plans to update its regulations governing administration of claims under the FECA. The regulations will be revised to reflect changes already in place since the regulations were comprehensively updated ten years ago and to incorporate new procedures that will enhance OWCP's ability to administer FECA. Among other benefits, changes to the regulations will facilitate the return to work of injured workers who are able to work, will enhance OWCP's ability to efficiently provide sufficient income and medical care for those who are unable to work, and will foster greater openness and transparency by better explaining the increased automation of the medical billing process.

In addition, OWCP will modernize the provision of compensation for employees situated overseas who are neither citizens nor residents of the United States to reflect current realities in regard to such employees. The regulations will also be revised to reflect a recent statutory change to the FECA moving the three-day waiting period before qualifying for wage-loss compensation for employees of the Postal Service. These revisions will increase the transparency of program operations and improve program implementation with efficiency providing better service in a more timely fashion.

OWCP plans to issue regulations under the LHWCA to clarify the application of the waiver provisions of the DBA, by explaining the DOL procedures for reviewing and granting a waiver. These rules will facilitate return to work for employees experiencing workplace injuries or illnesses who are able to work and sufficient income and medical care for those who are unable to work.

**DOL—Employment Standards Administration (ESA)**

**PROPOSED RULE STAGE**

### 92. ● THE FAMILY AND MEDICAL LEAVE ACT OF 1993, AS AMENDED

**Priority:**

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

**Legal Authority:**

29 USC 2654

**CFR Citation:**

29 CFR 825

**Legal Deadline:**

None

**Abstract:**

The Department of Labor continues to review the implementation of the new military family leave amendments to the Family and Medical Leave Act included in the National Defense Authorization Act for FY 2008, and other revisions of the current regulations implemented in January 2009.

**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. In addition, section 585(a) of the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, amended the FMLA effective January 28, 2008, to permit an eligible employee who is the ''spouse, son, daughter, parent, or next of kin of a covered servicemember'' to take up to a total of 26 workweeks of leave during a single 12-month period to care for the covered servicemember, defined as ''a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.'' The NDAA amendment to FMLA also permits an eligible employee to take up to 12 workweeks of FMLA leave for ''any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.'' Regulations implementing these amendments were published November 17, 2008, and took effect January 16, 2009 (73 FR 67934). The Department is reviewing the implementation of these new military family leave amendments and other revisions of the current regulations.

**Summary of Legal Basis:**

These regulations are authorized by section 404 of the Family and Medical Leave Act, 29 U.S.C. 2654.

**Alternatives:**

After completing a review of the implementation of the new military family leave amendments and other revisions of the regulations implemented in January 2009, regulatory alternatives will be developed for notice-and-comment rulemaking.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits of this initiative will be determined once regulatory alternatives are developed.

**Risks:**

This rulemaking action does not directly affect risks to public health, safety, or the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Local, State, Tribal

**Federalism:**

Undetermined

**Agency Contact:**

Richard M. Brennan
Director, Division of Interpretations and Regulatory Analysis, Wage and Hour Division
Department of Labor
200 Constitution Avenue NW.
FP Building
Room S–3502
Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1387

**RIN:** 1215–AB76

**DOL—ESA**

### 93. ● RECORDS TO BE KEPT BY EMPLOYERS UNDER THE FAIR LABOR STANDARDS ACT

**Priority:**

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

**Legal Authority:**

29 USC 211(c)

**CFR Citation:**

29 CFR 516

**Legal Deadline:**

None

**Abstract:**

The Department of Labor proposes to update the recordkeeping regulations under the Fair Labor Standards Act in order to enhance the transparency and disclosure to workers of how their pay is computed, and to modernize other recordkeeping requirements for employees under ''telework'' and ''flexiplace'' arrangements.

**Statement of Need:**

The recordkeeping regulation issued under the Fair Labor Standards Act (FLSA), 29 CFR part 516, specifies the scope and manner of records covered employers must keep that demonstrate compliance with minimum wage, overtime, and child labor requirements under the FLSA, or the records to be kept that confirm particular exemptions from some of the Act's requirements may apply. This proposal intends to update the recordkeeping requirements to foster more openness and transparency in demonstrating employers' compliance with applicable requirements to their workers, to better ensure compliance by regulated entities and to assist in enforcement. In addition, the proposal intends to modernize the requirements, consistent with the increasing emphasis on flexi-place and telecommuting, to allow for

automated or electronic recordkeeping systems instead of the mandatory manual preparation of ''homeworker'' handbooks currently required for all work that an employee may perform in the home.

**Summary of Legal Basis:**

These regulations are authorized by section 11 of the Fair Labor Standards Act, 29 U.S.C. 211.

**Alternatives:**

Alternatives will be developed in considering proposed revisions to the current recordkeeping requirements. The public will be invited to provide comments on the proposed revisions and possible alternatives.

**Anticipated Cost and Benefits:**

Preliminary estimates of anticipated costs and benefits of this regulatory initiative have not been determined at this time and will be determined at a later date as appropriate.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Local, State, Tribal

**Federalism:**

Undetermined

**Agency Contact:**

Richard M. Brennan
Director, Division of Interpretations and Regulatory Analysis, Wage and Hour Division
Department of Labor
200 Constitution Avenue NW.
FP Building
Room S–3502
Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1387

**RIN:** 1215–AB78

**DOL—ESA**

## 94. ● INTERPRETATION OF THE ''ADVICE'' EXEMPTION OF SECTION 203(C) OF THE LABOR–MANAGEMENT REPORTING AND DISCLOSURE ACT

**Priority:**

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

**Legal Authority:**

29 USC 433; 29 USC 438

**CFR Citation:**

29 CFR 405; 29 CFR 406

**Legal Deadline:**

None

**Abstract:**

The Department intends to publish notice and comment rulemaking seeking consideration of a revised interpretation of Section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA). That statutory provision creates an ''advice'' exemption from reporting requirements that apply to employers and other persons in connection with persuading employees about the right to organize and bargain collectively. A proposed revised interpretation would narrow the scope of the advice exemption.

**Statement of Need:**

The Department of Labor is proposing a regulatory initiative to better implement the public disclosure objectives of the Labor-Management Reporting and Disclosure Act (LMRDA) regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203 an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant, also, is required to report concerning such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. The Department believes that its current policy concerning the scope of the ''advice exception'' is over-broad and that a narrower construction would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace.

**Summary of Legal Basis:**

This proposed rulemaking is authorized under U.S.C. §§ 433 and 438 and applies to regulations at 29 CFR Part 405 and 29 CFR Part 406.

**Alternatives:**

Alternatives will be developed and considered in the course of notice and comment rulemaking.

**Anticipated Cost and Benefits:**

Anticipated costs and benefits of this proposed regulatory initiative have not been assessed and will be determined at a later date, as appropriate.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

www.olms.dol.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Andrew R. Davis
Chief, Division of Interpretations and Standards, Office of Labor–Management Standards
Department of Labor
Employment Standards Administration
200 Constitution Avenue NW.
FP Building
Room N–5609
Washington, DC 20210
Phone: 202 693–0123
Fax: 202 693–1340
Email: davis.andrew@dol.gov

**RIN:** 1215–AB79

**DOL—ESA**

**FINAL RULE STAGE**

### 95. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION

**Priority:**

Other Significant

**Legal Authority:**

29 USC 203(l); 29 USC 212; 29 USC 213(c)

**CFR Citation:**

29 CFR 570

**Legal Deadline:**

None

**Abstract:**

The Department of Labor continues to review the Fair Labor Standards Act child labor provisions to ensure that the implementing regulations provide job opportunities for working youth that are healthy and safe and not detrimental to their education, as required by the statute (29 U.S.C. sections 203(l), 212(c), 213(c), and 216(e)). This proposed rule will update the regulations to reflect statutory amendments enacted in 2004, and will propose, among other updates, revisions to address several recommendations of the National Institute for Occupational Safety and Health (NIOSH) in its 2002 report to the Department of Labor on the child labor Hazardous Occupations Orders (HOs) (available at http://www.youthrules.dol.gov/resources.htm).

**Statement of Need:**

The Fair Labor Standards Act (FLSA) requires the Secretary of Labor to issue regulations on the employment of minors between 14 and 16 years of age, ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. Updating the child labor regulations issued under the FLSA will help meet the challenge of ensuring good jobs that are safe, healthy, and fair for the Nation's working youth, while balancing their educational needs with job-related experiences that are safe. Updated child labor regulations that better address the safety needs of today's workplaces will ensure our young workers have permissible job opportunities that are safe, enhancing their opportunity to gain the skills to find and hold good jobs with the potential to increase their earnings over time. Ensuring safe and reasonable work hours for working youth will also ensure that top priority is given to their education, consistent with the purposes of the statute.

**Summary of Legal Basis:**

These regulations are issued pursuant to sections 3(1), 11, 12, and 13 of the Fair Labor Standards Act, 29 U.S.C. 203(1), 211, 121, and 213.

**Alternatives:**

When developing regulatory alternatives in the analysis of recommendations of the National Institute for Occupational Safety and Health in its 2002 report to the Department on the child labor hazardous occupations orders and other proposals, the Department has focused on assuring healthy, safe, and fair workplaces for young workers that are not detrimental to their education, as required by the statute. Some of the regulatory alternatives were developed based on recent legislative amendments.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits of this rulemaking initiative indicated it was not economically significant. Benefits to the public, including employers and workers, will include safer working conditions and the avoidance of injuries and lost productivity involving young workers.

**Risks:**

The Department's child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education, produce positive benefits by reducing health-related and lost-productivity costs employers might otherwise incur from higher accident and injury rates to young and inexperienced workers. Because of the limited nature of the regulatory revisions contemplated under this initiative, a detailed assessment of the magnitude of risk was not prepared.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/17/07 | 72 FR 19337 |
| NPRM Comment Period End | 07/16/07 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**Agency Contact:**

Richard M. Brennan
Director, Division of Interpretations and Regulatory Analysis, Wage and Hour Division
Department of Labor
200 Constitution Avenue NW.
FP Building
Room S–3502
Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1387

**RIN:** 1215–AB57

**DOL—Employment and Training Administration (ETA)**

**PROPOSED RULE STAGE**

### 96. YOUTHBUILD PROGRAM REGULATION

**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 populations. 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:**

The YouthBuild Transfer Act of 2006 (Transfer Act), PL 109-281, transfers the YouthBuild program from the HUD to the DOL. The transfer incorporates technical modifications and amends certain program features. The Employment and Training Administration is proposing new regulations which will govern its administration of the YouthBuild program.

The Transfer Act maintains all the goals of the YouthBuild program as originally developed under HUD, including supporting the development of affordable housing, but shifts the emphasis to skills training for youth participants. The Transfer Act makes the YouthBuild program consistent with the job training, education, and employment goals under the Workforce Investment Act, PL 105-220, as amended. This includes authorizing DOL to apply the common performance measures developed for Federal youth activities employment and training programs. The Transfer Act authorizes education and workforce investment, such as occupational skills training, internships, and job shadowing, as well as community service and peer-centered activities. In addition, the Transfer Act allows for greater coordination of the YouthBuild program with the workforce investment system, including local workforce investment boards, and One-Stop Career Centers, and their partner programs. These strengthened connections will enhance the job training and employment opportunities available to participating at-risk youth.

**Summary of Legal Basis:**

These regulations are authorized by Public Law 109-281, The YouthBuild Transfer Act of 2006, to implement changes to the amendments to subtitle D of Title I of the Workfoce Investment Act of 1998 as amended (WIA).

**Alternatives:**

The public will be afforded an opportunity to provide comments on the YouthBuild program changes when the Department publishes the NPRM in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NPRM.

**Anticipated Cost and Benefits:**

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

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Grace A. Kilbane
Administrator, Office of Workforce Investment
Department of Labor
Employment and Training Administration
200 Constitution Avenue NW.
FP Building, Room S–4231
Washington, DC 20210
Phone: 202 693–3980
Email: kilbane.grace@dol.gov

**RIN:** 1205–AB49

---

**DOL—ETA**

**97. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS PROGRAM; REGULATIONS**

**Priority:**

Other Significant

**Legal Authority:**

19 USC 2320; Secretary's Order 3–2007, 72 FR 15907

**CFR Citation:**

20 CFR 617, 618, 665, 671; 29 CFR 90

**Legal Deadline:**

None

**Abstract:**

The Trade and Globalization Assistance Act of 2009 (Act), Div. B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, reauthorizes the Trade Adjustment Assistance for Workers program. More specifically, the law amends the criteria for certification of worker groups as eligible to apply for benefits and services and substantially expands those benefits and services. It also requires reports on the program's effectiveness. The Act amends section 248 of the Trade Act of 1974 (19 U.S.C. 2320) and requires that the Secretary issue regulations to carry out these provisions.

**Statement of Need:**

The Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) is the portion of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. No. 111-5, Div. B, Title I, Subtitle I) that reauthorized and substantially amended the Trade Adjustment Assistance for Workers (TAA) program. Significant program changes enacted in the TGAAA include amending the certification criteria to expand the types of workers who may be certified and expanding the available program benefits. This proposed rule is important because it will update the program's regulations to be in concert with the notable program changes wrought by the TGAAA.

**Summary of Legal Basis:**

These regulations are authorized by sections 248 of the Trade Act (19 U.S.C. 2320), as amended by the TGAAA.

**Alternatives:**

The public will be afforded an opportunity to provide comments on the proposed regulatory changes when the Department publishes the NPRM in the Federal Register. A final rule will be issued after analysis of, and response to, public comments.

**Anticipated Cost and Benefits:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

**Agency Contact:**

Erin Fitzgerald
Office of Trade Adjustment Assistance
Department of Labor
Employment and Training Administration
200 Constitution Avenue NW.
Room C–5311, FP Building
Washingon, DC 20210
Phone: 202 693–3500
Fax: 202 693–3149
Email: fitzgerald.erin@dol.gov

**RIN:** 1205–AB57

**DOL—ETA**

### 98. ● EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AND TRAINING, AMENDMENT OF REGULATIONS

**Priority:**

Other Significant

**Legal Authority:**

Sec. 1, 50 Stat. 664, as amended (29 USC 50; 40 USC 276c; 5 USC 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 USC App. P. 534)

**CFR Citation:**

29 CFR 30 (Revision)

**Legal Deadline:**

None

**Abstract:**

Revisions to the equal opportunity regulatory framework for the National Apprenticeship Act are a critical element in the Department's vision to promote and expand registered apprenticeship opportunities in the 21st century while continuing to safeguard the welfare and safety of apprentices. In October 2008, the Agency issued a Final rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. These regulations, codified at Title 29 Code of Federal Regulations (CFR) part 29, had not been updated since first promulgated in 1977. The companion regulations, 29 CFR part 30, Equal Employment Opportunity (EEO) in Apprenticeship and Training, have not been amended since first promulgated in 1978.

The Agency now proposes to update 29 CFR part 30 to ensure that the National Registered Apprenticeship System is consistent and in alignment with changes in Affirmative Action regulations and EEO laws and court cases that have occurred over the past three decades [e.g. Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA)], and recent revisions to Title 29 CFR part 29. This second phase of regulatory updates will ensure that Registered Apprenticeship is positioned to continue to provide economic opportunity for millions of Americans while keeping pace with these new requirements.

**Statement of Need:**

Federal regulations for Equal Employment Opportunity (EEO) in Apprenticeship and Training have not been updated since first promulgated in 1978. Updates to these regulations are necessary to ensure that DOL regulatory requirements governing the National Registered Apprenticeship System are consistent with the current state of EEO law, including affirmative action, the passage of, for example, the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA), and recent revisions to Title 29 CFR part 29, regulations for Apprenticeship Programs and Labor Standards for Registration.

**Summary of Legal Basis:**

These regulations are authorized by the National Apprenticeship Act of 1937 (29 U.S.C. 50) and the Copeland Act (40 U.S.C. 276c). These regulations will set forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor or in State Apprenticeship Agencies recognized by the U.S. Department of Labor.

**Alternatives:**

The public will be afforded an opportunity to provide comments on the proposed amendment to Apprenticeship EEO regulations when the Department publishes a Notice of Proposed Rulemaking (NPRM) in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NRPM.

**Anticipated Cost and Benefits:**

Preliminary estimates of anticipated costs and benefits of this regulatory action have not been determined at this time. The Department will explore options for conducting a cost-benefit analysis for this regulatory action, if necessary.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/11 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Tribal

**Federalism:**

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

**Agency Contact:**

John V. Ladd
Office of Apprenticeship
Department of Labor
Employment and Training Administration
200 Constitution Avenue NW
Room N5311
FP Building
Washington, DC 20210
Phone: 202 693–2796
Fax: 202 693–3799
Email: ladd.john@dol.gov

**RIN:** 1205–AB59

**DOL—ETA**

## FINAL RULE STAGE

### 99. TEMPORARY AGRICULTURAL EMPLOYMENT OF H–2A ALIENS IN THE UNITED STATES

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1101(a)(15)(H)(ii)(a); 8 USC 1188

**CFR Citation:**

20 CFR 655

**Legal Deadline:**

None

**Abstract:**

The Department of Labor (the Department of DOL) proposes to amend its regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. This Notice of Proposed Rulemaking would reexamine the process by which employers obtain a temporary labor certification from the Department for use in petitioning the Department of Homeland Security (DHS) to employ a nonimmigrant worker in H-2A status.

**Statement of Need:**

The Department has determined for a variety of reasons that a new

rulemaking effort is necessary for the H-2A program. The Department believes that the policy underpinnings of the 2008 Final Rule, e.g., streamlining the H-2A regulatory process to defer many determinations of program compliance until after an application has been fully adjudicated, do not provide an adequate level of protection for either U.S. or foreign workers.

In addition, the Department's experience under the program since January 2009 demonstrates that the policy goals of the 2008 Final Rule have not been met. One of the clear goals of the 2008 Final Rule was to increase the use of the H-2A program and to make the program easier and more affordable to use for the average employer. However, applications have actually decreased since the implementation of the new program. Not only has usage not increased under the program revisions, there has actually been a reversal of an existing multi-year trend toward increased program use. While factors other than the regulatory changes may play a role in this decrease, the Department can not justify the significant decrease in worker protections if the prior rules' goal of increasing program use is not being accomplished.

The Department believes that there are insufficient worker protections in the attestation-based model in which employers merely confirm, and do not actually demonstrate, that they have performed an adequate test of the U.S. labor market. Even in the first year of the attestation model, it has come to the Department's attention that employers, either from a lack of understanding or otherwise, are attesting to compliance with program obligations with which they have not complied. Such non-compliance appears to be sufficiently substantial and widespread for the Department to revisit the use of attestations, even with the use of back-end integrity measures for demonstrated non-compliance.

The Department has also determined that the area in which agricultural workers are most vulnerable — wages — has been adversely impacted to a far more significant extent than anticipated by the 2008 Final Rule. The shift from the AEWR as calculated under the 1987 Rule to the AEWR of the 2008 Final Rule resulted in a substantial reduction of farmworker wages in a number of labor categories, and the obvious effects of that reduction on the workers' and their families' ability to meet necessary costs is an important concern.

**Summary of Legal Basis:**

These proposed regulations are authorized under Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, as amended. 8 U.S.C. 1101(a)(15)(H)(ii)(a); see also 8 U.S.C. 1184(c)(1) and 1188.

**Alternatives:**

The Department took into account both the regulations promulgated in 1987, as well as the significant reworking of the regulations in the 2008 Final Rule, in order to arrive at a balance between the worker protections of the 1987 Rule and the program integrity measures of the 2008 Final Rule.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated monetized costs of this proposed regulatory action are $10.56 million in 2009 to $18.07 million in 2018. A final estimate of costs and benefits will be prepared at the Final Rule stage in response to public comments.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/13/08 | 73 FR 8538 |
| NPRM Comment Period End | 03/31/08 | |
| NPRM Comment Period Extended | 04/14/08 | 73 FR 16243 |
| Final Rule | 12/18/08 | 73 FR 77110 |
| Final Rule Effective | 01/17/09 | |
| Notice of Proposed Suspension | 03/17/09 | 74 FR 11408 |
| Comment Period End | 03/27/09 | |
| Notice of Final Suspension | 05/29/09 | 74 FR 25972 |
| NPRM | 09/04/09 | 74 FR 45905 |
| NPRM Comment Period End | 10/05/09 | |
| NPRM Comment Period Extended | 10/20/09 | 74 FR 50929 |
| Final Rule | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Agency Contact:**

Dr. William L. Carlson
Administrator, Office of Foreign Labor Certification
Department of Labor
Employment and Training Administration
FP Building
Room C–4312
200 Constitution Avenue NW.
Washington, DC 20210
Phone: 202 693–3010
Email: carlson.william@dol.gov

**RIN:** 1205–AB55

## DOL—Employee Benefits Security Administration (EBSA)

### PRERULE STAGE

### 100. ● LIFETIME INCOME OPTIONS FOR PARTICIPANTS AND BENEFICIARIES IN RETIREMENT PLANS

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 1135; ERISA sec 505

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This initiative will explore what steps, if any, that the Department could or should take, by regulation or otherwise, to enhance the retirement security of American workers by facilitating access to and use of lifetime income or income arrangements designed to provide a stream of income after retirement.

**Statement of Need:**

With a continuing trend away from defined benefit plans to defined contribution plans, employees are not only increasingly responsible for the adequacy of their retirement savings, but also for ensuring that their savings last throughout their retirement. Employees may benefit from access to and use of lifetime income or other arrangements that will reduce the risk of running out of funds during the retirement years. However, both access to and use of such arrangements in defined contribution plans is limited.

The Department, taking into consideration recommendations of the ERISA Advisory Council and others, intends to explore what steps, if any, it could or should take, by regulation or otherwise, to enhance the retirement security of workers by increasing access to and use of such arrangements.

**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.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| RFI | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Jeffrey J. Turner
Chief, Division of Regulations, Office of Regulations and Interpretations
Department of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW.
FP Building
Rm N–5655
Washington, DC 20210
Phone: 202 693–8500

**RIN:** 1210–AB33

**DOL—EBSA**

## PROPOSED RULE STAGE

### 101. ● DEFINITION OF ''FIDUCIARY'' — INVESTMENT ADVICE

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 1002; ERISA sec 3(21); 29 USC 1135; ERISA sec 505

**CFR Citation:**

29 CFR 2510.3–21(c)

**Legal Deadline:**

None

**Abstract:**

This rulemaking would amend the regulatory definition of the term ''fiduciary'' set forth at 29 CFR 2510.3-21 (c) to more broadly define as employee benefit plan fiduciaries persons who render investment advice to plans for a fee within the meaning of section 3(21) of ERISA. The amendment would take into account current practices of investment advisers and the expectations of plan officials and participants who receive investment advice.

**Statement of Need:**

This rulemaking is needed to bring the definition of ''fiduciary'' into line with investment advice practices and to recast the current regulation to better reflect relationships between investment advisers and their employee benefit plan clients. The current regulation may inappropriately limit the types of investment advice relationships that should give rise to fiduciary duties on the part of the investment adviser.

**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 2510.3-21(c) defines the term fiduciary for certain purposes under section 3(21) of ERISA.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Jeffrey J. Turner
Chief, Division of Regulations, Office of Regulations and Interpretations
Department of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW.
FP Building
Rm N–5655
Washington, DC 20210
Phone: 202 693–8500

**RIN:** 1210–AB32

**DOL—EBSA**

### 102. ● HEALTH CARE ARRANGEMENTS ESTABLISHED BY STATE AND LOCAL GOVERNMENTS FOR NON–GOVERNMENTAL EMPLOYEES

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 1135; ERISA sec 505

**CFR Citation:**

29 CFR 2510.3–1

**Legal Deadline:**

None

**Abstract:**

Department of Labor regulation 29 C.F.R. 2510.3-1 clarifies the definition of the terms ''employee welfare benefit plan'' and ''welfare plan'' for purposes

of title I of the Employee Retirement Income Security Act of 1974 (ERISA) by identifying certain practices which do not constitute employee welfare benefit plans. This rulemaking would amend that regulation to clarify the circumstances under which health care arrangements established or maintained by state or local governments for the benefit of non-governmental employees do not constitute an employee welfare benefit plan for purposes of section 3(1) of ERISA and 29 CFR 2510.3-1.

**Statement of Need:**

Questions have been raised regarding the extent to which health care reform efforts on the part of state and local governments result in the creation of ERISA-covered employee welfare benefit plans or otherwise implicate ERISA. This regulation is needed to provide certainty to both governmental bodies and employers concerning the application of ERISA to such efforts.

**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 2510.3-1 clarifies definitions of the terms ''employee welfare benefit plan'' and ''welfare plan'' for purposes of title I of ERISA.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

Jeffrey J. Turner
Chief, Division of Regulations, Office of Regulations and Interpretations
Department of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW.
FP Building
Rm N–5655
Washington, DC 20210
Phone: 202 693–8500

**RIN:** 1210–AB34

**DOL—EBSA**

**FINAL RULE STAGE**

**103. GENETIC INFORMATION NONDISCRIMINATION**

**Priority:**

Other Significant

**Legal Authority:**

29 USC 1182; 29 USC 1191b(d); 29 USC 1132

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, May 21, 2009, As per GINA section 101(f)(1).

**Abstract:**

Pursuant to ERISA sections 702, 733(d), and 502, as amended by the Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110-233) enacted May 21, 2008, the Department is developing regulatory guidance. Regulatory guidance will provide clarification regarding GINA's prohibition against discrimination in group premiums based on genetic information, its limitations on genetic testing, its prohibition on collection of genetic information, and its new civil monetary penalties under ERISA.

**Statement of Need:**

GINA section 101(f)(1) requires the Secretary to issue regulations to carry out its statutory provisions no later than May 21, 2009.

**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 ERISA. 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, GINA section 101(f) requires the Secretary to issue regulations to carry out GINA's amendments.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Request for Information | 10/10/08 | 73 FR 60208 |
| Request for Information Comment Period End | 12/09/08 | |
| Interim Final Rule | 10/07/09 | 74 FR 51664 |
| Interim Final Rule Effective | 12/07/09 | |
| Interim Final Rule Comment Period End | 01/05/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Agency Contact:**

Amy J. Turner
Senior Advisor
Department of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW.
FP Building
Room N–5653
Washington, DC 20210
Phone: 202 693–8335
Fax: 202 219–1942

**RIN:** 1210–AB27

**DOL—EBSA**

**104. MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 1185a

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, October 8, 2009, as per MHPAEA section 512(d).

**Abstract:**

Pursuant to ERISA section 712, as amended by the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub. L. 110-343) enacted on October 8, 2008, the Department is developing regulatory guidance.

**Statement of Need:**

In response to a Request for Information in April 2008, over 400 comment letters were received raising questions regarding compliance with the federal parity provisions. This regulation is needed to provide clarifications to participants, beneficiaries, health care providers, employment-based health plans, health insurance issuers, third-party administrators, brokers, underwriters, and other plan service providers regarding such provisions.

**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. Section 734 of ERISA provides that the Secretary may prescribe regulations necessary or appropriate to carry out the provisions of ERISA Part 7. MHPAEA created new federal parity provisions in ERISA section 712 and provides, in section 512(d), that the Secretary shall issue regulations to carry out the provisions of MHPAEA.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Request for Information | 04/28/09 | 74 FR 19155 |
| Request for Information Comment Period End | 05/28/09 | |
| Interim Final Rule | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Federalism:**

Undetermined

**Agency Contact:**

Amy J. Turner
Senior Advisor
Department of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW.
FP Building
Room N–5653
Washington, DC 20210
Phone: 202 693–8335
Fax: 202 219–1942

**Related RIN:** Related to 0938–AP65, Related to 1545–BI70

**RIN:** 1210–AB30

## DOL—Mine Safety and Health Administration (MSHA)

### PRERULE STAGE

### 105. ● METAL AND NONMETAL IMPOUNDMENTS

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

30 USC 811; 30 USC 812

**CFR Citation:**

30 CFR 56; 30 CFR 57

**Legal Deadline:**

None

**Abstract:**

Water, sediment, and slurry impoundments for metal and nonmetal mining and milling operations are located throughout the country. Some of these impoundments would impact homes, well-traveled roads, and other important infrastructure if they were to fail. Impoundment failures could endanger lives and cause property damage. MSHA will issue an advance notice of proposed rulemaking to solicit information relative to proper design, construction, operation, maintenance, and other safety issues for impoundments at metal and nonmetal mines whose failure could cause loss of life or significant property damage.

**Statement of Need:**

Mining operations regularly find it necessary to construct dams to dispose of large volumes of mine waste (tailings or slurry) from processing operations, or to provide water supply, sediment control, or water treatment. Impoundments are structures that are used to impound water, sediment, or slurry or any combination of materials. Dams that form impoundments must be designed to be stable under the various conditions they will be subjected to, including runoff from rainfall, seepage, and possibly earthquake shaking. The failure of these structures can have a devastating effect on both the mine and nearby communities.

Every two years since 1980, a report has been prepared by the Federal Emergency Management Agency (FEMA) and sent to Congress on the status of dam safety in the U.S. These reports are required by a 1979 Presidential Memorandum which directed the Federal agencies responsible for dams to adopt and implement the Federal Guidelines for Dam Safety. MSHA has been criticized in these biennial reports for its lack of regulation of metal and nonmetal dams. MSHA's Metal and Nonmetal standards do not provide sufficient guidance to determine what is needed to effectively design and construct dams with high or significant hazard potential. The Metal and Nonmetal standards need to more effectively address requirements for dam design, construction, operation and maintenance.

**Summary of Legal Basis:**

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

MSHA is considering amendments, revisions, and additions to existing standards.

**Anticipated Cost and Benefits:**

MSHA will develop a preliminary regulatory economic analysis to

accompany any proposed rule that may be developed.

**Risks:**

The failure of impoundments can have a devastating affect on both the mine and nearby communities by causing loss of life and property damage.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Agency Contact:**

Patricia W. Silvey
Director, Office of Standards, Regulations, and Variances
Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209–3939
Phone: 202 693–9440
Fax: 202 693–9441
Email: silvey.patricia@dol.gov

**RIN:** 1219–AB70

---

**DOL—MSHA**

## PROPOSED RULE STAGE

### 106. RESPIRABLE CRYSTALLINE SILICA STANDARD

**Priority:**

Other Significant

**Legal Authority:**

30 USC 811; 30 USC 813

**CFR Citation:**

30 CFR 56 to 57; 30 CFR 70 to 72; 30 CFR 90

**Legal Deadline:**

None

**Abstract:**

Current standards limit exposures to quartz (crystalline silica) in respirable dust. The coal mining industry standard is based on the formula 10mg/m3 divided by the percentage of quartz where the quartz percent is greater than 5.0 percent calculated as an MRE equivalent concentration. The metal and nonmetal mining industry standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula: 10 mg/m3 divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. Both formulas are designed to limit exposures to 0.1 mg/m3 (100ug) of silica. The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers made several recommendations related to reducing exposure to silica. NIOSH recommends a 50 ug/m3 exposure limit for respirable crystalline silica, and ACGIH recommends a 25 ug/m3 exposure limit. MSHA will publish a proposed rule to address miners' exposure to respirable crystalline silica.

**Statement of Need:**

MSHA standards are outdated; current regulations may not protect workers from developing silicosis. Evidence indicates that miners continue to develop silicosis. MSHA's proposed regulatory action exemplifies the agency's commitment to protecting the most vulnerable populations while assuring broad-based compliance. MSHA will regulate to eliminate or reduce the hazards with the broadest and most serious consequences based on sound science. MSHA intends to use OSHA's work on the health effects and risk assessment, adapting it as necessary for the mining industry.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:**

This rulemaking would amend and improve health protection from that afforded by the existing standard. MSHA will consider alternative methods of addressing miners' exposure based on the capabilities of the sampling and analytical methods.

**Anticipated Cost and Benefits:**

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

**Risks:**

For over 70 years, toxicology information and epidemiological studies have shown that exposure to respirable crystalline silica presents potential health risks to miners. These potential adverse health effects include simple silicosis, progressive massive fibrosis (lung scarring). Evidence indicates that exposure to silica may cause cancer. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposure to respirable crystalline silica.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/11 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**URL For More Information:**

www.msha.gov/regsinfo.htm

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Patricia W. Silvey
Director, Office of Standards, Regulations, and Variances
Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209–3939
Phone: 202 693–9440
Fax: 202 693–9441
Email: silvey.patricia@dol.gov

**RIN:** 1219–AB36

---

**DOL—MSHA**

### 107. OCCUPATIONAL EXPOSURE TO COAL MINE DUST (LOWERING EXPOSURE)

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

30 USC 811; 30 USC 812

**CFR Citation:**

30 CFR 70; 30 CFR 71; 30 CFR 75; 30 CFR 90

**Legal Deadline:**

None

**Abstract:**

The Federal Coal Mine Health and Safety Act of 1969 established the first comprehensive respirable dust standards for coal mines. These standards were designed to reduce the incidence of coal workers' pneumoconiosis (black lung) and silicosis and eventually eliminate these diseases. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners continue to be at risk of developing occupational lung disease, according to the National Institute for Occupational Safety and Health (NIOSH). In September 1995, NIOSH issued a Criteria Document in which it recommended that the respirable coal mine dust permissible exposure limit (PEL) be cut in half. In February 1996, the Secretary of Labor convened a Federal Advisory Committee on the Elimination of Pneumoconiosis Among Coal Miners (Advisory Committee) to assess the adequacy of MSHA's current program and standards to control respirable dust in underground and surface coal mines, as well as other ways to eliminate black lung and silicosis among coal miners. The Committee represented the labor, industry and academic communities. The Committee submitted its report to the Secretary of Labor in November 1996, with the majority of the recommendations unanimously supported by the Committee members. The Committee recommended a number of actions to reduce miners' exposure to respirable coal mine dust. MSHA will publish a proposed rule to address miners' exposure to respirable coal mine dust.

**Statement of Need:**

Comprehensive respirable dust standards for coal mines were designed to reduce the incidence, and eventually eliminate, CWP and silicosis. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners remain at risk of developing occupational lung disease, according to NIOSH. Recent NIOSH data indicates increased prevalence of CWP ''clusters'' in several geographical areas, particularly in the Southern Appalachian Region.

**Summary of Legal Basis:**

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

MSHA is considering amendments, revisions, and additions to existing standards.

**Anticipated Cost and Benefits:**

MSHA will develop a preliminary regulatory economic analysis to accompany the proposed rule.

**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 workers' pneumoconiosis and silicosis, which are potentially disabling and can cause death. MSHA is pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and reduction of miners' exposure. MSHA will develop a risk assessment to accompany the proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

1219-AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust) and 1219-AB18 (Determination of Concentration of Respirable Coal Mine Dust) have been integrated.

**Agency Contact:**

Patricia W. Silvey
Director, Office of Standards, Regulations, and Variances
Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209–3939
Phone: 202 693–9440
Fax: 202 693–9441
Email: silvey.patricia@dol.gov

**Related RIN:** Related to 1219–AA81, Related to 1219–AB14, Related to 1219–AB18

**RIN:** 1219–AB64

## DOL—Occupational Safety and Health Administration (OSHA)

### PRERULE STAGE

### 108. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect State, local or tribal governments.

**Legal Authority:**

29 USC 655(b); 29 USC 657

**CFR Citation:**

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

**Legal Deadline:**

None

**Abstract:**

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50µg/m3 and 25µg/m3 exposure limits, respectively, for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials (ASTM) has published a recommended standard for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has

also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

**Statement of Need:**

Workers are exposed to crystalline silica dust in general industry, construction, and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: Foundries, industries that have abrasive blasting operations, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur; between 1990 and 1996, 200 to 300 deaths per year are known to have occurred where silicosis was identified on death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer (IARC) has designated crystalline silica as a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune respiratory diseases. Exposure studies and OSHA enforcement data indicate that some workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000. There is a particular need for the Agency to modernize its exposure limits for construction and maritime workers, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

**Summary of Legal Basis:**

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rule will recognize that the PELs for construction and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

**Alternatives:**

Over the past several years, the Agency has attempted to address this problem through a variety of non-regulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site. The Agency is currently evaluating several options for the scope of the rulemaking.

**Anticipated Cost and Benefits:**

The scope of the proposed rulemaking and estimates of the costs and benefits are still under development.

**Risks:**

A detailed risk analysis is under way.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Completed SBREFA Report | 12/19/03 | |
| Initiate Peer Review of Health Effects and Risk Assessment | 05/22/09 | |
| Complete Peer Review | 01/00/10 | |
| NPRM | 07/00/10 | |

**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.

**Agency Contact:**

Dorothy Dougherty
Director, Directorate of Standards and Guidance
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
FP Building
Room N–3718
Washington, DC 20210
Phone: 202 693–1950
Fax: 202 693–1678
Email: dougherty.dorothy@dol.gov

**RIN:** 1218–AB70

**DOL—OSHA**

## PROPOSED RULE STAGE

### 109. HAZARD COMMUNICATION

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

29 USC 655(b); 29 USC 657

**CFR Citation:**

29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21

**Legal Deadline:**

None

**Abstract:**

OSHA's Hazard Communication Standard (HCS) requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and prepare labels and material safety data sheets to convey the hazards and associated protective measures to users of the chemicals. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including labels on containers, material safety data sheets (MSDS), and training for employees. Within the United States (U.S.), there are other Federal agencies that also have requirements for classification and labeling of chemicals at different stages of the life cycle. Internationally, there are a number of countries that have developed similar laws that require information about chemicals to be prepared and transmitted to affected parties. These laws vary with regard to the scope of substances covered, definitions of hazards, the specificity of requirements (e.g., specification of a format for MSDSs), and the use of symbols and pictograms. The inconsistencies between the various laws are substantial enough that different labels and safety data sheets must often be used for the same product when it is marketed in different nations.

The diverse and sometimes conflicting national and international requirements can create confusion among those who seek to use hazard information. Labels and safety data sheets may include

symbols and hazard statements that are unfamiliar to readers or not well understood. Containers may be labeled with such a large volume of information that important statements are not easily recognized. Development of multiple sets of labels and safety data sheets is a major compliance burden for chemical manufacturers, distributors, and transporters involved in international trade. Small businesses may have particular difficulty in coping with the complexities and costs involved.

As a result of this situation, and in recognition of the extensive international trade in chemicals, there has been a long-standing 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 adopting the GHS into their national regulatory systems. 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.

Most importantly, comprehensibility of hazard information and worker safety 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. The increase in comprehensibility and consistency will reduce confusion and thus improve worker safety and health.

Several nations, including the European Union, have adopted the GHS with an implementation schedule through 2015. U.S. manufacturers, employers, and employees will be at a disadvantage in the event that our system of hazard communication is not compliant with the GHS.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

OSHA's risk analysis is under development.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/12/06 | 71 FR 53617 |
| ANPRM Comment Period End | 11/13/06 | |
| Complete Peer Review of Economic Analysis | 11/19/07 | |
| NPRM | 09/30/09 | 74 FR 50279 |
| NPRM Comment Period End | 12/29/09 | |
| Hearing | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

**Federalism:**

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

**Agency Contact:**

Dorothy Dougherty
Director, Directorate of Standards and Guidance
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
FP Building
Room N–3718
Washington, DC 20210
Phone: 202 693–1950
Fax: 202 693–1678
Email: dougherty.dorothy@dol.gov

**RIN:** 1218–AC20

**DOL—OSHA**

**FINAL RULE STAGE**

**110. CRANES AND DERRICKS IN CONSTRUCTION**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

29 USC 651(b); 29 USC 655(b); 40 USC 333

**CFR Citation:**

29 CFR 1926

**Legal Deadline:**

None

**Abstract:**

A number of industry stakeholders asked OSHA to update the cranes and derricks portion of subpart N (29 CFR 1926.550), specifically requesting that negotiated rulemaking be used.

In 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee. A year later, in 2003, committee members were announced and the Cranes and Derricks Negotiated Rulemaking Committee was established and held its first meeting. In July 2004, the committee reached consensus on all issues resulting in a final consensus document.

**Statement of Need:**

There have been considerable technological changes since the consensus standards upon which the 1971 OSHA standard is based were developed. In addition, industry consensus standards for derricks and crawler, truck and locomotive cranes were updated as recently as 2004.

The industry indicated that over the past 30 years, considerable changes in

both work processes and crane technology have occurred. There are estimated to be 64 to 89 fatalities associated with cranes each year in construction, and a more up-to-date standard would help prevent them.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 USC 651).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action and not update the standards in 29 CFR 1926.550 pertaining to cranes and derricks.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

OSHA's risk analysis is under development.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent To Establish Negotiated Rulemaking | 07/16/02 | 67 FR 46612 |
| Comment Period End | 09/16/02 | |
| Request for Comments on Proposed Committee Members | 02/27/03 | 68 FR 9036 |
| Request for Comments Period End | 03/31/03 | 68 FR 9036 |
| Established Negotiated Rulemaking Committee | 06/12/03 | 68 FR 35172 |
| Rulemaking Negotiations Completed | 07/30/04 | |
| SBREFA Report | 10/17/06 | |
| NPRM | 10/09/08 | 73 FR 59714 |
| NPRM Comment Period Extended | 12/02/08 | 73 FR 73197 |
| NPRM Comment Period End | 01/22/09 | |
| Public Hearing | 03/20/09 | |
| Close Record | 06/18/09 | |
| Final Rule | 07/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**Agency Contact:**

Noah Connell
Deputy Director, Directorate of Construction
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
FP Building
Room N–3468
Washington, DC 20210
Phone: 202 693–2020
Fax: 202 693–1689

**RIN:** 1218–AC01

BILLING CODE 4510–23–S

## DEPARTMENT OF TRANSPORTATION (DOT)

### Introduction: Department Overview and Summary 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. DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, and pipeline transportation areas. DOT also regulates aviation consumer and economic issues and provides financial assistance for programs involving highways, airports, public transportation, the maritime industry, railroads, and motor vehicle safety. The Department writes regulations to carry out a variety of statutes ranging from the Americans with Disabilities Act to the Uniform Time Act. Finally, DOT develops and implements a wide range of regulations that govern internal programs such as acquisitions and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, and the use of aircraft and vehicles.

This Plan identifies the Department's regulatory priorities—the fourteen pending rulemakings that the Department believes will merit special attention in the upcoming year. The rules included in the Regulatory Plan embody the Department's continuing focus on safety, consumer protection, environmental stewardship, and energy independence.

In order to prioritize these fourteen rulemakings from among the dozens in the Department's broad regulatory agenda, we 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

The Regulatory Plan reflects the Department's primary focus on safety—a focus that extends across all modes of transportation.

- The airways: The Plan includes important initiatives by the Federal Aviation Administration (FAA) to enhance the safety of our airways—including a proposed rulemaking to revise rest requirements for commercial pilots.
- The roads: The Plan includes proposals by the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) to improve the safety of our roadways. FMCSA has initiated rulemakings to strengthen the requirements for commercial drivers' licenses and carrier fitness, while NHTSA is protecting the passengers of the vehicles on America's roads through proposed rules to prevent passenger ejection and to require seat belts in buses.
- The railways: The Federal Railroad Administration (FRA) will implement Congress' directive to enhance the safety of our nation's rail system through the introduction of positive train control systems.
- Pipelines: The Pipelines and Hazardous Materials Safety Administration (PHMSA) will continue to enhance the integrity of the pipeline distribution system.

The Plan also reflects the Department's focus on protecting the nation's environment and furthering our energy independence. NHTSA's proposed CAFE standards for 2012-2016—a joint effort with the Environmental Protection Agency—is a milestone in that effort. This same focus is reflected in NHTSA's proposed rulemaking on tire fuel efficiency.

The Plan also contains a rulemaking designed to safeguard the interests of consumers flying the nation's skies by imposing limits on tarmac delays and chronically delayed flights.

Each of the rulemakings in the Regulatory Plan is described below in detail. In order to place them in context, we first review the Department's regulatory philosophy and our initiatives to educate and inform the public about transportation safety issues. We then describe the role in the Department's regulatory process and other important regulatory initiatives of the Office of the Secretary of Transportation (OST) and of each of the Department's components. Since each transportation ''mode'' within the Department has its own area of focus, we summarize the regulatory priorities of each mode and of OST, which supervises and coordinates the modal initiatives, and is charged with consumer protection in the aviation industry.

#### The Department's Regulatory Philosophy and Initiatives

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.

An important initiative of the Department has been to conduct high quality rulemakings in a timely manner and to reduce the number of old rulemakings. To implement this, the following actions have been required: (1) Regular meetings of senior DOT officials to ensure effective policy leadership and timely decisions, (2) better tracking and coordination of rulemakings, (3) regular reporting, (4) early briefings of interested officials, (5) better training of staff, and (6) necessary resource allocations. The Department has achieved significant success as a result of this initiative. This is allowing the Department to use its resources more effectively and efficiently.

The Department's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. DOT continually seeks to improve its regulatory process. A few examples include: the Department's development of regulatory process and related training courses for its employees; its use 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; the use of regulatory negotiation; an expanded internet page that provides important regulatory information, including ''effects'' report and status reports (http://regs.dot.gov/); and consideration of the use of internet blogs to enhance public participation in its rulemaking process.

In addition, the Department continues to engage in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. The Department's agencies also have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

The Department is also actively engaged in the review of existing rules to determine whether they need to be revised or revoked. These reviews are in accordance with section 610 of the Regulatory Flexibility Act, the Department's regulatory policies and procedures, and Executive Order 12866. This includes determining whether the rules would be more understandable if they are written using a plain language approach. Appendix D to our Regulatory Agenda highlights our efforts in this area.

The Department will also continue its efforts to use advances in technology to improve its rulemaking management process. For example, the Department created an effective tracking system for significant rulemakings to ensure that either rules are completed in a timely manner or delays are identified and fixed. Through this tracking system, a monthly status 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 quality 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.

**Education and Outreach**

The Department is committed to ensuring that the Administration's priorities related to transportation safety remain a paramount focus of its operation and has planned or initiated a variety of safety initiatives, summits and forums, throughout the country, that bring together senior transportation officials, elected officials, safety advocates, law enforcement representatives, private sector representatives and academics. Departmental initiatives include some of the following:

- Distracted Driving Summit – this Summit brought together senior transportation officials, elected officials, safety advocates, law enforcement representatives, private sector representatives and academics to address a range of issues related to reducing accidents through rulemaking and enforcement, public awareness, and education. Authoritative speakers from around the nation led interactive panel discussions on a number of key topics including the extent and impact of distracted driving, current research, regulations, and best practices. Participants also examined distractions caused by current and planned automotive devices, such as navigational systems.
- Motorcoach Safety Action Plan – DOT agencies with responsibility for motorcoach safety will develop an integrated Motorcoach Safety Action Plan. The agencies will take a fresh look at motorcoach safety issues, identify actions to address outstanding safety problems, and develop an aggressive multi-modal schedule to implement those actions. The Department expects this strategy to result in a reduction in the number of motorcoach crashes and fatalities and injuries resulting from those crashes. Based on analysis of the available safety data, the Department assessed causes and contributing factors for motorcoach crashes, fatalities and injuries, and identified opportunities to enhance motorcoach safety. The plan would provide an integrated strategy addressing a wide range of issues including driver errors resulting from fatigue, distraction, medical condition, and experience; crash avoidance technologies; vehicle maintenance and safety; carrier compliance; and measures to protect occupants in the event of a crash, such as seat belts, enhanced vehicle roof strength, fire safety, and emergency egress.
- Safety Performance Functions Summits – these summits provide a platform for the exchange of information among a group of stakeholders on the development and application of safety models (called ''safety performance functions'') for identifying highway locations that present the greatest potential for safety improvement and for evaluating the effectiveness of safety projects. The Federal Highway Administration, thirty States, the American Association of State Highway Transportation Officials (AASHTO), the Transportation Research Board, and academia were represented at the summit. From the summit, a set of actions were developed to support the wider deployment of the safety performance functions that serve as underlying foundation for new analysis tools being delivered to the highway safety community. These summits are being held throughout the country from January - December 2009.
- Towards Zero Fatalities: A Vision for Highway Safety – the objective is to begin framing the strategic issues that would need to be addressed to move the nation ''Toward Zero Fatalities.'' FHWA has a contract with AASHTO to hold a broad-based safety meeting in the spring of 2010. The meeting is intended to attract safety professionals from all across the nation and will provide us with a valuable opportunity to connect with stakeholders, solicit their input, and discuss the Department's safety initiatives.

**Office of the Secretary of Transportation (OST)**

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with Executive Order 12866 and other legal and policy requirements affecting rulemaking, including new statutes and Executive Orders. Although OST's principal role concerns the review of the Department's significant rulemakings, this office has the lead role in the substance of projects concerning aviation economic rules and those affecting the various elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and process for use by personnel throughout the Department. OST also plays an instrumental role in the Department's efforts to improve our economic analyses; risk assessments; regulatory flexibility analyses; other

related analyses; and data quality, including peer reviews.

OST also leads and coordinates the Department's response to Administration and congressional proposals that concern the regulatory process. The General Counsel's Office works closely with representatives of other agencies, the Office of Management and Budget, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

During fiscal year 2010, OST will continue to focus its efforts on enhancing airline passenger protections by requiring carriers to adopt various consumer service practices (2105-AB92).

OST will also continue its efforts to help coordinate the activities of several operating administrations that advance various Departmental efforts that support the Administration's initiatives on promoting safety, stimulating the economy and creating jobs, sustaining and building America's transportation infrastructure, and improving livability for the people and communities who use transportation systems subject to the Department's policies.

**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.

FAA top regulatory priorities for 2009-2010 include:

- Automatic Dependent Surveillance - Broadcast (ADS-B) Out equipment (2120-AI92)
- Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (2120-AJ00)
- Helicopter Air Ambulance and Commercial Helicopter Safety Initiatives and Miscellaneous Amendments (2120- AJ53)
- Flight and Duty Time Limitations and Rest Requirements (2120-AJ58)

The ADS-B rulemaking would:

- Accommodate the expected increase in demand for air transportation over the long run, as described in the Next Generation Air Transportation System Integrated Plan;
- Provide the Federal Aviation Administration with a comprehensive surveillance system that safely and efficiently accommodates the anticipated increase in operations; and
- Provide a platform for additional flight applications and services in the future.

The Crewmember and Aircraft Dispatcher Training rulemaking would:

- Reduce human error and improve performance among flight crewmembers, flight attendants, and aircraft dispatchers;
- Enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers; and
- Include additional training requirements in areas critical to safety.

The Air Ambulance and Commercial Helicopter rulemaking would:

- Codify current agency guidance and address National Transportation Safety Board recommendations;
- Provide certificate holders and pilots with tools and procedures that will aid in reducing accidents;
- Require additional equipment on board helicopters or air ambulances; and
- Amend all part 135 commercial helicopter operations regulations to include equipment requirements, pilot training, and alternate airport weather minimums.

The Flight and Duty Time Limitations and Rest Requirements rulemaking would:

- Address fatigue mitigation and use existing fatigue science to establish minimum rest periods, flight time limitations, and duty period limits for flight crewmembers;
- Incorporate the use of Fatigue Risk Management Systems as an option to provide operator flexibility for specific operations; and
- Reduce human error attributed to fatigue among flight crewmembers.

**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.

FHWA continues to address a number of rules required by the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The remaining congressionally directed rulemakings resulting from this act include: Express Lane Demonstration Project (2125-AF07) and Real-Time System Management Information Program (2125-AF19). These rulemakings are the FHWA's top regulatory priorities. Additionally, the FHWA is in the process of reviewing all FHWA regulations to ensure that they are consistent with SAFETEA-LU and will update those regulations that are not consistent with this legislation

**Federal Motor Carrier Safety Administration (FMCSA)**

The mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. A strong regulatory program is a cornerstone of FMCSA's compliance and enforcement efforts to advance this safety mission. Developing new and more effective safety regulations is key to increasing safety on our Nation's highways. FMCSA regulations establish standards for motor carriers, drivers, vehicles, and State agencies receiving certain motor carrier safety grants and issuing commercial drivers' licenses.

FMCSA continues to develop regulations both mandated by Congress and initiated by the Agency to increase safety. FMCSA continues to address a significant number of rules required by its most recent reauthorization legislation, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The Agency is committed to promulgating the SAFETEA-LU mandated rules while continuing to make progress on a large and challenging rulemaking agenda.

FMCSA continues its work on the Comprehensive Safety Analysis 2010 (CSA 2010). The CSA 2010 initiative will improve the way FMCSA conducts compliance and enforcement operations over the coming years. CSA 2010's goal is to improve large truck and bus safety by assessing a wider range of safety performance data of a larger segment of the motor carrier industry through an array of progressive compliance interventions. FMCSA is targeting 2010 for deployment of this new operational model. The Agency anticipates that the impacts of CSA 2010 and its associated rulemakings, which includes the Carrier Safety Fitness Determination (RIN 2126-AB11) rulemaking, will contribute further to the Agency's overall goal of decreasing CMV-related fatalities and injuries.

A major undertaking by FMCSA in FY2010 will be to begin a new rulemaking on Hours of Service as the result of a settlement agreement reached on October 26, 2009. Under terms of the settlement, FMCSA must submit a draft notice of proposed rulemaking to the Office of Management and Budget within nine months.

FMCSA's Regulatory Plan for FY2010 includes completion of a number of final and proposed rules that are high priorities for the Agency because they would have a positive impact on safety. Among the rulemakings included in the plan are: (1) Restrictions on the use of wireless communication devices (RIN 2126-AB22) (2) Carrier Safety Fitness Determination (RIN 2126-AB11), (3) National Registry of Certified Medical Examiners (RIN 2126-AA97), and (4) Commercial Driver's License Testing and Commercial Learner's Permit Standard (RIN 2126-AB02).

Together these priority rules will help to substantially improve commercial motor vehicle (CMV) safety on our Nation's highways by improving FMCSA's ability to provide safety oversight of motor carriers and drivers. For example, the restrictions on the use of wireless communication devices rulemaking would ban text messaging and restrict the use of cell phones while operating a commercial motor vehicle. The Commercial Driver's License Testing and Learner's Permit rulemaking would revise commercial driver's license testing and require new minimum Federal standards for States to issue commercial learner's permits. The National Registry of Certified Medical Examiners rulemaking would establish training and testing requirements for healthcare professionals who issue medical certificates to truck and bus drivers.

In order to manage its rulemaking agenda, FMCSA continues to involve senior agency leaders at the earliest stages of its rulemakings, and continues to refine its regulatory development process. The Agency also holds senior executives accountable for meeting deadlines for completing rulemakings.

**National Highway Traffic Safety Administration (NHTSA)**

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) relating to motor vehicles include reducing the number of, and mitigating the effects of, motor vehicle crashes and related fatalities and injuries; providing safety performance information to aid prospective purchasers of vehicles, child restraints, and tires; and improving automotive fuel efficiency. NHTSA pursues policies that encourage the development of non-regulatory approaches when feasible in meeting its statutory mandates. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

NHTSA continues to pursue the high priority vehicle safety area of occupant protection in rollover events, and will propose new performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions in fiscal year 2010. NHTSA will propose amending Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, to reduce deaths and injuries resulting from backing accidents, in accordance with the Cameron Gultransen Kids Transportaion Safety Act of 2007. NHTSA will also publish a notice of proposed rulemaking to require the installation of lap/shoulder belts in newly-manufactured motorcoaches in accordance with NHTSA's 2007 Motorcoach Safety Plan and DOT's Departmental Motorcoach Safety Action Plan.

NHTSA will continue its efforts to reduce domestic dependency on foreign oil in accordance with the Energy Independence and Security Act (EISA) of 2007 by publishing a final rule setting corporate average fuel economy (CAFE) standards for Model Years 2012-2016 for both cars and light trucks. NHTSA will also publish a final rule regarding tire fuel efficiency consumer information.

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 include: encouraging child safety-seat use; combating excessive speed and aggressive driving; improving motorcycle, bicycle, and pedestrian safety; and providing consumer information to the public.

**Federal Railroad Administration (FRA)**

The Federal Railroad Administration (FRA) exercises regulatory authority over all areas of railroad safety and, where feasible, incorporates flexible performance standards. In order to foster an environment for collaborative rulemaking, the FRA established the Railroad Safety Advisory Committee (RSAC). The purpose of the RSAC is to develop consensus recommendations for regulatory action on issues brought before it by the FRA. When consensus is achieved, and the FRA believes the recommendation serves the public's interest, the resulting rule, having been developed in a more transparent manner, is very likely to be better understood, more widely accepted, more cost-beneficial, and more correctly applied. In situations, where consensus cannot be achieved, the FRA fulfills its regulatory role without the benefit of the RSAC's recommendations.

FRA's current regulatory program contains numerous mandates resulting from the Rail Safety Improvement Act of 2008 (RSIA08) as well as actions supporting the Department's High-Speed Rail Strategic Plan. RSIA08 alone has resulted in at least 18 rulemaking actions, which are competing for limited resources to meet the short deadlines imposed by Congress. FRA has prioritized these rulemakings according to the greatest effect on safety, as well as expressed Congressional interest, and will work to complete as many rulemakings as possible prior their statutory deadlines. Revised timelines for completion of unfinished regulations will be forwarded to Congress for consideration. Through the RSAC, FRA is working to complete RSIA08 actions that include finalizing a Positive Train Control regulation, developing requirements for Train Conductor Certification, and determining hours of service for employees of intercity and commuter passenger rail service. RSAC-supported actions that advance high-speed passenger rail include proposed revisions to the Track Safety Standards dealing with vehicle-track interaction.

**Federal Transit Administration (FTA)**

FTA helps communities support public transportation by issuing grants to eligible recipients for public transportation purposes, including planning, vehicle purchases, facility construction, operations, and other transit-related purposes. FTA regulatory activity focuses on establishing the terms and conditions that attach to Federal financial assistance available under Federal transit laws. FTA policy regarding regulations is to:

- implement statutes that provide the maximum benefit to our nation's mobility and connectivity;
- provide local flexibility and discretion;
- ensure the most productive use of limited Federal resources;
- protect taxpayer investments in public transportation assets;
- incorporate good management principles into the grant management process; and
- provide transparency.

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 next authorization statutes, FTA expects to conduct a number of substantive rulemakings. A few rulemakings are likely to be mandated by statute, and others are likely necessary to amend current regulations to make them consistent with the next authorization statutes. FTA's regulatory priorities for the coming year will be reflective of the directives and programmatic priorities established by the authorization statutes, including, notably, FTA's School Bus regulation, New Starts regulation, and State Safety Oversight regulation. FTA also anticipates revising its Project Management Oversight regulation.

**Maritime Administration (MARAD)**

The Maritime Administration (MARAD) administers Federal laws and programs designed to promote and maintain a U.S. merchant marine capable of meeting the Nation's shipping needs for both national security and domestic and foreign commerce.

MARAD administers the Deepwater Port Act of 1974, as amended (DWPA, 33 U.S.C. § 1501 et seq.), which established a licensing system for ownership, construction, and operation of oil and natural gas deepwater port (DWP) structures located seaward of U.S. territorial waters. The DWPA authorizes the Secretary of Transportation, and by delegation the Maritime Administration, to issue licenses for deepwater ports.

By its delegated authority, MARAD is responsible for determining the financial capability of potential licensees, rendering citizenship determinations for ownership, and securing operational and decommissioning guarantees for deepwater port projects. In concert with the U.S. Coast Guard (USCG) and other cooperating Federal agencies, MARAD prepares a Record of Decision (ROD) for each application. Through the administration of the DWPA, the Maritime Administration plays a vital role in meeting Presidential energy directives, protecting the environment, building local economies, and improving mobility, safety, and security in our Nation's oceans and ports.

MARAD's other regulatory objectives and priorities reflect the Agency's responsibility of ensuring the availability of adequate and efficient water transportation services for American shippers and consumers. To advance these objectives, MARAD issues regulations, which are principally administrative and interpretive in nature.

Before the end of 2009, the Agency will issue a final rule regarding the America's Marine Highway program that is in response to the enactment of the Energy Independence and Security Act of 2007 (PL. 110-140). The ACT directs the Secretary of Transportation to establish a short sea transportation program and designate short sea transportation projects to mitigate landside congestion. Finally, during FY 2010, MARAD will focus on revising its cargo preference regulations.

**Pipeline and Hazardous Materials Safety Administration (PHMSA)**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has responsibility for rulemaking under two programs. Through the Associate Administrator for Hazardous Materials Safety, PHMSA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Through the Associate Administrator for Pipeline Safety, PHMSA administers regulatory programs under the Federal pipeline safety laws and the Federal Water

Pollution Control Act, as amended by the Oil Pollution Act of 1990.

PHMSA will continue to work toward the elimination of deaths and injuries associated with the transportation of hazardous materials by all transportation modes, including pipeline. We will use data to focus our efforts on the prevention of high-risk incidents, particularly those of high consequence to people and the environment. PHMSA will use all available agency tools to assess data; evaluate alternative safety strategies, including regulatory strategies as necessary and appropriate; target enforcement efforts; and enhance outreach, public education, and training to promote safety outcomes.

PHMSA will continue to focus its safety efforts on the resolution of highest priority risks, including those posed by the air transportation of hazardous materials and bulk transportation of high hazard materials (2137-AE32). To enhance aviation safety, PHMSA and FAA are seeking to identify cost-effective solutions that can be implemented to reduce incident rates and potentially detrimental consequences without placing unnecessary burdens on the regulated community. To this end, PHMSA and FAA are developing regulatory revisions to enhance the safe transportation of lithium batteries on board aircraft (2137-AE44). In addition, PHMSA is working with FAA to assess safety risks associated with the transportation by aircraft of hazardous materials in non-bulk packagings. To address the risks posed by the bulk transportation of high-risk hazardous materials, PHMSA is considering the development of enhanced safety measures governing bulk loading and unloading operations (2137-AE37).

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 (2137-AE39). We will continue to review regulatory standards to ensure they are necessary, easy to understand, contemporary, and enforceable.

In the fall of 2009, PHMSA will complete its integrity management initiative by finalizing risk-based integrity management regulations applicable to gas distribution pipelines.

**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, Office of Airline Information, RITA collects, compiles, analyzes, and makes accessible information on the Nation's air 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 that are used in supporting policy initiatives and administering the Department's mandated aviation responsibilities, including negotiating international bilateral aviation agreements, awarding international route authorities, performing airline and industry status evaluations, supporting air service to small communities, setting Alaskan Bush Mail rates, and meeting international treaty obligations.

Through its Intelligent Transportation Systems Joint Program Office (ITS/JPO), RITA conducts research and demonstrations, and, as appropriate, may develop new regulations, 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 2009-2010 DOT REGULATORY PLAN**
This chart does not account for non-quantifiable benefits, which are often substantial

| Agency/RIN Number | Title | Stage | Quantifiable Costs Discounted 2007 $ (Millions) | Quantifiable Benefits Discounted 2007 $ (Millions) |
|---|---|---|---|---|
| **OST** | | | | |
| 2105–AD72 | Enhancing Airline Passenger Protections | FR 02/10 | 5.6 | 14.1 |
| 2105–AD92 | Enhancing Airline Passenger Protections — Part 2 | NPRM 06/10 | TBD | TBD |
| **Total for OST** | | | **5.6** | **14.1** |
| **FAA** | | | | |
| 2120–AI92 | Automatic Dependent Surveillance – Broadcast (ADS-B) Out equipment | FR 04/10 | 1,600 | 1,000 |
| 2120–AJ00 | Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers | SNPRM 04/10 | TBD | TBD |
| 2120–AJ53 | Helicopter Air Ambulance and Commercial Helicopter Safety Initiatives and Miscellaneous Amendments | NPRM 06/10 | TBD | TBD |
| 2120–AJ58 | Flight and Duty Time Limitations and Rest Requirements | NPRM 12/09 | TBD | TBD |
| **Total for FAA** | | | **1,600** | **1,000** |
| **FMCSA** | | | | |
| 2126–AA97 | National Registry of Certified Medical Examiners | NPRM 05/10 | 587 | 1,034 |
| 2126–AB02 | Commercial Driver's Licenses and Learner's Permit | FR 04/10 | 65 | 231 |
| 2126–AB11 | Carrier Safety Fitness Determination | NPRM 01/10 | TBD | TBD |
| 2126–AB22 | Drivers of Commercial Motor Vehicles: Limiting the Use of Wireless Communication Devices | NPRM 09/10 | TBD | TBD |
| **Total for FMCSA** | | | **652** | **1,265** |
| **NHTSA** | | | | |
| 2127–AK23 | Ejection Mitigation | NPRM 12/09 | 583 | 1,158 |
| 2127–AK43 | Federal Motor Vehicles Safety Standard No. 111, Rearview Mirrors | NPRM 04/10 | TBD | TBD |
| 2127–AK45 | Tire Fuel Efficiency | FR 12/09 | 51 | 202 |
| 2127–AK50 | CAFE 2012-2016 | FR 04/10 | 60,157 | 201,676 |
| 2127–AK56 | Motorcoach Occupant Crash Protection | NPRM 03/10 | 25.8 | 107.7 |
| **Total for NHTSA** | | | **60,817** | **203,144** |
| **FRA** | | | | |
| 2130–AC03 | Positive Train Control | FR 01/10 | 9,575 | 584 |
| **Total for FRA** | | | **9,575** | **584** |
| **PHMSA** | | | | |
| 2137–AE15 | Pipeline Safety: Distribution Integrity Management | FR 11/09 | 1,484 | 2,691 |
| **Total for PHMSA** | | | **1,484** | **2,691** |

| Agency/RIN Number | Title | Stage | Quantifiable Costs Discounted 2007 $ (Millions) | Quantifiable Benefits Discounted 2007 $ (Millions) |
|---|---|---|---|---|
| **MARAD** | | | | |
| 2133–AB74 | Regulations To Be Followed by All Departments, Agencies and Shippers Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels | NPRM 09/10 | TBD | TBD |
| 2133–AB75 | Cargo Preference — Compromise, Assessment, Mitigation, Settlement & Collection of Civil Penalties | NPRM 03/10 | TBD | TBD |
| **Total for MARAD** | | | **0** | **0** |
| **TOTAL FOR DOT** | | | **74,133.6** | **208,698.1** |

**Notes:**
Estimated values are shown after rounding to the nearest $1 million and represent discounted present values assuming a discount rate of 7 percent.
Costs and benefits of rulemakings may be forecast over varying periods. Although the forecast periods will be the same for any given rulemaking, comparisons between proceedings should be made cautiously.
The Department of Transportation generally assumes that there are economic benefits to avoiding a fatality of $5.8 million. That economic value is included as part of the benefits estimates shown in the chart. As noted above, we have made no effort to include the non-quantifiable benefits.

## DOT—Office of the Secretary (OST)

### PROPOSED RULE STAGE

### 111. ● +ENHANCING AIRLINE PASSENGER PROTECTIONS — PART 2

**Priority:**

Other Significant

**Legal Authority:**

49 USC 41712; 49 USC 40101(a)(4); 49 USC 40101(a)(9); 49 USC 41702

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This rulemaking would enhance airline passenger protections by addressing the following areas: (1) contingency plans for lengthy tarmac delays; (2) reporting of tarmac delay data; (3) customer service plans; (4) notification to passengers of flight status changes; (5) inflation adjustment for denied boarding compensation; (6) alternative transportation for passengers on canceled flights; (7) opt-out provisions (e.g. travel insurance); (8) contract of carriage provisions; (9) baggage fees disclosure; and (10) full fare advertising.

**Statement of Need:**

This rule is needed to improve the air travel environment for passengers.

**Summary of Legal Basis:**

The Department has authority and responsibility under 49 USC 41712 in concert with 49 USC 40101(a)(4) and 40101(a)(9) and 49 USC 41702, to protect consumers from unfair and deceptive practices and to ensure safe and adequate service in air transportation.

**Alternatives:**

The main alternative would be to take no regulatory action.

**Anticipated Cost and Benefits:**

To be determined

**Risks:**

The risk of not taking regulatory action would be a continuation of the dissatisfaction and frustration passengers have with the air travel environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Blane A Workie
Attorney
Department of Transportation
Office of the Secretary
1200 New Jersey Avenue SE
Washington, DC 20590
Phone: 202 366–9342
TDD Phone: 202 755–7687
Fax: 202 366–7152
Email: blane.workie@dot.gov

**RIN:** 2105–AD92

## DOT—OST

### FINAL RULE STAGE

### 112. +ENHANCING AIRLINE PASSENGER PROTECTIONS

**Priority:**

Other Significant

**Legal Authority:**

49 USC 329

**CFR Citation:**

14 CFR 234; 14 CFR 399

**Legal Deadline:**

None

**Abstract:**

This rulemaking would propose to enhance airline passenger protections in the following ways: (1) require carriers to adopt contingency plans for lengthy tarmac delays and to incorporate these plans in their contracts of carriage, (2) require carriers

to respond to consumer problems, (3) declare the operation of flights that remain chronically delayed to be an unfair and deceptive practice and an unfair method of competition, (4) require carriers to publish delay data on their web sites, and (5) require carriers to adopt customer service plans, incorporate these in their contracts of carriage, and audit their adherence to their plans.

**Statement of Need:**

This rule is needed to provide consumers with more information and protections to minimize the adverse consequences of air travel delays and cancellations. The Department's Office of the Inspector General has recommended that the Department take specific action to improve the air travel environment for passengers and Congress has proposed legislation to improve airline passenger protections.

**Summary of Legal Basis:**

The Department has authority and responsibility under 49 USC 41712, in concert with 49 USC 40101(a)(4) and 40101(a)(9) and 49 USC 41702, to protect consumers from unfair and deceptive practices and to ensure safe and adequate service in air transportation.

**Alternatives:**

The main alternative would be to take no regulatory action to address the increasing number of passengers who are dissatisfied with airline service as a result of recent marathon tarmac waits and the epidemic of flight delays, and to rely on the airlines to regulate themselves.

**Anticipated Cost and Benefits:**

The rule is estimated to cost $5.6 million and result in benefits of $14.1 million per year (at a 7 percent discount rate).

**Risks:**

The risk of not taking regulatory action would be a continuation of the dissatisfaction and frustration passengers have with the air travel environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 11/20/07 | 72 FR 65233 |
| ANPRM Comment Period End | 01/22/08 | |
| Clarification Concerning ANPRM | 03/05/08 | 73 FR 11843 |
| NPRM | 12/08/08 | 73 FR 74586 |
| NPRM Comment Period End | 02/06/09 | |
| NPRM Comment Period Extended | 02/06/09 | 74 FR 6249 |
| NPRM Extended Comment Period End | 03/09/09 | |
| Final Rule | 02/00/10 | |

**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

**Agency Contact:**

Blane A Workie
Attorney
Department of Transportation
Office of the Secretary
1200 New Jersey Avenue SE
Washington, DC 20590
Phone: 202 366–9342
TDD Phone: 202 755–7687
Fax: 202 366–7152
Email: blane.workie@dot.gov

**RIN:** 2105–AD72

## DOT—Federal Aviation Administration (FAA)

### PROPOSED RULE STAGE

### 113. +QUALIFICATION, SERVICE, AND USE OF CREWMEMBERS AND AIRCRAFT DISPATCHERS

**Priority:**

Other Significant

**Legal Authority:**

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44912; 49 USC 46105

**CFR Citation:**

14 CFR 119; 14 CFR 121; 14 CFR 135; 14 CFR 142; 14 CFR 65

**Legal Deadline:**

None

**Abstract:**

This rulemaking would amend the regulations for crewmember and dispatcher training programs in domestic, flag, and supplemental operations. The rulemaking would enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers and including additional training requirements in areas that are critical to safety. The rulemaking would also reorganize and revise the qualification and training requirements. The changes are intended to contribute significantly to reducing aviation accidents.

**Statement of Need:**

This rulemaking is part of the FAA?s efforts to reduce fatal accidents in which human error was a major contributing cause. The changes would reduce human error and improve performance among flight crewmembers, flight attendants, and aircraft dispatchers. National Transportation Safety Board (NTSB) investigations identified several areas of inadequate training that were the probable cause of an accident. This rulemaking contains changes to address the causes and factors identified by the NTSB.

**Summary of Legal Basis:**

The FAA?s authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

**Alternatives:**

During the Notice of Proposed Rulemaking (NPRM) phase, the FAA did not find any significant alternatives in accordance with 5 U.S.C. § 603(d). The FAA will again review alternatives at the final rule phase.

**Anticipated Cost and Benefits:**

The FAA will develop the costs and benefits of this rulemaking after reviewing the comments received in response to the NPRM.

**Risks:**

The FAA will review specific risks associated with this rulemaking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/12/09 | 74 FR 1280 |

| Action | Date | FR Cite |
|---|---|---|
| Comment Period End | 05/12/09 | |
| Notice of Public Meeting | 03/12/09 | 74 FR 10689 |
| NPRM Comment Period Extended | 04/20/09 | 74 FR 17910 |
| Extended Comment Period End | 08/10/09 | |
| SNPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

For flight crewmember information contact Edward Cook, for flight attendant information contact Nancy Lauck Claussen, and for aircraft dispatcher information contact David Maloy, Air Carrier Training Branch (AFS-210), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267 8166.

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Edward Cook
Flight Standards Service
Department of Transportation
Federal Aviation Administration
100 Hartsfield Centre Parkway, Suite 400
Atlanta, GA 30354
Phone: 404–832–4700
Email: edward.cook@faa.gov

**RIN:** 2120–AJ00

---

**DOT—FAA**

### 114. ● +AIR AMBULANCE AND COMMERCIAL HELICOPTER OPERATIONS; SAFETY INITIATIVES AND MISCELLANEOUS AMENDMENTS

**Priority:**

Other Significant

**Legal Authority:**

49 USC 106(g); 49 USC 40113; 49 USC 41706; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 45101; 49 USC 45102; 49 USC 45103; 49 USC 45104; 49 USC 45105

**CFR Citation:**

14 CFR 1; 14 CFR 135

**Legal Deadline:**

None

**Abstract:**

This rulemaking would change equipment and operating requirements for commercial helicopter operations, including many specifically for helicopter air ambulance operations. This rulemaking is necessary to increase crew, passenger, and patient safety. The intended effect is to implement the National Transportation Safety Board, Aviation Rulemaking Committee and internal FAA recommendations.

**Statement of Need:**

Since 2002, there has been an increase in fatal helicopter air ambulance accidents. The FAA has undertaken initiatives to address common factors that contribute to helicopter air ambulance accidents including issuing notices, handbook bulletins, operations specifications, and advisory circulars (ACs). This rule would codify many of those initiatives, as well as several NTSB and Part 125/135 Aviation Rulemaking Committee recommendations. In addition, the House of Representatives and the Senate introduced legislation in the 111th Congress and in earlier sessions that would address several of the issues raised in this rulemaking.

**Summary of Legal Basis:**

This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(4), which requires the Administrator to promulgate regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

**Alternatives:**

The FAA is currently reviewing alternatives to rulemaking.

**Anticipated Cost and Benefits:**

The FAA is currently developing costs and benefits.

**Risks:**

Helicopter air ambulance operations have several characteristics that make them unique, including that they are not limited to airport locations for picking up and dropping off patients, but may pick up a person at a roadside accident scene and transport him or her directly to a hospital. Helicopter air ambulance operations are also often time-sensitive. A helicopter air ambulance flight may be crucial to getting a donor organ or critically ill or injured patient to a medical facility as efficiently as possible. Additionally, patients generally are not able to choose the helicopter air ambulance company that provides them with transportation. Despite the fact that there are unique aspects to helicopter air ambulance operations, they remain, at their core, air transportation. Accordingly, the FAA has the responsibility for ensuring the safety of these operations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**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

**Agency Contact:**

Edwin Miller
Department of Transportation
Federal Aviation Administration
800 Independence Ave, SW
Washington, DC 20591
Phone: 202–267–8166
Email: edwin.miller@faa.gov

**RIN:** 2120–AJ53

---

**DOT—FAA**

### 115. ● +FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44705; 49 USC 44709; 49 USC 44710; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 45101; 49 USC 45102; 49 USC 45103; 49 USC 45104; 49 USC 45105; 49 USC 46105

**CFR Citation:**

14 CFR 121; 14 CFR 135

**Legal Deadline:**

None

**Abstract:**

This rule would establish one set of flight time limitations, duty period limits, and rest requirements for pilots. The rule is necessary to ensure that pilots have the opportunity to obtain sufficient rest to perform their duties. The objective of the rule is to contribute to an improved aviation safety system.

**Statement of Need:**

The FAA recognizes that the effects of pilot fatigue are universal, and the profiles of different types of operations are similar enough that the same fatigue mitigations should be applied across all types of operations.

In June 2009, the FAA established the Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee (ARC) whose membership includes labor, industry, and FAA representatives. The ARC will review current approaches to mitigating fatigue and make recommendations to the Associate Administrator for Aviation Safety in September 2009 on how to address this issue in FAA regulations.

The ARC will consider:

— An approach to fatigue that consolidates and replaces existing regulatory requirements;

— Current fatigue science, data, and information;

— How current international standards address fatigue; and

— The use of Fatigue Risk Management Systems.

Based on ARC recommendations, the FAA will propose new regulations using scientific research data, developing methods for data collection and analysis, reviewing fatigue-related accident data, and using relevant NTSB recommendations.

**Summary of Legal Basis:**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

**Alternatives:**

The FAA is currently reviewing alternatives to rulemaking.

**Anticipated Cost and Benefits:**

The proposed rule is designated as ''significant regulatory action'' as designated in section 3(f) of Executive Order 12866. In addition, the proposed rule would have a significant economic impact on a substantial number of small entities. Quantifiable costs and benefits to be determined.

**Risks:**

The FAA will review specific risks associated with this rulemaking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Organizations

**Government Levels Affected:**

None

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Nancy L Claussen
Federal Aviation Administration
Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
Phone: 202 267–8166
Email: nancy.claussen@faa.gov

**RIN:** 2120–AJ58

**DOT—FAA**

## FINAL RULE STAGE

### 116. +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 ; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531; 49 USC 106(g); Articles 12 and 29 of 61 Stat.1180; 49 USC 46507

**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 tasked the FAA with creating the Next Generation Air Transportation System (NextGen) to accommodate the 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. ADS-B is a key component of NextGen that will move air traffic control from a radar-based system to satellite-derived aircraft location data.

**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) for navigating, protecting, and identifying aircraft, and the 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) Radar as it exists today — Radars have different update rates, accuracies, ranges, and functions. ADS-B, however, employs one type of receiving equipment, and it does not have to accommodate for transition between differing surveillance systems.

(2) Multilateration — Multilateration is a non-radar system that has limited deployment in the United States. Multilateration is a process by which an aircraft's position is determined by measuring the time difference between the arrival of the aircraft's signal to multiple receivers on the ground. 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.

The FAA rejected both of these alternatives. The agency has determined that the improved accuracy and update rate afforded by ADS-B provides an opportunity to make the system more efficient. Specifically, enhanced surveillance data via ADS-B will improve the performance of air traffic control (ATC) decision support tools that rely on surveillance data to make predictions. Unlike radar and multilateration, ADS-B provides more detailed flight information (for example, update rate, velocity, and heading) that supports ground based merging and spacing tools. The tools use this information to determine optimal tracks for ATC arrival planning.

**Anticipated Cost and Benefits:**

The FAA is currently developing costs and benefits.

**Risks:**

Congestion continues to build in the nation?s busiest airports and the surrounding airspace. The FAA must be poised to handle future demand that is certain to grow as the Nation's economy improves. In addition, the current method of handling traffic flow will not be able to adapt to future operations as future aviation activity will be more diverse than it is today.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/05/07 | 72 FR 56947 |
| NPRM Comment Period End | 11/19/07 | |
| NPRM Comment Period Extended | 01/03/08 | |
| Comment Period End | 03/03/08 | |
| Reopened for Comments on ARAC Recommendation | 10/02/08 | 73 FR 57270 |
| Comment Period End | 11/03/08 | |
| Final Rule | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**Additional Information:**

Project number ATO-06-552-R.

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Vincent Capezzuto
Terminal Program Operations
Department of Transportation
Federal Aviation Administration
800 Independence Avene, SW
Washington, DC 20591
Phone: 202–385–8637
Email: vincent.capezzuto@faa.gov

**RIN:** 2120–AI92

## DOT—Federal Motor Carrier Safety Administration (FMCSA)

### PROPOSED RULE STAGE

### 117. +CARRIER SAFETY FITNESS DETERMINATION

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Section 4009 of TEA–21

**CFR Citation:**

49 CFR 385

**Legal Deadline:**

None

**Abstract:**

This rulemaking would revise 49 CFR part 385, Safety Fitness Procedures, in accordance with the Agency's major new initiative, Comprehensive Safety Analysis (CSA) 2010. CSA 2010 is a new operational model FMCSA plans to implement that is designed to help the Agency carry out its compliance and enforcement programs more efficiently and effectively. Currently, the safety fitness rating of a motor carrier is determined based on the results of a very labor intensive compliance review conducted at the carrier's place of business. Aside from roadside inspections and new audits, the compliance review is the Agency's primary intervention. Under CSA 2010, FMCSA would propose to implement a broader array of progressive interventions, some of which allow FMCSA to make contact with more carriers. Through this rulemaking FMCSA would establish safety fitness determinations based on safety data consisting of crashes, inspections, and violation history rather than the standard compliance review. This will enable the Agency to assess the safety performance of a greater segment of the motor carrier industry with the goal of further reducing large truck and bus crashes and fatalities.

**Statement of Need:**

Because of the time and expense associated with the on-site compliance review, only a small fraction of carriers (approximately 12,000) receive a safety fitness determination each year. Since the current safety fitness determination

process is based exclusively on the results of an on site compliance review, the great majority of carriers subject to FMCSA jurisdiction do not receive a timely determination of their safety fitness.

The proposed methodology for determining motor carrier safety fitness should correct the deficiencies of the current process. In correcting these deficiencies, FMCSA has made a concerted effort to develop a ''transparent'' method for the SFD that would allow each motor carrier to understand fully how FMCSA established that carrier's specific SFD.

**Summary of Legal Basis:**

This rule is based primarily on the authority of 49 U.S.C. 31144, which directs the Secretary of Transportation to ''determine whether an owner or operator is fit to operate a commercial motor vehicle'' and to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' This statute was first enacted as part of the Motor Carrier Safety Act of 1984, § 215, Pub. L. 98-554, 98 Stat. 2844 (Oct. 30, 1984).

The proposed rule also relies on the provisions of 49 U.S.C. 31133, which gives the Secretary ''broad administrative powers to assist in the implementation'' of the provisions of the Motor Carrier Safety Act now found in chapter 311 of Title 49, U.S.C. These powers include, among others, authority to conduct inspections and investigations, compile statistics, require production of records and property, prescribe recordkeeping and reporting requirements and to perform other acts considered appropriate. These powers are used to obtain the data used by the Safety Management System and by the proposed new methodology for safety fitness determinations.

Under 49 CFR 1.73(g), the Secretary has delegated the authority to carry out the functions in subchapters I, III, and IV of chapter 311, title 49, U.S.C., to the FMCSA Administrator. Sections 31133 and 31144 are part of subchapter III of chapter 311.

**Alternatives:**

The Agency has been considering only two alternatives: the no-action alternative and the proposal.

**Anticipated Cost and Benefits:**

FMCSA has not yet fully assessed the costs and benefits at this time.

**Risks:**

FMCSA has not yet fully assessed the risks that might be associated with this activity.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

David Miller
Regulatory Development Division
Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–5370
Email: fmcsaregs@dot.gov

**RIN:** 2126–AB11

**DOT—FMCSA**

**118. ● +DRIVERS OF COMMERCIAL MOTOR VEHICLES: LIMITING THE USE OF WIRELESS COMMUNICATION DEVICES**

**Priority:**

Other Significant

**Legal Authority:**

49 USC 31136; 49 USC 31502

**CFR Citation:**

49 CFR 367

**Legal Deadline:**

None

**Abstract:**

This rulemaking would ban text messaging and restrict the use of cell phones while operating a commercial motor vehicle. This rulemaking is in response to Federal Motor Carrier Safety Administration-sponsored studies that analyzed safety incidents and distracted drivers. This rulemaking would also address the National Transportation Safety Board's ''Most Wanted List'' of safety recommendations.

**Statement of Need:**

TBD

**Summary of Legal Basis:**

TBD

**Alternatives:**

TBD

**Anticipated Cost and Benefits:**

FMCSA has not fully assessed the costs and benefits that might be associated with this activity.

**Risks:**

FMCSA has not fully assessed the risk that might be associated with this activity.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**URL For More Information:**

regs.dot.gov

**URL For Public Comments:**

regs.dot.gov

**Agency Contact:**

Thomas Yager
Driver and Carrier Operations Division, MC–PSD
Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–4325
Email: tom.yager@dot.gov

**RIN:** 2126–AB22

**DOT—FMCSA**

## FINAL RULE STAGE

**119. +NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS**

**Priority:**

Other Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

PL 109–59 (2005), sec 4116

**CFR Citation:**

49 CFR 390; 49 CFR 391

**Legal Deadline:**

Final, Statutory, August 10, 2006, Final Rule.

**Abstract:**

This rulemaking would establish training, testing and certification standards for medical examiners responsible for certifying that interstate commercial motor vehicle drivers meet established physical qualifications standards; provide a database (or National Registry) of medical examiners that meet the prescribed standards for use by motor carriers, drivers, and Federal and State enforcement personnel in determining whether a medical examiner is qualified to conduct examinations of interstate truck and bus drivers; and require medical examiners to transmit electronically to FMCSA the name of the driver and a numerical identifier for each driver that is examined. The rulemaking would also establish the process by which medical examiners that fail to meet or maintain the minimum standards would be removed from the National Registry. This action is in response to section 4116 of Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users.

**Statement of Need:**

In enacting the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [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 medical examiners as one step toward improving the quality of the commercial motor vehicle (CMV) driver physical examination process and the medical fitness of CMV drivers to operate CMVs. The safety impact will result from ensuring that medical examiners have completed training and testing to demonstrate that they fully understand FMCSA's physical qualifications standards and are capable of applying those standards consistently, thereby decreasing the likelihood that a medically unqualified driver may obtain a medical certificate.

**Summary of Legal Basis:**

The fundamental legal basis for the NRCME program comes from 49 U.S.C. 31149(d), which requires FMCSA to establish and maintain a current national registry of medical examiners that are qualified to perform examinations of CMV drivers and to issue medical certificates. FMCSA is required to remove from the registry any medical examiner who fails to meet or maintain qualifications established by FMCSA. In addition, in developing its regulations, FMCSA must consider both the effect of driver health on the safety of CMV operations and the effect of such operations on driver health, 49 U.S.C. 31136(a).

**Alternatives:**

The rulemaking is statutorily mandated. Thus, the Agency must establish the National Registry.

**Anticipated Cost and Benefits:**

We estimated 10 year costs (discounted at 7 percent) at $586,969,000, total benefits at $1,033,681,000, and net benefits over 10 years at $446,712,000.

**Risks:**

FMCSA has not yet fully assessed the risks that might be associated with this activity.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/01/08 | 73 FR 73129 |
| NPRM Comment Period End | 01/30/09 | |
| Final Rule | 05/00/10 | |

**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

**Agency Contact:**

Dr. Mary D Gunnels
Director, Office of Medical Programs
Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–4001
Email: maggi.gunnels@dot.gov

**RIN:** 2126–AA97

---

**DOT—FMCSA**

## 120. +COMMERCIAL DRIVER'S LICENSE TESTING AND COMMERCIAL LEARNER'S PERMIT STANDARDS

**Priority:**

Other Significant

**Legal Authority:**

PL 109–347, sec 703; 49 USC 31102; PL 105–178, 112 stat 414 (1998); PL 99–570, title XII, 100 Stat.3207 (1086); PL 102–240, sec 4007(a)(1), Stat. 1914, 2151; PL 109–59 (2005), sec 4122; 49 USC 31136

**CFR Citation:**

49 CFR 380; 49 CFR 383; 49 CFR 384; 49 CFR 385

**Legal Deadline:**

Final, Statutory, April 13, 2008, Final Rule.

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 Cost and Benefits:**

We estimate 10 year costs (discounted at 7 percent) at $65,079,000, total benefits at $231,264,000, and net benefits over 10 years at $166,185,000.

**Risks:**

FMCSA has not yet fully assessed the risks that might be associated with this activity.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/09/08 | 73 FR 19282 |
| NPRM Comment Period Extended | 06/09/08 | 73 FR 32520 |
| NPRM Comment Period End | 06/09/08 | |
| Second NPRM Comment Period End | 07/09/08 | |
| Final Rule | 04/00/10 | |

**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

**Agency Contact:**

Robert Redmond
Senior Transportation Specialist
Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–5014
Email: robert.redmond@dot.gov

**Related RIN:** Related to 2126–AB00

**RIN:** 2126–AB02

## DOT—National Highway Traffic Safety Administration (NHTSA)

### PROPOSED RULE STAGE

### 121. +EJECTION MITIGATION

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; delegation of authority at 49 CFR 1.50

**CFR Citation:**

49 CFR 571.226

**Legal Deadline:**

Final, Statutory, October 1, 2009, Final Rule. Extended via Letter to Congress to January 31, 2011.

**Abstract:**

This rulemaking would create a new Federal Motor Vehicle Safety Standard (FMVSS) for reducing occupant ejection. Currently, there are over 52,000 annual ejections in motor vehicle crashes, and over 10,000 ejected fatalities per year. This rulemaking would propose new requirements for reducing occupant ejection through passenger vehicle side widows. The requirement would be an occupant containment requirement on the amount of allowable excursion through passenger vehicle side windows. The SAFETEA-LU legislation requires that: ''[t]he Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.''

**Statement of Need:**

The agency's annualized injury data from 1997 to 2005 show that there are 6,174 fatalities and 5,271 Maximum Abbreviated Injury Scale (MAIS) 3+ non-fatal serious injuries for occupants partially and completely ejected through side windows in vehicles with a gross vehicle weight rating (GVWR) less than 4,536 kg (10,000 lbs.). Sixty-seven percent of the fatalities and 78 percent of the serious injuries are from ejections that involve a rollover as part of the crash event.

**Summary of Legal Basis:**

Section 30111, Title 49 of the USC, states that the Secretary shall prescribe motor vehicle safety standards. Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to issue by October 1, 2009, an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions. The SAFETEA-LU legislation also requires that if the Secretary determines that the subject final rule deadline cannot be met, the Secretary shall notify and provide an explanation of the delay to the Senate Committee on Commerce, Science and Transportation and the House of Representatives Committee on Energy and Commerce. On September 24, 2009, the Secretary provided appropriate notification to Congress that the final rule would be delayed until January 31, 2011.

**Alternatives:**

The agency is not pursuing any alternatives to reduce side window ejections of light vehicle occupants other than establishing FMVSS No. 226.

**Anticipated Cost and Benefits:**

The agency is reducing the population of partial and complete side window ejections through a series of rulemaking actions. These actions included adding a pole impact upgrade to FMVSS No. 214 — Side Impact Protection (72 FR 51908) and promulgating FMVSS No. 126 — Electronic Stability Control Systems (72 FR 17236). We estimate that promulgating FMVSS No. 226 will reduce the remaining population of ejection fatalities and serious injuries by the ranges of 390 to 402 and 296 to 310, respectively. The cost per equivalent fatality at a seven percent discount rate is estimated to be $2.0 million.

**Risks:**

The agency believes there are no substantial risks to this rulemaking, and that only beneficial outcomes will occur as the industry moves to reduce side window ejections of light vehicle occupants.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Louis Molino
Safety Standards Engineer
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–1833
Fax: 202 366–4329
Email: louis.molino@dot.gov

**RIN:** 2127–AK23

---

**DOT—NHTSA**

**122. +FEDERAL MOTOR VEHICLES SAFETY STANDARD NO. 111, REARVIEW MIRRORS**

**Priority:**

Other Significant

**Legal Authority:**

49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; Delegation of authority at 49 CFR 1.50

**CFR Citation:**

49 CFR 571.111

**Legal Deadline:**

Other, Statutory, February 28, 2009, Initiate Rulemaking.

Final, Statutory, February 28, 2011, Publish Final Rule.

**Abstract:**

This rulemaking would amend Federal Motor Vehicle Standard No. 111, Rearview Mirrors, to reflect requirements contained in the Cameron Gulbransen Kids Transportation Safety Act of 2007. The Act requires that NHTSA expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons. According to the Act, such a standard may be met by the provision of additional mirrors, sensors, cameras, or other technology to expand the driver's field of view.

**Statement of Need:**

Vehicles that are backing up have a potential to create a danger to pedestrians and pedicyclists. NHTSA estimates that backover crashes involving light vehicles account for an estimated 228 fatalities and 17,000 injuries annually. In analyzing the data further, we found that many of these incidents occur off public roadways, in areas such as driveways and parking lots and that they involve parents (or caregivers) accidentally backing over children. We have also found that children represent approximately 44 percent of the fatalities, which we believe to be unique to this safety problem.

**Summary of Legal Basis:**

Section 3011, title 49 of the USC, states that the Secretary shall prescribe motor vehicle safety standards.

**Alternatives:**

NHTSA is evaluating additional mirrors, sensors, cameras, and other technology to address this safety problem.

**Anticipated Cost and Benefits:**

Costs: $1.9 to 2.7 billion.

Benefit: Reduction by 95 to 112 fatalities.

**Risks:**

The agency believes there are no substantial risks to this rulemaking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/04/09 | 74 FR 9477 |
| ANPRM Comment Period End | 05/04/09 | |
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

David Hines
General Engineer Office of Crash Avoidance Standards
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–2720
Email: dhines@nhtsa.dot.gov

**RIN:** 2127–AK43

**DOT—NHTSA**

**123. ● +REQUIRE INSTALLATION OF SEAT BELTS ON MOTORCOACHES, FMVSS NO. 208**

**Priority:**

Other Significant

**Legal Authority:**

49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; 49 CFR 1.50

**CFR Citation:**

49 CFR 571.208; 49 CFR 571.3

**Legal Deadline:**

None

**Abstract:**

This rulemaking would require the installation of lap/shoulder belts in newly-manufactured motorcoaches. Specifically, this rulemaking would establish a new definition for motorcoaches in 49 CFR Part 571.3. It would also amend Federal Motor Vehicle Safety Standard No. 208, ''Occupant crash protection,'' to require the installation of lap/shoulder belts at all driver and passenger seating positions. It would also require the installation of lap/shoulder belts at driver seating positions of large school buses in FMVSS No. 208. This rulemaking responds, in part, to recommendations made by the National Transportation Safety Board for improving bus safety.

**Statement of Need:**

Over the ten-year period between 1999 and 2008, there were 54 fatal motorcoach crashes resulting in 186 fatalities. During this period, on average, 16 fatalities have occurred annually to occupants of motorcoaches in crash and rollover events, with about 2 of these fatalities being drivers and 14 being passengers. However, while motorcoach transportation overall is safe, when serious crashes of this vehicle type do occur, they can cause a significant number of fatal or serious injuries during a single event, particularly when occupants are ejected.

**Summary of Legal Basis:**

Section 30111, Title 49 of the USC, states that the Secretary shall prescribe motor vehicle safety standards.

**Alternatives:**

In addition to the proposed installation of seat belts in all passenger seating positions on motorcoaches, the agency is also pursuing improvements to motorcoach roof strength, fire safety, and emergency egress to improve occupant protection. Our detailed plan for improving motorcoach passenger protection can be found in NHTSA's Approach to Motorcoach Safety 2007 (Docket No. NHTSA-2007-28793).

**Anticipated Cost and Benefits:**

TBD

**Risks:**

The agency believes there are no substantial risks to this rulemaking, and that only beneficial outcomes will occur as the industry moves to reduce injuries of motorcoach occupants.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

David Sutula
Safety Standards Engineer
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–3273
Fax: 202 366–4329
Email: david.sutula@dot.gov

**RIN:** 2127–AK56

**DOT—NHTSA**

## FINAL RULE STAGE

**124. ● +TIRE FUEL EFFICIENCY CONSUMER INFORMATION**

**Priority:**

Other Significant

**Legal Authority:**

49 USC 32304

**CFR Citation:**

49 CFR 575.105

**Legal Deadline:**

Final, Statutory, December 18, 2009, Publish Final Rule.

**Abstract:**

This rulemaking would establish a new program that would make information about the relative rolling resistance of tires available to purchasers of replacement tires and educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability. The agency is required by the Energy Independence and Security Act of 2007 to establish a national tire fuel efficiency consumer information program for replacement tires designed for use on motor vehicles. Vehicle manufacturers often use low rolling resistance tires on new vehicles to help meet CAFE goals. This rulemaking is significant because it has a statutory mandate and it relates to fuel efficiency.

**Statement of Need:**

The agency is required by the Energy Independence and Security Act of 2007 to establish a national tire fuel efficiency consumer information program for replacement tires designed for use on motor vehicles that would make information about the relative rolling resistance of tires available to purchasers of replacement tires and educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability. Vehicle manufacturers often use low rolling resistance tires on new vehicles to help meet CAFE goals.

**Summary of Legal Basis:**

The Energy Independence and Security Act of 2007 (EISA; Pub. L. 110-140, 121 Stat. 1492 (December 18, 2007) requires NHTSA to develop a national tire fuel efficiency consumer information program to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability.

**Alternatives:**

The agency is not pursuing any alternatives.

**Anticipated Cost and Benefits:**

The annual cost of NHTSA's proposal is estimated to be between $18.9 and $52.8 million. This includes testing costs of $22,500, reporting costs of around $113,000, labeling costs of

around $9 million, costs to the Federal government of $1.28 million, and costs of between $8.4 and $42 million to improve tires. In addition, NHTSA anticipates one-time costs of around $4 million, including initial testing costs of $3.7 million and reporting start-up costs of $280,000.

It is hoped that the proposed rule will have benefits in terms of fuel economy, safety and durability. Because the agency cannot foresee precisely how much the consumer information program will affect consumer tire purchasing behavior, driving the market for improved tires, NHTSA made estimates based on hypothetical assumptions that 2% and 10% of tires would improve. Under these assumptions, the rule would save 7.9-78 million gallons of fuel annually. The values of the fuel savings are between $22 and $220 million at a 3 percent discount rate and between $20 and $203 million at a 7 percent discount rate.

**Risks:**

The agency believes there are no substantial risks to this rulemaking, and that only beneficial outcomes will occur as it will drive the market for more fuel efficient tires.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/22/09 | 74 FR 29541 |
| NPRM Comment Period End | 08/21/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Mary Versailles
Office of Planning and Consumer Standards
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202–366–2057
Email: mary.versailles@dot.gov

**RIN:** 2127–AK45

---

**DOT—NHTSA**

## 125. ● +PASSENGER CAR AND LIGHT TRUCK CORPORATE AVERAGE FUEL ECONOMY STANDARDS MYS 2012–2016

**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 32902; delegation of authority at 49 CFR 1.50

**CFR Citation:**

49 CFR 533

**Legal Deadline:**

Final, Statutory, April 1, 2010, Final rule for Model Year 2012.

**Abstract:**

This joint NHTSA/EPA rulemaking would establish a National Program consisting of new standards for light-duty vehicles that will reduce greenhouse gas emissions and improve fuel economy. This rulemaking would be consistent with the National Fuel Efficiency Policy announced by President Obama on May 19, 2009, responding to the country's critical need to address global climate change and to reduce oil consumption. EPA is proposing greenhouse gas emissions standards under the Clean Air Act, and NHTSA is proposing Corporate Average Fuel Economy standards under the Energy Policy and Conservation Act, as amended. These standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles, covering model years 2012 through 2016. They require these vehicles to meet an estimated combined average emissions level of 250 grams of CO2 per mile in MY 2016 under EPA's GHG program, and 34.1 mpg in MY 2016 under NHTSA's CAFE program and represent a harmonized and consistent national program (National Program). Under the National Program, the overall light-duty vehicle fleet would reach 35.5 mpg in MY 2016, if all reductions were made through fuel economy improvements. The Program would result in approximately 950 million metric tons of CO2 emission reductions and approximately 1.8 billion barrels of oil savings over the lifetime of vehicles sold in model years 2012 through 2016.

This rulemaking action was inadvertently published under RIN 2127-AK90.

**Statement of Need:**

NHTSA is required by statute to establish the CAFE standard for a model year not later than 18 months before its beginning, and thus must publish the final rule for model year 2012 on or before April 1, 2010.

**Summary of Legal Basis:**

Section 32910(d) of Title 49 of the United States Code provides that the Administrator may prescribe regulations necessary to carry out his duties under Chapter 329, Automobile fuel economy.

**Alternatives:**

The agency is not pursuing any alternatives.

**Anticipated Cost and Benefits:**

The costs and benefits of the potential changes 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 most recent NHTSA analysis (2003) indicated that the association between vehicle weight and overall crash fatality rates in heavier MY 1991-99 light trucks and vans was not significant. However, for three other groups of MY 1991-99 vehicles - the lighter LTVs (light trucks and vans), the heavier cars, and especially the lighter cars - fatality rates increased as weights decreased.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/28/09 | 74 FR 49454 |
| Notice of Public Hearing | 10/06/09 | 74 FR 51252 |
| NPRM Comment Period End | 11/27/09 | |
| Final Rule | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Energy Effects:**

Statement of Energy Effects planned as required by Executive Order 13211.

**International Impacts:**

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

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Julie Abraham
Director
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Ave, SE
Washington, DC 20590
Phone: 202–366–1455
Email: julie.abraham@dot.gov

**Related RIN:** Related to 2060–AP58

**RIN:** 2127–AK50

## DOT—Federal Railroad Administration (FRA)

### FINAL RULE STAGE

### 126. ● +POSITIVE TRAIN CONTROL

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 110–432, Section 104 (Codified at 49 USC 20157); Rail Safety Improvement Act of 2008

**CFR Citation:**

49 CFR 236

**Legal Deadline:**

None

**Abstract:**

This rulemaking would regulate the submission of Positive Train Control plans; the implementation of the Positive Train Control Systems; and the qualification, installation, maintenance and use of the these systems required under 49 USC 20157 or specifically required by the Federal Railroad Administration.

**Statement of Need:**

Required by the Railroad Safety Improvement Act of 2008, Pub. L. 110-423.

**Summary of Legal Basis:**

Required by the Railroad Safety Improvement Act of 2008, Pub. L. 110-423.

**Alternatives:**

The Railroad Safety Improvement Act of 2008 does not permit FRA to exercise discretion in requiring the installation of PTC systems on railroads operating on the affected network.

**Anticipated Cost and Benefits:**

The Railroad Safety Improvement Act of 2008 does not permit FRA to exercise discretion in requiring the installation of PTC systems on railroads operating on the affected network. All costs and benefits that follow are 20 year costs and benefits, discounted at 7% per year. FRA estimates that it will cost between $3 billion and $7 billion to install PTC on passenger railroads, and between $10 billion and $20 billion to install PTC on Class 1 freight railroads. FRA estimates that the benefit of reduced accidents on railroads will be about $800 million, however the net impact on safety could be adverse if shippers and passengers divert to highway transportation.

**Risks:**

The advantages of PTC technology will significantly improve the safety and performance of train operations, significantly reducing the risk of train accidents. Under the statute, required PTC systems will be designed to prevent train-to-train collisions, overspeed derailments, and incursions into roadway worker work limits.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/21/09 | 74 FR 35950 |
| NPRM Comment Period End | 08/20/09 | |
| Final Rule | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Federalism:**

Undetermined

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Kathryn Shelton
Trial Attorney
Department of Transportation
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 493–6063
Email: kathryn.shelton@fra.dot.gov

**RIN:** 2130–AC03

## DOT—Pipeline and Hazardous Materials Safety Administration (PHMSA)

### FINAL RULE STAGE

### 127. +PIPELINE SAFETY: DISTRIBUTION INTEGRITY MANAGEMENT

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

49 USC 5103; 49 USC 60104; 49 USC 60102; 49 USC 60108 to 60110; 49 USC 60113; 49 USC 60118; 49 CFR 1.53

**CFR Citation:**

49 CFR 192

**Legal Deadline:**

None

**Abstract:**

This rulemaking would establish integrity management program requirements appropriate for gas distribution pipeline operators. This rulemaking would require gas distribution pipeline operators to develop and implement programs to better assure the integrity of their pipeline systems.

**Statement of Need:**

This rule is necessary to comply with a Congressional mandate and to enhance safety by managing and reducing risks associated with gas distribution pipeline systems.

**Summary of Legal Basis:**

The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006

(Public Law No. 109-468), requires PHMSA to prescribe minimum standards for integrity management programs for gas distribution pipelines.

**Alternatives:**

PHMSA considered the following alternatives:

—No Action: No new requirements would be levied.

—Apply existing gas transmission pipeline IMP regulations to gas distribution pipelines.

—Model State legislation by imposing requirements on excavators and others outside the regulatory jurisdiction of pipeline safety authorities.

—Develop guidance documents for adoption by states with the intent of states mandating use of the guidance.

—Implement prescriptive Federal regulations, specifying in detail, actions that must be taken to assure distribution pipeline integrity.

—Implement risk-based, flexible, performance-oriented federal regulations, establishing high-level elements that must be included in integrity management programs—the alternative selected.

**Anticipated Cost and Benefits:**

The monetized benefits resulting from the rulemaking are estimated to be $214 million per year. The costs of the rulemaking are estimated to be $155.1 million in the first year and $104.1 million in each subsequent year.

**Risks:**

These regulations will require operators to analyze their pipelines, including unique situations, identify the factors that affect risk — both risk to the pipeline and the risks posed by the pipeline — and manage those factors.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/25/08 | 73 FR 36015 |
| Extended NPRM Comment Period End 10/23/08 | 09/12/08 | 73 FR 52938 |
| NPRM Comment Period End | 09/23/08 | |
| Final Rule | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

Docket Nos. PHMSA-04-18938 and PHMSA-04-19854.

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Mike Israni
General Engineer
Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–4571
Email: mike.israni@rpsa.dot.gov

**RIN:** 2137–AE15

## DOT—Maritime Administration (MARAD)

### PROPOSED RULE STAGE

### 128. +REGULATIONS TO BE FOLLOWED BY ALL DEPARTMENTS, AGENCIES, AND SHIPPERS HAVING RESPONSIBILITY TO PROVIDE A PREFERENCE FOR U.S.–FLAG VESSELS IN THE SHIPMENT OF CARGOES ON OCEAN VESSELS

**Priority:**

Other Significant

**Legal Authority:**

49 CFR 1.66; 46 App USC 1101; 46 App USC 1241; 46 USC 2302 (e)(1); PL 91–469

**CFR Citation:**

46 CFR 381

**Legal Deadline:**

None

**Abstract:**

This rulemaking would revise and clarify the Cargo Preference rules that have not been revised substantially since 1971. Revisions would include an updated purpose and definitions section along with the removal of obsolete provisions.

**Statement of Need:**

On September 4, 2009, the USDA, MARAD, and USAID entered into a MOU regarding the proper implementation of the Cargo Preference Act. The MOU establishes procedures and standards by which owners and operators of oceangoing cargo ships may seek to designate each of their vessels as either a dry bulk carrier or a dry cargo liner, according to specified service-based criteria. With the help of OMB, these agencies are in the process of negotiating updates to the comprehensive cargo preference rule, which has not been significantly changed since 1971.

**Summary of Legal Basis:**

The Cargo Preference Act requires that Federal agencies take necessary and practicable steps to ensure that privately-owned US flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under Federal programs to the extent such vessels are available at fair and reasonable rates for commercial vessels of the US, in a manner that will ensure a fair and reasonable participation of commercial vessels of the US in those cargoes by geographic areas. 46 USC 55305(b). An additional 25 percent of gross tonnage of certain food assistance programs is to be transported in accordance with the requirements of 46 USC 55314.

**Alternatives:**

TBD

**Anticipated Cost and Benefits:**

TBD

**Risks:**

TBD

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**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

**Agency Contact:**

Christine Gurland
Department of Transportation
Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–5157
Email: christine.gurland@dot.gov

**Related RIN:** Related to 2133–AB37

**RIN:** 2133–AB74

---

**DOT—MARAD**

**129. +CARGO PREFERENCE — COMPROMISE, ASSESSMENT, MITIGATION, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES**

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

PL 110–417

**CFR Citation:**

46 CFR 383

**Legal Deadline:**

None

**Abstract:**

This rulemaking would establish part 383 of the cargo preference regulations. This rulemaking would cover P.L. 110-417, section 3511, National Defense Authorization Act for FY2009 statutory changes to the cargo preference rules, which have not been substantially revised since 1971. The rulemaking also would include compromise, assessment, mitigation, settlement, and collection of civil penalties.

**Statement of Need:**

On September 4, 2009, the USDA, MARAD, and USAID entered into a MOU regarding the proper implementation of the Cargo Preference Act. The MOU establishes procedures and standards by which owners and operators of oceangoing cargo ships may seek to designate each of their vessels as either a dry bulk carrier or a dry cargo liner, according to specified service-based criteria. With the help of OMB, these agencies are negotiating updates to the comprehensive Cargo Preference rule, which has not been significantly changed since 1971. The statutory changes will be the subject of either a separate rulemaking or as part of the comprehensive rulemaking.

**Summary of Legal Basis:**

The Cargo Preference Act requires that Federal agencies take necessary and practicable steps to ensure that privately-owned US flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under Federal programs to the extent such vessels are available at fair and reasonable rates for commercial vessels of the US, in a manner that will ensure a fair and reasonable participation of commercial vessels of the US in those cargoes by geographic areas. 46 USC 55305(b). An additional 25 percent of gross tonnage of certain food assistance programs is to be transported in accordance with the requirements of 46 USC 55314. P.L 110-417 gave MARAD the authority for assessing civil penalties and make-up cargoes for non-compliance with the cargo preference laws.

**Alternatives:**

TBD

**Anticipated Cost and Benefits:**

TBD

**Risks:**

TBD

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Undetermined

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Christine Gurland
Department of Transportation
Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202 366–5157
Email: christine.gurland@dot.gov

**Related RIN:** Related to 2133–AB74

**RIN:** 2133–AB75

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 requirements to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

In response to the events of September 11, 2001, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Since then, the Department has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN).

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866, and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

**Emergency Economic Stabilization Act**

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 (EESA) (Pub. L. 110-334). Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a Troubled Asset Relief Program (TARP) to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.''

EESA provides authority to issue regulations and guidance to implement the program. Regulations and guidance required by EESA include conflicts of interest, executive compensation, and tax guidance. The Secretary is also charged with establishing a program that will guarantee principal of, and interest on, troubled assets originated or issued prior to March 14, 2008.

The Department has issued guidance and regulations and will continue to provide program information through the next year. Regulatory actions taken to date include the following:

- *Executive compensation.* In October 2008, the Department issued an interim final rule that set forth executive compensation guidelines for the TARP Capital Purchase Program (73 FR 62205). Related tax guidance on executive compensation was announced in IRS Notice 2008-94. In addition, among other EESA tax guidance, the IRS issued interim guidance regarding loss corporation and ownership changes in Notice 2008-100, providing that any shares of stock owned by the Department of the Treasury under the Capital Purchase Program will not be considered to cause Treasury's ownership in such corporation to increase. On June 15, 2009, the Department issued a revised interim final rule that sets forth executive compensation guidelines for all TARP program participants (74 FR 28394), implementing amendments to the executive compensation provisions of EESA made by the American Recovery and Reinvestment Act of 2009 (Pub. L.111-5). Public comments on the revised interim final rule regarding executive compensation were due by August 14, 2009 and will be considered as part of the process of issuing a final rule on this subject.
- *Insurance program for trouble assets.* On October 14, 2008, the Department released a request for public input on an insurance program for troubled assets.
- *Conflicts of interest.* On January 21, 2009, the Department issued an interim final rule providing guidance on conflicts of interest pursuant to section 108 of EESA (74 FR 3431). Comments on the interim final rule, which were due by March 23, 2009, will be considered as part of the process of issuing a final rule.

During Fiscal Year 2010, the Department will continue implementing the EESA authorities to restore capital flows to the consumers and businesses that form the core of the nation's economy.

**Terrorism Risk Insurance Program Office**

The Terrorism Risk Insurance Act of 2002 (TRIA) was signed into law on November 26, 2002. The law, which was enacted as a consequence of the events of September 11, 2001, established a temporary Federal reinsurance program under which the Federal Government shares the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers. The Act, originally scheduled to expire on December 31, 2005, was extended to December 31, 2007 by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). The Act has since been extended to December 31, 2014, by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA).

The Office of the Assistant Secretary for Financial Institutions is responsible for developing and promulgating regulations implementing TRIA, as extended and amended by TRIEA and TRIPRA. The Terrorism Risk Insurance Program Office, which is part of the Office of the Assistant Secretary for Financial Institutions, is responsible for operational implementation of TRIA. The purposes of this legislation are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Over the past year, the Office of the Assistant Secretary has issued proposed rules implementing changes authorized by TRIA as revised by TRIPRA. The following regulations should be published by December 31, 2009:

- *Recoupment of Federal Share of Compensation for Insured Losses.* This final rule would implement and establish requirements for determining amounts to be recouped and for procedures insurers are to use for collecting terrorism policy surcharges and remitting them to the Treasury.
- *Cap on Annual Liability and Pro Rata Share of Insured Losses.* This final rule would establish, for purposes of the $100 billion cap on annual liability, how Treasury will determine whether aggregate insured losses will exceed $100 billion and, if so, how Treasury will determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

During 2010, Treasury will continue the ongoing work of implementing TRIA and carrying out revised operations as a result of the TRIPRA related regulation changes.

**Customs Revenue Functions**

On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the United States Customs Service from the Department of the Treasury to the DHS, where it is was known as the Bureau of Customs and Border Protection (CBP). Effective March 31, 2007, DHS changed the name of the Bureau of Customs and Border Protection to U.S. Customs and Border Protection (CBP) pursuant to section 872(a)(2) of the Act (6 USC 452(a)(2)) in a Federal Register notice (72 FR 20131) published on April 23, 2007. Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs and the establishment of recordkeeping requirements relating thereto.

During the past fiscal year, among the Treasury-retained CBP customs-revenue function regulations issued was an interim rule to amend the regulatory provisions relating to the requirement under the United States-Bahrain FTA (BFTA) that a good must be ''imported directly'' from Bahrain to the United States or from the United States to Bahrain to qualify for preferential tariff treatment. The change removed the condition that a good passing through the territory of an intermediate country must remain under the control of the customs authority of the intermediate country. CBP plans to finalize this rulemaking in the upcoming fiscal year.

In addition, during the past fiscal year, CBP amended the regulations on an interim basis to implement certain provisions of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286) (the ''JADE Act'') and Presidential Proclamation 8294 of September 26, 2008, which includes new Additional U.S. Note 4 to Chapter 71 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The interim amendments prohibit the importation of Burmese-covered articles of jadeite, rubies and articles of jewelry containing jadeite or rubies, and sets forth restrictions for the importation of non-Burmese covered articles of jadeite, rubies and articles of jewelry containing jadeite or rubies.

As a result of last year's ''Farm Bill'' legislation, CBP implemented interim regulations on the Softwood Lumber Act of 2008, which prescribed special entry requirements as well as an importer declaration program applicable to certain softwood lumber (SWL) and SWL products exported from any country into the United States; CBP plans to finalize the interim rule in the upcoming fiscal year.

During fiscal year 2010, CBP and Treasury plan to give priority to the following regulatory matters involving the customs revenue functions not delegated to DHS:

- *Trade Act of 2002's preferential trade benefit provisions.* Treasury and CBP plan to finalize several interim regulations that implement the trade benefit provisions of the Trade Act of 2002 including the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act.
- *Free Trade Agreements.* Treasury and CBP also plan to finalize interim regulations this fiscal year to implement the preferential tariff treatment provisions of the United States-Singapore Free Trade Agreement Implementation Act and the Dominican Republic-Central America-United States Free Trade Agreement (also known as ''CAFTA-DR'') Implementation Act. Treasury and CBP expect to issue interim regulations implementing the United States-Australia Free Trade Agreement Implementation Act, the United States-Oman Free Trade Agreement Implementation Act, and the United States-Peru Free Trade Agreement Implementation Act.
- *Country of Origin of Textile and Apparel Products.* Treasury and CBP also plan to publish a final rule adopting an interim rule that was published on the Country of Origin of Textile and Apparel Products, which implemented the changes brought about, in part, by the expiration of the Agreement on Textile and Clothing and the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organizations (WTO) members.
- *North American Free Trade Agreement country of origin rules.* Treasury and CBP are determining how to proceed regarding a proposal which was published in July 2008 seeking public comment regarding uniform rules governing the determination of the country of origin of imported merchandise. The proposal attracted considerable interest from the trading community. If finalized, the proposed amendments would extend the application of the North American Free Trade Agreement country of origin rules to all trade.
- *Customs Modernization provisions of the North American Free Trade Implementation Act (Customs Mod Act).* Treasury and CBP also plan to continue moving forward with amendments to improve its regulatory procedures began under the authority granted by the Customs Mod Act. These efforts, in accordance with the principles of Executive Order 12866,

have involved and will continue to involve significant input from the importing public. CBP will also continue to test new programs to see if they work before proceeding with proposed rulemaking to establish permanently the programs. Consistent with this practice, we expect to finalize a proposal to establish permanently the *remote location filing* program, which has been a test program under the Customs Mod Act. This rule would allow remote location filing of electronic entries of merchandise from a location other than where the merchandise will arrive. In addition, Treasury and CBP plan to finalize a proposal which was published in August 2008 regarding the *electronic payment and refund of quarterly harbor maintenance fees*. The rule would provide the trade with expanded electronic payment/refund options for quarterly harbor maintenance fees and would modernize and enhance CBP's port use fee collection efforts.

**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 addition the Fund administers the Financial Education and Counseling Pilot Program (FEC) and the Capital Magnet Fund (CMF).

In fiscal year (FY) 2010, subject to funding availability, the Fund will provide awards through the following programs:

- *Native American CDFI Assistance (NACA) Program.* Through the NACA Program, 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.
- *Bank Enterprise Award (BEA) Program.* Through 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.
- *New Markets Tax Credit (NMTC) Program.* 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 Education and Counseling (FEC) Pilot Program.* Through the FEC Pilot Program, the CDFI Fund will provide grants to eligible organizations to provide a range of financial education and counseling services to prospective homebuyers. The Fund will administer the FEC Program in coordination with the Office of Financial Education.
- *Capital Magnet Fund (CMF).* Through the Capital Magnet Fund, the CDFI Fund will provide competitively awarded grants to CDFIs and qualified nonprofit housing organizations to finance affordable housing and related community development projects. In FY 2010, the Fund expects to draft and publish regulations to govern the application process, award selection, and compliance components of the CMF.

**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 2009, FinCEN issued, or plans to issue, the following regulatory actions:

- *Currency Transaction Reporting Exemptions.* FinCEN published a Final Rule that simplifies the existing currency transaction reporting (CTR) exemption regulatory requirements. The amendments were recommended by the Government Accountability Office in GAO-08-355. By simplifying the regulatory requirements regarding CTR exemptions, FinCEN believes that more depository institutions will avail themselves of the exemptions. The rule was finalized with an effective date of January 5, 2009.
- *Administrative Rulings.* Prior to the end of the fiscal year, FinCEN will issue a final technical rule change to update the Bank Secrecy Act provisions to reflect that Administrative Rulings are published on the FinCEN Web site, rather than in the Federal Register.
- *Reorganization of BSA Rules.* On October 23, 2008, FinCEN issued a Notice of Proposed Rulemaking to re-designate and reorganize the BSA regulations in a new chapter within the Code of Federal Regulations. The re-designation and reorganization of the regulations in a new chapter is not

intended to alter regulatory requirements. The regulations will be organized in a more consistent and intuitive structure that more easily allows financial institutions to identify their specific regulatory requirements under the BSA. The new chapter will replace 31 CFR Part 103.

- *Money Services Businesses.* On May 12, 2009, FinCEN issued a Notice of Proposed Rulemaking addressing definitional thresholds for Money Services Businesses (MSBs), incorporating previously issued Administrative Rules and guidance with regard to MSBs, and addressing the issue of foreign-located MSBs.
- *Confidentiality of Suspicious Activity Reports.* On March 3, 2009, FinCEN issued a Notice of Proposed Rulemaking clarifying the non-disclosure provisions with respect to the existing regulations pertaining to the confidentiality of suspicious activity reports (SARs). In conjunction with this notice, FinCEN issued for comment two guidance documents, SAR Sharing with Affiliates for depository institutions and SAR Sharing with Affiliates for securities and futures industry entities, to solicit comment permitting certain financial institutions to share SARs with their U.S. affiliates that are also subject to SAR reporting requirements.
- *Mutual Funds.* On June 5, 2009, FinCEN issued a Notice of Proposed Rulemaking addressing the definition of financial institution in the BSA's implementing regulations to include open-end investment companies (mutual funds). Despite the fact that mutual funds are already required to comply with anti-money laundering and customer identification program requirements, file SARs, comply with due diligence obligations pursuant to rules implementing section 312 of the USA PATRIOT Act, and perform other BSA compliance functions, a mutual fund is not designated as a 'financial institution' under the BSA implementing regulations. The proposed rule would address obligations to file Currency Transaction Reports for cash transactions over $10,000 in lieu of current obligations to file Form 8300s.
- *Non-Bank Residential Mortgage Lenders and Originators.* On July 21, 2009, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report regulations to a specific sub-set of loan and finance companies, i.e., non-bank residential mortgage lenders and originators
- *Expansion of Special Information Sharing Procedures (pursuant to section 314(a) of the BSA).* Prior to the end of the fiscal year, FinCEN will issue a Notice of Proposed Rulemaking to amend the BSA regulations to allow certain foreign law enforcement agencies, State and local law enforcement agencies, and FinCEN itself to submit requests for information to financial institutions.
- *Withdrawal of Proposed Rules.* On October 30, 2008, FinCEN withdrew the proposed rules (issued in 2002 and 2003) for investment advisers, commodity trading advisors, and unregistered investment companies. The proposed rules were withdrawn to eliminate uncertainty associated with the existence of out-of-date proposed rules, and to allow FinCEN to issue new notices of proposed rulemaking at a later date that take into account industry regulatory developments with respect to investment advisers, commodity trading advisors, and unregistered investment companies since 2003.
- *Renewal of Existing Rules.* FinCEN renewed without change the information collections associated with the existing regulations requiring money services businesses, mutual funds, operators of credit card systems, dealers in precious metals, precious stones, or jewels, and certain insurance companies to develop and implement written anti-money laundering programs. Also, FinCEN renewed without change the information collections associated with the existing regulations requiring futures commission merchants, introducing brokers in commodities, banks, savings associations, credit unions, certain non-federally regulated banks, mutual funds, and securities broker-dealers to develop and implement customer identification programs.
- *Administrative Rulings and Written Guidance.* FinCEN issued 10 Administrative Rulings and written guidance pieces (as of August 2009) interpreting the BSA and providing clarity to regulated industries.

FinCEN's regulatory priorities for fiscal year 2010 include finalizing the proposed initiatives mentioned above, as well as the following projects:

- *Anti-Money Laundering Programs.* Pursuant to section 352 of the USA PATRIOT Act, certain financial institutions are required to establish AML programs. Continued from fiscal year 2009, FinCEN will propose a rulemaking to require state-chartered credit unions and other depository institutions without a federal functional regulator to implement AML programs. With the added information from the ANPRM regarding non-bank residential mortgage lenders or originators, FinCEN will research and analyze issues regarding potential regulation of the loan and finance industry, and may issue proposed rulemaking with regard to non-bank residential mortgage lenders and originators. Finally, FinCEN also will continue to consider regulatory options regarding certain corporate and trust service providers.
- *Regulatory Framework for Stored Value.* The Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) of 2009 (Section 503) requires FinCEN to issue a final rule ''regarding issuance, sale, redemption, or international transport of stored value'' by mid-February 2010. This act has imposed a timetable to activities that were already underway. Just prior to the enactment of the CARD Act, FinCEN issued a Notice of Proposed Rulemaking clarifying the applicability of BSA regulations with respect to MSB activities. As part of this Notice of Proposed Rulemaking, FinCEN solicited comment on the treatment of stored value as money transmission under FinCEN's regulations. In the accelerated rulemaking environment resulting from the CARD Act, FinCEN is consulting with law enforcement and other regulators with the intent to issue a Notice of Proposed Rulemaking and then a Final Rule to meet the established deadline. *FBAR Requirements.* FinCEN will work with the IRS and other pertinent offices within the Department of the Treasury to issue a Notice of Proposed Rulemaking with regard to revising the regulations governing the filing of Reports of Foreign Bank and Financial Accounts (FBARs). Among other things, FinCEN and the IRS will seek comments regarding when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account, and when an interest in a foreign entity

(e.g., a corporation, partnership, trust or estate) should be subject to FBAR reporting.

*Other Requirements.* FinCEN will continue to consider 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 IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2010, the IRS will accord priority to the following regulatory projects:

- *Deduction and Capitalization of Costs for Tangible Assets.* Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Under section 263(a) of the Code, no immediate deduction is allowed for amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Those expenditures are capital expenditures that generally may be recovered only in future taxable years, as the property is used in the taxpayer's trade or business. It often is not clear whether an amount paid to acquire, produce, or improve property is a deductible expense or a capital expenditure. Although existing regulations provide that a deductible repair expense is an expenditure that does not materially add to the value of the property or appreciably prolong its life, the IRS and Treasury believe that additional clarification is needed to reduce uncertainty and controversy in this area. In August 2006, the IRS and Treasury issued proposed regulations in this area and received numerous comments. In March 2008, the IRS and Treasury withdrew the 2006 proposed regulations and issued new proposed regulations, which have generated relatively few comments. The IRS and Treasury intend to finalize those regulations.
- *Arbitrage Investment Restrictions on Tax-Exempt Bonds.* The arbitrage investment restrictions on tax-exempt bonds under section 148 generally limit issuers from investing bond proceeds higher-yielding investments. Treasury and the IRS plan to issue proposed regulations to address selected current issues involving the arbitrage restrictions, including clarification of the issue price definition used in the computation of bond yield, clarification and simplification of the rules regarding modifications and terminations of qualified hedging transactions, guidance on the treatment of working capital financing, and selected other issues.
- *Tax Credit Bonds.* Tax credit bonds are bonds in which the holder receives a federal tax credit in lieu of some or all of the interest on the bond. The American Recovery and Reinvestment Act of 2009 created a number of new types of tax credit bonds and modified the law as it concerned several existing types of tax credit bonds. The IRS and Treasury intend to provide guidance on numerous legal issues concerning tax credit bonds and to develop clear guidelines for the IRS Tax Exempt Bond enforcement program.
- *Build America Bonds.* Treasury and the IRS plan to issue proposed regulations to provide guidance on interpretative issues that have arisen in implementing the broad new Build America Bond program in section 54AA under the American Recovery and Reinvestment Act of 2009.
- *Private Activity Bonds.* Treasury and the IRS to issue final regulations on allocation and accounting rules for application of the private business restrictions on tax-exempt governmental bonds under section 141. These regulations will include guidance on public-private partnerships and mixed use arrangements in which projects are used in part by State and local governments and in part by private businesses. These regulations will finalize 2006 proposed regulations with modifications in consideration of the public comments.
- *Guidance on the Tax Treatment of Distressed Debt.* Recent events in the financial markets have highlighted a number of unresolved tax issues relating to the amount, character, and timing of income, expense, gain, or loss on distressed debt. In addition, the tax treatment of distressed debt, including distressed debt that has been modified, may affect the qualification of certain entities for tax purposes or result in additional taxes on the investors in such entities, such as regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits. During fiscal year 2009, Congress, Treasury, and the IRS have addressed some of these issues through statutory changes and published guidance. Treasury and the IRS plan to address more of these issues in published guidance.
- *Classification of Series LLCs and Cell Companies.* Series LLCs were first introduced in Delaware in 1996, and since then, series LLC statutes have been adopted in several other states. These statutes typically permit the entity to segregate assets and liabilities and to associate certain members with specified assets and liabilities. In the insurance and foreign arena, similar entities are sometimes referred to as cell companies. In Notice 2008-19, the IRS requested comments on when a cell of a protected cell company should be treated as a separate insurance company for federal income tax purposes. The IRS also requested comments on similar segregated arrangements, such as series LLCs that do not involve insurance. It is likely that, over time, the use of series LLCs and cell companies will increase. Accordingly, it is important to provide timely guidance to clarify the classification and other tax treatment of this new form of organization. Guidance has been requested on the federal tax classification of these domestic and foreign entities. The IRS

and Treasury intend to issue guidance that will address the characterization of domestic and foreign series and cells for federal tax purposes.

- *Elective Deferral of Certain Business Discharge of Indebtedness Income.* In the recent economic downturn, many business taxpayers realized income as a result of modifying the terms of their outstanding indebtedness or refinancing on terms subjecting them to less risk of default. The American Recovery and Reinvestment Act of 2009 includes a special relief provision allowing for the elective deferral of certain discharge of indebtedness income realized in 2009 and 2010. The provision, section 108(i) of the Code, is complicated and many of the details will have to be supplied through regulatory guidance. This guidance will have to be provided expeditiously so taxpayers will be able to evaluate the benefits of electing deferral. Treasury and the IRS recently issued Revenue Procedure 2009-37 that prescribes the procedure for making the election. The IRS and Treasury intend to issue additional guidance on such issues as the types of indebtedness eligible for the relief, acceleration of deferred amounts, the operation of the provision in the context of flow-through entities, the treatment of the discharge for the purpose of computing earnings and profits, and the operation of a provision of the statute deferring original issue discount deductions with respect to related refinancings.
- *Rules under the Pension Protection Act of 2006* and Other Retirement-Related Guidance. 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 prioritized the various pieces of guidance required to comply with those rules. The IRS and Treasury intend to issue additional guidance on the provisions of the PPA related to funding. In addition, the IRS and Treasury will be issuing various items of administrative guidance that facilitate or enhance retirement savings and security.
- *Withholding on Government Payments for Property and Services*. Section 3402(t) was added to the Internal Revenue Code by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). Section 3402(t) requires all Federal, State and local Government entities (except for certain small State entities) to deduct and withhold an income tax equal to 3 percent from all payments (with certain enumerated exceptions) the Government entity makes for property or services. Section 3402(t) will be effective with respect to payments made after December 31, 2011. On March 11, 2008, the IRS issued Notice 2008-38 soliciting public comments regarding guidance to be provided to Federal, State and local governments required to withhold under section 3402(t). After considering the many comments, the IRS and Treasury issued a Notice of Proposed Rulemaking, which was published in the Federal Register on December 4, 2008. A hearing on the proposed regulations was held on April 16, 2009, and the IRS has received 168 comments from stakeholders on the proposed regulations. The IRS and Treasury are considering the comments and intend to issue final regulations.
- *Information Reporting of Basis by Brokers and Others*. Section 403 of the Energy Improvement and Extension Act of 2008 (Pub. L. No. 110-343) enacted on October 3, 2008, amended section 6045 to require brokers to report both the basis and gross proceeds of securities sold by customers. Form 1099-B is used for this purpose. Basis reporting generally will be required for stock acquired after December 31, 2010. Basis reporting will be required for debt securities, such as bonds, acquired after December 31, 2012. The legislation also imposed basis reporting requirements on others in certain circumstances. The IRS and Treasury intend to issue proposed and final regulations under to address these new reporting requirements.
- *Information Reporting Concerning Payment Card Transactions*. Section 6050W was added to the Internal Revenue Code by the Housing Assistance Tax Act of 2008, enacted on July 30, 2008. Section 6050W requires information returns to be made for each calendar year beginning after December 31, 2010, by merchant-acquiring entities and third-party settlement organizations with respect to payment card transactions and third-party payment network transactions occurring in that calendar year. Certain payment card transactions subject to information reporting under section 6050W are subject to backup withholding if the payee has not provided a valid taxpayer identification number (TIN). Announcement 2009-6, 2009-9 IRB 643 (Feb. 6, 2009), advised section 6050W filers that they may participate in the TIN matching program under the procedures established in Rev. Proc. 2003-9, 2003-1 C.B. 516, which permits program participants to verify the payee TINs required to be reported on information returns and payee statements. Notice 2009-19, 2009-10 IRB 660 (Feb. 20, 2009), requested public comments regarding guidance to be provided to payment settlement entities and other affected persons concerning the new requirements under section 6050W. The IRS and Treasury intend to issue proposed and final regulations under sections 6050W to address these requirements.
- *Withholding Tax and the Role of Financial Intermediaries.* In 1997 the IRS and Treasury issued regulations under the section 1441 provisions for withholding tax on certain items of portfolio investment income from U.S. sources. The qualified intermediary (QI) system was a key element. In October 2008 the IRS issued Announcement 2008-98 concerning proposed amendments to the qualified intermediary agreements and rules to address early notice of failures of internal controls, evaluation of risk that foreign accounts may be subject to control by U.S. persons, and association of a U.S. auditor to the oversight of QI performance. The IRS and Treasury intend to issue regulations to address these various areas of compliance involving the withholding taxes on portfolio investment income.
- *Foreign Bank Account Reporting (FBAR).* In May 2009 the Treasury issued budget proposals for Fiscal Year 2010 which included proposed legislation to address FBAR related issues. In August 2009, the IRS and Treasury issued Notice 2009-62 providing an extension until June 30, 2010 to file FBARs for 2008 and earlier calendar years, pending the preparation of further guidance. The IRS and Treasury intend to issue regulations to address these FBAR issues.

**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.

Significant rules issued during fiscal year 2009 include:

- *Fair Credit Reporting, Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (12 CFR Part 41).* The banking agencies,[1] the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC) issued a joint final rule to implement section 312 of the FACT Act. Section 312 requires the issuance of guidelines regarding the accuracy and integrity of information entities furnish to a consumer reporting agency (CRA). Section 312 also requires the issuance of regulations requiring entities that furnish information to a CRA to establish reasonable policies and procedures for the implementation of the guidelines. In addition, section 312 requires jointly prescribed regulations that identify the circumstances under which a furnisher of information to a CRA shall be required to investigate a dispute concerning the accuracy of information contained in a consumer report based on the consumer's direct request to the furnisher. A final rule was issued on July 1, 2009 (74 FR 31484).
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital – Residential Mortgage Loans Modified Pursuant to the Home Affordable Program (12 CFR Part 3).* In order to support and facilitate the timely implementation of the Home Affordable Program (Program) announced by the U.S. Department of Treasury and to promote the stability of banking organizations and the financial system, the banking agencies issued an interim final rule providing that a residential mortgage loan (whether a first-lien or a second-lien loan) modified under the Program will retain the risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other relevant supervisory criteria. The rule minimizes disincentives to bank participation in the Program that could otherwise result from agencies' regulatory capital regulations. The banking agencies believe that this treatment is appropriate in light of the overall important public policy objectives of promoting sustainable loan modifications for at-risk homeowners that balance the interests of borrowers, servicers, and investors. Joint agency action is essential to ensure that the regulatory capital consequences of participation in the Program are the same for all commercial banks and thrifts. An interim final rule was issued on June 30, 2009. (74 FR 31160).
- *Registration of Mortgage Loan Originators (12 CFR Part 34).* The banking agencies, the NCUA, and Farm Credit Administration (FCA) proposed amendments to their rules to implement the S.A.F.E. Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289. These amendments require an employee of a depository institution, an employee of a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the FCA that engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (NMLSR) and to obtain a unique identifier. These amendments also provide that these institutions must require their employees who act as mortgage loan originators to comply with this Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with these requirements. A notice of proposed rulemaking was issued on June 9, 2009 (74 FR 27386). The OCC has included this rulemaking project in the Regulatory Plan (1557-AD23).
- *Risk-Based Capital Guidelines — Money Market Mutual Funds (12 CFR Part 3).* On September 19, 2008, the Board of Governors of the Federal Reserve System adopted the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (the ''AMLF'' or ''ABCP Lending Facility'') which enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds of the loan to purchase certain asset-backed commercial paper (ABCP) from money market mutual funds. The purpose of this action was to reduce strains being experienced by money market mutual funds. To facilitate national bank participation in the program, the OCC adopted on September 19, 2008,[2] on an interim final basis, an exemption from its risk-based capital guidelines for ABCP held by a national bank as a result of its participation in this program. The AMLF was set to expire on January 30, 2009. However, to encourage the stability of money market mutual funds, the program has been extended. This rule finalizes the risk-based capital exemption and extends the risk-based capital exemption to ABCP purchased beyond the original January 30, 2009 date. This final rule applies the risk-based capital exemption to any ABCP purchased as a result of a national bank's participation in the facility. The risk-based capital exemption will continue to apply if the AMLF has not expired. A final rule was issued on March 27, 2009 (74 FR 13336).
- *Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Deduction of Goodwill Net of Associated Deferred Tax Liability (12 CFR Part 3).* The banking agencies issued a final rule to allow their institutions to elect to reduce the amount of goodwill that a bank must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. This treatment is currently permitted only in the case of goodwill acquired in a nontaxable purchase business combination. This change effectively reduces the amount of goodwill that a bank must deduct from tier 1 capital and reflects a bank's maximum effective exposure to loss in the event that such goodwill is impaired or derecognized for financial reporting purposes. A final rule was issued on December 30, 2008 (74 FR 79602).
- *Standards Governing the Release of a Suspicious Activity Report (12 CFR Part 4).* The OCC proposed to revise its regulations governing the release of non-public OCC information set forth in 12 CFR part 4, subpart C. The proposal would clarify that the OCC's decision to release a suspicious activity report (SAR) will be governed by the standards set forth in proposed amendments to the OCC's SAR regulation, 12 CFR 21.11(k), that are part of a separate, but simultaneously issued, rulemaking. A notice of

[1] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

[2] 73 FR 55704 (September 26, 2008).

proposed rulemaking was published on March 9, 2009 (74 FR 10136).

- *Confidentiality of Suspicious Activity Reports (12 CFR Part 21).* The OCC proposed to amend its regulations implementing the Bank Secrecy Act governing the confidentiality of a suspicious activity report (SAR) to: clarify the scope of the statutory prohibition on the disclosure by a national bank of a SAR; address the statutory prohibition on the disclosure by the government of a SAR as that prohibition applies to the OCC's standards governing the disclosure of SARs; clarify that the exclusive standard applicable to the disclosure of a SAR, or any information that would reveal the existence of a SAR, by the OCC is ''to fulfill official duties consistent with the purposes of the BSA''; and modify the safe harbor provision in its rules to include changes made by the USA PATRIOT Act. This proposal is based upon a similar proposal issued simultaneously by the Financial Crimes Enforcement Network (FinCEN). A notice of proposed rulemaking was published on March 9, 2009 (74 FR 10130).
- *Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments (12 CFR Part 24).* The OCC adopted without change the interim final rule, issued on August 11, 2008, which implemented the statutory change to national banks' community development investment authority made in the Housing and Economic Recovery Act of 2008 (HERA). The OCC also revised Appendix 1 to part 24, the CD-1 National Bank Community Development (Part 24) Investments Form, to make technical changes that are consistent with the HERA provision and the revised regulation. Section 2503 of the HERA revised the community development investment authority in section 24(Eleventh) to restore a national bank's authority to make investments designed primarily to promote the public welfare. A final rule was published on April 7, 2009 (74 FR 15657).
- *Community Reinvestment Act Regulations (12 CFR Part 25).* On August 14, 2008, the Higher Education Opportunity Act (HEOA) was enacted into law. Section 1031 of the HEOA revised the Community Reinvestment Act (CRA) to require the banking agencies, when evaluating a bank's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the bank to low-income borrowers. The banking agencies issued a proposal that would implement section 1031 of the HEOA. In addition, the proposal would incorporate into the banking agencies' rules statutory language that allows them to consider as a factor when evaluating a bank's record of meeting community credit needs capital investment, loan participation, and other ventures undertaken by nonminority- and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions. A notice of proposed rulemaking was published on June 30, 2009 (74 FR 31209).

The OCC's regulatory priorities for fiscal year 2010 include the following:

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues (12 CFR Part 3).* The banking agencies issued a notice of proposed rulemaking to: (i) modify their general risk-based capital standards and advanced risk-based capital adequacy frameworks to eliminate the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; and (ii) provide a reservation of authority in their general risk-based capital standards to permit the agencies' to require banking organizations to treat structures that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the banking organization to the structure. The banking agencies also requested comment on the effect on regulatory capital requirements of the consolidation of assets required by the Financial Accounting Standard Board's (FASB) recent issuance of Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R). A notice of proposed rulemaking was published on September 15, 2009 (74 FR 47138).
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Basel II Standardized Approach (12 CFR Part 3).* As part of the banking agencies' ongoing efforts to develop and refine the capital standards to enhance their risk sensitivity and ensure the safety and soundness of the banking system, they issued a notice of proposed rulemaking to amend various provisions of the capital rules on July 29, 2008, at 73 FR 43982. The changes involve amending the current capital rules for those banks that will not be subject to the advanced internal ratings-based approaches. Work on a final rule is underway.
- *Risk-Based Capital Standards: Market Risk (12 CFR Part 3).* The banking agencies plan to issue a second notice of proposed rulemaking to amend the market risk capital requirements for national banks. The banking agencies issued a notice of proposed rulemaking on September 25, 2006 (71 FR 55958). The rule would make the current market risk capital requirements generally more risk sensitive with respect to the capital treatment of trading activities in banks and bank holding companies.
- *Interagency Proposal for Model Privacy Form under Gramm-Leach-Bliley Act (12 CFR Part 40).* The banking agencies, along with the NCUA, FTC, the Commodity Futures Trading Commission, and the Securities and Exchange Commission (SEC), issued a joint notice of proposed rulemaking pursuant to section 728 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109-351) on March 29, 2007 (72 FR 14940). Specifically, a safe harbor model privacy form was proposed that financial institutions may use to provide the disclosures under the privacy rules. After further consumer testing of this model form, the SEC published for comment in the *Federal Register* a report analyzing this testing on April 20, 2009. 74 FR 17925. The final rule will be published in November 2009.

**Office of Thrift Supervision**

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to supervise thrift institutions effectively and efficiently. These objectives include maintaining and enhancing the safety and soundness of the thrift industry; a flexible, responsive regulatory structure that enables savings associations to

provide credit and other financial services to their communities, particularly housing mortgage credit; and a risk-focused, timely approach to supervision.

OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the banking agencies) continue to work together on regulations where they share the responsibility to implement statutory requirements. For example, the banking agencies are working jointly on several rules to update capital standards to maintain and improve consistency in agency rules. These rules implement revisions to the *International Convergence of Capital Management and Capital Standards: A Revised Framework (Basel II Framework) and include:*

- *Risk-Based Capital Guidelines: Implementation of Revised Basel Capital Accord.* The final Basel II Advanced Approaches rule was published by the banking agencies on December 7, 2007 and became effective April 1, 2008. The OTS, in conjunction with the other banking agencies, is working on implementing the Advanced Approaches rule first for core banking organizations. This is an institution-specific and multi-year process of evaluating each organization's readiness and qualification to move forward into transitional capital floors.
- *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 Agencies did not finalize the 2006 NPRM. Subsequently, the Basel Committee directed international revisions which were completed in July 2009. At that time the Agencies began drafting a new NPR, based upon the international revisions as well as on the comments received in 2006. The new NPRM should be issued in 2010.
- *Risk-Based Capital Standards: Standardized Approach.* The banking agencies issued an NPRM implementing the Standardized Approach to credit risk and approaches to operational risk that are contained in the Basel II Framework. 73 FR 43982 (July 29, 2008). Banking organizations would be able to elect to adopt these proposed revisions or remain subject to the agencies' existing risk-based capital rules, unless the banking organization uses the Advanced Capital Adequacy Framework described above. The comment period closed October 27, 2008 and the proposal is still pending final action by the banking agencies.
- *Risk-Based Capital Guidelines: Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs.* The banking agencies are proposing to modify its general risk-based capital standards and advanced risk-based capital adequacy framework to eliminate the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; and permit the banking agencies to require banking organizations to treat structures that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the banking organization to the structure. The agencies issued an NPRM on September 15, 2009 (74 FR 47138).

Significant proposed rules issued during fiscal year 2009 include:

- *S.A.F.E. Mortgage Licensing.* On June 9, 2009, the banking agencies and the Farm Credit Administration (FCA) issued a joint NPRM proposing to amend their rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). These amendments require an employee of a depository institution, an employee of a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the FCA that engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. These amendments also provide that these institutions must require their employees who act as mortgage loan originators to comply with this Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with these requirements. The comment period on this proposal closed on July 9, 2009, and comments are being reviewed in preparation for drafting a final rule in 2010.

Significant final rules issued during fiscal year 2009 include:

- OTS, FRB and NCUA issued a final rule on January 29, 2009 (74 FR 5498) to prohibit certain unfair or deceptive acts or practices in the areas of credit cards and overdrafts and proposed clarifications to that final rule on May 5, 2009 (84 FR 20804). The comment period closed on July 30, 2009 and, in accordance with the statute, the agencies may issue further clarifications at a later date.
- 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 expect to issue final amendments to their rules requiring initial and annual privacy notices to their customers. And, pursuant to Section 728 of the Financial Services Regulatory Relief Act of 2006, the agencies are adopting a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules.

**Alcohol and Tobacco Tax and Trade Bureau**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce the Federal laws relating to alcohol, tobacco, firearms, and ammunition taxes and relating to commerce involving alcohol beverages. TTB's mission and regulations are designed to:

1) Regulate with regard to the issuance of permits and authorizations to operate in the alcohol and tobacco industries;

2) Assure the collection of all alcohol, tobacco, and firearms and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries; and

3) Suppress commercial bribery, consumer deception, and other prohibited practices in the alcohol beverage industry.

TTB plans to pursue one significant regulatory action during FY 2010. In 2007, the Department approved the publication of a notice of proposed rulemaking soliciting comments on a proposal to require a serving facts statement on alcohol beverage labels. The proposed statement would include information about the serving size, the number of servings per container, and per-serving information on calories and grams of carbohydrates, fat, and protein. The proposed rule would also require

information about alcohol content. This regulatory action was initiated under section 105(e) of the Federal Alcohol Administration Act, 27 U.S.C. 205(e), which confers on the Secretary of the Treasury authority to promulgate regulations for the labeling of alcoholic beverages, including regulations that prohibit consumer deception and the use of misleading statements on labels and that ensure that such labels provide the consumer with adequate information as to the identity and quality of the product. TTB received and reviewed approximately 800 comments on the serving facts proposal and plans to put forward for Department approval a final rule on this matter in FY 2010.

In addition to the regulatory action described above, in FY 2010 TTB plans to give priority to the following regulatory matters:

- *Modernization of title 27, Code of Federal Regulations.* TTB will continue to pursue its multi-year program of modernizing its regulations in title 27 of the Code of Federal Regulations. This program involves updating and revising the regulations to be more clear, current, and concise, with an emphasis on the application of plain language principles. TTB laid the groundwork for this program in 2002 when it started to recodify its regulations in order to present them in a more logical sequence. In FY 2005, TTB evaluated all of the 36 CFR parts in title 27 and prioritized them as ''high,'' ''medium,'' or ''low'' in terms of the need for complete revision or regulation modernization. TTB determined importance based on industry member numbers, revenue collected, and enforcement and compliance issues identified through field audits and permit qualifications, statutory changes, significant industry innovations, and other factors. The 10 parts of title 27, Code of Federal Regulations, 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 parts represent nearly all the tax revenue that TTB collects, which is expected to be approximately $22 billion in FY 2010. 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), as well as regulations addressing the American Viticultural Area program (Part 9) and TTB procedures (Part 70).

  To date, related to the modernization plan, TTB has published notices of proposed rulemaking to revise Part 19 and to amend Part 9 and has reviewed the public comments received in response to those notices, and TTB anticipates that in FY 2010 it will forward to the Department final rules for both parts for publication approval. In FY 2010, TTB plans to put forward to the Department for publication approval an advance notice for proposed rulemaking for the revision of the beer regulations in Part 25.

- *Allergen Labeling.* In FY 2006 TTB published interim regulations setting forth standards for voluntary allergen labeling of alcohol beverages. These regulatory changes were an outgrowth of changes made to the Federal Food, Drug and Cosmetic Act by the Food Allergen Labeling and Consumer Protection Act of 2004. At the same time, TTB published a proposal to make those interim requirements mandatory. In FY 2010 TTB intends to continue its review of mandatory allergen labeling with a view to preparing a final rule document that would take effect on the same date as the serving facts regulatory changes discussed above.

- *Multi-Region Appellations for Imported Wine.* TTB will put forward for Departmental publication approval a proposal to amend its wine labeling regulations to allow the labeling of imported wines with multi-region appellations of origin. The proposed regulatory change would provide labeling treatment for imported wines that is similar to what is currently available for domestic wines, which may be labeled with a multi-state or multi-county appellation of origin.

- *Other wine labeling issues.* In FY 2010 TTB will continue to act on petitions for the establishment of new American viticultural areas (AVAs) and for the modification of the boundaries of existing AVAs. TTB also will seek Departmental publication approval of a number of other wine labeling rulemaking documents for public comment in FY 2010. These initiatives include a clarification of the approval process for the use of American grape varietal names on labels and an updating of the list of approved American grape varietal names. We also plan regulatory action on petitions seeking to adopt new label designation standards for wines now generally described as ''wine with natural flavors,'' and to limit the use of American appellations to wines produced entirely from U.S. grapes.

- *Specially Denatured and Completely Denatured Alcohol Formulas.* TTB will submit for publication approval by the Department a proposal to reclassify some specially denatured alcohol (SDA) formulas as completely denatured alcohol (CDA) for which formula submission to TTB is not required. The proposed regulatory changes would also allow other SDA formulas to be used without the submission of article formulas. These changes would allow TTB to shift its SDA-dedicated resources from the current front-end pre-market formula control approach to a post-market assessment of actual compliance with SDA regulations.

- *Special (Occupational) Tax Repeal.* TTB published in FY 2009 a temporary rule, together with a contemporaneous notice of proposed rulemaking that amended the TTB regulations in response to the statutory repeal of the special (occupational) taxes on producers and marketers of alcoholic beverages. In FY 2010 TTB intends to put forward for Departmental approval a document that adopts those temporary amendments as a final rule.

- *Alternation of Brewery Premises.* In FY 2010 TTB will forward to the Department for publication approval a notice of proposed rulemaking to amend the TTB regulations to set forth specific standards for the approval and operation of alternating proprietorships at the same brewery premises. The proposed regulations will include standards for alternation agreements between host and tenant brewers as well as rules for recordkeeping and segregation of products made by different brewers.

- *Determination of Tax on Large Cigars.* TTB will forward to the Department for publication approval a notice of proposed rulemaking that clarifies the rules for determining the amount of tax that is due on large cigars, which is based on their sale price. The proposed regulatory changes will include specific standards for determining the tax on large cigars

that are provided at no cost in connection with a sale.

- *Time For Payment of Tax on Alcohol Beverages.* In FY 2010 TTB will forward to the Department for publication approval a temporary rule, together with a contemporaneous notice of proposed rulemaking, to reflect statutory standards for the deferred payment of taxes on alcohol beverages in the month of September and for quarterly payment of tax by small producers of alcohol beverages.
- *Classification of Tobacco Products.* In FY 2010 TTB will continue its review of standards for the classification of different tobacco products. In FY 2007 TTB published a notice of proposed rulemaking to set standards for distinguishing between cigars and cigarettes and, after a review of the public comments received in response to that proposal, TTB determined that further review was necessary with a view to possible publication of new proposals for further comment. In addition, TTB will consider the possibility of proposing standards to distinguish between pipe tobacco and roll-your-own tobacco.
- *CHIPRA Tobacco Product and Processed Tobacco Implementation.* In FY 2009 TTB published two temporary rules, together with a contemporaneous notice of proposed rulemaking in each case, to implement changes to the Internal Revenue Code of 1986 made by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). The changes included tobacco product tax rate increases, changes to the bases for the denial, suspension, or revocation of permits for tobacco manufacturers and importers, permit and related requirements for manufacturers and importers of processed tobacco, and an expansion of the definition of roll-your-own tobacco. TTB anticipates that in FY 2010 it will forward to the Department for publication approval final rules regarding these two regulatory initiatives.

**Bureau of the Public Debt**

The Bureau of the Public Debt (BPD) has responsibility for borrowing the money needed to operate the Federal Government and accounting for the resulting debt, regulating the primary and secondary Treasury securities markets, and ensuring that reliable systems and processes are in place for buying and transferring Treasury securities.

BPD administers regulations: (1) Governing transactions in Government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended; (2) Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local Government securities; (3) Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations; (4) Governing securities held in Treasury's retail systems; and (5) Governing the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

Treasury's GSA rules govern financial responsibility, the protection of customer funds and securities, record keeping, reporting, audit, and large position reporting for all government securities brokers and dealers, including financial institutions.

Treasury maintains regulations governing two retail systems for purchasing and holding Treasury securities: Legacy Treasury Direct, in which investors can purchase, manage, and hold marketable Treasury securities in book-entry form, and TreasuryDirect, in which investors may purchase, manage, and hold savings bonds, marketable Treasury securities, and certificates of indebtedness in an Internet-based system.

During fiscal year 2010, BPD will accord priority to the following regulatory projects:

- *Savings Bond Issuing and Paying Agent Regulations.* BPD plans to issue a final rule amending the savings bond issuing regulations to equalize the fee structure between definitive and electronic bonds, and amending the savings bond paying agent regulations to replace the EZ Direct system with the EZ Clear system.
- *TreasuryDirect.* BPD plans to issue a final rule revising the TreasuryDirect regulations to support enhancements to the system, primarily to implement a reinvestment option and to revise the purchase process.
- *Marketable Treasury bills, notes, bonds, and non-marketable savings bonds.* BPD plans to amend the regulations to remove certain evidentiary requirements for deceased owner cases.

**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 2010, FMS's regulatory plan includes the following priorities:

- *Federal Government Participation in the Automated Clearing House.* FMS is proposing to amend our regulation at 31 CFR part 210 governing the use of the Automated Clearing House (ACH) system by Federal agencies. The proposed amendments will adopt, with some exceptions, the ACH Rules developed by NACHA – The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies.

  We are issuing this proposed rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2007 ACH Rules book. These changes include new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identity the parties to the transaction and to allow the Office of Foreign Assets Control (OFAC) screening.

  In addition, we are proposing (1) to streamline the process for reclaiming post-death benefit payments from financial institutions; (2) to require financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008; and (3) to modify our previous guidance regarding the requirement that non-vendor payments be delivered to a deposit account in the name of the recipient.
- *Debt Collection Authorities Under the Debt Collection Improvement Act.* FMS is amending its regulation at 31 CFR part 285 governing the centralized offset of federal payments, including tax refund payments, to collect nontax debts owed to the United States. The amendments remove the time limitation on the collection of nontax debts by centralized offset, consistent with a change in the statute on which it is based. The statutory change, enacted

as part of the Food, Conservation and Energy Act of 2008, allows for the use of centralized offset of federal payments, including federal salary payments, to collect nontax debts owed to the United States irrespective of the amount of time the debt has been outstanding.

**Domestic Finance – Office of the Fiscal Assistant Secretary (OFAS)**

The Office of the Fiscal Assistant Secretary develops policy for and oversees the operations of the financial infrastructure of the federal government, including payments, collections, cash management, financing, central accounting, and delinquent debt collection.

- *Anti-Garnishment*. In FY 2010, Treasury plans to promulgate a joint rule, with Federal benefit agencies, to give better force and effect to various benefit agency statutes that exempt Federal benefits from garnishment. Typically, upon receipt of a garnishment order from a State court, financial institutions will completely freeze an account as they perform due diligence in complying with the order. The joint rule will address this practice of account freezes to ensure that benefit recipients have access to a certain amount of lifeline funds while garnishment orders or other legal processes are resolved or adjudicated, and will provide financial institutions with specific administrative instructions to carry out upon receipt of a garnishment order. The joint rule will apply to financial institutions, but is not expected to have specific provisions for consumers, States, debt collectors, or banking regulators. However, the banking regulators would enforce the policy in cases of non-compliance by means of their general authorities. This proposed regulation will be a new part in Title 31 jointly controlled by Treasury and the Federal benefit agencies.

## TREAS—Departmental Offices (DO)

### FINAL RULE STAGE

### 130. EMERGENCY ECONOMIC STABILIZATION ACT; CONFLICTS OF INTEREST

**Priority:**

Other Significant

**Legal Authority:**

PL 110–343; 122 Stat 3765

**CFR Citation:**

31 CFR 31

**Legal Deadline:**

None

**Abstract:**

This rule provides guidance on conflicts of interest pursuant to section 108 of the Emergency Economic Stabilization Act of 2008 (EESA), which was enacted on October 3, 2008.

**Statement of Need:**

This rulemaking is necessary to revise the interim conflicts of interest rule issued in January 2009 based on public comments received. This January 2009 interim rule addressed conflicts that may arise during the selection of individuals or entities seeking a contract or financial agency agreement with the Treasury, particularly those involved in the acquisition, valuation, management, and disposition of troubled assets.

**Summary of Legal Basis:**

This rule is issued pursuant to section 108 of the Emergency Economic Stabilization Act of 2008 (EESA), which was enacted on October 3, 2008. Section 108 of EESA authorizes the Secretary to issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the EESA authorities.

**Alternatives:**

Not applicable.

**Anticipated Cost and Benefits:**

Not applicable.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/21/09 | 74 FR 3431 |
| Interim Final Rule Effective | 01/21/09 | |
| Interim Final Rule Comment Period End | 03/23/09 | |
| Final Rule | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Program Compliance Officer
Office of Financial Stability
Department of the Treasury
1500 Pennsylvania Avenue NW.
Washington, DC 20220
Phone: 202 622–2000
Email: tarp.compliance@do.treas.gov

**RIN:** 1505–AC05

## TREAS—DO

### 131. TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

PL 110–343; PL 111–5

**CFR Citation:**

31 CFR 30

**Legal Deadline:**

None

**Abstract:**

This interim final rule, promulgated pursuant to sections 101(a)(1), 101(c)(5), and 111(b) of the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110-343 (EESA), as amended, provides further guidance on the executive compensation provisions applicable to participants in the Troubled Assets Relief Program (TARP).

**Statement of Need:**

EESA provided immediate authority and facilities that the Secretary of the Treasury could use to restore liquidity and stability to the financial system. The rule is necessary to establish standards for executive compensation practices at firms receiving TARP assistance, in order to fully protect the interests of taxpayers and mandate compensation practices that maximize the value of the firm for shareholders.

**Summary of Legal Basis:**

Section 111 of EESA, as amended, provides that certain entities that receive financial assistance from Treasury under the TARP will be subject to specified executive compensation and corporate governance standards to be established by the Secretary.

**Alternatives:**

Not yet determined.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

Not yet determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/15/09 | 74 FR 28394 |
| Interim Final Rule Effective | 06/15/09 | |
| Interim Final Rule Comment Period End | 08/14/09 | |
| Final Rule | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**Agency Contact:**

Stephen Tackney
Attorney–Advisor
Department of the Treasury
1500 Pennsylvania Avenue NW.
Washington, DC 20220
Phone: 202 622–1773

**RIN:** 1505–AC09

## TREAS—Comptroller of the Currency (OCC)

### FINAL RULE STAGE

### 132. S.A.F.E. MORTGAGE LICENSING ACT

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

12 USC 1 et seq; 12 USC 29; 12 USC 93a; 12 USC 371; 12 USC 1701j–3; 12 USC 1828(o); 12 USC 3331 et seq

**CFR Citation:**

12 CFR 34

**Legal Deadline:**

Other, Statutory, July 29, 2009, Implement Registration System.

Implement system for registering employees as mortgage loan originators with the Nationwide Mortgage Licensing System and Registry.

**Abstract:**

These regulations implement the Federal registration requirement imposed by the S.A.F.E. Mortgage Licensing Act, title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654 (2008)) with respect to national banks and their operating subsidiaries. They are being issued by the OCC, FRB, FDIC, OTS, NCUA, and Farm Credit Administration (the Agencies).

**Statement of Need:**

The S.A.F.E. Act requires the Agencies to develop and maintain a system for registering employees of depository institutions and their subsidiaries regulated by a Federal Banking Agency or employees of institutions regulated by the Farm Credit Administration as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The Agencies determined the best method for implementing this requirement was through a rulemaking.

**Summary of Legal Basis:**

This rulemaking is based on the requirements of the S.A.F.E. Act's requirements, S.A.F.E. Mortgage Licensing Act, title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654 (2008)), and the OCC's general rulemaking authority in 12 U.S.C. 93a.

**Alternatives:**

Not yet determined.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

Not yet determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/09/09 | 74 FR 27386 |
| NPRM Comment Period End | 07/09/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Agency Contact:**

Heidi M. Thomas
Special Counsel
Department of the Treasury
Comptroller of the Currency
Legislative and Regulatory Activities Division
250 E Street SW.
Washington, DC 20219
Phone: 202 874–5090
Fax: 202 874–4889
Email: heidi.thomas@occ.treas.gov

**Related RIN:** Related to 1550–AC33

**RIN:** 1557–AD23

BILLING CODE 4810–25–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

Established in 1970, the Environmental Protection Agency is the primary federal agency responsible for protecting public health and the environment by improving air, land and water quality. EPA Administrator Lisa Jackson has embarked on an ambitious effort to restore momentum to EPA's core programs while also tackling emerging challenges such as climate change. Underlying this effort is the premise that environmental protection and economic growth are mutually achievable – that we can increase economic activity and create new jobs while we reduce harmful emissions and the dependence on polluting sources of energy. The Agency is dedicated to upholding the following values in its efforts to maintain the strongest level of environmental protection:

*Scientific Integrity.* The public health and environmental laws that Congress has enacted depend on rigorous adherence to the best available science. Scientific findings should be independent, using well-established scientific methods, including peer review, to assure rigor, accuracy, and impartiality.

*Following the Rule of Law.* EPA recognizes that respect for Congressional mandates and judicial decisions is the hallmark of a principled regulatory agency. Where EPA exercises discretion, it must be conducted in good faith and in keeping with the directives of Congress and the courts.

*Transparency.* EPA will apply the principles of transparency and openness to the rulemaking process. Public trust in the Agency demands that EPA reach out to all stakeholders fairly and impartially, that EPA consider the views and data presented carefully and objectively, and that EPA fully disclose the information that forms the bases for our decisions.

*Environmental Justice.* For generations, pollution has been a disproportionate problem in low-income and minority communities, particularly for the children in those communities. EPA is initiating major improvements with outreach and interaction with those who have been historically underrepresented in agency decision making, including the disenfranchised in cities and rural areas, communities of color, native Americans, and people disproportionately impacted by pollution. EPA will identify, where possible, the public health or environmental impacts of policies, programs and activities on these communities and take action, as appropriate, to address such impacts.

**The American Recovery and Reinvestment Act**

Environmental protection and economic growth are complementary goals. With its partners, EPA is overseeing investment from the American Recovery and Reinvestment Act (ARRA) of 2009 in ''green jobs'' and a healthier environment. To reach this goal, $7.22 billion has been designated for projects and programs administered by EPA. To support a green economy and a green environment, EPA lends support to innovation, investment and technology in the following environmental areas:

- **Water Infrastructure Improvements for Communities:** $4 billion for state clean water funding and $2 billion for state drinking water funding. This new infusion of money will help states and local government finance many of the overdue improvements to public waters and wastewater systems that are essential to protecting public health and assuring good water quality. 20 percent of this funding will be targeted towards green infrastructure, water and energy efficiency, and environmentally innovative projects.
- **Brownfield Restorations:** $100 million for grants to clean up and return former industrial and commercial sites to their communities for productive use. $5 million dollars is set aside for job training in the assessment and remediation of these sites.
- **Diesel Emissions Reductions:** $300 million for grants and loans to help regional, state and local governments, tribes, and non-profit organizations with projects that reduce harmful diesel emissions from vehicles like school buses, garbage trucks, construction equipment, marine vessels, and locomotives. Reducing emissions helps to reduce the risk of asthma, respiratory illnesses and premature deaths.
- **Accelerating Superfund Site Cleanups:** $600 million for the cleanup of hazardous wastes from sites. EPA will use this funding to increase the pace of these cleanups already underway, and return the sites to our communities for productive use.
- **Accelerating Leaking Underground Storage Tank Cleanups:** $200 million for the cleanup of petroleum leaks that occurred from underground storage tanks. There are approximately 100,000 sites eligible for cleanup where leaks threaten soil or water quality or result in fire or explosion hazards.
- **Responsible Oversight:** $20 million for the EPA Office of Inspector General for audits, evaluations, investigations and oversight of the Recovery Act funding to ensure that every penny is spent on projects that benefit Americans.

EPA has a number of successes in fulfilling its obligations under the American Recovery and Reinvestment Act.

- In the first EPA-related award under the American Recovery and Reinvestment Act, EPA devoted nearly $100 million in environmental funding to be invested in Colorado. This includes more than $65 million for improving drinking water and wastewater infrastructure, $2.5 million for leaking underground storage tanks and $2 million for revitalizing Brownfield sites.
- In the single largest grant in its history, EPA awarded more than $430 million to the State of New York for wastewater infrastructure projects that will create thousands of jobs, jumpstart local economies and protect human health and the environment across the state. The state will use the Recovery Act grant to provide money to municipal and county governments and wastewater utilities for projects to protect lakes, ponds and streams in communities across New York.
- The Iron Mountain Mine Superfund site near Redding, California, will receive between $10-25 million that will make it possible to dredge, treat, and dispose of heavy-metal contaminated sediments in the Spring Creek Arm of the Kewich Reservoir in 18 months, rather than three years.

EPA's portion of the ARRA will encourage further growth in a greener workforce by creating sustainable jobs that help produce cleaner drinking water, purer air, environmentally friendly urban and rural re-development, and reduced greenhouse gases. For new information on the state-by-state distributions for EPA's ARRA funds, see http://www.epa.gov/recovery.

## HIGHLIGHTS OF EPA'S REGULATORY PLAN

In developing its agenda, five priorities form the core of EPA's regulatory focus:

### Climate Change

In the U.S., energy-related activities account for three-quarters of human-generated greenhouse gas emissions, mostly in the form of carbon dioxide emissions from burning fossil fuels. More than half the energy-related emissions come from large stationary sources such as power plants, while about a third comes from transportation. Industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of greenhouse gas emissions in the United States. This year, EPA is taking the first Federal regulatory steps to address the problem of global climate change.

**New Mandatory Greenhouse Gas Reporting.** In the fall of 2009, EPA will publish a final rule requiring mandatory reporting of greenhouse gas emissions from targeted sectors of the economy. This rule, funds for which were designated by the FY2008 Consolidated Appropriations Act, establishes monitoring, reporting, and recordkeeping requirements on facilities that produce, import, or emit greenhouse gases above a specific threshold in order to provide comprehensive and accurate data to support a range of future climate policy options.

**Recognition that Greenhouse Gases Pose a Danger to Public Health and Welfare.** On April 24, 2009, the Administrator proposed Endangerment and Cause or Contribute Findings under section 202(a) of the Clean Air Act. This action, in response to a 2007 Supreme Court decision, proposed to find that the current and projected concentrations of the mix of six key greenhouse gases - carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6) - in the atmosphere endanger the public health and welfare of current and future generations through climate change. As part of this action, the Administrator further proposed to find that the combined emissions of four of these six greenhouse gases from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these key greenhouse gases and hence to the threat of climate change.

**Vehicle Emissions.** In the fall of 2009, EPA will propose to set national emissions standards under section 202 (a) of the Clean Air Act to control greenhouse gas (GHG) emissions from passenger cars and light-duty trucks, and medium-duty passenger vehicles, as part of a joint rulemaking with National Highway Traffic and Safety Administration (NHTSA). This joint rulemaking effort was announced by President Obama on May 19, 2009. The GHG standards would significantly reduce the GHG emissions from these light-duty vehicles.

**Renewable Fuels Standard.** In May of 2009, EPA proposed a rule that will address climate change and energy security by increasing the nation's use of renewable fuels. This rulemaking implements provisions in Title II of the 2007 Energy Independence and Security Act (EISA) that amend Section 211(o) of the Clean Air Act. The amendments revise the National Renewable Fuels Standard Program in the United States, increasing the national requirement to a total of 36 billion gallons of total renewable fuel in 2022. The amendments also establish new eligibility requirements for meeting the renewable fuel standards, including the establishment of minimum lifecycle greenhouse gas reduction thresholds for the various categories of renewable fuels.

For more information about these regulatory actions, as well as information about other programs and activities related to climate change, please visit http://www.epa.gov/climatechange/ or http://www.epa.gov/otaq/climate/regulations.htm.

### Improving Air Quality

The U.S. continues to face serious air pollution challenges, with large areas of the country that still cannot meet federal air quality standards and many communities still facing health threats from exposure to toxics. 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 can remain in the environment for long periods of time and can be carried by the wind hundreds of miles from their origin.

**Ambient Air Quality.** This year's Regulatory Plan describes efforts to review the National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen, oxides of sulfur, ozone, and particulates. The Clean Air Act requires EPA to review the NAAQS every 5 years for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) and, if appropriate, revise these standards. Each review consists of an exhaustive assessment of the current scientific evidence detailing the health and welfare effects of exposure to the pollutants, and a policy assessment of the policy implications of that evidence. Each review will conclude with the EPA Administrator either retaining or revising the standards, taking into consideration the views of independent scientists and the public.

**Reducing Harmful Emissions from Power Plants.** Under the federal structure set up by the Clean Air Act, it is the States who are primarily responsible for bringing about the pollutant emission reductions necessary to reach attainment with the NAAQS. However, EPA does help achieve these reductions through national programs requiring emission reductions from both mobile and stationary sources. This Regulatory Plan describes one particularly significant such program — the Clean Air Transport Rule — which employs a market-based ''cap and trade'' program to bring about broad reductions in sulfur dioxide and nitrogen oxides from power plants in the eastern half of the United States. This program is designed to reduce the amount of pollution that is transported by the wind over long distances. This transported pollution can be a large part of the total pollution in many eastern cities, and controlling it nationally is a crucial complement to the States' efforts to achieve clean air.

**Cleaner Air from Improved Technology.** EPA continues to address toxic air pollution under authority of the Clean Air Act Amendments of 1990. The centerpiece of this effort is the ''Maximum Achievable Control Technology'' (MACT) program, which requires that all major sources of a given type use emission controls that better reflect the current state of the art. One of these efforts is by setting standards for industrial, commercial, and institutional boilers and process heaters.

For more information about these regulatory actions, as well as information about other programs and activities related to air quality, please visit http://www.epa.gov/ttn/naaqs/.

**Management of Chemical Risks**

EPA's Administrator has highlighted the need to strengthen EPA's chemical management program as one of her priorities coming in to the Agency. As part of this process, the Agency is evaluating its existing chemicals program to determine how best to ramp up efforts to assess, prioritize and take risk management action on chemicals of concern. EPA intends to announce the specifics of this effort and will seek public input.

**Protection from Lead During and After Renovation.** EPA is continuing its efforts to implement the final Lead; Renovation, Repair, and Painting Program Rule that was issued in 2008. As part of these efforts, EPA will be developing revisions to the rule to address several issues raised in litigation, including the universe of housing where lead-safe work practices are required, the provision of additional information on renovation activities to owners and occupants, and possibly additional requirements to ensure that renovation work areas have been adequately cleaned after renovation work has been finished and before the areas are re-occupied.

For more information about these regulatory actions, as well as information about other programs and activities related to the management of chemical risks, please visit http://www.epa.gov/oppts/.

**Cleaning up Hazardous Waste**

EPA envisions communities where blighted properties are transformed into safe and productive parcels, and threats to human health are properly mitigated, leading to jobs and a reinvestment in land, communities, and citizens. EPA's Office of Solid Waste and Emergency Response (OSWER) contributes to the Agency's overall mission of protecting public health and the environment by focusing on, preparing for, preventing and responding to chemical and oil spills, accidents, and emergencies; enhancing homeland security; increasing the beneficial use and recycling of secondary materials, the safe management of wastes and cleaning up contaminated property and making it available for reuse. Several regulatory priorities for the upcoming fiscal year will promote stewardship and resource conservation and focus regulatory efforts on risk reduction and statutory compliance.

**Spill Prevention Control, and Countermeasures.** EPA is considering amending the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements issued on December 5, 2008 (73 FR 74236), based on comments received on a February 2009 notice. The rule, when finalized, will streamline and reduce the burden imposed on the regulated community for complying with these SPCC requirements, while maintaining protection of human health and the environment.

**Financial Responsibility.** Under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA is to promulgate requirements that require certain classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risks from the production, treatment, and transportation, storage or disposal of CERCLA hazardous substances. Additionally, EPA is to publish a notice of the classes of facilities for which financial responsibility requirements will be first developed. To fulfill the notice requirement, EPA identified the certain classes of facilities within the hardrock mining industry as the classes of facilities for which the Agency will first develop financial responsibility requirements under CERCLA 108(b). In addition, the Agency plans to publish a notice by December 2009 in which it will identify other possible classes of facilities for which the Agency will consider developing financial responsibility requirements.

Protection from Inadequate Management of Coal Waste. Coal Combustion Residuals (CCRs) comprise one of the largest industrial waste streams. To protect the public from human health risks and to prevent environmental damage resulting from present disposal practices, EPA expects to propose a rule by December 2009 for the management of CCRs in landfills and surface impoundments. In developing the proposed rule, the Agency will consider comments it received on its August 2007 notice of data availability, plus any additional information that the Agency has collected or has been provided regarding the management of these residuals.

For more information about these regulatory actions, as well as information about other programs and activities related to hazardous waste, please visit http://www.epa.gov/oswer/.

**Protecting America's Water**

EPA will intensify its work to restore water quality protections in our nation's streams, rivers, lakes, bays, oceans and aquifers. EPA will make robust use of its authority to restore threatened treasures such as the Great Lakes and the Chesapeake Bay, address neglected urban rivers, strengthen drinking water safety programs, and reduce pollution from industrial and non-industrial discharges. Three regulatory priorities for the coming fiscal year will help achieve some of these goals.

**Improving Water Quality.** EPA plans to address challenging water quality problems in two rulemakings during Fiscal Year 2010. First, the Agency will publish final standards to address erosion and sediment discharges associated with construction and development activities. Later in the fiscal year, EPA plans to solicit comment on proposed standards for cooling water intakes for electric power plants and for other manufacturers who use large amounts of cooling water. The goal of the proposed rule will be to protect aquatic organisms from being killed or injured through impingement or entrainment.

For more information about these regulatory actions, as well as information about other programs and activities related to water, please visit http://www.epa.gov/ow/.

**Aggregate Costs and Benefits**

EPA has calculated a combined aggregate estimate of the costs and benefits of regulations included in the Regulatory Plan. For the fiscal year 2009, EPA has been able to gather sufficient data on seven of the twenty-two anticipated regulations to include them in an aggregate estimate. For the remaining actions, costs and benefits have not yet been calculated for various reasons. The regulations included in the aggregate estimate of costs and benefits are:

- Primary NAAQS for Nitrogen Dioxide (2060-AO19);
- Control of Emissions from New Marine Compression-Ignition Engines (2060-AO38);
- EPA/NHTSA Joint Rulemaking for Light-Duty GHG Emission and CAFE Standards (2060-AP58);
- Combined Rulemaking for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources of HAP and Industrial, Commercial, and Institutional Boilers at Area Sources (2060-AM44);
- Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule, 40 CFR 112 (2050-AG16);
- Standards for Cooling Water Intake Structures (2040-AE95); and

- Effluent Limitations Guidelines and Standards for the Construction and Development (C&D) Point Source Category (2040-AE91).

EPA obtained aggregate estimates of total costs and benefits assuming both a three percent discount rate and a seven percent discount rate. However, one of the regulations listed above (C&D) was not included in the seven percent aggregation due to lack of data. Given a three percent discount rate, benefits range from $114 billion to $360 billion while the costs range from $17 billion to $30 billion. With a seven percent discount rate, and omitting one rule, benefits range from $75 billion to $305 billion. Costs with a seven percent discount rate range from $12 billion to $22 billion. In both cases, cost savings were treated as benefits, and all values are converted to 2008 dollars using a GDP deflator.

These results should be considered with caution. As with any aggregate estimate of total costs and benefits, these estimates must be highly qualified. First, there are significant gaps in data. In general, the benefits estimates reported above do not include values for benefits that have been quantified but not monetized and missing values for qualitative benefits, such as some human health benefits and ecosystem health improvements. Second, methodologies and types of costs/benefits considered are inconsistent, as are the units of analysis. Some of the costs/benefits are described as annualized values, while other values are specific to one year. Third, problems with aggregation can arise from differing baselines. Finally, the ranges presented do not reflect the full range of uncertainty in the benefit and cost estimates for these rules.

**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:

- Combined Rulemaking for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources of HAP and Industrial, Commercial, and Institutional Boilers at Area Sources (2060-AM44);
- Renewable Fuel Standard Program (2060-AO810).

**CONCLUSION**

EPA's Regulatory Plan is an important element of the Agency's strategy for achieving environmental results within the framework described above. Taken as a whole, the Agency's Regulatory Plan will ensure that the Nation continues to achieve improvements in environmental quality while at the same time promoting economic growth.

## EPA

### PRERULE STAGE

### 133. • LEAD; RENOVATION, REPAIR, AND PAINTING PROGRAM FOR PUBLIC AND COMMERCIAL BUILDINGS

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

15 USC 2682(c)(3)

**CFR Citation:**

40 CFR 745

**Legal Deadline:**

Other, Judicial, April 22, 2010, Advance Notice of Proposed Rulemaking.

NPRM, Judicial, December 15, 2011.

Final, Judicial, July 15, 2013.

**Abstract:**

Section 402(c)(3) of the Toxic Substances Control Act (TSCA) requires EPA to regulate renovation or remodeling activities in target housing (most pre-1978 housing), pre-1978 public buildings, and commercial buildings that create lead-based paint hazards. On April 22, 2008, EPA issued a final rule to address lead-based paint hazards created by these activities in target housing and child-occupied facilities built before 1978. In this rule, child-occupied facilities are a subset of public and commercial buildings or facilities where children under age 6 spend a great deal of time. The 2008 rule established requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. This new rulemaking will address renovation or remodeling activities in the remaining buildings described in TSCA section 402(c)(3): Public buildings built before 1978 and commercial buildings that are not child-occupied facilities.

**Statement of Need:**

Statutory requirement.

**Summary of Legal Basis:**

Section 402(c)(3) of the Toxic Substances Control Act (TSCA) requires EPA to regulate renovation or remodeling activities that create lead-based paint hazards in target housing, which is defined by statute to cover most pre-1978 housing, public buildings built before 1978, and commercial buildings.

**Alternatives:**

Yet to be determined.

**Anticipated Cost and Benefits:**

Yet to be determined.

**Risks:**

Yet to be determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 04/00/10 | |
| NPRM | 12/00/11 | |
| Final Action | 07/00/13 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 5381; N/A

**URL For More Information:**

http://www.epa.gov/lead/pubs/renovation.htm

**Agency Contact:**

Hans Scheifele
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
7404T
Washington, DC 20460
Phone: 202 564–1459
Email: scheifele.hans@epamail.epa.gov

Cindy Wheeler
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
7404T
Washington, DC 20460
Phone: 202 566–0484
Fax: 202 566–0471
Email: wheeler.cindy@epa.gov

**RIN:** 2070–AJ56

**EPA**

### 134. CERCLA 108(B) FINANCIAL RESPONSIBILITY

**Priority:**

Other Significant

**Legal Authority:**

42 USC 9608 (b)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain authorities concerning financial responsibility requirements. The Agency has already identified classes of facilities within the hardrock mining industry as those for which financial responsibility requirements will be first developed. The Agency is currently examining the following classes of facilities for possible development of financial responsibility requirements under CERCLA Section 108(b): hazardous waste generators, hazardous waste recyclers, metal finishers, wood treatment facilities and chemical manufacturers. This list may be revised as the Agency's evaluation proceeds. EPA is scheduled to complete and publish in the Federal Register a notice identifying potential categories of facilities by December 2009.

**Statement of Need:**

The Agency is currently examining various classes of facilities that may produce, transport, treat, store or dispose of hazardous substances for development of financial responsibility requirements under CERCLA Section 108(b).

**Summary of Legal Basis:**

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended.

**Alternatives:**

To be determined.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

To be determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Priority Notice | 07/28/09 | 74 FR 37213 |
| FR Notice | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5350; EPA publication information: Priority Notice - http://www.epa.gov/fedrgstr/EPA-WASTE/2009/July/Day-28/f16819.pdf; EPA Docket information: EPA-HQ-SFUND-2009-0265

**Agency Contact:**

Ben Lesser
Environmental Protection Agency
Solid Waste and Emergency Response
5304P
Washington, DC 20460
Phone: 703 308–0314
Email: lesser.ben@epa.gov

Elaine Eby
Environmental Protection Agency
Solid Waste and Emergency Response
5304P
Washington, DC 20460
Phone: 703 308–8449
Email: eby.elaine@epa.gov

**RIN:** 2050–AG56

**EPA**

## PROPOSED RULE STAGE

### 135. COMBINED RULEMAKING FOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS AT MAJOR SOURCES OF HAP AND INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AT AREA SOURCES

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

Clean Air Act, sec 112

**CFR Citation:**

40 CFR 63

**Legal Deadline:**

NPRM, Judicial, April 15, 2010, A 60 day extension for proposal was granted on June 30, 2009.

Final, Judicial, December 16, 2010.

**Abstract:**

Section 112 of the Clean Air Act (CAA) outlines the statutory requirements for EPA's stationary source air toxics program. Section 112 mandates that EPA develop standards for hazardous air pollutants (HAP) for both major and area sources listed under section 112(c). Section 112(k) requires development of standards for area sources which account for 90% of the emissions in urban areas of the 30 urban (HAP) listed in the Integrated Urban Air Toxics Strategy. These area source standards can require control levels which are equivalent to either maximum achievable control technology (MACT) or generally available control technology (GACT). The Integrated Air Toxics Strategy lists industrial boilers and commercial/institutional boilers as area source categories for regulation pursuant to section 112(c). Industrial boilers and institutional/commercial boilers are on the list of section 112(c)(6) source categories. In this rulemaking, EPA will develop standards for these source categories.

**Statement of Need:**

As a result of the vacatur of the Industrial Boiler MACT, the Agency will develop another rulemaking under

CAA section 112 which will reduce hazardous air pollutant (HAP) emissions from this source category. Recent court decisions on other CAA section 112 rules will be considered in developing this regulation.

**Summary of Legal Basis:**

Clean Air Act, section 112.

**Alternatives:**

Not yet determined.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

Not yet determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

Local, State

**Additional Information:**

SAN No. 4884. This rulemaking combines the area source rulemaking for boilers and the rulemaking for re-establishing the vacated NESHAP for boilers and process heaters. EPA Docket information: EPA-HQ-OAR-2006-0790

**Agency Contact:**

Jim Eddinger
Environmental Protection Agency
Air and Radiation
C439–01
Research Triangle Park, NC 27711
Phone: 919 541–5426
Email: eddinger.jim@epamail.epa.gov

Robert J. Wayland
Environmental Protection Agency
Air and Radiation
D243–01
RTP, NC 27711
Phone: 919 541–1045
Fax: 919 541–5450
Email: wayland.robertj@epamail.epa.gov

**RIN:** 2060–AM44

**EPA**

## 136. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7408; 42 USC 7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

None

**Abstract:**

Under the Clean Air Act, EPA is required to review and, if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On October 17, 2006, EPA published a final rule to revise the primary and secondary NAAQS for particulate matter to provide increased protection of public health and welfare. With regard to the primary standard for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM2.5), EPA revised the level of the 24-hour PM2.5 standard to 35 micrograms per cubic meter (ug/m3) and retained the level of the annual PM2.5 standard at 15 ug/m3. With regard to primary standards for particles generally less than or equal to 1 micrometers in diameter (PM10), EPA retained the 24-hour PM10 standard and revoked the annual PM10 standard. With regard to secondary PM standards, EPA made them identical in all respects to the primary PM standards, as revised. EPA initiated the current review in 2007 with a workshop to discuss key policy-relevant issues around which EPA would structure the review. This review includes the preparation of an Integrated Science Assessment, Risk/Exposure Assessment, and a Policy Assessment Document by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's decision as to whether to retain or revise the standards.

**Statement of Need:**

As established in the Clean Air Act, the national ambient air quality standards for particulate matter are to be reviewed every five years.

**Summary of Legal Basis:**

Section 109 of the Clean Air Act (42 USC 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare or ecosystem effects.

**Alternatives:**

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for particulate matter are whether to retain or revise the existing standards and, if revisions are necessary, the forms and levels of the revised standards. Options for these alternatives will be developed as the rulemaking proceeds.

**Anticipated Cost and Benefits:**

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

**Risks:**

During the course of this review, risk assessments will be conducted to evaluate health risks associated with retention or revision of the particulate matter standards.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |
| Final Action | 07/00/11 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 5169; ; EPA Docket information: EPA-HQ-OAR-2007-0492

**URL For More Information:**

www.epa.gov/air/particlepollution/

**Agency Contact:**

Beth Hassett–Sipple
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–4605
Fax: 919 541–0237
Email: hassett-sipple.beth@epa.gov

Karen Martin
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–5274
Fax: 919 541–0237
Email: martin.karen@epa.gov

**RIN:** 2060–AO47

---

**EPA**

**137. REVIEW OF THE PRIMARY NATIONAL AMBIENT AIR QUALITY STANDARD FOR SULFUR DIOXIDE**

**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, November 16, 2009.

Final, Judicial, June 2, 2010.

**Abstract:**

Under the Clean Air Act, EPA is required to review and, if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On May 22, 1996, EPA published a final decision that revisions of the primary and secondary NAAQS for Sulfur Dioxide (SO2) were not appropriate at that time, aside from several minor technical changes. That action provided the Administrator's final determination, after careful evaluation of comments received on the November 1994 proposal, that significant revisions to the primary and secondary NAAQS for SO2 would not be made at that time. In 2006, EPA's Office of Research and Development initiated the current periodic review of SO2 air quality criteria, the scientific basis for the NAAQS, with a call for information in the Federal Register. Subsequently, the decision was made to separate the reviews of the primary and secondary SO2 standards, and to combine the SO2 secondary-standard review with the secondary-standard review of Nitrogen Dioxide (NO2) due to their linkage in terms of effects and atmospheric chemistry. That joint review of the SO2 and NO2 secondary standards is part of a separate regulatory action described elsewhere in this Regulatory Plan under the identifying number (RIN) 2060-AO72. The regulatory action described here is for the Agency's review of the primary SO2 NAAQS. This review includes the preparation of an Integrated Science Assessment, Risk/Exposure Assessment, and a Policy Assessment. These documents were reviewed by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the standards.

**Statement of Need:**

As established in the Clean Air Act, the national ambient air quality standards for SO2 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 SO2 are whether to retain or revise the existing standards.

**Anticipated Cost and Benefits:**

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on the developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

**Risks:**

During the course of this review, risk assessments were conducted to evaluate health risks associated with retention or revision of the SO2 standards.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 5163; ; EPA Docket information: EPA-HQ-OAR-2007-0352

**URL For More Information:**

http://www.epa.gov/ttn/naaqs/standards/so2/s__so2__index.html

**Agency Contact:**

Michael Stewart
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–7524
Fax: 919 541–0237
Email: stewart.michael@epa.gov

Karen Martin
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–5274
Fax: 919 541–0237
Email: martin.karen@epa.gov

**RIN:** 2060–AO48

**EPA**

## 138. REVIEW OF THE SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OXIDES OF NITROGEN AND OXIDES OF SULFUR

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7408; 42 USC 7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

NPRM, Judicial, July 12, 2011.

Final, Judicial, March 20, 2012, No court schedule has been ordered for this review as of yet. This date represents the date submitted by EPA to the court.

**Abstract:**

Under the Clean Air Act, EPA is required to review and, if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On October 11, 1995, EPA published a final rule not to revise either the primary or secondary NAAQS for nitrogen dioxide (NO2). On May 22, 1996, EPA published a final decision that revisions of the primary and secondary NAAQS for sulfur dioxide (SO2) were not appropriate at that time, aside from several minor technical changes. On December 9, 2005, EPA's Office of Research and Development (ORD) initiated the current periodic review of NO2 air quality criteria with a call for information in the Federal Register (FR). On May 3, 2006, ORD initiated the current periodic review of SO2 air quality criteria with a call for information in the FR. Subsequently, the decision was made to review the oxides of nitrogen and the oxides of sulfur together, rather than individually, with respect to a secondary welfare standard for NO2 and SO2. This decision derives from the fact that NO2, SO2, and their associated transformation products are linked from an atmospheric chemistry perspective, as well as from an environmental effects perspective, most notably in the case of secondary aerosol formation and acidification in ecosystems. This review includes the preparation of an Integrated Science Assessment, Risk/Exposure Assessment, and a Policy Assessment Document by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the standards. It should be noted that this review will be limited to only the secondary standards; the primary standards for SO2 and NO2 are being reviewed separately, as described elsewhere in this Regulatory Plan under the identifying numbers RIN-2060-AO48 and RIN-2060-AO19, respectively.

**Statement of Need:**

As established in the Clean Air Act, the national ambient air quality standards for oxides of nitrogen and oxides of sulfur are to be reviewed every five years.

**Summary of Legal Basis:**

Section 109 of the Clean Air Act (42 USC 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare or ecosystem effects.

**Alternatives:**

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for oxides of nitrogen and oxides of sulfur are whether to retain or revise the existing standards.

**Anticipated Cost and Benefits:**

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on the developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

**Risks:**

During the course of this review, risk assessments may be conducted to evaluate public welfare risks associated with retention or revision of the NOx/SOx secondary standards.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/10 | |
| Final Action | 11/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 5170; EPA Docket information: EPA-HQ-OAR-2007-1145

**Agency Contact:**

Anne Rea
Environmental Protection Agency
Air and Radiation
C539–02
Research Triangle Park, NC 27711
Phone: 919 541–0053
Fax: 919 541–0905
Email: rea.anne@epa.gov

Ginger Tennant
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–4072
Fax: 919 541–0237
Email: tennant.ginger@epa.gov

**RIN:** 2060–AO72

**EPA**

**139. CLEAN AIR TRANSPORT RULE**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

Clean Air Act Title I

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

On May 12, 2005, the Environmental Protection Agency (EPA) promulgated the Clean Air Interstate Rule, commonly known as CAIR (70 FR 25162). The CAIR used a cap and trade approach to reduce sulfur dioxide (SO2) and nitrogen oxides (NOx) emissions. On July 11, 2008, the D.C. Circuit issued an opinion finding the CAIR unlawful and vacating the rule. On December 23, the D.C. Circuit issued a decision on the petitions for rehearing of the July 11 decision. The court granted EPA's petition for rehearing to the extent that it remanded the cases without vacatur of the CAIR. This ruling means that the CAIR remains in place, but that EPA is obligated to promulgate another rule under Clean Air Act Section 110(a)(2)(D) consistent with the court's July 11 opinion. This action is proposing to fulfill our obligation to develop a rule consistent with the July 11, 2008 and December 23, 2008 D.C. Court decisions.

**Statement of Need:**

The Clean Air Transport Rule is necessary to help states address interstate transport of pollutants from upwind states to downwind nonattainment areas. Specifically, the rule is needed to respond to the remand of the Clean Air Interstate Rule by the U.S. Court of Appeals for the D.C. Circuit.

**Summary of Legal Basis:**

The Clean Air Transport Rule is needed to help states address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act. This section requires States to prohibit emissions that contribute significantly to downwind nonattainment with the national ambient air quality standards, or which interfere with maintaining the standards in those downwind states.

**Alternatives:**

To be determined.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

To be determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/10 | |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 5336; EPA Docket information: EPA-HQ-OAR-2009-0491

**Agency Contact:**

Tim Smith
Environmental Protection Agency
Air and Radiation
C539–04
RTP, NC 27711
Phone: 919 541–4718
Fax: 919 541–5489
Email: smith.tim@epamail.epa.gov

Rhea Jones
Environmental Protection Agency
Air and Radiation
C539–04
RTP, NC 27709
Phone: 919 541–2940
Fax: 919 541–0824
Email: jones.rhea@epa.gov

**RIN:** 2060–AP50

---

**EPA**

**140. ● REVISION TO PB AMBIENT AIR MONITORING REQUIREMENTS**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7403; 42 USC 7410; 42 USC 7601(a); 42 USC 7611; 42 USC 7619

**CFR Citation:**

40 CFR 58

**Legal Deadline:**

None

**Abstract:**

On November 12, 2008, the Environmental Protection Agency (EPA revised the National Ambient Air Quality Standards (NAAQS) for lead and associated monitoring requirements. The finalized monitoring requirements require state and local monitoring agencies to conduct Pb monitoring near Pb sources emitting 1.0 tons per year (tpy) or more and in large urban areas referred to as Core Based Statistical Areas (CBSA) with a population of 500,000 people or more. In January 2009, EPA received a petition to reconsider the 1.0 tpy emission threshold from the Missouri Coalition for the Environment Foundation, Natural Resources Defense Council, the Coalition to End Childhood Poisoning, and Physicians for Social Responsibility requesting EPA reconsider the 1.0 tpy emission threshold. EPA granted the petition to reconsider on July 22, 2009. This action represents the results of the EPA's reconsideration of the Pb monitoring requirements.

**Statement of Need:**

This action is in response to a petition to reconsider that the Agency received and granted on the Pb monitoring requirements contained in the revision to the Pb NAAQS (73 FR 66964).

**Summary of Legal Basis:**

Clean Air Act Title I

**Alternatives:**

To be determined.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

To be determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

**Additional Information:**

SAN No. 5370; EPA Docket information: EPA-HQ-OAR-2006-0735

**URL For More Information:**

http://epa.gov/air/lead

**Agency Contact:**

Kevin Cavender
Environmental Protection Agency
Air and Radiation
C304–06
RTP, NC 27711
Phone: 919 541–2364
Fax: 919 541–1903
Email: cavender.kevin@epamail.epa.gov

Lewis Weinstock
Environmental Protection Agency
Air and Radiation
C304–06
RTP, NC 27711
Phone: 919 541–3661
Fax: 919 541–1903
Email: weinstock.lewis@epamail.epa.gov

**RIN:** 2060–AP77

**EPA**

## 141. • PREVENTION OF SIGNIFICANT DETERIORATION/TITLE V GREENHOUSE GAS TAILORING RULE

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

Clean Air Act Title I

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

In this rule, EPA will apply a tailored approach to the applicability major source thresholds for greenhouse gases under the Prevention of Significant Deterioration (PSD) and title V programs of the Clean Air Act (CAA or Act) by temporarily raising those thresholds and setting a PSD significance level for greenhouse gases. EPA is anticipating that greenhouse gas (GHG) emissions may soon be subject to regulation pursuant to the CAA.

One consequence of our subjecting GHG emissions to regulatory controls is that the requirements of existing air permit programs, namely the prevention of significant deterioration (PSD) preconstruction permitting program for major stationary sources and the title V operating permits program, would be triggered for GHG emission sources. At the current applicability levels under the CAA, tens of thousands of projects every year would need permits under the PSD program, and millions of sources would become subject to the title V program. These numbers of permits are orders of magnitude greater than the current number of permits under these permitting programs and would vastly exceed the administrative capacity of the permitting authorities. By tailoring the applicability thresholds, we will allow actions to be taken by EPA and states to build capacity and streamline permitting.

**Statement of Need:**

This action will implement a tailored approach to PSD and Title V applicability for GHG sources when GHG emissions become subject to regulation pursuant to the CAA. This will avoid the scenario where each year tens of thousands of new sources and modifications would potentially become subject to PSD review and millions of sources would require title V operating permits, instead replacing it with a phased approach that allows permitting authorities to manage or obtain the necessary resources to handle the increased workload.

**Summary of Legal Basis:**

Doctrine of Administrative Necessity.

**Alternatives:**

Alternatives are being developed and will be presented in the preamble to the proposed rule.

**Anticipated Cost and Benefits:**

EPA has not completed the necessary analytical work that supports developing the regulatory relief costs savings associated with this rule. Once the analysis plan/work is completed, the Agency will compile and present the information.

**Risks:**

Not yet determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

**Additional Information:**

SAN No. 5192; EPA Docket information: EOPA-HQ-OAR-2009-0517

**URL For More Information:**

www.epa.gov/nsr

**Agency Contact:**

Joseph Mangino
Environmental Protection Agency
Air and Radiation
C504–03
RTP, NC 27711
Phone: 919 541–9778
Fax: 919 685–3105
Email: mangino.joseph@epamail.epa.gov

Jennifer Snyder
Environmental Protection Agency
Air and Radiation
C504–05
Research Triangle Park, NC 27711
Phone: 919 541–3003
Fax: 919 541–5509
Email: snyder.jennifer@epamail.epa.gov

**RIN:** 2060–AP86

**EPA**

## 142. • RECONSIDERATION OF THE 2008 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 USC 7409

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

NPRM, Judicial, December 21, 2009, Promised proposal to court by 12/21/2009.

**Abstract:**

On March 12, 2008, EPA announced the final decision on the ozone national ambient air quality standards (NAAQS). Soon after that decision was signed on 3/27/08 (73 FR 16436), the Clean Air Scientific Advisory Committee (CASAC) held an unsolicited public meeting and criticized EPA for setting primary and secondary standards that were not consistent with advice provided by the CASAC during review of the NAAQS. On 7/25/08, several environmental and industry petitioners, as well as a number of States, sued EPA on the NAAQS decision, and the Court set a briefing schedule for the consolidated cases on 12/23/08. On 3/10/09, EPA requested that the Court vacate the briefing schedule and hold the consolidated cases in abeyance for 180 days. This request for extension was made to allow time for appropriate

EPA officials appointed by the new Administration to determine whether the standards established in March 2008 should be maintained, modified or otherwise reconsidered. Announcement of reconsideration of the March 2008 NAAQS decision occurred on 9/16/09. The current rulemaking schedule calls for a NAAQS proposal (including a proposal to stay implementation designations for the March 2008 NAAQS) to be signed by 12/15/09, with the final rule to be signed by 8/31/10. Reconsideration of the NAAQS will be limited to information and supporting documentation available to EPA and in the docket at the time of the March 2008 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. As outlined in the abstract of this Regulatory Plan entry, this reconsideration is in response to actions by the courts regarding the last review in 2008.

**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. Decisions on these alternatives will be summarized in the Notice of Proposed Rulemaking.

**Anticipated Cost and Benefits:**

A regulatory impact analysis (RIA) is being prepared that presents the costs and benefits associated with the proposed revised ozone standards and potential alternative standards. This RIA will be made available when the Notice of Proposed Rulemaking is published.

**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 |
|---|---|---|
| NPRM | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**URL For More Information:**

www.epa.gov/air/criteria.html

**Agency Contact:**

David McKee
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–5288
Fax: 919 541–0237
Email: mckee.dave@epa.gov

Karen Martin
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–5274
Fax: 919 541–0237
Email: martin.karen@epa.gov

**Related RIN:** Related to 2060–AN24

**RIN:** 2060–AP98

---

**EPA**

### 143. ● LEAD; CLEARANCE AND CLEARANCE TESTING REQUIREMENTS FOR THE RENOVATION, REPAIR, AND PAINTING PROGRAM

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

15 USC 2601(c); 15 USC 2682(c)(3); 15 USC 2684; 15 USC 2686; 15 USC 2687

**CFR Citation:**

40 CFR 745

**Legal Deadline:**

NPRM, Judicial, April 22, 2010, Signature.

Final, Judicial, July 15, 2011, Signature.

**Abstract:**

EPA intends to propose several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. Current requirements include training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. EPA is particularly concerned about dust lead hazards generated by renovations because children, especially younger children, are at risk for high exposures of lead-based paint dust via hand-to-mouth exposure. For this particular action, EPA will consider whether to establish additional requirements to ensure that renovation work areas are adequately cleaned after renovation work is finished and before the areas are re-occupied. These additional requirements may include dust wipe testing after renovations and ensuring that renovation work areas meet clearance standards before re-occupancy.

**Statement of Need:**

EPA is particularly concerned about dust lead hazards generated by renovations because children, especially younger children, are at risk for high exposures of lead-based paint dust via hand-to-mouth exposure. This rulemaking revision is being considered in response to a settlement agreement.

**Summary of Legal Basis:**

Section 402(c)(3) of the Toxic Substances Control Act (TSCA) requires EPA to regulate renovation or remodeling activities that create lead-based paint hazards in target housing, which is defined by statute to cover most pre-1978 housing, public buildings built before 1978, and commercial buildings.

**Alternatives:**

The additional requirements may include dust wipe testing after

renovations and ensuring that renovation work areas meet clearance standards before re-occupancy.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

Not yet determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| Final Action | 07/00/11 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5380

**URL For More Information:**

http://www.epa.gov/lead/pubs/renovation.htm

**Agency Contact:**

Cindy Wheeler
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
7404T
Washington, DC 20460
Phone: 202 566–0484
Fax: 202 566–0471
Email: wheeler.cindy@epa.gov

Michelle Price
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
7404T
Washington, DC 20460
Phone: 202 566–0744
Fax: 202 566–0471
Email: price.michelle@epa.gov

**RIN:** 2070–AJ57

---

**EPA**

## 144. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION RESIDUALS GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This action is for the development of regulations for coal combustion residuals (formerly coal combustion waste). The regulations will apply to waste management units at facilities that manage coal combustion residuals generated by steam electric power generators, i.e., electric utilities and independent power producers. This action results from EPA's regulatory determination for fossil fuel combustion wastes (see 65 FR 32214, May 22, 2000), which concluded that waste management regulations under RCRA are appropriate for certain coal combustion residuals (wastes). The intended benefits of this action will be to prevent contamination or damage to ground waters and surface waters, thereby avoiding risk to human health and the environment, including ecological risks, while monitoring the benefits of beneficial use of coal ash residues. The Agency issued on August 29, 2007, a Notice of Data Availability (NODA) announcing the availability for public inspection and comment of new information and data on the management of coal combustion wastes that the Agency will consider in deciding next steps in this effort. The comment period for this NODA closed on February 11, 2008. EPA is currently preparing a proposed rule for the regulation of coal combustion residuals.

**Statement of Need:**

There is a need to assess risks associated with the management of coal combustion residuals and the most effective regulatory option to address them.

**Summary of Legal Basis:**

Resource Conservation and Recovery Act

**Alternatives:**

To be determined.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

To be determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NODA | 08/29/07 | 72 FR 49714 |
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Federal, Local, State, Tribal

**Federalism:**

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

**Additional Information:**

SAN No. 4470. EPA publication information: NODA - http://frwebgate1.access.gpo.gov/ cgi-bin/waisgate.cgi?WAISdocID=623368417775 +2+0+0&WAISaction=retrieve — This effort will also affect Federal, state, local or tribal governments that own coal-burning commercial electric power generating facilities. EPA Docket information: EPA-HQ-RCRA-2006-0796

**Sectors Affected:**

221112 Fossil Fuel Electric Power Generation

**Agency Contact:**

Alexander Livnat
Environmental Protection Agency
Solid Waste and Emergency Response
5304P
Washington, DC 20460
Phone: 703 308–7251
Fax: 703 605–0595
Email: livnat.alexander@epa.gov

Steve Souders
Environmental Protection Agency
Solid Waste and Emergency Response
5306P
Washington, DC 20460
Phone: 703 308–8431
Fax: 703 605–0595
Email: souders.steve@epamail.epa.gov

**RIN:** 2050–AE81

---

**EPA**

## 145. CRITERIA AND STANDARDS FOR COOLING WATER INTAKE STRUCTURES

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

CWA 101; CWA 301; CWA 304; CWA 308; CWA 316; CWA 401; CWA 402; CWA 501; CWA 510

**CFR Citation:**

40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

**Legal Deadline:**

None

**Abstract:**

Section 316(b) of the Clean Water Act (CWA) requires EPA to ensure that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impacts. In developing regulations to implement section 316(b), EPA divided its effort into three rulemaking phases. Phase II, for existing electric generating plants that use at least 50 MGD of cooling water, was completed in July 2004. Industry and environmental stakeholders challenged the Phase II regulations. On review, the U.S. Court of Appeals for the Second Circuit remanded several key provisions. In July 2007, EPA suspended Phase II and has now initiated a new 316(b) Phase II rulemaking. Following the decision in the Second Circuit, several parties petitioned the U.S. Supreme Court to review that decision, and the Supreme Court granted the petitions, limited to the issue of whether the Clean Water Act authorized EPA to consider the relationship of costs and benefits in establishing section 316(b) standards. On April 1, 2009, the Supreme Court reversed the Second Circuit, finding that the Agency may consider cost-benefit analysis in its decision-making. This finding did not hold that the Agency must consider costs and benefits in these decisions. EPA issued the Phase III regulation, covering existing electric generating plants using less than 50 MGD of cooling water, and all existing manufacturing facilities, in June 2006. EPA will accept a voluntary remand of the Phase III regulation for existing facilities, in order to issue a regulation covering both Phase II and III facilities, and to do so in a consistent manner. EPA expects this new rulemaking will similarly apply to the approximately 900 existing electric generating and manufacturing plants.

**Statement of Need:**

In the absence of national regulations, NPDES permit writers have developed requirements to implement section 316(b) on a case-by-case basis. This may result in a range of different requirements, and, in some cases, delays in permit issuance or reissuance. This regulation may have substantial ecological benefits.

**Summary of Legal Basis:**

The Clean Water Act requires EPA to establish best technology available standards to minimize adverse environmental impacts from cooling water intake structures. On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power producing facilities under section 316(b) of the Clean Water Act (Phase II rule). 69 FR 41576 (July 9, 2004). These regulations were challenged, and the Second Circuit remanded several provisions of the Phase II rule on various grounds. Riverkeeper, Inc. v. EPA, 475 F.3d 83, (2d Cir., 2007). EPA suspended most of the rule in response to the remand. 72 FR 37107 (July 9, 2007). The remand of Phase III does not change permitting requirements for these facilities. Until the new rule is issued, permit directors continue to issue permits on a case-by-case, Best Professional Judgment basis for Phase II facilities.

**Alternatives:**

This analysis will cover various sizes and types of potentially regulated facilities, and control technologies. EPA is considering whether to regulate on a national basis, by subcategory, or by broad water body category.

**Anticipated Cost and Benefits:**

The technologies under consideration in this rulemaking are similar to the technologies considered for the original Phase II and Phase III rules. Those costs evaluated for the Phase II remanded rule, in 2002 dollars, ranged from $389 million (the final rule option) to $440 million (the final rule option at proposal) to $1 billion to $3.5 billion (closed cycle cooling for facilities on certain waterbodies, or at all facilities). The monetized benefits of the original final rule were estimated to be $82 million. The monetized benefits include only the use value associated with quantifiable increases in commercial and recreational fisheries. Non-use benefits were not analyzed. The costs and benefits of the Phase III option most closely aligned with the Phase II option co-promulgated were $38.3 million and $2.3 million respectively, in 2004 dollars. EPA will develop new costs and benefits estimates for this new effort.

**Risks:**

Cooling water intake structures may pose significant risks for aquatic ecosystems.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |
| Final Action | 07/00/12 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

SAN No. 5210; EPA Docket information: EPA-HQ-OW-2008-0667

**URL For More Information:**

www.epa.gov/waterscience/316b

**Agency Contact:**

Paul Shriner
Environmental Protection Agency
Water
4303T
Washington, DC 20460
Phone: 202 566–1076
Email: shriner.paul@epamail.epa.gov

Jan Matuszko
Environmental Protection Agency
Water
4303T
Washington, DC 20460
Phone: 202 566–1035
Email: matuszko.jan@epamail.epa.gov

**RIN:** 2040–AE95

**EPA**

## FINAL RULE STAGE

### 146. REVIEW OF THE PRIMARY NATIONAL AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7408; 42 USC 7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

NPRM, Judicial, June 26, 2009.

Final, Judicial, January 22, 2010.

**Abstract:**

Under the Clean Air Act, EPA is required to review and, if appropriate,

revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On October 8, 1996, EPA published a final rule not to revise either the primary or secondary NAAQS for nitrogen dioxide (NO2). That action provided the Administrator's final determination, after careful evaluation of comments received on the October 1995 proposal, that revisions to neither the primary nor the secondary NAAQS for NO2 were appropriate at that time. On December 9, 2005, EPA's Office of Research and Development initiated the current periodic review of NO2 air quality criteria, the scientific basis for the NAAQS, with a call for information in the Federal Register. Subsequently, the decision was made to separate the reviews of the primary and secondary NO2 standards, and to combine the NO2 secondary-standard review with the secondary-standard review of Sulfur Dioxide (SO2) due to their linkage in terms of effects and atmospheric chemistry. That joint review of the SO2 and NO2 secondary standards is part of a separate regulatory action described elsewhere in this Regulatory Plan under the identifying number RIN-2060-AO72. The regulatory action described here is for the Agency's review of the primary NO2 NAAQS. This includes the preparation of an Integrated Science Assessment, Risk/Exposure Assessment, and a Policy Assessment Document by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the standards. On July 15, 2009, a proposed rule was published that would establish a new, short-term (1-hour) standard in the range of 80 to 100 parts per billion. This action included a proposal to revise the NO2 monitoring network to include monitors near major roadways.

**Statement of Need:**

As established in the Clean Air Act, the national ambient air quality standards for NO2 are to be reviewed every five years.

**Summary of Legal Basis:**

Section 109 of the Clean Air Act (42 USC 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare or ecosystem effects.

**Alternatives:**

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for NO2 are whether to retain or revise the existing standards.

**Anticipated Cost and Benefits:**

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on the developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

**Risks:**

During the course of this review, risk assessments will be conducted to evaluate health risks associated with retention or revision of the NO2 standards

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/15/09 | 74 FR 34403 |
| Final Action | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Local, Tribal

**Additional Information:**

SAN No. 5111; EPA publication information: NPRM - http://edocket.access.gpo.gov/2009/pdf/E9-15944.pdf; EPA Docket information: EPA-HQ-OAR-2006-0922

**URL For More Information:**

http://www.epa.gov/air/nitrogenoxides/

**Agency Contact:**

Scott Jenkins
Environmental Protection Agency
Air and Radiation
C445–01
RTP, NC 27711
Phone: 919 541–1167
Email: jenkins.scott@epa.gov

Karen Martin
Environmental Protection Agency
Air and Radiation
C504–06
Research Triangle Park, NC 27711
Phone: 919 541–5274
Fax: 919 541–0237
Email: martin.karen@epa.gov

**RIN:** 2060–AO19

---

**EPA**

## 147. CONTROL OF EMISSIONS FROM NEW MARINE COMPRESSION–IGNITION ENGINES AT OR ABOVE 30 LITERS PER CYLINDER

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7545; 42 USC 7547

**CFR Citation:**

40 CFR 80; 40 CFR 94; 40 CFR 1042; 40 CFR 1065

**Legal Deadline:**

Final, Judicial, December 17, 2009.

**Abstract:**

Category 3 marine diesel engines (those with per cylinder displacement greater than 30 liters) are very large engines that are used for propulsion power in ocean-going vessels. Emissions from these engines contribute significantly to unhealthful levels of ambient particulate matter and ozone in many parts of the United States. These engines are highly mobile and are not easily controlled at a state or local level. EPA currently regulates emissions from Category 3 marine diesel engines on ships flagged in the United States. This rulemaking will consider long-term nitrogen oxides (NOx) standards for new Category 3 marine diesel engines that would require the use of high efficiency aftertreatment technology. We are considering standards equivalent to the limits for NOx recently adopted by the International Maritime Organization,

which are based on the position advanced by the United States Government as part of the international negotiations. We are also considering a revision to our diesel fuel program under the Act to allow for the manufacture and sale of marine diesel fuel with a sulfur content up to 1,000 ppm for use in Category 3 engines. The proposal would be part of a coordinated strategy, the other components of which would consist of the new amendments to MARPOL Annex VI that will extend these standards to foreign vessels (through the Act to Prevent Pollution from Ships) and pursuing Emission Control Area (ECA) designation for U.S. coastal areas in accordance with MARPOL Annex VI. Implementation of this coordinated strategy will ensure that all ships that affect U.S. air quality meet stringent NOx and fuel sulfur requirements. A recent D.C. Circuit decision (February 2009) upheld EPA's deadline of 12/17/09 based on EPA's commitment in the regulation to meet that deadline for the final Category 3 rule.

**Statement of Need:**

There is a need to reduce emissions from Category 3 marine diesel engines to achieve significant public health benefits and help states and localities attain and maintain PM and ozone National Ambient Air Quality Standards. These large diesel engines generate significant emissions of fine particulate matter (PM2.5), Nitrogen oxides (NOx) and sulfur oxides (SOx), as well as hydrocarbons (HC), carbon monoxide (CO), and hazardous air pollutants or air toxics that are associated with adverse health effects. Without further action, by 2030, NOx emissions from ships are projected to more than double, growing to 2.1 million tons a year, while annual PM2.5 emissions are expected to almost triple to 170,000 tons. By 2030, the coordinated strategy described in this rule is expected to reduce annual emissions of NOx in the United States by about 1.2 million tons and particulate matter (PM) emissions by about 143,000 tons, and prevent between 13,000 and 32,000 premature deaths annually.

**Summary of Legal Basis:**

Authority for this regulatory action is granted to the Environmental Protections Agency by sections 114, 203, 205, 206, 207, 208, 211, 213, 216, and 301(a) of the Clean Air Act as amended in 1990 (42 U.S.C. 7414, 7522, 7524, 7525, 7541, 7542, 7545, 7547, 7550 and 7601(a)), and by sections 1901-1915 of the Act to Prevent Pollution from Ships (33 USC 1909 et seq.).

The authority for the fuel requirements is provided in section 211 (c) of the Clean Air Act, which allow EPA to regulate fuels that contribute to air pollution which endangers public health or welfare (42 U.S.C. 7545 (c)). Additional support for the procedural and enforcement-related aspects of the fuel controls in the proposed rule, including the record keeping requirements, comes from sections 114 (a) and 301 (a) of the CAA (42 U.S.C. Sections 7414 (a) and 7601 (a)). The authority for the engine requirements is provided in section 213(a)(3) of the Clean Air Act, which directs the Administrator to set standards regulating emissions of NOx, volatile organic compounds (VOCs), or CO for classes or categories of engines, like marine diesel engines, that contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. Section 208, which requires manufacturers and other persons subject to Title II requirements to ''provide information the Administrator may reasonably require . . . to otherwise carry out the provisions of this part. . . '' provides authority for a PM measurement requirement. The authority to implement and enforce the Category 3 marine diesel emission standard is provided in Section 213(d) which specifies that the standards EPA adopts for marine diesel engines ''shall be subject to Sections 206, 207, 208, and 209 of the Clean Air Act, with such modifications that the Administrator deems appropriate to the regulations implementing these sections.'' In addition, the marine standards ''shall be enforced in the same manner as [motor vehicle] standards prescribed under section 202'' of the Act. Section 213 (d) also grants EPA authority to promulgate or revise regulations as necessary to determine compliance with and enforce standards adopted under section 213. Authority to implement MARPOL Annex VI is provided in section 1903 of the Act to Prevent Pollution from Ships (APPS). Section 1903 gives the Administrator the authority to prescribe any necessary or desired regulations to carry out the provisions of Regulations 12 through 19 of Annex VI.

**Alternatives:**

Several alternatives were considered as part of this rulemaking, including a mandatory cold ironing requirement; earlier adoption of the Tier 3 NOx limits; and standards for existing engines, including a mandatory remanufacture program, the MARPOL Annex VI program for existing engines, and a Voluntary Marine Verification Program.

**Anticipated Cost and Benefits:**

A benefit-cost analysis was performed for the entire coordinated strategy that involves this rulemaking and the international agreements described above. Specifically, the estimated annual benefits of the coordinated strategy range between $110 and $280 billion annually in 2030 using a three percent discount rate, or between $100 and $260 billion assuming a 7 percent discount rate, compared to estimated social costs of approximately $3.1 billion in that same year. Though there are a number of health and environmental effects associated with the coordinated strategy that we are unable to quantify or monetize, the projected benefits of the coordinated strategy far outweigh the projected costs. Using a conservative benefits estimate, the 2030 benefits are expected to outweigh the costs by at least a factor of 32 and could be as much as a factor of 90.

**Risks:**

The failure to set new tiers of standards for Category 3 marine diesel engines risks continued increases in exposure to elevated levels of ambient ozone and particulate matter emissions, particularly for populations in port areas and along coastal waterways but also for populations located well inland. These elevated levels risk additional premature mortality and other health and environmental impacts that could otherwise be avoided.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 12/07/07 | 72 FR 69521 |
| ANPRM Comment Period End | 03/06/08 | |
| NPRM | 08/28/09 | 74 FR 44441 |
| NPRM Comment Period End | 09/28/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**International Impacts:**

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

**Additional Information:**

SAN No. 5129. EPA publication information: ANPRM - http://www.epa.gov/fedrgstr/EPA-AIR/2007/December/Day-07/a23556.htm — EPA Docket information: EPA-HQ-OAR-2007-0121

**URL For More Information:**

www.epa.gov/otaq/oceanvessels.htm

**Agency Contact:**

Jean Revelt
Environmental Protection Agency
Air and Radiation
OAR/OTAQ/ASD
Ann Arbor, MI 48105
Phone: 734 214–4822
Fax: 734 214–4050
Email: revelt.jean-marie@epa.gov

Michael Samulski
Environmental Protection Agency
Air and Radiation
OAR/OTAQ/ASD
Ann Arbor, MI 48105
Phone: 734 214–4532
Fax: 734 214–4816
Email: samulski.michael@epa.gov

**RIN:** 2060–AO38

---

**EPA**

## 148. RENEWABLE FUELS STANDARD PROGRAM

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

Clean Air Act Section 211(o)

**CFR Citation:**

40 CFR 86; 40 CFR 80

**Legal Deadline:**

Final, Statutory, December 19, 2008.

**Abstract:**

This rulemaking will implement provisions in Title II of the 2007 Energy Independence and Security Act (EISA) that amend Section 211(o) of the Clean Air Act. The amendments revise the National Renewable Fuels Standard Program in the United States, increasing the national requirement to a total of 36 billion gallons of total renewable fuel in 2022. Application of the new standards now apply to diesel fuel producers in addition to gasoline producers and to nonroad fuels in addition to highway fuels. The new requirements also establish new renewable fuel categories and specific volume standards for cellulosic and advanced renewable fuels, biomass based diesel and total renewable fuels. Further, the amendments establish new eligibility requirements for meeting the renewable fuel standards including application of a specific definition for biomass, restrictions on what land feedstocks can come from and establish minimum lifecycle greenhouse gas reduction thresholds for the various categories of renewable fuels.

**Statement of Need:**

This action is directed by the 2007 Energy Independence and Security Act. It requires EPA to implement the amendments to Clean Air Act Section 211(o) - The Renewable Fuels Standard Program.

**Summary of Legal Basis:**

Clean Air Act Section 211(o).

**Alternatives:**

A notice of proposed rulemaking was published in the Federal Register on May 26, 2009. The proposal includes a number of proposed approaches as well as alternative approaches to implement the new standards. The public comment period will close on September 25, 2009.

**Anticipated Cost and Benefits:**

The economic analyses that support the proposed rule do not reflect all of the potentially quantifiable economic impacts. There are several key impacts that remain incomplete as a result of time and resource constraints necessary to complete the proposed rule, including the economic impact analysis and the air quality and health impacts analysis (see Section II.B.3). As a result, this proposal does not combine economic impacts in an attempt to compare costs and benefits, in order to avoid presenting an incomplete and potentially misleading characterization. For the final rule, when the planned analyses are complete and current analyses updated, we will provide a consistent cost-benefit comparison. However, the following is offered in reflection of some of the benefits and costs associated with certain aspects of the proposed rule. Initial estimates indicate that the expanded use of renewable fuels will result in a reduction of 6.8 billion tons of CO2 equivalent GHG emissions in 2022. This is equivalent to removing about 24 million vehicles off the road. Also, 36 billion gallons of renewable fuel will displace about 15 billion gallons of petroleum-based gasoline and diesel fuel, which represents about 11% of annual gasoline and diesel consumption in 2022. Total energy security benefits associated with a reduction of U.S. imported oil is $12.38/barrel. Based upon the $12.38/barrel figure, total energy security benefits associated with this proposal were calculated at $3.7 billion. Increases in gasoline and diesel fuel costs are equivalent to $4 billion to $18 billion in 2022. Estimates on U.S. food costs would increase by $10 per person per year by 2022 while net U.S. farm income would increase by $7.1 billion dollars (10.6%).

**Risks:**

Analysis of criteria and toxic emission impacts is performed relative to several different reference cases. Overall we project the proposed program will result in significant increases in ethanol and acetaldehyde emissions. We project more modest but still significant increases in acrolein, NOx, formaldehyde and PM. However, we project today's action will result in decreased ammonia emissions (due to reductions in livestock agricultural activity), decreased CO emissions (driven primarily by the impacts of ethanol on exhaust emissions from vehicles and nonroad equipment), and decreased benzene emissions (due to displacement of gasoline with ethanol in the fuel pool). Discussion and a breakdown of these results by the fuel production / distribution and vehicle and equipment emissions are presented in the NPRM. The aggregate nationwide emission inventory impacts presented here will likely lead to health impacts throughout the U.S. due to changes in future-year ambient air quality. However, emissions changes alone are not a good indication of local or regional air quality and health impacts, as there may be highly localized impacts such as increased emissions from ethanol plants and evaporative emissions from cars, and decreased emissions from gasoline refineries. For the final rule, a national-scale air quality modeling analysis will be performed to analyze the impacts of the proposed standards. Further, as the production of biofuels increases to meet the requirements of this proposed rule, there may be adverse impacts on both

water quality and quantity. Increased production of biofuels may lead to increased application of fertilizer and pesticides and increased soil erosion, which could impact water quality.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/26/09 | 74 FR 24903 |
| NPRM Comment Period End | 07/27/09 | |
| NPRM Comment Period Extended | 07/07/09 | 74 FR 32091 |
| NPRM Extended Comment Period End | 09/25/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**Additional Information:**

SAN No. 5250. EPA publication information: NPRM - http://edocket.access.gpo.gov/2009/pdf/E9-10978.pdf — EPA Docket information: EPA—HQ— OAR—2005—0161

**URL For More Information:**

http://www.epa.gov/otaq/renewablefuels/index.htmınotices

**Agency Contact:**

Paul Argyropoulos
Environmental Protection Agency
Air and Radiation
6520J ARN
Washington, DC 20460
Phone: 202 564–1123
Fax: 202 564–1686
Email: argyropoulos.paul@epa.gov

David Korotney
Environmental Protection Agency
Air and Radiation
AAFC
Ann Arbor, MI 48105
Phone: 734 214–4507
Email: korotney.david@epamail.epa.gov

**RIN:** 2060–AO81

**EPA**

## 149. ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7521(a)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

On April 24, 2009, the Administrator published a proposed Endangerment Finding under section 202(a) of the Clean Air Act. This proposed finding had two components. First, the Administrator proposed to find that the current and projected concentrations of the mix of six key greenhouse gases - carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6) - in the atmosphere endanger the public health and welfare of current and future generations through climate change. In the second component of the proposal, known as the Cause or Contribute Finding, the Administrator further proposed to find that the combined emissions of four of these six greenhouse gases from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these key greenhouse gases and hence to the threat of climate change. EPA has not proposed in this action any new regulation of motor vehicle or motor vehicle emissions.

**Statement of Need:**

This action responds to the Supreme Court's decision in Massachusetts v. EPA, 549 U.S. 497 (2007), in which the court found that greenhouse gases are air pollutants under the CAA. The Court held that the Administrator must determine whether or not emissions of greenhouse gases from new motor vehicles and new motor vehicle engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

**Summary of Legal Basis:**

The legal basis is Section 202(a) of the Clean Air Act.

**Alternatives:**

Not yet determined.

**Anticipated Cost and Benefits:**

This action does not include any proposed standards and does not itself impose any requirements on industry or other entities.

**Risks:**

The effects of climate change observed to date and projected to occur in the future include, but are not limited to, more frequent and intense heat waves, more severe wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Proposal | 04/24/09 | 74 FR 18886 |
| Final | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

Previously reported as RIN 2060-ZA14. SAN No. 5335; EPA publication information: Proposal - http://www.epa.gov/fedrgstr/EPA-AIR/2009/April/Day-24/a9339.pdf. EPA Docket information: EPA-HQ-OAR-2009-0171

**URL For More Information:**

www.epa.gov/climatechange/endangerment.html

**Agency Contact:**

Rona Birnbaum
Environmental Protection Agency
Air and Radiation
6207J
Washington, DC 20460
Phone: 202 343–9076
Fax: 202 565–2140
Email: birnbaum.rona@epamail.epa.gov

Ben DeAngelo
Environmental Protection Agency
Air and Radiation
6207J
Washington, DC 20460
Phone: 202 343–9107
Email: deangelo.ben@epamail.epa.gov

**RIN:** 2060–AP55

**EPA**

## 150. ● EPA/NHTSA JOINT RULEMAKING TO ESTABLISH LIGHT–DUTY GREENHOUSE GAS EMISSION STANDARDS AND CORPORATE AVERAGE FUEL ECONOMY STANDARDS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Clean Air Act Section 202(a)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

EPA plans to set national emissions standards under section 202 (a) of the Clean Air Act to control greenhouse gas (GHG) emissions from passenger cars and light-duty trucks, and medium-duty passenger vehicles, as part of a joint rulemaking with National Highway Traffic and Safety Administration (NHTSA). This joint rulemaking effort was announced by President Obama on May 19, 2009. The GHG standards would significantly reduce the GHG emissions from these light-duty vehicles. The standards would be phased in beginning with the 2012 model year through model year 2016. EPA and NHTSA expect to propose the rules by late summer 2009. EPA's final action would only occur if EPA determines that emissions of greenhouse gases may reasonably be anticipated to endanger public health or welfare, and that emissions from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these greenhouse gases and hence to the threat of climate change. EPA has already proposed these findings. (74 FR 18886; April 24, 2009)

**Statement of Need:**

EPA recently proposed to find that emissions of greenhouse gases from new motor vehicles and engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. Therefore, there is a need to reduce GHG emissions from light-duty vehicles to protect public health and welfare. The light-duty vehicle sector, which includes passenger cars, light-duty trucks, and medium-duty passenger vehicles, accounts for approximately 60% of all U.S. transportation sector GHG emissions. This rulemaking would significantly reduce GHG emissions from model year 2012 through 2016 light-duty vehicles. This rulemaking is also consistent with the National Fuel Efficiency Policy announced by President Obama on May 19, 2009, responding to the country's critical need to address global climate change and reduce oil consumption.

**Summary of Legal Basis:**

Section 202(a)(1) provides broad authority to regulate new ''motor vehicles,'' which include light duty vehicles, light-duty trucks, and medium-duty passenger vehicles (hereafter light vehicles). While other provisions of Title II address specific model years and emissions of motor vehicles, section 202(a)(1) provides the authority that EPA would use to regulate GHGs from new light vehicles. Section 202(a)(1) states ''the Administrator shall by regulation prescribe (and from time to time revise). . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles . . . , which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Any such standards ''shall be applicable to such vehicles . . . for their useful life.'' Finalizing the light vehicle regulations would be contingent upon EPA finalizing both the endangerment finding and cause or contribute finding that emissions of GHGs from new motor vehicles and motor vehicle engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare.

**Alternatives:**

The rulemaking proposal will include an evaluation of regulatory alternatives that can be considered in addition to the Agency's primary proposal. In addition, the proposal is expected to include tools such as averaging, banking and trading of emissions credits as alternative approaches for compliance with the proposed program.

**Anticipated Cost and Benefits:**

According to EPA's preliminary analysis, the standards under consideration are projected to reduce GHGs by approximately 900 million metric tons and save 1.8 billion barrels of oil over the life of the program for MY 2012 — 2016 vehicles. The program would reduce GHG emissions from the U.S. light-duty fleet by 19 percent by 2030. EPA estimates an average increased cost of about $1,300 per vehicle in 2016 compared to today's vehicles. However, the typical driver would save enough in lower fuel costs over the first three years to offset the higher vehicle cost. Over the life of a vehicle, drivers would save about $2,800 through the fuel savings that come from controlling GHG emissions. Detailed analysis of economy-wide cost impacts, greenhouse gas emission reductions, and societal benefits will be performed during the rulemaking process.

**Risks:**

GHG emissions from light-duty vehicles are responsible for almost 60 percent of all U.S. transportation-related GHGs, and increase the risk of unacceptable climate change impacts.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/28/09 | 74 FR 49454 |
| NPRM Comment Period End | 11/27/09 | |
| Final Action | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5344; EPA Docket information: EPA-HQ-OAR-2009-0472

**Agency Contact:**

Robin Moran
Environmental Protection Agency
Air and Radiation
ASD
Ann Arbor, MI 48105
Phone: 734 214–4781
Fax: 734 214–4816
Email: moran.robin@epamail.epa.gov

Chris Lieske
Environmental Protection Agency
Air and Radiation
ASD
Ann Arbor, MI 48105
Phone: 734 214–4584
Fax: 734 214–4816
Email: lieske.christopher@epamail.epa.gov

**Related RIN:** Related to 2127–AK50

**RIN:** 2060–AP58

**EPA**

**151. ● PREVENTION OF SIGNIFICANT DETERIORATION (PSD): RECONSIDERATION OF INTERPRETATION OF REGULATIONS THAT DETERMINE POLLUTANTS COVERED BY THE FEDERAL PSD PERMIT PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

Administrative Procedure Act sec 553(e)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This action concerns the EPA's interpretation of the regulatory phrase ''subject to regulation'' as it applies to the federal Prevention of Significant Deterioration (PSD) program (more specifically, in 40 CFR 52.21(b)(50)). At issue is a December 18, 2008, memorandum, titled ''EPA's Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program,'' which specified that a pollutant is only ''subject to regulation'' when its emissions are actually controlled or limited under a provision of the Clean Air Act (CAA) or a final EPA rule issued under the authority of the CAA. Following issuance of the memo, EPA received a petition for reconsideration from the Sierra Club and several other organizations. The petitioners argued that EPA's issuance of the Memo violated the procedural requirements of the Administrative Procedures Act and the CAA, and the Memo's interpretation conflicted with prior agency actions. On February 17, 2009, the Administrator granted reconsideration on the December 18, 2008, memorandum in order to allow for public comment on the issues raised in the Memo and in a related decision of the Environmental Appeals Board (EAB). Thus, EPA will proceed with a reconsideration proceeding and conduct rulemaking regarding the proper interpretation of this regulatory phrase.

**Statement of Need:**

This rulemaking is needed to ensure a common understanding of when a new pollutant becomes ''subject to regulation'' and thereby subject to PSD permitting requirements. In light of the petitioners' request, EPA believes that soliciting comment on the December 18, 2008, interpretation, as well as other feasible options, is warranted.

**Summary of Legal Basis:**

APA 553(e).

**Alternatives:**

Not yet determined.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

Not yet determined.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/07/09 | 74 FR 51535 |
| Final Action | 03/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5377

**URL For More Information:**

www.epa.gov/nsr

**Agency Contact:**

Dave Svendsgaard
Environmental Protection Agency
Air and Radiation
C504–03
RTP, NC 27711
Phone: 919 541–2380
Fax: 919 685–3105
Email: svendsgaard.dave@epamail.epa.gov

Raj Rao
Environmental Protection Agency
Air and Radiation
C504–02
RTP, NC 27711
Phone: 919 541–5344
Fax: 919 541–5509
Email: rao.raj@epamail.epa.gov

**RIN:** 2060–AP87

**EPA**

**152. ● LEAD; AMENDMENT TO THE OPT–OUT AND RECORDKEEPING PROVISIONS IN THE RENOVATION, REPAIR, AND PAINTING PROGRAM**

**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 2601(c); 15 USC 2682(c)(3); 15 USC 2684; 15 USC 2686; 15 USC 2687

**CFR Citation:**

40 CFR 745

**Legal Deadline:**

NPRM, Judicial, October 20, 2009, Signature.

Final, Judicial, April 22, 2010, Signature.

**Abstract:**

EPA intends to propose several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. This particular action will involve proposing amendments to the opt-out provision that currently exempts a renovator from the training and work practice requirements of the rule where he or she obtains a certification from the owner of a residence he or she occupies that no child under age 6 or pregnant women resides in the home and the home is not a child-occupied facility. EPA will propose revisions that involve renovation firms providing the owner with a copy of the records they are currently required to maintain to demonstrate compliance with the training and work practice requirements of the RRP rule and, if different, providing the information to the occupant of the building being renovated or the operator of the child-occupied facility. EPA will also propose various minor amendments to the regulations concerning applications for training provider accreditation, amending accreditations, course completion certificates, recordkeeping, State and Tribal program requirements, and grandfathering (i.e., taking a refresher training in lieu of the initial training). In addition, the proposed amendments intend to clarify that certain requirements apply to the RRP rule as well as the Lead-based Paint Activities (abatement) regulations, that a certified inspector or risk assessor can act as a dust sampling technician, which hands-on training topics are required for renovator and dust sampling technician courses, and

requirements for States and Tribes that apply to become authorized to implement the RRP program.

**Statement of Need:**

This rulemaking revisions is being considered in response to a settlement agreement.

**Summary of Legal Basis:**

Section 402(c)(3) of the Toxic Substances Control Act (TSCA) requires EPA to regulate renovation or remodeling activities that create lead-based paint hazards in target housing, which is defined by statute to cover most pre-1978 housing, public buildings built before 1978, and commercial buildings.

**Alternatives:**

The original proposal considered several options on these points. In addition, EPA will identify other alternatives to evaluate. The alternatives were not, however, available at the time that this form was completed.

**Anticipated Cost and Benefits:**

Under development and not available at the time that this form was completed.

**Risks:**

Under development and not available at the time that this form was completed.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/28/09 | 74 FR 55506 |
| NPRM Comment Period End | 11/27/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5379

**URL For More Information:**

http://www.epa.gov/lead/pubs/renovation.htm

**Agency Contact:**

Marc Edmonds
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
7404T
Washington, DC 20460
Phone: 202 566–0758
Fax: 202 566–0741
Email: edmonds.marc@epa.gov

Michelle Price
Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
7404T
Washington, DC 20460
Phone: 202 566–0744
Fax: 202 566–0471
Email: price.michelle@epa.gov

**RIN:** 2070–AJ55

---

**EPA**

## 153. 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:**

On December 5, 2008, EPA amended the Spill Prevention, Control, and Countermeasure (SPCC) rule to provide increased clarity with respect to specific regulatory requirements, to tailor requirements to particular industry sectors, and to streamline certain rule requirements. The Agency subsequently delayed the effective date of these amendments to January 14, 2010 to allow the Agency time to review the amendments to ensure that they properly reflect consideration of all relevant facts. EPA also requested public comment on the delay of the effective date and its duration, and on the December 2008 amendments. EPA is reviewing the record for the amendments and the additional comments to determine if any changes are warranted.

**Statement of Need:**

The final 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 final rule, following receipt of public comments.

**Anticipated Cost and Benefits:**

The principal effect of the final amendments would be lower compliance costs for owners and operators of certain types of facilities and equipment. Preliminary cost savings for this rulemaking effort is estimated to be between $92-100 million.

**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 final 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–Year Compliance Extension | 06/17/04 | 69 FR 34014 |
| Final 18 Months Compliance Extension | 08/11/04 | 69 FR 48794 |
| NODA : Certain Facilities | 09/20/04 | 69 FR 56184 |
| NODA: Oil–Filled and Process Equipment | 09/20/04 | 69 FR 56182 |
| NPRM | 10/15/07 | 72 FR 58377 |
| Final Action | 12/05/08 | 73 FR 74236 |
| Notice to Delay Effective Date | 02/03/09 | 74 FR 5900 |
| Delay of Effective Date | 04/01/09 | 74 FR 14736 |
| Final Action #2 | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 2634.2; EPA publication information: Notice Clarifying Certain Issues - http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi? dbname=2004

__register &docid=fr25my04-49.pdf; Split from RIN 2050-AC62.; EPA Docket information: EPA-HQ-OPA-2007-0584

**URL For More Information:**

www.epa.gov/oilspill/spcc.htm

**Agency Contact:**

Vanessa Principe
Environmental Protection Agency
Solid Waste and Emergency Response
5104A
Washington, DC 20460
Phone: 202 564–7913
Fax: 202 564–2625
Email: principe.vanessa@epa.gov

**RIN:** 2050–AG16

---

**EPA**

## 154. EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

CWA 301; CWA 304; CWA 306; CWA 501

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

NPRM, Judicial, December 1, 2008, FR Publication by 12/1/2008 as per 12/5/2006 Court Order.

Final, Judicial, December 1, 2009, FR Publication by 12/1/2009 as per 12/5/2006 Court Order.

**Abstract:**

In a November 28, 2008 proposed rulemaking, EPA proposed to establish effluent limitations guidelines (ELGs) and new source performance standards (NSPSs) for the Construction and Development point source category. This rulemaking and its schedule respond to a court order that requires the Agency to publish final regulations by December 1, 2009. The ELGs and NSPSs would control the discharge of pollutants such as sediment, turbidity, nutrients and metals in discharges from construction activities and will be implemented through the issuance of NPDES permits. EPA solicited comments on a range of erosion and sediment control measures and pollution prevention measures. The proposed requirements vary by size of the construction site and by other factors, such as rainfall intensity and clay content of soil. The proposed rule was intended to work in concert with existing state and local programs, adding a technology-based ''floor'' that establishes minimum requirements that would apply nationally. Once implemented, these new requirements would significantly reduce the amount of sediment, turbidity, and other pollutants discharged from construction sites.

**Statement of Need:**

Despite substantial improvements in the nation's water quality since the inception of the Clean Water Act, 45 percent of assessed river and stream miles, 47 percent of assessed lake acres, and 32 percent of assessed square miles of estuaries show impairments from a wide range of sources. Improper control of stormwater discharges from construction activity is among the many contributors to remaining water quality problems throughout the United States. Sediment is one of the primary pollutants that cause water quality impairment for streams and rivers. Construction generates significantly higher loads of sediment per acre than other sources. The rulemaking would constitute the nationally applicable, technology-based ELGs and NSPS applicable to all dischargers required to obtain a National Pollutant Discharge Elimination System (NPDES) permit.

**Summary of Legal Basis:**

The Clean Water Act authorizes EPA to establish ELGs and NSPS to limit the pollutants discharged from point sources. In addition, EPA is bound by the district court decision, in NRDC v. EPA, 437 F.Supp.2d 1137, (C.D. Cal.2006), to propose ELGs and NSPS for the construction and development industry by December 1, 2008 and to promulgate ELGs and NSPS as soon as practicable, but in no event later than December 1, 2009.

**Alternatives:**

The Clean Water Act directs EPA to establish a technology basis for the ELGs and NSPS, which are based on the performance of specific technology levels, such as the best available technology economically achievable. EPA is considering a range of pollution control approaches and technologies, and is also considering waivers based on construction site size, rainfall, and soil erosivity to reduce the impact on small dischargers.

**Anticipated Cost and Benefits:**

The annualized social costs of the proposed rulemaking were estimated to range from $141 million to $3.8 billion, and the annualized monetized benefits were estimated to range from $11 million to $327 million. The costs include compliance costs, administrative costs, and partial equilibrium estimates of quantity effects and deadweight loss to society. The monetized benefit categories include avoided costs of dredging for navigation and water storage, avoided costs of drinking water treatment, and monetizable water quality benefits. These costs may change in the final rule.

**Risks:**

Sediment is currently one of the primary pollutants that cause water quality impairment for streams and rivers and present a risk to aquatic life. The ELGs and NSPS are expected to result in a reduction of the discharge of pollutants to surface waters, primarily as sediment and turbidity.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/28/08 | 73 FR 72561 |
| NPRM Comment Period End | 02/26/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

SAN No. 5119; EPA publication information: NPRM - http://edocket.access.gpo.gov/2008/pdf/E8-27848.pdf; EPA Docket information: EPA-HQ-OW-2008-0465

**URL For More Information:**

http://www.epa.gov/waterscience/guide/construction/

**Agency Contact:**

Jesse Pritts
Environmental Protection Agency
Water
4303T
Washington, DC 20460
Phone: 202 566–1038
Fax: 202 566–1053
Email: pritts.jesse@epamail.epa.gov

Janet Goodwin
Environmental Protection Agency
Water
4303T
Washington, DC 20460
Phone: 202 566–1060
Email: goodwin.janet@epamail.epa.gov

**RIN:** 2040–AE91

BILLING CODE 6560–50–S

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

### Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission or agency) is to ensure equality of opportunity in employment by vigorously enforcing six federal statutes. These statutes are: Title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex, religion, or national origin); the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967 (ADEA), as amended; Titles I and V 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. Effective November 21, 2009, the EEOC will enforce Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information.

The first item in this Regulatory Plan is titled ''Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act.'' On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 (''ADA Amendments Act'' or ''Act''). The Act makes important changes to the definition of the term ''disability'' by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of ''disability'' as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways.

The second item in this Regulatory Plan is titled ''Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act''. In March 2008, the EEOC published a Notice of Proposed Rulemaking (NPRM) concerning disparate impact under the Age Discrimination in Employment Act. 73 FR 16807 (March 31, 2008). In this NPRM, the Commission asked whether EEOC regulations should provide more information on the meaning of ''reasonable factors other than age'' (RFOA) and if so, what the regulations should say. After consideration of the public comments, and in light of the Supreme Court decisions in Smith v. City of Jackson, 544 U.S. 228 (2005), and Meacham v. Knolls Atomic Power Lab., 554 U.S. _____, 128 S. Ct. 2395 (2008), the Commission believes it is appropriate to issue a new NPRM to address the scope of the RFOA defense. Accordingly, before finalizing its regulations concerning disparate impact under the ADEA, the Commission intends to publish a new NPRM proposing to amend its regulations concerning RFOA.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Acting Chairman of the Agency. The statement has not been reviewed or approved by the other members of the Commission.

---

## EEOC

### PROPOSED RULE STAGE

### 155. REASONABLE FACTORS OTHER THAN AGE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

**Priority:**

Other Significant

**Legal Authority:**

29 USC 628

**CFR Citation:**

29 CFR 1625.7(b),(c)

**Legal Deadline:**

None

**Abstract:**

On March 31, 2008, the EEOC published a Notice of Proposed Rulemaking (NPRM) concerning disparate impact under the Age Discrimination in Employment Act. 73 FR 16807 (March 31, 2008). In addition to requesting public comment on the proposed rule, the Commission asked whether regulations should provide more information on the meaning of ''reasonable factors other than age'' (RFOA) and, if so, what the regulations should say. After consideration of the public comments, and in light of the Supreme Court decisions in Smith v. City of Jackson, 544 U.S. 228 (2005), and Meacham v. Knolls Atomic Power Lab., 554 U.S. _____, 128 S. Ct. 2395 (2008), the Commission believes it is appropriate to issue a new NPRM to address the scope of the RFOA defense. Accordingly, before finalizing its regulations concerning disparate impact under the ADEA, the Commission intends to publish a new NPRM proposing to amend its regulations concerning RFOA.

**Statement of Need:**

In Smith v. City of Jackson, the Supreme Court affirmed that disparate impact is a cognizable theory of discrimination under the ADEA but indicated that ''reasonable factors other than age,'' not ''business necessity,'' is the appropriate model for the employer's defense against an impact claim. In Meacham v. Knolls Atomic Power Lab., the Supreme Court ruled that the employer has the RFOA burden of persuasion. Current EEOC regulations do not define the meaning of ''RFOA.'' The EEOC is revising its regulations to address the scope of the RFOA defense.

**Summary of Legal Basis:**

The ADEA authorizes the EEOC ''to issue such rules and regulations it may consider necessary or appropriate for carrying out this chapter. . . .'' 29 U.S.C. section 628.

**Alternatives:**

The Commission will consider all alternatives offered by the public commenters.

**Anticipated Cost and Benefits:**

Preliminary estimates of anticipated costs and benefits have not been determined at this time. The Commission will explore options for conducting a cost benefit analysis for this regulatory action if necessary. This revision to EEOC's regulation, informed by the comments of stakeholders, will be beneficial to courts, employers, and employees seeking to interpret, understand, and comply with the ADEA.

**Risks:**

The proposed regulation will reduce the risks of liability for noncompliance with the statute by clarifying the RFOA defense. The proposal does not address risks to public health, safety, or the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

Federal, Local, State, Tribal

**Agency Contact:**

Dianna B. Johnston
Assistant Legal Counsel, Office of Legal Counsel
Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507
Phone: 202 663–4657
Fax: 202 663–4639
Email: dianna.johnston@eeoc.gov

**RIN:** 3046–AA87

**EEOC**

**FINAL RULE STAGE**

**156. REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT**

**Priority:**

Other Significant

**Legal Authority:**

42 USC sec 12116 and sec 506 as redesignated under the ADA Amendments Act of 2008

**CFR Citation:**

29 CFR 1630

**Legal Deadline:**

None

**Abstract:**

The Americans With Disabilities Act Amendments Act of 2008 (''the Amendments Act'') was signed into law on September 25, 2008, with a statutory effective date of January 1, 2009. EEOC proposes to revise its Americans With Disabilities Act (ADA) regulations and accompanying interpretative guidance (29 CFR part 1630 and accompanying appendix) in order to implement the ADA Amendments Act of 2008. Pursuant to the 2008 amendments, the definition of disability under the ADA shall be construed in favor of broad coverage to the maximun extent permitted by the terms of the ADA, and the determination of whether an individual has a disability should not demand extensive analysis. The Amendments Act rejects the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

**Statement of Need:**

This regulation is necessary to bring the Commission's regulations into compliance with the ADA Amendments Act of 2008, which became effective January 1, 2009, and explicitly invalidated certain provisions of the existing regulations. The Amendments Act retains the terminology of the ADA's basic definition of ''disability'' as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the existing regulations and interpretive guidance contained in the accompanying ''Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act,'' which are published at 29 CFR part 1630. The proposed revisions to the title I regulations and appendix are intended to enhance predictability and consistency between judicial interpretations and executive enforcement of the ADA as now amended by Congress.

**Summary of Legal Basis:**

Section 506 of the Amendments Act, 42 U.S.C. section 2000ff-10, gives the EEOC the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

**Alternatives:**

None: Congress mandated issuance of regulations.

**Anticipated Cost and Benefits:**

For those employers that have 15 or more employees and are therefore covered by Amendments Act, the potential economic impact stems from the likelihood that due to the broader interpretation of ''substantially limited in a major life activity,'' more employees will be covered under the first two prongs of the definition of disability, and thus potentially entitled to reasonable accommodations that do not pose an undue hardship. However, the Amendments Act does not change the scope of the accommodation obligation itself, or the definition of the ''undue hardship'' defense as ''significant difficulty or expense.'' The Amendments Act also reverses at least three courts of appeals decisions that previously permitted individuals who were merely ''regarded as'' individuals with disabilities to potentially be entitled to reasonable accommodation. This change narrows the financial impact of the ADA on employers. While many individuals with disabilities do not request or need a reasonable accommodation, statistical studies have repeatedly shown that when reasonable accommodation is required by an individual with a disability, it is far less expensive than many employers suspect.

**Risks:**

The proposed rule imposes no new or additional risk to employers. The proposal does not address risks to public health, safety, or the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/23/09 | 74 FR 48431 |
| NPRM Comment Period End | 11/23/09 | |
| Final Action | 07/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

Federal, Local, State, Tribal

**Agency Contact:**

Christopher Kuczynski
Assistant Legal Counsel, Office of Legal Counsel
Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507
Phone: 202 663–4665
TDD Phone: 202 663–7026
Fax: 202 663–4639
Email: christopher.kuczynski@eeoc.gov

**RIN:** 3046–AA85

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 2010 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.

Through a framework of six strategic goals, NASA's 2006 Strategic Plan guided the following Agency activities:

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.

Through pursuit of these goals, NASA embraced its mission for space exploration and continued scientific discovery and aeronautics research. Under a new Administrator, NASA is planning to publish an updated Strategic Plan in early 2010. The 2010 NASA Strategic Plan will reflect progress since 2006 and priorities of the new Administration.

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) 2010.

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. NASA does not plan any major NFS revisions in FY 2010. In a continuing effort to keep the NFS current and to implement NASA initiatives and Federal procurement policy, minor revisions to the NFS will be published.

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 2010, which is included in The Regulatory Plan. We are drafting regulations for the Office of Government Information Services (OGIS), established under the OPEN Government Act of 2007. The OGIS Director is responsible for reviewing policies and procedures of administrative agencies under the Freedom of Information Act (FOIA); reviewing compliance with FOIA by administrative agencies; and recommending policy changes to Congress and the President to improve the administration of FOIA.

**NARA**

## PROPOSED RULE STAGE

### 157. ● OFFICE OF GOVERNMENT INFORMATION SERVICES

**Priority:**

Other Significant

**Legal Authority:**

PL 110–175

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Office of Government Information Services (OGIS), established under the OPEN Government Act of 2007, is responsible for reviewing policies and procedures of administrative agencies under the Freedom of Information Act (FOIA); reviewing compliance with FOIA by administrative agencies; and recommending policy changes to Congress and the President to improve the administration of FOIA.

**Statement of Need:**

The Office of Government Information Services (OGIS), established under the OPEN Government Act of 2007, may require implementing regulations.

**Summary of Legal Basis:**

The Open Government Act of 2007 (Public Law 110-175) requires the establishment of an Office of Government Information Services within NARA. OGIS will oversee Freedom of Information Act (FOIA) activities government-wide.

**Anticipated Cost and Benefits:**

OGIS, as an organization responsible for reviewing policies and procedures of administrative agencies under the Freedom of Information Act (FOIA); reviewing compliance with FOIA by administrative agencies; and recommending policy changes to Congress and the President to improve the administration of FOIA, is expected to increase the efficiency of the FOIA process.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal

**Agency Contact:**

Laura McCarthy
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
Phone: 301 837–3023
Email: laura.mccarthy@nara.gov

**RIN:** 3095–AB62

**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 2009 regulatory priorities are designed to support these activities.

*Adverse Actions*

OPM proposes to amend its regulations governing Federal adverse actions. The proposed amendments would clarify the adverse action rules regarding reductions in pay and indefinite suspension. In addition, OPM proposes to remove unnecessary subparts pertaining to statutory requirements, make a number of technical corrections, and utilize consistent language for similar regulatory requirements. OPM also proposes various revisions to make the regulations more readable.

*Pay and Leave Flexibilities in Emergency Situations*

OPM will continue efforts to improve Federal pay and leave flexibilities available in emergency situations. Drawing on experiences and lessons learned in past emergency situations, OPM anticipates issuing proposed regulations to reorganize and clarify the administration of advance payments, evacuation payments, and special allowances.

OPM also anticipates issuing final regulations to entitle an employee to use sick leave to provide care for a family member when the relevant health authorities or a health care provider have determined that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease. We anticipate a proposal to permit agencies to advance a maximum of 240 hours (30 days) of sick leave to an employee if the employee's presence on the job would jeopardize the health of others because of exposure to a communicable disease, and to advance a maximum of 104 hours (13 days) of sick leave to an employee to provide care for a family member who would jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease.

*Benefits for Reservists and their Family Members*

OPM will continue to enhance benefits and support work-life balance for Federal employees whose family members are serving on active duty. OPM anticipates issuing final regulations to implement section 585(b) of the National Defense Authorization Act for Fiscal Year 2008 (NDAA) (Public Law 110-181, January 28, 2008) that amends the Family and Medical Leave Act (FMLA) provisions in 5 U.S.C. 6381-6383 (applicable to Federal employees) to provide that a Federal employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness is entitled to a total of 26 administrative workweeks of leave during a single 12-month period to care for the covered servicemember. The covered servicemember must be a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. The regulations would also permit an employee to substitute annual or sick leave, including advanced annual or sick leave, for any part of the 26-week period of unpaid FMLA leave to care for a covered servicemember.

OPM will also continue to support Federal civilian employees called to active duty to further serve our Nation. OPM anticipates issuing proposed regulations to implement statutory changes that provide a new benefit to Federal civilian employees who are members of the Reserve or National Guard and who are called or ordered to active duty. Section 751 of the Omnibus Appropriations Act, 2009 (Public Law 111-8, March 11, 2009) established a new provision in 5 U.S.C. 5538 that became effective on March 15, 2009. Under this new law, eligible Federal civilian employees called to active duty may receive a reservist differential. The reservist differential is equal to the amount by which an employee's projected civilian ''basic pay'' for a covered pay period exceeds the employee's actual military ''pay and allowances'' allocable to that pay period. While each employing civilian agency is responsible for making these payments, OPM, in consultation with the Department of Defense, is required to issue regulations to implement the new benefit.

*Benefits for a Diverse Workforce*

OPM will continue to encourage the recruitment and retention of a diverse workforce. OPM anticipates issuing final regulations to modify definitions related to family member and immediate relative for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These changes would implement section 1 of President Obama's June 17, 2009, Memorandum on Federal Benefits and Non-Discrimination and ensure that agencies are considering the needs of a widely diverse workforce and providing the broadest support possible to employees to help them balance their increasing work, personal, and family obligations. As part of OPM's continued efforts to support the needs of the Federal workforce during times of sickness, funerals, and medical or other emergencies, we are proposing to make the definitions of *family member* and *immediate relative* more explicit to include more examples of relationships that are covered under the phrase ''[a]ny individual related by blood or affinity'' whose close association with the employee is the equivalent of a family relationship. These examples include step-parents and step-children, grandparents, grandchildren, and same-sex and opposite-sex domestic partners. By making these definitions more explicit, we would ensure more consistent application of policy across the Federal Government and set an example of the Federal Government as a model employer of a diverse workforce.

*Federal Employees Health Benefits Program (FEHB)*

OPM is amending its regulations to provide for continuation of health benefits coverage for certain former Senate restaurant employees who were transferred to employment with a private contractor. We are also proposing to change the annual FEHB Program Open Season to November 1 through November 30 of each year. We are also adding a new opportunity for eligible employees to enroll or change enrollment from self only to self and family under the Children's Health Insurance Program Reauthorization Act of 2009. We are also changing the regulations to allow FEHB plans to offer three options, one of which may be a high deductible health plan.

*Federal Employees Dental and Vision Insurance Program (FEDVIP)*

OPM is issuing final regulations on changes in the Federal Employees Dental and Vision Insurance Program (FEDVIP). We are amending the regulations to authorize retroactive enrollment changes when an enrollee has lost their spouse through death or divorce or their last eligible child marries or reaches age 22.

*Federal Employees Group Life Insurance (FEGLI)*

OPM is amending its Federal Employees Group Life Insurance (FEGLI) regulations to provide for new election opportunities for certain civilian and Defense Department employees deployed in support of a contingency operation required by Public Law 110-417; provide for the continuation of coverage opportunities for Federal employees called to active duty required by Public Law 110-181; and update the regulations with other changes, clarifications, and corrections.

*Federal Long Term Care Insurance Program (FLTCIP)*

OPM is issuing a proposed regulation to amend regulations pertaining to the Federal Long Term Care Insurance Program (FLTCIP). This proposed regulation expands coverage eligibility to domestic partners of eligible Federal employees and annuitants.

*Training; Supervisory, Management, Executive Development*

On October 30, 2004, the President signed the Federal Workforce Flexibility Act of 2004 (Act), Public Law 108-411, into law. The Act makes several significant changes in the law governing the training and development of Federal employees, supervisors, managers, and executives. It requires each agency to evaluate, on a regular basis, its training programs and plans to ensure that its training activities are linked to the accomplishment of its specific performance plans and strategic goals, and to modify its training plans and programs as needed to accomplish the agency's performance and strategic goals. Another change requires agencies to work with OPM to establish comprehensive management succession programs designed to develop future mangers for the agency. It also requires agencies, in consultation with OPM, to establish programs to provide training to managers regarding how to relate to employees with unacceptable performance, mentor employees, use various actions, options and strategies to improve employee performance and productivity, and conduct employee performance appraisals. Our proposed revision to the OPM regulations at Parts 410 and 412 of 5 CFR have been designed to address the changes, and in general to increase the emphasis on employee and executive development in the Federal Government. The proposed regulations were published for public comments. OPM expects publication of final regulations by the end of 2009.

*Pay System for Senior Professionals (SL/ST)*

OPM proposes to amend rules for setting and adjusting pay of senior-level (SL) and scientific and professional (ST) employees. The Senior Professional Performance Act of 2008 changed pay for these employees by eliminating their previous entitlement to locality pay and providing instead for rates of basic pay up to the rate payable for level III of the Executive Schedule (EX-III), or, if the employee is under a certified performance appraisal system, the rate payable for level II of the Executive Schedule (EX-II). Consistent with this statutory emphasis on performance-based pay, these regulations will provide more flexible rules for agencies to set and adjust pay for SL and ST employees based primarily upon individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance appraisal system.

*Job Announcement and Applicant Notification*

OPM is proposing to amend the regulations concerning the content of a job announcement. We are also proposing to add regulations to require Federal agencies to notify applicants at four points in the hiring process; to require agencies to use alternative valid assessment tools, excluding lengthy written essays or narratives of knowledge, skills, and abilities/competencies, and to require agencies to accept cover letters and résumés as the initial application for a Federal job. With these changes, OPM plans to streamline the Federal hiring process and improve an applicant's experience.

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 about 44 million people in about 28,500 private defined benefit plans. PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC issues regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, reporting and disclosure, and assessment and collection of employer liability. The Corporation is committed to issuing simple, understandable, and timely regulations to help affected parties.

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).
- *Multiemployer Program*. The smaller multiemployer program covers about 1500 collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (in the form of a loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are less than single-employer guaranteed benefits.

At the end of fiscal year 2009, PBGC had a $22 billion deficit in its insurance programs.

**Regulatory Objectives and Priorities**

As described below, PBGC's current regulatory objectives and priorities are to complete implementation of the Pension Protection Act of 2006 (PPA 2006) by issuing simple, understandable, and timely regulations that do not impose undue burdens that could impede maintenance or establishment of defined benefit plans. PBGC is also working on several regulatory projects not related to PPA 2006. 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, provide relief for small businesses, and assist plans to comply with applicable requirements.

*Transparency*

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 requires disclosure of certain information to participants regarding the termination of their underfunded plan. PBGC published a final regulation on this disclosure of termination information in November 2008.

PPA 2006 makes changes to the plan actuarial and employer financial information required under section 4010 of ERISA to be reported to PBGC by employers with large amounts of pension underfunding. PBGC published a final regulation implementing those changes in March 2009.

*Electronic filing*

PBGC has simplified filing by increasing use of electronic filing methods. Electronic filing of premium information has been mandatory for all plans for plan years beginning on or after January 1, 2007. Filers have a choice of using private-sector software that meets PBGC's published standards or using PBGC's software. Electronic premium filing simplifies filers' paperwork, improves accuracy of PBGC's premium records and database, and enables more prompt payment of premium refunds. Most of the premium changes under PPA 2006 have now been incorporated into software so that it will be easy to comply with the premium changes under the new law.

Employers with large amounts of underfunding in their plans must file actuarial and financial information under section 4010 of ERISA electronically. Electronic filing reduces the filing burden, improves accuracy, and better enables PBGC to monitor and manage risks posed by these plans. PBGC incorporated 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.

*Small businesses*

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 regulation PBGC published under PPA 2006 implemented the cap on the variable-rate premium for plans of small employers. In early 2010, the Corporation expects to issue a proposed regulation implementing the expanded missing participants program under PPA 2006, which will also benefit small businesses.

*Other PPA 2006 changes*

Under PPA 2006, if a plan terminates while its sponsor is in bankruptcy, and the bankruptcy was initiated on or after September 16, 2006, the bankruptcy filing date is treated as the plan termination date for purposes of determining the amount of benefits PBGC guarantees and the amount of assets allocated to participants who retired or have been retirement-eligible for three years. In 2008, PBGC published a proposed regulation to implement this statutory change; PBGC expects to finalize the regulation in late 2009.

PPA 2006 changes the rules for determining benefits upon the termination of a statutory hybrid plan, such as a cash balance plan. PBGC plans to publish a proposed regulation in late 2009 to implement those rules in both PBGC-trusteed plans and in plans that close out in the private sector.

Under PPA 2006, the phase-in period for the guarantee of a benefit payable solely by reason of an ''unpredictable contingent event,'' such as a plant shutdown, starts no earlier than the date of the shutdown or other unpredictable contingent event. PBGC plans to publish a proposed regulation implementing this statutory change in late 2009.

PPA 2006 provides for changes in the allocation of unfunded vested benefits to withdrawing employers from a multiemployer pension plan and requires adjustments in determining an employer's withdrawal liability when a multiemployer plan is in critical status. In December 2008, PBGC published a final regulation to implement these provisions and to provide other improvements to the withdrawal liability rules.

*Compliance assistance*

PBGC has initiated a regulatory project to assist plans to comply with requirements applicable to certain substantial cessations of operations. ERISA section 4062(e) provides for reporting of and liability for certain substantial cessations of operations by employers that maintain single-employer plans. In early 2010, PBGC expects to publish a proposed regulation that would provide guidance as to what constitutes a section 4062(e) event, on the reporting of such an event to PBGC, and on the determination and satisfaction of liability arising from such an event.

*Reemployed service members' pension benefits*

In 2009, PBGC published a proposed regulation that would implement provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA provides that an individual who leaves a job to serve in the uniformed services is generally entitled to reemployment by the previous employer and, upon reemployment, to receive credit for benefits, including employee pension plan benefits, that would have accrued but for the employee's absence due to the military service. The proposed regulation would provide that so long as a service member is reemployed within the time limits set by USERRA, even if the reemployment occurs after the plan's termination date, PBGC would treat the participant as having satisfied the reemployment condition as of the termination date. This would ensure that the pension benefits of reemployed service members, like those of other employees, would generally be guaranteed for periods up to the plan's termination date.

PBGC will continue to look for ways to further improve its regulations.

**BILLING CODE 7709–01–S**

## U.S. SMALL BUSINESS ADMINISTRATION (SBA)

### Statement of Regulatory Priorities

**Overview**

The U.S. 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 disaster. In the coming year, SBA's regulatory priorities will focus on increasing procurement opportunities for Women-Owned Small Business Concerns (WOSBs). This proposed rule would further SBA's overall goal to increase contracting and business opportunities for small businesses by giving contracting officers the ability to restrict competition to WOSBs in industries in which SBA has determined that WOSBs are underrepresented and substantially underrepresented and where certain threshold determinations are made by an agency.

In addition, SBA has prioritized changes to the regulations governing the Section 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and to SBA's size determinations. The amendments in this proposed rule will prevent large businesses as well as other non-8(a) firms from being able to reap the benefits of sole source contracts intended for tribally-owned or Alaska Native Corporation-owned 8(a) Participants. The proposed rule will also benefit eligible business by clarifying SBA's requirements, removing confusion, and eliminating or easing restrictions that are unnecessary.

Finally, SBA will focus its regulatory priorities on reviewing and updating its size standards for small businesses to ensure that SBA's size standards are consistently evaluated using the latest available data. In particular, SBA intends to publish three proposed rules to revise the size standards for business in certain industries classified under the North American Industry Classification System (NAICS): Retail Trade Industry Sector; Accommodations and Food Services Industry Sector; and Other Services Industry Sector, which include, for example, repair and maintenance services, personal and laundry services, and religious, grant making, civic, and professional services.

---

## SBA

### PROPOSED RULE STAGE

### 158. 8(A) BUSINESS DEVELOPMENT

**Priority:**

Other Significant

**Legal Authority:**

15 USC 634(b)(6), 636(j), 637(a) and (d)

**CFR Citation:**

13 CFR 124

**Legal Deadline:**

None

**Abstract:**

This rule proposes to make a number of changes to the regulations governing the 8(a) Business Development (8(a) BD) Program and several changes to SBA's size regulations. Some of the changes involve technical issues, such as changing the term ''SIC code'' to ''NAICS code'' to reflect the national conversion to the North American Industry Classification System. SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unfairly preclude firms from being admitted to the program. In other cases, SBA has determined that a rule is too expansive or indefinite and has sought to restrict or clarify that rule. Changes are also being proposed to correct past public or agency misinterpretation. Also, new situations have arisen that were not anticipated when the current rules were drafted and the proposed rule seeks to cover those situations. Finally, one of the changes, involving Native Hawaiian Organizations, implements recently enacted legislation.

**Statement of Need:**

Sections 8(a) and 7(j) of the Small Business Act authorize the SBA to administer the 8(a) BD program and assist eligible small disadvantaged business concerns compete in the American economy through business development. The 8(a) BD program provides procurement, financial, management and technical assistance to foster the business growth and development of 8(a) BD program participants. The proposed regulatory action is necessary to implement changes to the regulations governing the 8(a) BD program, the Small Disadvantaged Business (SDB) programs, and to the SBA size regulations. The changes are proposed as a result of the continuing need to ensure that SBA is effectively delivering the 8(a) BD program in accordance with the Small Business Act. In addition, the regulatory action is needed to enable SBA to institute the proper internal controls that will ensure effective monitoring and oversight of the 8(a) BD Program.

**Summary of Legal Basis:**

This rule proposes to make some changes that involve technical issues, correct some rules governing the 8(a) BD program that are too restrictive, and others that require clarification. The rule change will address new situations have arisen that were not anticipated when the current rules were drafted. Finally, there is one change that implements a statutory change.

**Alternatives:**

SBA will analyze and consider the impact of any comments received from the public as a result of the proposed

regulations being published in the Federal Register. Where relevant and appropriate, the regulations will be revised to incorporate these comments.

**Anticipated Cost and Benefits:**

It is difficult to estimate the costs and benefits to the various classes of firms affected by this rule as it is impossible to foresee which future contracts above the competitive thresholds would be awarded based on the various options available to contracting officers. SBA believes that the benefits of the proposed rule exceed its costs and exceed the benefits of continuing the status quo. SBA believes that increased clarity and easing of restrictions in the overall proposed changes set forth in this rule are beneficial to 8(a) applicants and Participants.

**Risks:**

Because the 8(a) Program is a business development program—not a contracting program—it is intended to foster the 8(a) firm's growth (through various forms of technical, management, procurement and financial assistance) and viability during the Participant's 9-year term.

The regulatory action is intended to mitigate any risks associated with program procedures and internal controls by ensuring clear and concise regulations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/28/09 | 74 FR 55694 |
| NPRM Comment Period End | 12/28/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Joe Loddo
Associate Administrator, Office of Business Development
Small Business Administration
409 3rd Street SW
Washington, DC 20416
Phone: 202 205–7550
Email: joe.loddo@sba.gov

**RIN:** 3245–AF53

**SBA**

**159. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES**

**Priority:**

Other Significant

**Legal Authority:**

15 USC 632(a)

**CFR Citation:**

13 CFR 121

**Legal Deadline:**

None

**Abstract:**

An SBA project is the review and update of all SBA size standards over a 2-year period. This proposed rule is one of a series of proposals evaluating the size standards for industries within a specific North American Industry Classification System (NAICS) Industry Sector. This action proposes revisions to certain industries in the NAICS Retail Trade Industry Sector. The Retail Trade Industry Sector includes companies engaged in retailing merchandise and rendering services incidental to the sale of merchandise. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

**Statement of Need:**

SBA's small business size standards are used to establish eligibility for financial assistance and Federal contracting opportunities for small businesses. SBA is conducting a comprehensive review of all small business size standards to ensure that they accurately reflect industry structure, Federal government procurement practices and current economic conditions so that Federal programs are able to effectively assist small businesses. This rule reviews SBA size standards for industries within NAICS Sector 44-45, Retail Trade, and revises size standards for certain industries in the sector. The last such review of size standards for retail trade industries was in the early 1980s.

**Summary of Legal Basis:**

The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions, commonly referred to as size standards. The Act requires that such definitions vary to reflect industry differences.

**Alternatives:**

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry, no practical alternative exists to the systems of numerical size standards.

**Anticipated Cost and Benefits:**

The rule has proposed to increase size standards for 48 industries within Sector 44-45, enabling about 8,800 additional firms to obtain small business status and become eligible for Federal small business assistance. This could potentially increase the small business share of Federal contracting dollars by up to between $80 million and $100 million annually. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53924 |
| NPRM Comment Period End | 12/21/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Khem Sharma
Division Chief, Division of Size Standards, Office of Government Contracting/Business Development
Small Business Administration
409 Third Street SW
Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390

**RIN:** 3245–AF69

**SBA**

**160. SMALL BUSINESS SIZE STANDARDS: OTHER SERVICES**

**Priority:**

Other Significant

**Legal Authority:**

15 USC 632(a)

**CFR Citation:**

13 CFR 121

**Legal Deadline:**

None

**Abstract:**

An SBA project is the review of all SBA size standards over a 2-year period. This proposed rule is one of a series of proposals evaluating the size standards for industries within a specific North American Industry Classification System (NAICS) Industry Sector. This action proposes revisions to certain industries in the NAICS Other Services Industry Sector. Other Services include, for example, repair and maintenance services, personal and laundry services, and religious, grant making, civic, and professional services. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

**Statement of Need:**

SBA's small business size standards are used to establish eligibility for financial assistance and Federal contracting opportunities for small businesses. SBA is conducting a comprehensive review of all small business size standards to ensure that they accurately reflect industry structure, Federal government procurement practices and current economic conditions so that Federal programs are able to effectively assist small businesses. This rule reviews SBA size standards for industries within NAICS Sector 81, Other Services, and revises size standards for certain industries in the sector. The last such review of size standards for other services industries was in the early 1980s.

**Summary of Legal Basis:**

The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions, commonly referred to as size standards. The Act requires that such definitions vary to reflect industry differences.

**Alternatives:**

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry, no practical alternative exists to the systems of numerical size standards.

**Anticipated Cost and Benefits:**

The rule has proposed to increase size standards for 18 industries within Sector 81, enabling about 1,400 additional firms to obtain small business status and become eligible for Federal small business assistance. This could potentially increase the small business share of Federal contracting dollars by up to between $25 million and $30 million annually. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53941 |
| NPRM Comment Period End | 12/21/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Khem Sharma
Division Chief, Division of Size Standards, Office of Government Contracting/Business Development
Small Business Administration
409 Third Street SW
Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390

**RIN:** 3245–AF70

**SBA**

**161. SMALL BUSINESS SIZE STANDARDS: ACCOMMODATIONS AND FOOD SERVICE INDUSTRIES**

**Priority:**

Other Significant

**Legal Authority:**

15 USC 632(a)

**CFR Citation:**

13 CFR 121

**Legal Deadline:**

None

**Abstract:**

An SBA project is a review of all SBA size standards over a 2-year period. This proposed rule is one of a series of proposals evaluating the size standards for industries within a specific North American Industry Classification System (NAICS) Industry Sector. This action proposes revisions to certain industries in the NAICS Accommodations and Food Services Industry Sector. The Accommodations and Food Services Industry Sector includes companies that provide lodging and/or prepare meals, snacks, and beverages for immediate consumption. These proposed revisions ensure that SBA's size standards are consistently evaluated using the latest available data.

**Statement of Need:**

SBA's small business size standards are used to establish eligibility for financial assistance and Federal contracting opportunities for small businesses. SBA is conducting a comprehensive review of all small business size standards to ensure that they accurately reflect industry structure, Federal government procurement practices and current economic conditions so that Federal programs are able to effectively assist small businesses. This rule reviews SBA size standards for industries within NAICS Sector 72, Accommodation and Food Service, and revises size standards for certain industries in the sector. The last such review of size standards for industries in the accommodation and food service sector was in the early 1980s.

**Summary of Legal Basis:**

The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions, commonly referred to as size standards. The Act requires that such definitions vary to reflect industry differences.

**Alternatives:**

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry, no practical alternative exists to the systems of numerical size standards.

**Anticipated Cost and Benefits:**

The rule has proposed to increase size standards for five industries within Sector 72, enabling about 2,050 additional firms to obtain small business status and become eligible for Federal small business assistance. This could potentially increase the small business share of Federal contracting dollars by up to between $75 million annually. The proposed action is not expected to result in significant costs to both Federal government and small entities as necessary administrative and operational mechanisms are already in place.

**Risks:**

Not applicable.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53913 |
| NPRM Comment Period End | 12/21/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Khem Sharma
Division Chief, Division of Size Standards, Office of Government Contracting/Business Development
Small Business Administration
409 Third Street SW
Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390

**RIN:** 3245–AF71

**SBA**

## 162. WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

**Priority:**

Other Significant

**Legal Authority:**

15 USC 637(m)

**CFR Citation:**

13 CFR 121; 13 CFR 125; 13 CFR 127; 13 CFR 134

**Legal Deadline:**

None

**Abstract:**

The U.S. Small Business Administration (SBA) is prohibited from using funding in Fiscal Year 2009 to implement the program relating to Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures published on October 1, 2008, by the Omnibus Appropriations Act, 2009, Div. D, title V, section 522 (Mar. 11, 2009). In the future, SBA plans to withdraw this proposed rule and promulgate a new rule in order to establish and implement an effective WOSB procurement program. SBA is committed to moving forward to implement a successful WOSB procurement program. This rule will establish regulations to implement the Women-Owned Small Business (WOSB) Federal Contract Assistance Program, authorized under section 8(m) of the Small Business Act. Section 8(m) was enacted as part of Public Law 106-554 to provide a targeted procurement mechanism to assist Federal agencies in achieving the statutory goal of 5 percent for contracting with WOSBs. In accordance with section 8(m), the new regulations would authorize contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. Also consistent with section 8(m), the authority to restrict competition would be limited to contracts not exceeding $3 million, or $5 million in the case of manufacturing contracts. In implementing section 8(m) the proposed regulations would further provide: the eligible industries in which WOSBs are underrepresented or substantially underrepresented; the specific eligibility requirements for WOSBs to qualify for program participation; the procedures for concerns to certify their eligibility; the process for SBA to verify the continuing WOSB eligibility; the contractual and business development assistance available under the program; the relevant protest and appeal procedures; and the applicable penalties.

**Statement of Need:**

''Although the growth rate in the number of women-owned small businesses (WOSBs) was almost twice that of all firms between 1997 and 2002, WOSBs have not experienced a proportional increase in their share of Federal contracting dollars.'' LaLa Wu and Kate Collier, The National Plan of Action: Then and Now, Bella Abzug Leadership Institute, November 2007 (hereinafter ''The National Plan of Action''). ''Between 1997 and 2002, the numbers of women-owned firms overall increased by 19.8 percent and of women-owned employer firms, by 8.3 percent.'' SBA Office of Advocacy. ''Women in Business: 2006. A Demographic Review of Women's Business Ownership,'' 2007. Most tend be small; only 1.8 percent of WOSBs have receipts over $1 million and less than 0.1 percent had more than 500 employees. See The Utilization of Women-Owned Small Business in Federal Contract, Kauffman-RAND Institute, 2007. Firms owned by women increased employment by 70,000 and those by men lost 1 million employees. See id. In addition, in 2002, women-owned firms accounted for 28.2 percent of all non-farm firms in the United States. See id. Despite this growth, the share of WOSB prime contract awards was 3.39 percent in FY 2008.

Several congressional and executive efforts over the years to increase Federal contracting with WOSBs have not enhanced the WOSB share of Federal contracting dollars as much as anticipated. For example, in 1979, when Executive Order 12138 ''charged Federal agencies with responsibility for providing procurement assistance to women-owned businesses, WOSBs received only 0.2 percent of all Federal procurements.'' The National Plan of Action. In 9 years, the percentage of WOSB Federal procurements had grown to only one percent. See id. Similarly, in 1988, the Women's Business Ownership Act, Public Law 100—588 (Oct. 25, 1988), ''was enacted to assist women in starting, managing and growing small businesses.'' Id. ''While this program has assisted thousands of women in obtaining business financing and information, it has had less success in the Federal procurement arena.'' Id.

Subsequently, in 1994, section 7106 of the Federal Acquisition Streamlining Act (FASA), Public Law 103—355, ''amended the Small Business Act by establishing a target that was aimed at increasing opportunities for women to compete for Federal contracts.'' Id. ''FASA, among other things, established a Governmentwide goal for participation by WOSBs in procurement contracts of not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.'' Id.

Federal Procurement Data System (FPDS) data indicates that since fiscal year (FY) 1996, Federal agencies have not met the separate 5 percent Governmentwide WOSB goal for prime contracts and subcontracts. However, the share of Federal prime contracting dollars to WOSBs has increased over the years. For example, in FY 2000, WOSBs received 2.3 percent of the approximately $200 billion in Federal prime contract awards. The share of WOSB prime contract award dollars increased to 2.49 percent in FY 2001, and again to 2.90, 2.98, and 3.03 percent in FYs 2002, 2003 and 2004, respectively. In FY 2005, WOSB prime contract award dollars increased to 3.18 percent, in FY 2006, increased again to 3.41 percent of prime contract award dollars, in FY 2007 it remained at 3.41 percent and in FY 2008 it dropped slightly to 3.39 percent. Although this increase shows a growing amount of contract of dollars going to WOSBs, SBA anticipates the WOSB Program will serve to quicken the increase of that percentage or perhaps give impetus to the development of new WOSBs.

The foregoing historical data demonstrates the need for targeted government action to facilitate participation by WOSBs in Federal government contracting. Congress enacted section 811 of the Small Business Reauthorization Act of 2000, Public Law 106-554, to provide that mechanism.

**Summary of Legal Basis:**

Section 811 of the Small Business Reauthorization Act of 2000, amended the Small Business Act (Act) by adding a new section 8(m), 15 U.S.C. 637(m), authorizing contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. The new section 8(m) of the Act explicitly limits the contracting officer's authority to restrict competition to contracts not exceeding $3 million ($5 million for manufacturing). It further requires SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement and requires the head of any department or agency to provide SBA information that SBA deems necessary to conduct the study.

**Alternatives:**

This proposed rule implements statutory provisions for the purpose of facilitating participation by WOSBs in Federal Government contracting.

**Anticipated Cost and Benefits:**

Implementing these statutory provisions may impose additional costs on the Federal Government and small businesses. The costs and benefits of this proposed rule will be analyzed in the rule's regulatory impact analysis and its initial regulatory flexibility analysis.

**Risks:**

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

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Agency Contact:**

Dean R. Koppel
Acting Director for Government Contracting, Office of Policy, Planning and Liaison
Small Business Administration
409 3rd Street SW
Washington, DC 20416
Phone: 202 205–7322
Fax: 202 481–1540

**RIN:** 3245–AG06

**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 program 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 and our procedures for administering these programs. Generally, our regulations do not impose burdens on the private sector or on State or local governments.

The 14 entries in SSA's Regulatory Plan (the Plan), represent issues of major importance to the agency. One of our 14 entries recently published in the Federal Register and will appear in the Completed Actions section of the Unified Agenda. We describe the individual initiatives more fully in the attached Plan.

**Improving the Disability Process**

Because the continued improvement of the disability program is a vital concern to us, we have 12 initiatives in the Plan addressing disability-related issues. They include:

- A proposed rule providing that we identify claimants with serious medical conditions as soon as possible, allowing us to grant benefits expeditiously to those claimants who meet SSA disability standards;
- A final rule clarifying that we may set the time and place for a hearing before an administrative law judge (ALJ);
- A proposed rule reestablishing Uniform National Disability Adjudication provisions in our Boston Region;
- Two proposed rules allowing certain SSA employees to issue fully favorable decisions on disability hearing level requests; and,
- Seven initiatives updating the medical listings used to determine disability—two final rules evaluating hearing loss and malignant neoplastic diseases, and five proposed rules on evaluating respiratory system disorders, mental disorders, hematological disorders, immune (HIV) system disorders and endocrine disorders. The final rule on evaluating Malignant Neoplastic Diseases published on October 6, 2009. The revisions reflect our adjudicative experience, advances in medical knowledge, diagnosis, and treatment.

**Enhanced Public Service**

We are proposing to revise our rules about the representation of claimants and other parties before the agency. These rules include recognizing entities as representatives, expanding the use of electronic services, and modifying our rules on representative sanctions.

---

**SSA**

---

**PROPOSED RULE STAGE**

---

### 163. REVISED MEDICAL CRITERIA FOR EVALUATING ENDOCRINE SYSTEM DISORDERS (436P)

**Priority:**

Other Significant

**Legal Authority:**

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

**CFR Citation:**

20 CFR 404.1500, app 1

**Legal Deadline:**

None

**Abstract:**

Sections 9.00 and 109.00, Endocrine System, of appendix 1 to Subpart P of part 404 of our regulations describe endocrine system disorders that are considered severe enough to prevent an individual from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming SSI payments under title XVI. We are proposing to revise these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

**Statement of Need:**

These proposed regulations are necessary to update the Endocrine System listings to reflect advances in medical knowledge, treatment, and methods of evaluating endocrine system disorders. The changes would ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of disorders.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 08/11/05 | 70 FR 46792 |
| ANPRM Comment Period End | 10/11/05 | |
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Cheryl A. Williams
Acting Director
Social Security Administration
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1020

Brian Rudick
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–7102

**RIN:** 0960–AD78

**SSA**

**164. REVISED MEDICAL CRITERIA FOR EVALUATING RESPIRATORY SYSTEM DISORDERS (859P)**

**Priority:**

Other Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

**CFR Citation:**

20 CFR 404.1500, app 1

**Legal Deadline:**

None

**Abstract:**

Sections 3.00 and 103.00, Respiratory System, of appendix 1 to Subpart P of part 404 of our regulations describe respiratory system disorders that are considered severe enough to prevent an individual from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming SSI payments under title XVI. We are proposing to revise these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

**Statement of Need:**

These proposed regulations are necessary to update the Respiratory System listings to reflect advances in medical knowledge, treatment, and methods of evaluating respiratory disorders. The changes would ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

We considered not revising the listings and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating respiratory diseases and because of our adjudicative experience.

**Anticipated Cost and Benefits:**

Estimated costs - low.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 04/13/05 | 70 FR 19358 |
| ANPRM Comment Period End | 06/13/05 | |
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Cheryl A. Williams
Acting Director
Social Security Administration
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1020

Joshua B. Silverman
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 594–2128

**RIN:** 0960–AF58

---

**SSA**

**165. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 401(j); 42 USC 402; 42 USC 404(f); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 405(j); 42 USC 416(i); 42 USC 421; 42 USC 421(a); 42 USC 421(i); 42 USC 421(m); 42 USC 422(c); 42 USC 423; 42 USC 423(i); 42 USC 425; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382(c); 42 USC 1382(h); 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d); 42 USC 1383(i); 42 USC 1383(p); 42 USC 1383b

**CFR Citation:**

20 CFR 404.941; 20 CFR 404.1500, app 1; 20 CFR 404.1503; 20 CFR 404.1520 to 404.1520a; 20 CFR 404.1528; 20 CFR 404.1615; 20 CFR 416.903; 20 CFR 416.920a; 20 CFR 416.928; 20 CFR 416.1015; 20 CFR 416.1441

**Legal Deadline:**

None

**Abstract:**

Sections 12.00 and 112.00, Mental Disorders, of appendix 1 to subpart P of part 404 of our regulations describe those mental impairments that are considered severe enough to prevent a person from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming SSI payments under title XVI. We are proposing to revise the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

**Statement of Need:**

These proposed regulations are necessary to update the listings for evaluating mental disorders to reflect advances in medical knowledge, treatment, and methods of evaluating these disorders. The changes would ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

We considered not revising the listings or making only minor technical changes. 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 disorders. We have not comprehensively revised the current listings in over 15 years. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

**Anticipated Cost and Benefits:**

Savings estimates for fiscal years 2010 - 2018: (in millions of dollars) OASDI - 315, SSI - 370.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/17/03 | 68 FR 12639 |
| ANPRM Comment Period End | 06/16/03 | |
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Cheryl A. Williams
Acting Director
Social Security Administration
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1020

Rosemarie Greenwald
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 966–7813

**RIN:** 0960–AF69

---

**SSA**

**166. REVISED MEDICAL CRITERIA FOR EVALUATING HEMATOLOGICAL DISORDERS (974P)**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)5)

**CFR Citation:**

20 CFR 404.1500, app 1

**Legal Deadline:**

None

**Abstract:**

Sections 7.00 and 107.00, Hematological Disorders, of appendix 1 to subpart P of part 404 of our regulations describe hematological disorders that are considered severe enough to prevent a person from performing any gainful activity, or that cause marked and severe functional limitation for a child claiming SSI payments under title XVI. We are proposing to revise the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment

**Statement of Need:**

These proposed regulations are necessary to update the hematological listings to reflect advances in medical knowledge, treatment, and methods of evaluating hematological disorders. The changes ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of impairments.

**Anticipated Cost and Benefits:**

Estimated savings - low.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Cheryl A. Williams
Acting Director
Social Security Administration
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1020

Richard M. Bresnick
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1758

**RIN:** 0960–AF88

---

**SSA**

**167. REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE (HIV) SYSTEM DISORDERS (3466P)**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

**CFR Citation:**

20 CFR 404.1500, app 1

**Legal Deadline:**

None

**Abstract:**

Sections 14.00 and 114.00, Immune System, of appendix 1 to subpart P of part 404 of our regulations describe immune system disorders that are considered severe enough to prevent an individual from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming supplemental Security Income payments under title XVI. We are proposing to revise the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

**Statement of Need:**

This proposed regulation is necessary in order to update the HIV evaluation

listings to reflect advances in medical knowledge, treatment, and evaluation methods. It ensures that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that individuals who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

Undetermined at this time.

**Anticipated Cost and Benefits:**

Cost/Savings estimate - negligible.

**Risks:**

Undetermined at this time.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/18/08 | 73 FR 14409 |
| ANPRM Comment Period End | 05/19/08 | |
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Undetermined

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Cheryl A. Williams
Acting Director
Social Security Administration
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1020

Helen Droddy
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1483

**RIN:** 0960–AG71

---

**SSA**

### 168. REESTABLISHING UNIFORM NATIONAL DISABILITY ADJUDICATION PROVISIONS (3502P)

**Priority:**

Other Significant

**Legal Authority:**

42 USC 401(j); 42 USC 402; 42 USC 404(f); 42 USC 405; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d)–(h); 42 USC 405(j); 42 USC 405(s); 42 USC 405 note; 42 USC 416(i); 42 USC 421; 42 USC 421(a); 42 USC 421(i); 42 USC 421(m); 42 USC 421 note; 42 USC 422(c); 42 USC 423; 42 USC 423(i); 42 USC 423 note; 42 USC 425; 42 USC 432; 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1320b–1; 42 USC 1320b–13; 42 USC 1381; 42 USC 1381a; 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

**CFR Citation:**

20 CFR 404.970; 20 CFR 404.976; 20 CFR 404.1502; 20 CFR 404.1512; 20 CFR 404.1513; 20 CFR 404.1519k; 20 CFR 404.1519m; 20 CFR 404.1519s; 20 CFR 404.1520a; 20 CFR 404.1526; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1601; 20 CFR 404.1624; 20 CFR 405.1; 20 CFR 405.5; 20 CFR 405.10; 20 CFR 405.20; 20 CFR 405.240; 20 CFR 405.320; 20 CFR 405.360; 20 CFR 405.371; 20 CFR 405.372; 20 CFR 405.373; 20 CFR 405.381; 20 CFR 405.382; 20 CFR 405.383; 20 CFR 405.401; 20 CFR 405.405; 20 CFR 405.410; 20 CFR 405.415; 20 CFR 405.420; 20 CFR 405.425; 20 CFR 405.427; 20 CFR 405.430; 20 CFR 405.440; 20 CFR 405.445; 20 CFR 405.450; 20 CFR 405.501; 20 CFR 405.505; 20 CFR 405.510; 20 CFR 405.515; 20 CFR 405.701; 20 CFR 405.705; 20 CFR 405.710; 20 CFR 405.715; 20 CFR 405.720; 20 CFR 405.725; 20 CFR 416.902; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.919k; 20 CFR 416.919m; 20 CFR 416.919s; 20 CFR 416.920a; 20 CFR 416.924; 20 CFR 416.926; 20 CFR 416.926a; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1001; 20 CFR 416.1024; 20 CFR 416.1470; 20 CFR 416.1476; 20 CFR 422.130; 20 CFR 422.140; 20 CFR 422.201

**Legal Deadline:**

None

**Abstract:**

We propose to eliminate the remaining portions of part 405 of our regulations, which we now use for disability claims in our Boston region. This proposal reinstates in the Boston region the same rules that we use for disability adjudications in the rest of the country. These rules apply to all levels of our administrative review process, including the administrative law judge and Appeals Council levels.

**Statement of Need:**

To provide more consistent processing of appeals level claims for all regions.

**Summary of Legal Basis:**

Administrative - not required by statute or court order.

**Alternatives:**

Continue existing process.

**Anticipated Cost and Benefits:**

Cost estimates for fiscal year 2009 - 2018: (in millions of dollars) OASDI - 55, SSI - 7.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Dean Landis
Associate Commissioner, Office of Regulations
Social Security Administration
Office of Regulations
Office of Legislative and Regulatory Affairs
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–0520

**RIN:** 0960–AG80

---

**SSA**

### 169. DISABILITY DETERMINATIONS BY STATE AGENCY DISABILITY EXAMINERS (3510P)

**Priority:**

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

**Legal Authority:**

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421; 42 USC 421 note; 42 USC 421(a); 42 USC 421(i); 42

USC 421(m); 42 USC 422(c); 42 USC 423; 42 USC 423 note; 42 USC 425; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

**CFR Citation:**

20 CFR 404.1512; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1615; 20 CFR 404.1619; 20 CFR 416.912; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1015; 20 CFR 416.1019

**Legal Deadline:**

None

**Abstract:**

We propose to amend our rules to permit disability examiners in our State agencies to make fully favorable determinations without requiring the input of a medical or psychological consultant in certain claims for disability benefits under title II (Social Security Disability Insurance) and title XVI (Supplemental Security Income) of the Social Security Act.

**Statement of Need:**

This proposal would allow us to improve service to a vulnerable section of the public by processing very specific disability claims faster.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Nancy Schoenberg
Social Insurance Specialist
Social Security Administration
Office of Disability Programs
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 966–9408

Pamela Kultgen
Assistant Regional Counsel
Social Security Administration
Office of the General Counsel
601 E. 12th Street, Suite 965
Kansas City, MO 64106
Phone: 816 936–5078

**RIN:** 0960–AG87

---

**SSA**

**170. TEMPORARY AUTHORIZATION FOR FEDERAL DISABILITY EXAMINERS TO ADJUDICATE HEARING REQUESTS ON–THE–RECORD (3526P)**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 401(j); 42 USC 404(f); 42 USC 405(a) and 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 404.943; 20 CFR 416.1443

**Legal Deadline:**

None

**Abstract:**

We propose to modify, on a temporary basis, the prehearing procedures we follow in claims for Social Security disability benefits and SSI payments based on disability or blindness under titles II and XVI of the Social Security Act. This proposed rule would authorize Federal disability examiners to issue fully favorable decisions without review by an attorney advisor or administrative law judge (ALJ) and would expedite the processing of cases at the hearing level without infringing on the right to a hearing before an ALJ. This temporary modification would remain in effect for a period not to exceed 5 years, unless we terminate or extend it by publication of a final rule in the Federal Register.

**Statement of Need:**

The increased complexity and quantity of disability claims have reduced our ability to timely adjudicate disability appeals. This proposed rule would authorize Federal disability examiners to issue fully favorable decisions without review by an attorney advisor or ALJ and would expedite the processing of cases at the hearing level without infringing on the right to a hearing before an ALJ.

**Summary of Legal Basis:**

Discretionary. Not required by statute or court order.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Robin Sabatino
Division Director
Social Security Administration
Office of Quality Performance
Office of Quality Improvement
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–9885

Helen Droddy
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1483

**RIN:** 0960–AG97

**SSA**

**171. ● ATTORNEY ADVISORY PROGRAM PERMANENT RULE (3578P)**

**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 404.942; 20 CFR 416.1442

**Legal Deadline:**

None

**Abstract:**

On July 13, 2009, we published a final rule extending for two more years the authorization for attorney advisors to conduct certain prehearing procedures and to issue fully favorable decisions. The current rule is scheduled to expire on August 10, 2011. We are proposing to make this authorization permanent and no longer subject to the sunset date.

**Statement of Need:**

The attorney advisor initiative has helped reduce the high number of pending cases at the hearing level by permitting certain attorney advisors to issue fully favorable ''on the record'' decisions in appropriate cases earlier in the hearing process without the need for a hearing before an Administrative Law Judge. Since this initiative's inception in November 2007, attorney advisors have issued more than 54,000 fully favorable decisions. The most recent Office of Quality Performance post effectuation review found a 96% accuracy rating for these decisions.

We have reduced the number of cases awaiting a hearing for the last seven months. The attorney advisor initiative has contributed to this reduction by providing earlier decisions where the evidence supports making a fully favorable decision. The attorney advisor initiative is an important part of our effort to reduce the hearings backlog and prevent its recurrence.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

The alternative to making the rule permanent is to let it continue to be renewed every two years before the sunset provision expires. We need this additional tool to continue to reduce our hearings backlog, which will be compounded by the recent economic downturn in the economy.

**Anticipated Cost and Benefits:**

Undetermined at this time.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Marilyn Hull
Social Security Administration
5107 Leesburg Pike
Falls Church, VA 22041–3260
Phone: 703 605–8500

Brian Rudick
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–7102

**RIN:** 0960–AH05

---

**SSA**

## FINAL RULE STAGE

**172. REVISED MEDICAL CRITERIA FOR EVALUATING HEARING LOSS (2862F)**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

**CFR Citation:**

20 CFR 404.1500, app 1

**Legal Deadline:**

None

**Abstract:**

Sections 2.00 and 102.00, Special Senses and Speech, of appendix 1 subpart P of part 404 of our regulations describe hearing loss that is considered severe enough to prevent a person from doing any gainful activity, or that causes marked and severe functional limitations for a child claiming Supplemental Security Income (SSI) payments under title XVI. We are revising these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment

**Statement of Need:**

These regulations are necessary to update the hearing loss listings to reflect advances in medical knowledge, treatment, and methods of evaluating hearing impairments. The changes ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that these revisions are preferable because of the medical advances that have been made in treating and evaluating these types of impairments. The current listings are now over 15 years old. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

**Anticipated Cost and Benefits:**

Cost estimates for fiscal years 2008 - 2018: (in millions of dollars) OASDI - 105, SSI - 10.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 04/13/05 | 70 FR 19353 |
| ANPRM Comment Period End | 06/13/05 | |
| NPRM | 08/13/08 | 73 FR 47103 |
| NPRM Comment Period End | 10/14/08 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Cheryl A. Williams
Acting Director
Social Security Administration
Office of Compassionate Allowances and Listings Improvements
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1020

Rosemarie Greenwald
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 966–7813

**RIN:** 0960–AG20

---

**SSA**

### 173. REVISIONS TO RULES ON REPRESENTATION OF PARTIES (3396F)

**Priority:**

Other Significant

**Legal Authority:**

42 USC 405(a); 42 USC 406(a)(1); 42 USC 810(a); 42 USC 902(a)(5); 42 USC 1010; 42 USC 1383(d)

**CFR Citation:**

20 CFR 404.612; 20 CFR 404.901; 20 CFR 404.903; 20 CFR 404.909; 20 CFR 404.910; 20 CFR 404.933; 20 CFR 404.934; 20 CFR 404.1700 to 404.1799; 20 CFR 408.1101; 20 CFR 416.315; 20 CFR 416.1401; 20 CFR 416.1403; 20 CFR 416.1409; 20 CFR 416.1410; 20 CFR 416.1433; 20 CFR 416.1434; 20 CFR 416.1500 to 416.1599; 20 CFR 422.203; 20 CFR 422.515

**Legal Deadline:**

None

**Abstract:**

We will revise our rules on representation of parties in parts 404, 408, 416, and 422 to reflect changes in the way claimants obtain representation and in representatives' business practices. These new rules will also improve our efficiency by increasing the use of electronic services. These rules will:

— Recognize entities as representatives;

— Mandate the use of Form SSA-1696 during the appointment process;

— Mandate the use of Form SSA-1696 to waive a fee or to waive direct payment of a fee;

— Require certain representatives to use our electronic services as they become available, including Internet Appeals;

— Require certain representatives to keep paper copies of certain documents that we may require;

— Require representatives and certain individuals to register with us and to provide attestations;

— Add new affirmative duties and prohibited actions for representatives;

— Add new definitions or revise existing definitions for: ''disqualify,'' ''electronic media,'' ''Federal agency,'' ''Federal program,'' ''fee petition,'' ''initial disability claim,'' ''person,'' and ''representative''; and

— Change references in the representative sanctions rules to reflect a recent delegation of authority and recent agency reorganization.

**Statement of Need:**

These revisions will reflect changes in representatives' business practices and improve our efficiency by enhancing use of the Internet.

**Summary of Legal Basis:**

Section 206 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA) and section 302 and 4303 of the Social Security Protection Act of 2004 (SSPA) Public Law 108-203.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

Negligible.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/08/08 | 73 FR 51963 |
| NPRM Comment Period End | 11/07/08 | |
| Final Action | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Joann Anderson
Social Insurance Specialist
Social Security Administration
Office of Income Security Programs
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–6716

Joshua B. Silverman
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 594–2128

**RIN:** 0960–AG56

---

**SSA**

### 174. SETTING THE TIME AND PLACE FOR A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE (3481F)

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 401(j); 42 USC 404(f); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 405 note; 42 USC 421; 42 USC 421 note; 42 USC 423(i); 42 USC 425; 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1383; 42 USC 1383b

**CFR Citation:**

20 CFR 404.932; 20 CFR 404.936; 20 CFR 404.938; 20 CFR 404.950; 20 CFR 416.1432; 20 CFR 416.1436; 20 CFR 416.1438; 20 CFR 416.1450(b)

**Legal Deadline:**

None

**Abstract:**

We will amend our rules to clarify that the agency is responsible for setting the time and place for a hearing before an administrative law judge. This change will ensure greater flexibility in scheduling both in-person and video-teleconference hearings, increase efficiency in the hearing process, and reduce the number of pending hearings. The number of cases awaiting a hearing has reached historic proportions and greater efficiency is critical to addressing this problem.

**Statement of Need:**

We currently face 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. This rulemaking will promote greater efficiency at the hearing level.

**Summary of Legal Basis:**

Administrative—not required by statute or court order.

**Alternatives:**

Undetermined at this time.

**Anticipated Cost and Benefits:**

Program benefit costs are estimated to increase for fiscal years 2008 - 2018 by $1.2 billion for OASDI and SSI.

**Risks:**

Undetermined at this time.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/10/08 | 73 FR 66564 |
| NPRM Comment Period End | 01/09/09 | |
| Final Action | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Brent Hillman
Social Insurance Specialist
Social Security Administration
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041–3260
Phone: 703 605–8280

Pamela Kultgen
Assistant Regional Counsel
Social Security Administration
Office of the General Counsel
601 E. 12th Street, Suite 965
Kansas City, MO 64106
Phone: 816 936–5078

**RIN:** 0960–AG61

---

**SSA**

**175. ● AMENDMENTS TO REGULATIONS REGARDING MAJOR LIFE–CHANGING EVENTS AFFECTING INCOME–RELATED MONTHLY ADJUSTMENTS TO MEDICARE PART B PREMIUMS (3574F)**

**Priority:**

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

**Legal Authority:**

42 USC 902(a)(5); 42 USC 1395r(i)

**CFR Citation:**

20 CFR 418.1205; 20 CFR 418.1210; 20 CFR 418.1230; 20 CFR 418.1255; 20 CFR 418.1265

**Legal Deadline:**

None

**Abstract:**

We are modifying our regulations in order to clarify and expand events considered life-changing events for the purposes of Medicare Part B income-related monthly adjustments as well as the types of evidence required to support claims of such events.

**Statement of Need:**

The past year has seen the closure or reorganization of several major employers in the United States. As a result, some companies are providing settlement payments to current and retired employees in lieu of periodic pension payments and/or extended health insurance coverage. These settlement payments unexpectedly increase a beneficiary's income for a tax-reporting year, resulting in an income-related monthly adjustment amount (IRMAA) above the beneficiary's ability to pay. This change will allow a beneficiary to claim a decrease in IRMAA by using a more representative tax year's modified adjusted gross income.

**Summary of Legal Basis:**

Discretionary. Not required by statute or court order.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

None.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action | 01/00/10 | |

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:**

Helen Droddy
Social Insurance Specialist, Regulations Writer
Social Security Administration
Office of Regulations
6401 Security Boulevard
Baltimore, MD 21235–6401
Phone: 410 965–1483

**RIN:** 0960–AH06

BILLING CODE 4191–02–S

## FEDERAL MARITIME COMMISSION (FMC)

### Statement of Regulatory and Deregulatory Priorities

The Federal Maritime Commission's 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 FMC administers in a manner consistent with this vision in a way that minimizes regulatory costs and fosters economic efficiencies.

The Commission has implemented its Strategic Plan for Fiscal Years 2010 through 2015. As a result of the strategic planning process, the Commission's mission statement, strategic goals and performance measures have been refined to better focus the FMC's efforts in achieving its mission and promote efficiency in the Commission's business processes. In working toward these objectives, the Commission will initiate rulemakings to address changing industry conditions or to implement technological advancements to minimize regulatory costs.

The Commission is in the process of reviewing its regulations to ensure alignment with emerging industry trends and business practices, particularly as they relate to ocean transportation intermediaries, marine terminal operators and vessel-operating common carriers. For administrative purposes, the FMC amended its regulations to reflect the codification of shipping laws in Title 46 of the United States Code and revised Commission rules to adjust civil monetary penalties for inflation. The FMC also commenced a rulemaking to assess the continued need for a marine terminal agreement exemption (46 CFR 535.308) in light of recent industry changes and existing exemptions for marine terminal services agreements and marine terminal facilities agreements under 46 CFR 535.309 and 535.310.

The Commission also oversees the financial responsibility of passenger vessel operators to indemnify passengers and other persons in cases of death or injury and to indemnify passengers for nonperformance of voyages. The Commission is presently evaluating the passenger vessel operator program, particularly with regard to passenger vessel financial responsibility requirements.

The principal priority of the Agency's current regulatory plan will be to continue to assess major existing regulations for ongoing need, burden on the regulated industry, and clarity. The Commission receives requests from segments of the shipping industry with regard to their tariff obligations under the Commission's regulations. The Commission invites comments on such requests and evaluates those comments. If the Commission determines to act favorably on the requests, it is possible that there could be specific rulemaking proposals presented for the Commission's consideration.

The Commission's review of existing regulations exemplifies its objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866.

### Description of the Most Significant Regulatory Actions

The Commission currently has no actions under consideration that constitute ''significant regulatory actions'' under the definition in Executive Order 12866.

BILLING CODE 6730–01–S

## FEDERAL TRADE COMMISSION (FTC)

### Statement of Regulatory Priorities

### I. REGULATORY PRIORITIES

*Background*

The Federal Trade Commission (FTC or Commission) is an independent agency charged with protecting American consumers from ''unfair methods of competition'' and ''unfair or deceptive acts or practices'' in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that competition, based on truthful and non-misleading information about products and services, brings the best choice of products and services at the lowest prices for consumers.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. Fraud and deception injure both consumers and honest competitors alike and undermine competitive markets. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Pursuant to the FTC Act, for example, the Commission currently has in place sixteen trade regulation rules. The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters and are generally intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

*Industry Self-Regulation and Compliance Partnerships with Industry*

The Commission vigorously protects consumers through a variety of tools including both regulatory and non-regulatory approaches. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate. The Commission has held workshops and issued reports that encourage industry self-regulation and compliance partnerships in several areas. As detailed below, information privacy and security, the evolving nature of technology, consumer credit and finance, and health care issues continue to be at the forefront of the Commission's consumer protection and competition programs. By subject area, we discuss the major workshops and reports[1] the FTC has issued since the 2008 Regulatory Plan was published.

(a) *Protecting Personal Information.* The Commission convened a number of workshops in interrelated areas associated with protecting personal information, consumer privacy, and identity theft. They include:

- On November 13, 2008, the FTC and the Southern Methodist University Dedman School of Law co-hosted a workshop on how businesses can secure personal information and protect the privacy of consumers and employees. The workshop was presented in partnership with the International Association of Privacy Professionals which provides guidance to businesses on data security, privacy, and responses to data breaches.
- On March 16-17, 2009, the FTC, along with the Asia-Pacific Economic Cooperation forum and the Organization for Economic Cooperation and Development, co-hosted an international conference on how companies can manage personal data security issues in a global information environment where data can be stored and accessed from multiple jurisdictions.
- On April 29, 2009, the FTC held a workshop to help businesses implement data security practices to deter identity thieves and recognize telltale signs - or red flags - that thieves are trying to use personal information they have obtained.
- Beginning December 7, 2009, the Commission will hold three roundtables to explore the privacy challenges posed by 21st century technology and business practices that collect and use company data. The goal of the roundtables is to determine how best to protect consumers while supporting beneficial uses of the information and technological innovation.

As an outgrowth of an April 2007 federal government strategic plan which contained 31 recommendations to address identity theft, the President's Identity Task Force (co-chaired by the Attorney General and the FTC's Chairman) released an October 2008 report on the progress made in implementing the recommendations.[2] The report discusses the FTC's workshops, training seminars, and extensive outreach with public, private, and non-government organizations on preventing identity theft. Related to this, and following a December 2007 workshop on the use of Social Security numbers, the Commission issued a December 2008 report ''Security in Numbers: Social Security and Identity Theft: A Federal Trade Commission Report Providing Recommendations on Social Security Number Use in the Private Sector.''[3]

As a result of a November 2007 town hall on issues related to online behavioral advertising - the practice of tracking an individual's online activities in order to deliver advertising tailored to his or her interests - and how best to protect consumer privacy, the FTC staff put out for comment a set of four principles in December 2007. The principles were transparency and consumer control, reasonable security for consumer collected data, express consumer consent to material changes in privacy policy, express consumer consent to use of sensitive data. After considering the comments, the Commission issued a report in February 2009, ''Self-Regulatory Principles for Online Behavioral Advertising,'' which revised and retained the principles governing self-regulation by advertisers.[4]

[1] The FTC also prepares a number of annual and periodic reports on the statutes it administers. These are not discussed in this plan.

[2] *See* ''The President's Identity Theft Task Force Report'' at http://www.ftc.gov/os/2008/10/081021taskforcereport.pdf.

[3] The complete report is at http://www.ftc.gov/os/2008/12/P075414ssnreport.pdf.

[4] This can be found at http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf.

(b) *Mobile Marketplace*. In May 2008, the Commission held a town hall meeting to assess the evolving mobile commerce marketplace and its implications for consumer protection policies. As a result of that meeting and based on further review, the FTC staff issued an April 2009 report ''Beyond Voice: Mapping the Mobile Marketplace.''[5] The report found that cost disclosures about mobile services continue to generate consumer complaints and that the increased use of smartphones to access the mobile Web presented unique privacy concerns, especially regarding children. The report also highlighted the need to monitor the impact of unwanted mobile text messages, malware, and spyware and the substantial cost to carriers (and potentially consumers) of blocking them.

(c) *Debt Collection*. In October 2007, the Commission held a two-day workshop to explore how collection industry changes have affected consumers and businesses. In February 2009, in addition to its annual report on the Fair Debt Collection Practices Act (FDCPA), the FTC issued ''Collecting Consumer Debts: The Challenges of Change.''[6] The report found that major problems in the flow of information in the collection chain and recommended that consumers be provided better information on debts and their rights. The report also recommended that debt collection laws should be modernized to reflect changes in technology and that Congress authorize the FTC to issue rules under the FDCPA.

The report further notes that the FTC lacked sufficient information on debt collection proceedings. On August 5-6, September 29-30, and December 4, 2009, the Commission has held or will hold roundtables examining consumer protection issues involving debt collections, both in litigation and arbitration proceedings.

(d) *Health Care*. On November 21, 2008, the Commission held roundtables on two distinct health care issues involving competition and consumer protection issues: competition between health care providers based on quality information, and competition which may be provided by an abbreviated regulatory approval for follow-on biologics (FOBs).

In June 2009, the Commission issued two reports on health care issues. The first, ''Follow-On Biologic Drug Competition,''[7] was a result of the November workshop. After discussing the differences between FOB drugs and branded-generic drugs and noting that competition by FOBs is unlikely to be similar to brand-generic competition (substantial FOB costs, limited competition, lack of automatic substitution, FOB difficulty gaining market share), the report concludes that patent protection and market-based pricing will promote competition by FOBs and recommends legislation to put in place an abbreviated FDA approval process for FOBs. The second report, ''Authorized Generics: An Interim Report,''[8] analyzes price reductions when authorized generic (AG) drugs compete with first-to-file generics during 180-day exclusivity and the impact of brand-generic patent litigation settlements that contain provisions on launching an AG drug. The FTC's report was prepared in response to requests from Congress and is relevant to health care reform initiatives.

(e) *Competition*. On February 17-19 and May 20-21, 2009, the Commission hosted public workshops on resale price maintenance under the Sherman Act and the FTC Act, focusing on how best to distinguish resale price maintenance that benefits consumers from that which does not. The workshops discussed theories of economic benefits and harms, featured panel presentations, and allowed for audience questions. On October 17, 2008, the FTC held a workshop on the scope of ''unfair methods of competition'' in section 5 of the FTC Act. The Commission considered the history of the provision, FTC and court interpretations, contemporary business conduct, and issues concerning standard-setting organizations.

In addition, beginning December 3, 2009, and ending January 26, 2010, the Commission and the Department of Justice will hold a series of five joint public workshops to explore updating the guidelines used to evaluate the potential competitive effects of mergers and acquisitions. The purpose of the review is to consider guideline revisions to more accurately reflect agency practice and result in a more efficient review process. The agencies have requested comments on twenty questions related to competitive effects; market definition, share, and concentration; and the price and non-price effects of mergers.

(f) *Intellectual Property*. The Commission held a series of five hearings on the ''Evolving Intellectual Property (IP) Marketplace.'' The hearings generally focused on examining changes in intellectual property law, patent-related business models, and new information regarding the operation of the IP marketplace since the issuance of the FTC's October 2003 report, ''To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy.''

- Overview Hearing. On December 5, 2008, three panels provided an overview of developing business models, recent and proposed changes in IP remedies law, and changes in legal doctrines affecting the value and licensing of patents.
- Remedies. On February 11-12, 2009, the Commission held hearings on damages in patent cases and recent changes in permanent injunction and willful infringement standards in the wake of recent court decisions.
- Operation of IP Markets. The hearings on March 18-19, 2009 explored how different industries use patents, the economic and legal perspectives on IP and technology markets, and the notice role of patents.
- Markets for Intellectual Property. This April 17, 2009 hearing addressed new business models in the IP market; strategies for buying, selling, and licensing patents; and the role of secondary markets.
- Industry Focus. On May 4-5, 2009, in conjunction with the Berkeley Center for Law and Technology and the Berkeley Center for Competition Policy, the Commission considered how markets for patents and technology operate in different industries and how patent policy might be adjusted to respond to problems and better promote innovation and competition.

In addition to these five IP hearings, the Commission and the Technology Law and Public Policy Clinic at the University of Washington School of Law hosted a ''Digital Rights Management'' (DRM) conference on March 25, 2009. The conference addressed the use of DRM technologies, practices which are expected to become more prevalent in U.S. markets.

[5] This is located at www.ftc.gov/reports/mobilemarketplace/mobilemktgfinal.pdf.

[6] This is at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf.

[7] The link is http://www.ftc.gov/os/2009/06/P083901biologicsreport.pdf.

[8] The link is www.ftc.gov/os/2009/06/P062105authorizedgenericsreport.pdf.

(g) *Journalism and the Internet.* On December 1-2, 2009, the FTC will host a two-day workshop titled ''From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?'' 74 FR 51605 (Oct. 7, 2009). The workshop will broadly consider the economics of journalism; the wide variety of new business and non-profit models for journalism; the financial, technological, and other challenges facing the news industry; and a variety of government policies, including antitrust, copyright, and tax policy, bearing on journalism. Witnesses will include journalists and representatives of news organizations, new media representatives, direct marketers, academics, and consumer advocates.

(h) *Other Workshops*. The FTC hosted a ''Fraud Forum'' on February 25-26, 2009. The first day was open to the public and addressed the many aspects of fraud today. The second day was open only to domestic and international law enforcement officials and focused on improving interagency coordination in consumer fraud cases. On March 12, 2009, the FTC staff conducted a forum to gather information for an upcoming education campaign involving advertising and marketing to children.

Then-Chairman William E. Kovacic also issued a report that considered basic questions and future directions as the Commission approaches its 100-year anniversary in 2014.[9] The report was based on seven months of agency self-assessment and numerous consultations with officials in the public and private sector, and concluded, ''The progress of the Federal Trade Commission in its modern era has built heavily upon the willingness of its people to assess their work critically and explore possibilities for improvement. Critical self-study and external consultations not only have helped identify paths to achieving greatness, but also have renewed the institution's commitment to fulfill the destiny that Congress in 1914 wished it to achieve.'' The report, the latest element of that tradition, seeks to ingrain in the agency a habit of periodic self-assessment to illuminate the way to future improvements.

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 movies, games, and music that the industries' rating or labeling systems say are inappropriate for children or warrant parental caution due to their violent content. The motion picture, electronic game and music industries have each established self-regulatory systems that rate or label products in an effort to help parents seeking to limit their children's exposure to violent materials. Since 1999, the Commission has issued six reports on these three industries, examining the industries' compliance with their own voluntary marketing guidelines.[10]

Staff is currently working on the development of a mall intercept study of parental awareness and use of rating information on movie DVDs and on a telephone survey on parental awareness and attitudes toward the marketing and sale of Unrated ''Director's Cut'' DVDs. The results of this research will be reported in the Commission's seventh media violence report, with an anticipated release in the Fall of 2009.

Regarding advertising for alcoholic products, the Commission plans to issue each year orders requiring two to four suppliers to provide information about advertising and marketing practices and compliance with self-regulatory guidelines. In June 2009, the Commission issued orders pursuant to FTC Act Section 6(b) to three alcohol companies, asking for information about advertising and marketing practices. In the coming year, FTC will review the companies' responses to the orders in light of the provisions of the alcohol industry self-regulatory codes. The FTC will continue to monitor advertising and marketing efforts by other industry members. It will also continue to promote the ''We Don't Serve Teens'' consumer education program, supporting the legal drinking age.[11]

The Commission will continue to examine issues related to food marketing to youth. In July 2008, the Commission published a report to Congress on this topic[12] based on the responses of 44 members of the food and beverage industry to Special Orders issued by the Commission in 2007 under Section 6(b) of the FTC Act. The Commission's report found that, in 2006, the surveyed companies spent more than $1.6 billion in youth-directed marketing, often employing a variety of integrated techniques such as traditional media, digital- and Internet-based platforms, packaging and in-store marketing, and cross-promotions with media and entertainment companies including the use of licensed characters. Among the report recommendations were that food companies adopt meaningful nutrition-based standards for marketing products to children and that companies define ''marketing to children'' to encompass the full spectrum of advertising and promotional techniques. After receipt of 2009 data from the companies during 2010, the Commission intends to conduct a follow-up study to assess the extent to which recommendations from the 2008 report have been implemented and whether additional measures are needed.

The Commission is also spearheading an Interagency Working Group on Food Marketed to Children, made up of members of the FTC, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Department of Agriculture. The working group was established in response to a provision in the FY 2009 Omnibus Appropriations Act (H.R. 1105) and is charged with conducting a study and developing recommendations for nutritional standards for foods marketed to children ages 17 and under. Findings and recommendations will be submitted in a report to Congress by July 2010.

Additionally, in the industry self-regulation area, 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, 160 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

[9] *See* Chairman William E. Kovacic, ''The Federal Trade Commission at 100: Into Our 2nd Century - The Continuing Pursuit of Better Practices, A Report by Federal Trade Commission'' (January 2009), available at http://www.ftc.gov/os/2009/01/ftc100rpt.pdf.

[10] For the most recent report, *see* ''Federal Trade Commission, Marketing Violent Entertainment to Children: A Fifth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries A Report to Congress'' (April 2007), available at www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf.

[11] More information can be found at http://www.dontserveteens.gov/.

[12] *See* ''Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation'' (July 2008), available at http://www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf.

involving the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR 453, so that they can meet the rule's disclosure requirements. Nearly 300 funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program is designed to assist franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR 436, in complying with the rule. Violations involving fraud or other section 5 violations are not candidates for referral to the program. The IFA teaches the franchisor how to comply with the rule and monitors its business for a period of years. Where appropriate, the program offers franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, twenty-one companies have agreed to participate in the program.

*Rulemakings that Have International Effects*

The OMB has requested that agencies discuss the international effects of their rulemakings in the regulatory plan narrative per the recommendation of the OMB Secretariat General of the European Commission joint report to the U.S.-European Union (EU) High Level Regulatory Cooperation Forum

And Transatlantic Economic Council (TEC).[13] The Commission has statutory authority and implementing regulatory authority to prevent unfair or deceptive acts or practices in commerce among the states or with foreign nations. The Commission's Rules apply to foreign-based corporations doing business in the United States. As explained below, to the extent that foreign companies do business in the United States or their conduct from outside causes or is likely to cause reasonably foreseeable injury within the United States, these foreign entities are required to comply with the applicable statutes and rules.

The Commission enforces Section 5(a) of the FTC Act, which provides that ''unfair or deceptive acts or practices in or affecting commerce ... are ... declared unlawful.'' Recently, the ''Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006'' (or the ''U.S. SAFE WEB Act of 2006'' or ''SAFE WEB'') (Pub. L. No. 109-455, codified to the FTC Act, 15 U.S.C. § 41 *et seq.*) amended Sec. 5(a)'s ''unfair or deceptive acts or practices'' to include such acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. This amendment expressly confirmed the FTC's authority to redress harm in the United States caused by foreign actors and harm abroad caused by U.S. actors. This also clarified the factors for Commission consideration in establishing Trade Regulation Rules to remedy unfair or deceptive acts or practices that occur on an industry-wide basis. Under Section 18 of the FTC Act, the Commission is authorized to prescribe ''rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce'' within the meaning of Section 5(a)(1) of the Act.

Turning to specific rules and rulemakings and their international effects or of potential international interest, the Premerger Notification Rules, 16 CFR 801-803, for example, apply to mergers or acquisitions reaching a certain size threshold and where one or both parties are of a certain size. In addition, the Energy Independence and Security Act of 2007 provided the Commission with authority to promulgate a rule addressing manipulation of wholesale prices for petroleum products and authorizes rule provisions prohibiting persons from supplying misleading or deceptive information or data to certain entities. As discussed within *Final Actions* below, the Commission announced a final rule on August 6, 2009.

For the Commission's consumer protection mission, some of the rules currently being reviewed may have effects on international companies doing business in the United States or on U.S. businesses regarding their dealings with foreigners. These include, among other things, the provisions of the recently promulgated Health Breach Notification Rule, 16 CFR 318, which applies to foreign vendors of personal health records and related entities. Other rules that are pending or under review and that may have an effect on international commerce include: the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 16 CFR 307; Trade Regulation Rules adopted pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (900 Number Rule), 16 CFR 308; Telemarketing Sales Act, which prohibit calls to persons listed on the Do-Not-Call list, 16 CFR 310; the rulemakings on Mortgage Acts and Practices and Mortgage Assistance Relief Services, to be codified at 16 CFR 321, 322; Power Output Claims for Amplifiers Used in Home Entertainment Systems, 16 CFR 432; and the Trade Regulation Rule on Mail or Telephone Order Merchandise, which covers purchases on the Internet, 16 CFR 435.

In addition, many of the FTC Guides also apply to foreign entities doing business in the United States or are of interest to such foreign entities. These include among others: Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR 23; the Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. 255; Guides Concerning Fuel Economy Advertising for New Automobiles, 16 CFR 259; and the Guides for the Use of Environmental Marketing Claims, 16 CFR 260. The FTC also issued and applies an Enforcement Statement on the use of Made in USA and other U.S. origin claims in advertising and labeling.[14] The principles set forth in this enforcement policy statement apply to U.S. origin claims included in labeling, advertising, other promotional materials, and all other forms of marketing, including marketing through digital or electronic means such as the Internet or electronic mail.[15]

*Rulemakings and Studies Required by Statute*

The Congress has enacted laws requiring the Commission to undertake rulemakings and studies. They include at least 15 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) and the related Credit

[13] *See* ''Review of the Application of EU and US Regulatory Impact Assessment Guidelines on the Analysis of Impacts on International Trade and Investment'' (May 2008), available at http://www.whitehouse.gov/omb/assets/regulatory__matters__pdf/sg__omb__final.pdf.

[14] *See* http://www.ftc.gov/os/statutes/usajump.shtm.

[15] The Made in USA Enforcement Statement does not cover products specifically subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act, the Wool Products Labeling Act, the Fur Products Labeling Act, or the American Automobile Labeling Act.

Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (CARD Act); the rulemaking pursuant to the Federal Deposit Insurance Corporation Improvements Act of 1991, Pub. L. No. 102-242 (FDICIA); model privacy notices under the Gramm-Leach-Bliley Act; the rulemakings concerning gasoline price manipulation and energy labeling for lamps required or authorized by the Energy Security and Independence Act of 2007, Pub. L. No. 110-140; temporary breach notification requirements for vendors of personal health records under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5; and a rulemaking on mortgage loans pursuant to the Omnibus Appropriations Act of 2009, Pub. L. No. 111-8. The *Final Actions* section below describes actions taken on the required rulemakings and studies since the 2008 Regulatory Plan was published.

*FACTA Rules.* The Commission has already issued nearly all of the rules required by FACTA. These rules are codified in several parts of 16 CFR 600 *et seq.* The remaining active FACTA rulemakings are:

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 64698. The comment period ended on January 5, 2005. Staff reviewed the comments and is monitoring the credit score market, where prices have continued to remain reasonable and competitive.
2. Risk Based Pricing Rule–The Commission jointly with the Federal Reserve published a risk-based pricing proposal for comment on May 19, 2008. 73 FR 28966. The comment period ended on August 18, 2008. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. This statutorily-required rulemaking would address the form, content, time, manner, definitions, exceptions, and model of a risk-based pricing notice. The agencies anticipate issuing a final rule in December 2009.
3. Furnisher Rules–On July 1, 2009, the Agencies issued furnisher accuracy and dispute rules which are discussed under *Completed Actions* below. On the same date, the Agencies also issued an advance notice of proposed rulemaking (''ANPRM'') that seeks to obtain information that would assist in determining whether it would be appropriate to propose an addition to one of the guidelines that would delineate the circumstances under which a furnisher would be expected to provide an account opening date, or any other types of information, to a consumer reporting agency to promote the integrity of the information. 74 FR 31529. The comment period closed on August 31, 2009.
4. Advertising Disclosure Rule for Free Credit Reports–Section 205 of the CARD Act requires the Commission to issue a rule to prevent deceptive marketing of ''free credit reports.'' On October 7, 2009, the Commission issued an NPRM to amend the Free Credit Reports Rule to require prominent disclosures in advertising for ''free credit reports'' and to address practices which interfere with consumers' ability to obtain file disclosures from consumer reporting agencies. 74 FR 52915 (Oct. 15, 2009). Comments on the NPRM are due on November 30, 2009.

*FACTA Study on Insurance Scores.* On March 27, 2009, the Commission issued Amended Orders to File a Special Report amending the compulsory process resolution dated May 16, 2008 titled ''Resolution Directing Use of Compulsory Process to Study the Effects of Credit Scores and Credit-Based Insurance Scores Under Section 215 of the FACT Act.'' This Amended Order requires certain insurance companies to produce information for a study on the use and effect of credit-based insurance scores on consumers of homeowner's insurance. The Amended Orders were served on nine of the largest private providers of homeowners insurance on or about April 6, 2009; it is anticipated the insurers will have fully complied with the Amended Orders by the middle of September, 2009. Staff has begun reviewing the data produced by the insurers and is working to identify a sample set of data to be used for the study.

*FACTA Study on Credit Reports.* Pending approval from the Office of Management and Budget, the FTC plans to conduct a national study of the accuracy of consumer reports in connection with Section 319 of the FACT Act. This study is a follow-up to the Commission's two previous pilot studies that were undertaken to evaluate a potential design for a national study. Section 319 required the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. Section 319 also required the Commission to issue a series of biennial reports to Congress over a period of eleven years from the date of enactment (2003).

*FDICIA Rule.* The FDICIA assigns to the Commission responsibilities for certain non-federally insured depository institutions (''DIs'') and private deposit insurers of such DIs. The FTC is required to prescribe by regulation or order, the manner and content of certain disclosures required of DIs that lack federal deposit insurance. From 1993-2003, the Commission was statutorily barred on an annual basis from appropriating funds for purposes of complying with FDICIA. The Consolidated Appropriations Act of 2004 and subsequent yearly appropriations have not imposed the same funding prohibition and the Commission issued an NPRM on March 16, 2005, 70 FR 12823, and a revised NPRM on March 14, 2009. 74 FR 10843. Staff is reviewing the comments on the revised NPRM and expects to forward a recommendation to the Commission by the end of 2009.

*Gramm-Leach-Bliley (GLB) Rule.* Please see Final Actions for information about a final GLB Rule.

*Energy Security and Independence Act Rules.* Several sections of the Energy Security and Independence Act of 2007 (ESIA), require or authorize, among other things, that the Commission promulgate rules concerning gas price manipulation and labeling requirements for various categories of biodiesel fuels, as well as energy labeling requirements for certain appliances including light bulbs.[16] The active rulemakings under ESIA are discussed below and, for the Market Manipulation Rulemaking, in the *Final Actions* section.[17]

Section 321 of the ESIA requires the Commission to conduct a rulemaking to consider the effectiveness of current energy labeling for lamps (commonly referred to as ''light bulbs'') and to consider alternative labeling approaches. In response to that

[16] The rulemaking concerning labeling for biofuels was completed in 2008.

[17] In addition, this act provides the Commission with authority to promulgate energy labeling rules for consumer electronics; and the Commission issued an ANPRM in May 2009. *See Ongoing Reviews* below.

directive, the Commission issued an ANPRM on July 17, 2008, seeking comments on the effectiveness of current labeling requirements for lamp packages and possible alternatives to those requirements. 73 FR 40988. As part of this effort, the Commission held a public roundtable meeting on September 15, 2008; and the comment period ended on September 29, 2008. The Commission announced an NPRM on October 27, 2009, seeking comments about proposed labeling requirements for light bulbs. 74 FR 57950 (Nov. 10, 2009). Comments are due by December 28, 2009. The Commission will take final action before June 2010.

*Mortgage Loans Rule*. Section 626 of the Omnibus Appropriations Act of 2009 directed the Commission to initiate a rulemaking proceeding with respect to mortgage loans and prescribed that any violation of the rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices. On June 1, 2009, the Commission published an ANPRM in two parts: (1) Mortgage Acts and Practices through the life cycle of the mortgage loan (i.e., loan advertising, marketing, origination, appraisals, and servicing), 74 FR 26118, and (2) Mortgage Assistance Relief Services (practices of entities providing assistance to consumers in modifying mortgage loans or avoiding foreclosure), 74 FR 26130. The comment periods for the ANPRMs have closed. Staff is reviewing the comments and expects to send a recommendation to the Commission by fall 2009 relating to further proposed actions.

Please see *Final Actions* below for information about the statutorily required *Temporary Breach Notification Rule*.

*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.

*Calendar Year 2008-09 Reviews*

Most of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. On February 5, 2009, the Commission published its modified ten-year schedule of review and announced that it would initiate the review of two rules and one guide during 2009: (1) the Automotive Fuel Ratings, Certification, and Posting Rule (Fuel Ratings Rule), 16 CFR 306, (2) the Rule Concerning Prenotification Negative Option Plans (Negative Option Rule), 16 CFR 425, and (3) the Guides for Private Vocational and Distance Education Schools (Vocational School Guides), 16 CFR 254. 74 FR 6129 (Feb. 5, 2009). Discussion of these three reviews follows.

*Fuel Ratings Rule*. The Fuel Ratings Rule sets out a uniform method for determining the octane rating of gasoline from the refiner through the chain of distribution to the point of retail sale. The rule enables consumers to buy gasoline with an appropriate octane rating for their vehicle and establishes standard procedures for determining, certifying, and posting octane ratings. On March 3, 2009, the Commission published an ANPRM and requested comments on the rule as part of its systematic periodic review of current rules and guides. 74 FR 9054. Staff anticipates that the Commission will issue an NPRM during December 2009.

*Negative Option Rule*. The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise automatically to their subscribers and bill them for the merchandise within a prescribed time. The rule protects consumers by requiring the disclosure of the terms of membership clearly and conspicuously and establishes procedures for administering the subscription plans. An ANPRM was published on May 14, 2009, 74 FR 22720, and the comment period ended on July 27, 2009. Several states, a county government agency, and an industry trade association filed requests seeking to extend the comment period but the requests were so close to the end of the comment period we could not extend the period. On August 7, 2009, the Commission granted the requests to reopen and extended the comment period until October 13, 2009.

*Vocational Schools Guides*. The Commission is seeking public comments on its Private Vocational and Distance Education Schools Guides, commonly known as the Vocational Schools Guides. 74 FR 37973 (July 30, 2009). Issued in 1972 and most recently amended in 1998 to add a provision addressing misrepresentations related to post-graduation employment, the guides advise businesses offering vocational training courses – either on the school's premises or through distance education, such as correspondence courses or the Internet – how to avoid unfair and deceptive practices in the advertising, marketing, or sale of their courses. The comment period closed on October 16, 2009.

*Ongoing Reviews*

Since the publication of the 2008 Regulatory Plan, the Commission has initiated two rulemaking proceedings and is continuing review of a number of rules and guides. The two new rulemaking proceedings are discussed first under *(a) Rules*, followed by the other rule reviews and then *(b) Guides*.

*(a) Rules*

*Consumer Electronics Rule*. The Commission has authority under section 325 of the ESIA to promulgate energy labeling rules for consumer electronics (Consumer Electronics Rule). On March 16, 2009, the Commission published an ANPRM seeking comments on whether it should require labels for consumer

electronics, including televisions, computers, video recorder boxes, and certain other equipment; the disclosures, need, and format of labels; and appropriate test procedures. 74 FR 11045. The comment period ended on May 14, 2009. Staff is currently reviewing the comments and anticipates sending a recommendation to the Commission by the end of 2009.

*Debt Relief Services TSR Rule*. On July 30, 2009, the Commission approved an NPRM seeking comments on a proposal to amend the Telemarketing Sales Rule (TSR) to address the sale of debt relief services, including: for-profit credit counselors; debt settlement companies that promise to obtain substantially reduced, lump sum settlements of consumers' debts; and debt negotiators that offer to obtain interest rate reductions or other concessions to lower consumers' monthly payments (Debt Relief Services TSR Rule) 74 FR 41988 (Aug. 19, 2009). The proposed amendments would define ''debt relief services,'' to ensure that telemarketing transactions involving these services would be subject to the TSR, mandate certain disclosures, and prohibit misrepresentations and the request or receipt of payment for these services until services have been performed and documented. The comment period was initially set to close on October 9, 2009, but was extended to October 26, 2009. Staff held a public forum on November 4, 2009, which afforded Commission staff and interested parties an opportunity to discuss the proposed amendments as well as any issues raised in comments in response thereto.

*Mail Order Rule*. The Mail or Telephone Order Merchandise Rule (or the Mail Order Rule), 16 CFR 435, 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 sought 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. 72 FR 51728 (Sept. 11, 2007). Staff has reviewed the comments and anticipates sending a recommendation to the Commission by early 2010.

*Business Opportunity Rule*. The proposed Business Opportunity Rule stems from the recently concluded review of the Franchise Rule, where staff recommended that the rule be split into two parts; one part addressing franchise issues and another part addressing business opportunity issues. After reviewing the comments from an NPRM, 71 FR 19054 (Apr. 12, 2006), the Commission issued a revised NPRM on March 26, 2008, that would require business opportunity sellers to furnish prospective purchasers with specific information that is material to the consumer's decision as to whether to purchase a business opportunity and which should help the purchaser identify fraudulent offerings. 73 FR 16110. The revised NPRM comment period ended on May 27, 2008, and the rebuttal comment period ended on June 16, 2008. A public workshop was held on June 1, 2009, to explore changes to the proposed rule and a related comment period closed on June 30, 2009. The Commission plans to issue a staff report on the Business Opportunity Rule in early 2010 and seek comment on the report.

*Hart-Scott-Rodino Rules*. For the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), 16 CFR 801-803, Bureau of Competition staff is continuing to review various HSR Rule provisions. Staff is also reviewing the HSR Form and anticipates sending a recommendation to the Commission in January 2010.

*Used Car Rule*. The Used Motor Vehicle Trade Regulation Rule (Used Car Rule), 16 CFR 455, sets out the general duties of a used vehicle dealer, requires that a completed Buyers Guide be posted at all times on the side window of each used car a dealer offers for sale, and mandates disclosure of 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 Commission published a notice seeking public comments on the effectiveness and impact of the rule. 73 FR 42285 (July 21, 2008). The notice seeks comments on a range of issues including, among others, whether a bilingual Buyers Guide would be useful or practicable, as well as what form such a Buyers Guide should take. Second, the notice seeks comments on possible changes to the Buyers Guide that reflect new warranty products such as certified used car warranties, that have become increasingly popular since the rule was last reviewed. Finally, the notice seeks comments on other issues including the continuing need for the rule and its economic impact, the effect of the rule on deception in the used car market, and the rule's interaction with other regulations. The comment period ended on September 19, 2008, and staff anticipates sending its recommendation to the Commission during fall 2009.

*Amplifier Rule*. The Amplifier Rule, 16 CFR 432, assists consumers in purchasing by standardizing the measurement and disclosure of various performance attributes of power amplification equipment for home entertainment purposes. The rule makes it an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purposes to fail to disclose certain performance information in connection with direct or indirect representations of power output, power band, frequency or distortion characteristics. The rule also sets out standard test conditions for performing the measurements that support the required performance disclosures. On February 27, 2008, the Commission published a request for comments including a number of specific issues related to changes in technology and products. 73 FR 10403. The comment period ended on May 12, 2008, and staff anticipates sending a recommendation to the Commission by fall 2009.

*Cooling-Off Rule*. The Cooling-Off Rule requires that a consumer be given a three-day right to cancel certain sales greater than $25.00 that occur at a place other than a seller's place of business. The rule also requires a seller to notify buyers orally of the right to cancel; to provide buyers with a dated receipt or copy of the contract containing the name and address of the seller and notice of cancellation rights; and to provide buyers with forms which buyers may use to cancel the contract. An ANPRM seeking comment was published on April 21, 2009. 74 FR 18170. The comment period was supposed to close on June 22, 2009, but was extended to September 25, 2009. 74 FR 36972 (July 27, 2009). Staff is reviewing the comments and expects to prepare a recommendation for the Commission during the early part of 2010.

*Smokeless Tobacco Regulations*. The Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Tobacco Regulations), 16 CFR 307, is ongoing. The Smokeless Tobacco Regulations govern the format and display of statutorily-mandated health warnings on all packages and advertisements for smokeless tobacco. Staff anticipates Commission action

regarding review of this rule by early 2010.

*Pay-Per-Call Rule*. The Commission's review of the Pay-Per-Call Rule, 16 CFR 308, is continuing. The Commission has held workshops to discuss proposed amendments to this rule, including provisions to combat telephone bill ''cramming'' – inserting unauthorized charges on consumers' phone bills – and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone based information and entertainment services. The most recent workshop focused on 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 expansion of the rule's coverage. Staff anticipates forwarding its recommendation to the Commission by December 2010.

*(b) Guides*

*Fuel Economy Guide*. The Fuel Economy Guide for new automobiles, 16 CFR 259, was adopted in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising. As part of its regular review of all rules and guides, the Commission issued a request for comments on May 9, 2007, on whether to retain or amend the guide. 72 FR 72328. 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 Environmental Protection Agency amendments to fuel economy labeling requirements for automobiles. On April 28, 2009, the Commission published proposed amendments to the Guide. The deadline for comments was June 16, 2009. Staff is reviewing the comments and expects to make a recommendation by the end of 2009.

*Jewelry, Precious Metals and Pewter Guides*. After issuing a staff advisory opinion indicating that the Commission's current Guides for Jewelry, Precious Metals and Pewter Industries, 16 CFR 23, did not address descriptions of new platinum alloy products, the Commission issued a Request for Public Comments on whether the platinum section of the Guides for Jewelry, Precious Metals and Pewter Industries, should be amended to provide guidance on how to non-deceptively mark or describe products containing between 500 and 850 parts per thousand (ppt) pure platinum and no other platinum group metals. 70 FR 38834 (July 6, 2005). After reviewing the comments, the Commission issued a notice seeking comment on proposals to amend the platinum section of the Guides to address the new platinum alloys. 73 FR 10190 (Feb. 26, 2008). The extended comment period ended August 25, 2008. Staff expects that the Commission will amend the Guides during late 2009 to provide that marketers may non-deceptively mark and describe an alloy of platinum and non-precious metals consisting of at least 500 parts per thousand (ppt), but less than 850 ppt, pure platinum and less than 950 ppt total platinum group metals (PGM) as ''platinum,'' provided they make certain disclosures.

*Green Guides*. The Commission previously announced that it would review the Green Guides, 16 CFR 260. 73 FR 66091 (Nov. 27, 2007). The Green Guides outline general principles that apply to all environmental marketing claims and provide guidance regarding specific environmental claims. The Commission sought comment on the need for the guides and their economic impact, the effect of the guides on the accuracy of various environmental claims, and the interaction of the guides with other environmental marketing regulations. As part of its review, during 2008, the Commission held workshops and received comments in three specific areas: 1) carbon offsets and renewable energy certificates (Jan. 8, 2008); 2) environmental packaging claims and green packaging (April 30, 2008); and 3) developments in green building and textiles claims and consumer perception of such claims (July 15, 2008). Staff is reviewing the comments the Commission has received and is conducting consumer research.

*FCRA Commentary*. Finally, the Commission anticipates issuing a notice requesting comments on the Statement of General Policy or Interpretations under the Fair Credit Reporting Act (also known as FCRA Commentary) by the middle of 2010.

*Final Actions*

Since the publication of the 2008 Regulatory Plan, the Commission has issued the following final rules:

*Call Abandonment TSR Amendments*. The Commission issued a final rule implementing proposed Call Abandonment amendments to the TSR. 73 FR 51164 (Aug. 29, 2008). The amendments expressly prohibited telemarketing sales calls that deliver prerecorded messages, whether answered in person by a consumer or by an answering machine or voicemail service, unless the seller has previously obtained the recipient's signed, written agreement to receive such calls. The amendments also changed 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 ended its temporary policy during the rulemaking of forbearing from bringing enforcement actions against sellers and telemarketers who placed prerecorded calls that meet certain specified conditions that would be inconsistent with the new requirements. There was a phase-in of various effective dates, with the last one being the provision requiring permission from consumers to receive such calls, which became effective September 1, 2009.

*Market Manipulation Rule*. Section 811 of the ESIA prohibits any manipulative or deceptive device or contrivance in connection with the wholesale purchase, or sale of crude oil, gasoline, or other petroleum distillate in contravention of rules or regulations the Commission may prescribe (Market Manipulation Rule). Section 813 specifies the methods of enforcing such a rule. The Commission announced an ANPRM requesting comments on the manner in which it should carry out its responsibilities to promulgate regulations under these sections. 73 FR 25614 (May 7, 2008). After considering the comments, the Commission issued an NPRM on August 19, 2008, 73 FR 53393, and held a workshop on November 6, 2008. The Commission issued a revised NPRM on April 22, 2009, 74 FR 18304; and the comment period on the revised NPRM ended on May 20, 2009. On August 6, 2009, the Commission announced a final rule that prohibits fraud or deceit in wholesale markets for petroleum products, and intentional omissions of material information that are likely to distort market conditions for any such product. 74 FR 40686 (Aug. 12, 2009). The rule was effective on November 4, 2009. On November 13, 2009, the FTC issued its Compliance Guide for these Petroleum Market Manipulation Regulations. The Guide answers commonly asked questions and examines various scenarios to help those trading in wholesale petroleum markets comply

with the regulations. The Guide is available on the FTC's Web site at: www.ftc.gov/ftc/oilgas/rules.htm.

*Health Breach Notification Rule.* Section 13407 of the American Recovery and Reinvestment Act of 2009 required the Commission to issue rules requiring vendors of personal health records and third parties that offer products or services through the web sites of vendors to notify individuals when the security of their individually identifiable health information is breached. The Commission published an NPRM on April 20, 2009 (74 FR 17914), seeking comments. The Commission announced the final rule on August 17, 2009. 74 FR 42962 (Aug. 25, 2009).

*FACTA Furnisher Rule.* The Commission also published one final rule mandated by FACTA, the Furnisher Rule. 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 published final rules on July 1, 2009. 74 FR 31484.

*Endorsements and Testimonials in Advertising Guides.* On January 16, 2007, the Commission requested public comments on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR 255. 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). After reviewing the comments, the Commission proposed changes to the guides and requested public comments. 73 FR 72374 (Nov. 28, 2008). The proposed revisions address consumer endorsements, expert endorsements, endorsement by organizations, and disclosure of material connections between advertisers and endorsers. On the issue of consumer endorsements, the proposed revisions explain that when ads using consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve and the advertiser does not possess adequate substantiation for this representation, the advertiser should clearly and conspicuously disclose the results consumers actually can expect to achieve. The initial comment period ended on January 30, 2009, but was subsequently extended to March 2, 2009. 74 FR 5810 (Feb. 2, 2009). On October 5, 2009, the Commission announced it would retain a revised version of the guides, effective on December 1, 2009. 74 FR 53124 (Oct. 15, 2009).

*Gramm-Leach-Bliley Rule.* 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[18] is directed to propose a model form that may be used at the option of financial institutions for the privacy notices required under GLB. The 2006 amendment provided that the agencies must propose the model form within 280 days after enactment, or by April 11, 2007. On March 29, 2007, the GLB agencies issued an NPRM proposing as the model form the prototype privacy notice developed during the consumer testing research project undertaken by first six, and then seven, of these agencies. 72 FR 14940. On November 17, 2009, the Agencies announced a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules. In addition, the Agencies other than the SEC are eliminating the safe harbor permitted for notices based on the Sample Clauses currently contained in the privacy rules if the notice is provided after December 31, 2010.

*Summary*

In both content and process, the FTC's ongoing and proposed regulatory actions are consistent with the President's priorities. The actions under consideration inform and protect consumers and reduce the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's ten-year review program is patterned after provisions in the Regulatory Flexibility Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's ten-year program also is consistent with section 5(a) of E.O. 12866, which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. 58 FR 51735 (Sept. 30, 1993). In addition, the final rules issued by the Commission continue to be consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia,* required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

The Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions, and to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. In sum, the Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of ''private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' E.O. 12866, section 1.

## II. REGULATORY ACTIONS

The Commission has one proposed rule that would be a ''significant regulatory action'' under the definition in Executive Order 12866.[19] This is the FACTA Risk Based Pricing Final Rule, which staff anticipates being approved by the Commission during early 2010. There is further information about this under the prior heading of Rulemakings and Studies Required by Statute.

BILLING CODE 6750–01–S

[18] 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.

[19] Section 3(f) of the Executive Order defines a regulatory action to be ''significant'' if it is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

## NATIONAL INDIAN GAMING COMMISSION (NIGC)

### Statement of Regulatory Priorities

The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC). The stated purpose of the NIGC is to regulate the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. It is the NIGC's intention to provide regulation of Indian gaming to adequately shield it from organized crime and other corrupting influences, to ensure that each Indian tribe is the primary beneficiary of its gaming operation(s), and to assure that gaming is conducted fairly and honestly by both the operator and players.

The regulatory priorities for the next fiscal year reflect the NIGC's commitment to uphold the principles of IGRA. As the Indian gaming industry continues to grow and evolve, the NIGC must be continually attentive to reviewing and revising its existing regulations to ensure that they do not become outdated and lose their usefulness. To that end, the NIGC is currently revising its existing regulations concerning background investigations and licenses to ensure the continued integrity of the Indian gaming industry, and that background investigations for key employees and primary management officials are performed as thoroughly and efficiently as possible, and are updated on a regular, ongoing basis. In addition, the NIGC is currently revising its existing regulations on minimum internal control standards to ensure that they remain up to date, and continue to adequately protect against the risks inherent in gambling, especially as gaming technology continues to evolve.

As new developments and trends of concern to effective gaming regulation are most often first perceived and addressed on the gaming floors and in the backs of the gaming houses themselves, it is often that the all-day, everyday tribal gaming regulators present at the tribal gaming facilities are the first to identify weaknesses in the gaming regulatory structure. To detect these concerns as early as possible, 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 ongoing consultations with regulated tribes will continue to play an important role in the development of the NIGC's rulemaking efforts.

## NIGC

### PROPOSED RULE STAGE

### 176. TRIBAL BACKGROUND INVESTIGATION SUBMISSION REQUIREMENTS AND TIMING

**Priority:**

Other Significant

**Legal Authority:**

25 USC 2706(b)(3); 25 USC 2706(b)(10); 25 USC 2710(b)(2)(F)(ii); 25 USC 2710(c)(1)–(2); 25 USC 2710(d)(A)

**CFR Citation:**

25 CFR 556; 25 CFR 558

**Legal Deadline:**

None

**Abstract:**

It is necessary for the National Indian Gaming Commission (NIGC) to: modify certain regulations concerning background investigations and licensing to streamline the process for submitting information; ensure that the process complies with the Indian Gaming Regulatory Act (IGRA); and distinguish the requirements for temporary and permanent licenses.

**Statement of Need:**

Modifications to specific background investigation and licensing regulations are needed to ensure compliance with the Indian Gaming Regulatory Act (IGRA), which mandates that certain notifications be submitted to the Commission. Modifications are also needed to reduce the quantity of documents submitted to the Commission under these regulations and to distinguish the requirements for temporary and permanent licenses.

**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 to assure 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)). Sections 2710(b)(2)(F) and 2710(d)(A) require Tribes to have an adequate system for background investigations of primary management officials and key employees and inform the Commission of the results of those investigations. Under section 2710(c), the Commission may also object to licenses or require a tribe to suspend a license. The Commission relies on these sections of the statute to authorize the modification of the background and licensing regulations to ensure compliance with IGRA, reduce the quantity of documents submitted to the Commission, and distinguish the requirements for temporary and permanent licenses.

**Alternatives:**

If the Commission does not modify these regulations to reduce the quantity of documents submitted under them, tribes will continue to be required to submit these documents to the Commission. Further, to ensure compliance with IGRA, the modifications mandating notifications to the Commission regarding the results of background checks and the issuance of temporary and permanent gaming licenses must be made.

**Anticipated Cost and Benefits:**

These modifications to the background investigation and licensing regulations will reduce the cost of regulation to the Federal Government by reducing the amount of documents received from tribes that must be processed and retained. Further, these modifications will reduce the quantity of documents that tribes are required to submit to the NIGC, which will result in a cost savings to the tribes. There are minimal anticipated cost increases to tribal governments due to additional notifications to the NIGC.

**Risks:**

There are no known risks to this regulatory action.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Tribal

**Agency Contact:**

Heather M Nakai
Staff Attorney
National Indian Gaming Commission
1441 L Street NW
Suite 9100
Washington, DC 20005
Phone: 202 632–7003
Fax: 202 632 7066

**RIN:** 3141–AA15

---

**NIGC**

**177. CLASS II AND CLASS III MINIMUM INTERNAL CONTROL STANDARDS**

**Priority:**

Other Significant

**Legal Authority:**

25 USC 2706(b)(10); 25 USC 2706(b)(1)–(4); 25 USC 2710(d)(3)(C)(vi); 25 USC 2710(d)(7)(B)(vii)

**CFR Citation:**

25 CFR 542; 25 CFR 543

**Legal Deadline:**

None

**Abstract:**

The National Indian Gaming Commission is revising the existing minimum internal control standards (MICS) to reflect the changing technologies in the industry. The Commission will routinely revise the MICS in response to these changes. It is also continuing with its plan to clarify the regulatory structure by segregating Class II MICS from Class III.

**Statement of Need:**

The rapid evolution of gaming technology and regulatory structures in Indian gaming brings new risks and requires a distinction between the control standards for Class II and Class III gaming. Periodic review and revision of existing standards are necessary to ensure that they remain relevant and continue to adequately protect tribal gaming assets and the interests of stakeholders and the gaming public.

**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)). This responsibility includes inspecting and examining the premises located on Indian lands on which Class II gaming is conducted; and auditing all papers, books, and records respecting gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter. (25 U.S.C. 2706(b)(2),(4)). With regard to Class III gaming, section 2710(d)(3)(C)(vi) allows Tribal-State compacts to include negotiated provisions governing the standards for operation of gaming activity, and where states and tribes cannot reach agreement, section 2710(d)(7)(B)(vii) allows the Secretary of the Interior to establish procedures in place of a compact whereby a particular tribe may conduct Class III gaming. In each of the procedures approved to date, the Secretary has delegated the responsibility for gaming standards and oversight to the NIGC. The Commission relies on these sections of the statute to authorize the promulgation of MICS to ensure integrity in tribal gaming.

**Alternatives:**

If the Commission does not periodically update the MICS, the regulations that govern tribal gaming will not address changing technology and gaming methods.

**Anticipated Cost and Benefits:**

Updated MICS will aid tribal governments in the regulation of their gaming activities.

**Risks:**

There are no known risks to this regulatory action.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| First NPRM | 12/01/04 | 69 FR 69847 |
| Second NPRM | 03/10/05 | 70 FR 11893 |
| Final Action on First Rule | 05/04/05 | 70 FR 23011 |
| Final Action on Second Rule | 08/12/05 | 70 FR 47097 |
| Third NPRM | 11/15/05 | 70 FR 69293 |
| Final Action on Third Rule (1) | 05/11/06 | 71 FR 27385 |
| Fourth NPRM | 12/00/09 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Tribal

**Agency Contact:**

Jennifer Ward
Staff Attorney
National Indian Gaming Commission
1441 L Street NW.
Suite 9100
Washington, DC 20005
Phone: 202 632–7003
Fax: 202 632–7066

**RIN:** 3141–AA27

**BILLING CODE 7565–01–S**

## POSTAL REGULATORY COMMISSION (PRC)

### Statement of Regulatory Priorities

The Postal Regulatory Commission serves as the primary regulator of the United States Postal Service. Its primary mission is to ensure accountability and transparency of the Postal Service to Congress, stakeholders and the general public on issues such as financial operations, pricing policies, and delivery performance.

In fiscal year 2010, the Commission will evaluate its current regulations with a goal of improving and streamlining those regulations to ensure that the Postal Service is in full compliance with applicable law. The Commission's principal regulatory priority for fiscal year 2010 is to develop and establish regulations relating to the Periodic Reporting of Service Performance Measurements and Customer Satisfaction for Postal Service market dominant products. The Commission has begun this process and will continue to do so well into fiscal year 2010.

**PRC**

### FINAL RULE STAGE

### 178. ● PERIODIC REPORTING OF SERVICE PERFORMANCE MEASUREMENTS AND CUSTOMER SATISFACTION

**Priority:**

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

**Legal Authority:**

39 USC 3652(a)(2)(B); 39 USC 3652(e); 39 USC 3651

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

Section 3652(a)(2)(B) of title 39 requires the United States Postal Service to prepare and submit to the Postal Regulatory Commission periodic reports which in part provide measures of the quality of service afforded each market dominant product in terms of the level of service and the degree of customer satisfaction. Section 3652(e) directs the Postal Regulatory Commission to prescribe the content and form of such reports provided by the United States Postal Service under 39 USC 3652. Section 3651(c) also authorizes the Postal Regulatory Commission to obtain information from the Postal Service in order to prepare periodic reports. This regulation will fulfill the Commission's statutory responsibility to prescribe the content and form of reports related to the quality of service.

**Statement of Need:**

Establishing requirements for the reporting of quality of service afforded each market dominant product is required by the Postal Accountability and Enhancement Act. The reporting of quality of service provides visibility into the United States Postal Service's provision of those products. This is a necessary element of a modern system of regulation to ensure that quality of service is not compromised under a new price cap based rate system. Congress tasked the Postal Regulatory Commission with the job of prescribing reporting requirements to accomplish these goals. These regulations are the Commission's implementation of that Congressional directive.

**Summary of Legal Basis:**

Title 39 USC 3652(a)(2)(B) and 39 USC 3651 require the United States Postal Service to prepare and submit to the Postal Regulatory Commission periodic reports which in part provide measures of the quality of service afforded each market dominant product. Title 39 USC 3652(e) requires the Postal Regulatory Commission to issue regulations to prescribe the content and form of public reports (and any nonpublic annex and supporting matter relating to the report) provided by the Postal Service under 39 USC 3652. Title 39 USC 3651(c) also authorizes the Postal Regulatory Commission to obtain information from the Postal Service in order to prepare periodic reports.

**Alternatives:**

There are no alternative methods of complying with the requirements of 39 USC 3652(e) or 39 USC 3651 other than by issuing regulations.

**Anticipated Cost and Benefits:**

The United States Postal Service will incur costs associated with developing and implementing systems to measure the quality of service afforded each market dominant product. The United States Postal Service also will incur the costs of annual reporting. The Postal Regulatory Commission will incur the costs of reviewing annual reports. These costs were anticipated by Congress when establishing the reporting requirements of 39 USC 3651 and 39 USC 3652. The benefits of incurring these costs are to provide visibility into the quality of service afforded each market dominant product provided by the United States Postal Service.

**Risks:**

There are no known risks to this regulatory action.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/25/09 | 74 FR 49190 |
| NPRM Comment Period End | 10/26/09 | |
| Reply Comment Deadline | 11/24/09 | |
| Final Action | 02/00/10 | |

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal

**Agency Contact:**

Stephen L. Sharfman
General Counsel
Postal Regulatory Commission
Suite 200
901 New York Avenue NW
Washington, DC 20268–0001
Phone: 202 789–6820
Fax: 202 789–6861
Email: stephen.sharfman@prc.gov

**RIN:** 3211–AA05

**BILLING CODE 7710–FW–S**