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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 113, 9004, 9034

[Notice 2009–27]

Campaign Travel

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is promulgating new and revised rules implementing the provision of the Honest Leadership and Open Government Act governing non-commercial campaign travel on aircraft. These changes restrict, and in some situations prohibit, Federal candidates and certain political committees from expending campaign funds for non-commercial air travel. The rules apply to all Federal candidates, including publicly funded presidential candidates, and other individuals traveling on behalf of candidates, political party committees, and other political committees, where the travel is in connection with Federal elections.

DATES: The effective date for the amendments to 11 CFR parts 100, 113 and 9034 is January 6, 2010. Further action on amendments to 11 CFR part 9004, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Mr. Joshua S. Blume, Attorney, or Ms. Joanna S. Waldstreicher, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is promulgating several changes to its rules in order to implement section 601 of Public Law 110–81, 121 Stat. 735, the ''Honest Leadership and Open Government Act of 2007'' (''HLOGA''). This provision of HLOGA became effective upon enactment on September 14, 2007. HLOGA amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*) (''the Act'') by restricting, and in some cases prohibiting, the expenditure of campaign funds by candidates for Federal office for non-commercial travel aboard aircraft. *See* 2 U.S.C. 439a(c).

The Commission is implementing this provision of HLOGA by adding new § 113.5 to 11 CFR Part 113, which governs the expenditure of campaign funds by candidates for Federal office and their authorized political committees. In addition, the Commission is promulgating revisions to 11 CFR 100.93, which establishes an exception to the definition of ''contribution'' for non-commercial travel aboard aircraft by, or on behalf of, Federal candidates and political committees, if the candidates and political committees reimburse the service providers at specified rates. The revisions to 11 CFR 100.93 apply to campaign travel by, or on behalf of, candidates for Federal office or leadership PACs of House candidates. As discussed below, the rules leave in place the required reimbursement rate structure imposed under the Commission's 2003 rules for travel by persons on behalf of other political committees, such as the staff of a political party committee, a nonconnected political committee, or a leadership PAC of a Senate or Presidential candidate. The revisions to 11 CFR 100.93 are also incorporated by reference into the Commission's rules governing travel by publicly funded presidential candidates. The changes in these final rules, however, do not substantively alter the Commission's treatment of travel by means of transportation other than aircraft, or of travel aboard commercial airliners or charter flights.

The Notice of Proposed Rulemaking (''NPRM'') on which these final rules are based was published in the **Federal Register** on October 23, 2007. 72 FR 59953 (Oct. 23, 2007). The comment period closed on November 13, 2007. The Commission received eight comments from eleven commenters.[1] The comments are available at *http://www.fec.gov/law/law_rulemakings.shtml#travel07.* Because no commenters requested the opportunity to testify, the Commission did not hold a hearing on this rulemaking.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least thirty calendar days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on November 24, 2009.

Explanation and Justification

I. Background

A. Statutory and Regulatory Framework

The Act defines a ''contribution'' to include ''any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(8)(A)(i); *see also* 11 CFR 100.52(a). The phrase ''anything of value'' encompasses ''the provision of any goods or services without charge or at a charge that is less than the normal and usual charge for such goods or services.'' 11 CFR 100.52(d)(1). When goods or services are provided at less than the usual and normal charge, ''the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.'' *Id.*

As a result, candidates who travel aboard a commercial airliner or other conveyance for which a fee is normally charged must pay the usual and normal charge for that service to avoid receiving an in-kind contribution from the person

[1] These comments included a written comment from the Internal Revenue Service stating that it did not find any conflict between its regulations and the Commission's proposed rules.

providing the travel service. Such in-kind contributions would be prohibited if provided by certain entities, including corporations, labor organizations, Federal contractors, and foreign nationals. *See* 2 U.S.C. 441b, 441c, and 441e; 11 CFR 110.20, 114.2(b), and 115.2. If the in-kind contributions are from permissible sources, they nevertheless would be subject to the contribution limits of the Act and Commission regulations. *See* 2 U.S.C. 441a-441k; 11 CFR parts 110, 114, and 115.

1. Promulgation of 11 CFR 100.93 in 2003—Payment for Non-Commercial Travel

The usual and normal charge for travel aboard a commercial aircraft is the publicly available price for a ticket, and the usual and normal charge for a chartered aircraft is the publicly available charter or lease rate. The usual and normal charge for travel aboard a non-commercial flight, however, may not be as apparent. For example, there is generally not a ticket price for a seat aboard a non-commercial aircraft that may be operated primarily for the travel of the owner and invited guests. Because candidates for Federal office traveled on these privately operated aircraft, the Commission's regulations provided specific guidance about the rate of reimbursement that candidates and others had to pay to avoid receiving an excessive or a prohibited in-kind contribution for travel aboard such aircraft.

On December 15, 2003, the Commission promulgated final rules adding 11 CFR 100.93. *See* Final Rules and Explanation and Justification for Travel on Behalf of Candidates and Political Committees, 68 FR 69583 (Dec. 15, 2003) (''2003 travel rules'' or ''2003 E&J''). The 2003 travel rules established an exception from the definition of ''contribution'' for payments at specified rates for non-commercial travel in connection with a Federal election. Under the 2003 travel rules, the payment required for non-commercial air travel varied among the first-class, coach, or charter rate, depending on whether the travel occurred between cities served by regularly scheduled commercial airline service, and whether that service was available at a first-class or coach rate. *See* 11 CFR 100.93(a)(3)(i) and (c) (2004).

2. Revisions in 2003 to 11 CFR 9004.7 and 9034.7—Travel by Presidential and Vice-Presidential Candidates Accepting Public Funds

Candidates in the presidential primary elections may qualify to receive partial public funding in the form of matching payments from the Federal government. Additionally, presidential general election candidates may qualify to receive outright grants of public funds. In both cases, the presidential candidates must agree, among other things, to use the public funds they receive solely for ''qualified campaign expenses'' and not to exceed specified expenditure limits. 2 U.S.C. 441a(b)(1)(A) and (B); 26 U.S.C. 9003(b) and (c), and 9033(b).

As part of the 2003 travel rules, the Commission promulgated separate regulations at 11 CFR 9004.7(b)(5)(i), (v), and (b)(8), and 9034.7(b)(5)(i), (v), and (b)(8), setting forth the appropriate reimbursement rates that publicly funded candidates must use for campaign-related travel on non-commercial transportation. While 11 CFR 100.93 treats the underpayment for travel as an in-kind contribution, 11 CFR 9004.7 and 9034.7 address the extent to which payments for campaign-related travel constitute ''qualified campaign expenses.'' The 2003 travel rules revised the rates and recordkeeping requirements for presidential and vice-presidential candidates accepting public funds to conform them to the new rates in 11 CFR 100.93.

II. Revisions to 2 U.S.C. 439a—Use of Campaign Funds

HLOGA amended the Act to prohibit House candidates, their authorized committees, and their leadership PACs [2] from making any expenditure [3] for non-commercial travel on aircraft, with an exception for travel on government-operated aircraft and aircraft owned or leased by a candidate or an immediate family member of the candidate. *See* 2 U.S.C. 439a(c)(2) and (3). HLOGA also specified new reimbursement rates that presidential, vice-presidential, and Senate candidates must pay for non-commercial campaign travel on aircraft. *See* 2 U.S.C. 439a(c)(1). The reimbursement rates for these types of travel differ from those contained in the Commission's 2003 travel rules, which addressed non-commercial travel on aircraft by all political committees, including political party committees, separate segregated funds, nonconnected political committees, and other political committees. HLOGA did not, however, affect campaign travel on commercial flights, which all candidates must still reimburse at the ''usual and normal charge.'' *See* 11 CFR 100.52(a) and (d), and 100.93(a)(2).

III. Revisions to 11 CFR 100.93—Travel by Aircraft or Other Means of Transportation

The Commission is amending 11 CFR 100.93 to implement HLOGA's provisions requiring candidates and certain political committees to pay for non-commercial air travel at a specified rate to avoid the receipt of an excessive or a prohibited in-kind contribution.[4]

The Commission is otherwise retaining 11 CFR 100.93 intact, except as identified below. The explanations for the purpose and provisions of 11 CFR 100.93 were set out in the 2003 E&J and continue to apply unless addressed in the following discussion. In the NPRM, the Commission sought comments on the overall structure of 11 CFR 100.93. None of the commenters called for a change in the structure or general function of the section.

A. 100.93(a)—Scope and Definitions

The Commission is changing the scope and definitions in 11 CFR 100.93(a) as noted below. First, for internal consistency, the Commission is replacing all references to ''airplanes'' in 11 CFR 100.93 with the term ''aircraft.'' HLOGA uses the term ''aircraft,'' which the Federal Aviation Authority (FAA) defines as ''a device that is used or intended to be used for flight in the air.''

[2] The NPRM proposed a definition of ''leadership PAC'' to implement section 204(a) of HLOGA, 2 U.S.C. 434(i)(8)(B). NPRM at 59954–55, 59964. The Commission subsequently adopted a definition of ''leadership PAC'' at 11 CFR 100.5(e)(6) as part of a separate rulemaking governing the reporting of contributions bundled by lobbyists, registrants and the PACs of lobbyists and registrants. *See* Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants, 74 FR 7285, 7286 (Feb. 17, 2009). This definition became effective on March 19, 2009. Accordingly, the definition of ''leadership PAC'' is not addressed in these final rules.

[3] An ''expenditure'' includes any payment ''made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(9)(A)(i).

[4] The intent of section 601 of HLOGA was frequently characterized by its sponsors as an effort to end subsidization of air travel provided by corporations and others to candidates, and thereby reduce the potential for corruption or the appearance thereof. *See, e.g.,* 153 Cong. Rec. S263 (daily ed. Jan. 1, 2007) (statement of Sen. Obama) (''It would be one thing if Congressmen and Senators paid the full rate for these flights, but we don't''), 153 Cong. Rec. S267 (daily ed. Jan. 9, 2007) (statement of Sen. Feingold) (''Any legislation on corporate jets must include campaign trips as well as official travel because one thing is for certain—the lobbyist for the company that provides the jet is likely to be on the flight, whether it is taking you to see a factory back home or a fundraiser for your campaign.''), 153 Cong. Rec. S320 (daily ed. Jan. 10, 2007) (statement of Sen. Lieberman) (''When a Member of Congress or a candidate for Federal office uses a private plane, the ethics rules, as well as the Federal Election Commission rules, require payment to the owner of the plane equivalent to a first-class commercial ticket * * * The Reid amendment would eliminate that loophole * * *''), and 153 Cong. Rec. S10692 (daily ed. Aug. 2, 2007) (statement of then Sen. Obama).

14 CFR 1.1. The term ''aircraft'' includes helicopters, which the Commission's 2003 travel rules had grouped with buses and conveyances other than airplanes. *See* 11 CFR 100.93(a)(3)(ii) (2004) (definition of ''service provider'' focuses on ''person who makes the airplane or other conveyance available''), 11 CFR 100.93(c) (2004) (''travel by airplane''), and 11 CFR 100.93(d) (''other means of transportation'' includes ''any other means of transportation'' and specifically lists helicopters). The primary impact of these changes is that travel aboard a helicopter now would be reimbursed at the rate required in 11 CFR 100.93(c) (aircraft), rather than (d) (other conveyances), which was the case under the 2003 travel rules, as discussed below.

1. 11 CFR 100.93(a)(1) and (2)—Scope of 11 CFR 100.93

The rule at 11 CFR 100.93 is intended to establish reimbursement rates for ''non-commercial travel'' in the absence of a usual and normal charge. 11 CFR 100.93(a)(1). When a usual and normal charge is readily ascertainable, such as a specified fee by route, mileage, or date and time of use, the travel is generally considered ''commercial travel'' and the usual and normal charge must be paid to avoid receiving an in-kind contribution. *See* 11 CFR 100.93(a)(2) and 100.52(d)(1).

The Commission's 2003 travel rules distinguished between commercial and non-commercial air travel based on the certification system of the Federal Aviation Administration (FAA). Specifically, the Commission's 2003 travel rules applied to all airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135. *See* 11 CFR 100.93(a)(1)(i) (2004).

HLOGA accomplishes the same result without explicit reference to specific FAA regulatory provisions. In order to simplify and align the Commission's regulations with HLOGA, the Commission is replacing its reliance on specific FAA regulatory provisions with the new terms ''commercial travel'' and ''non-commercial travel,'' which are defined in new 11 CFR 100.93(a)(3)(iv) and (v) and explained below. None of the commenters opposed this change.

2. 11 CFR 100.93(a)(3)(i)—Definition of ''Campaign Traveler''

The Commission also is making a change to the definition of ''campaign traveler'' in 11 CFR 100.93(a)(3) to clarify that the term encompasses not only persons traveling on behalf of a candidate, but also candidates who travel on behalf of their own campaigns. In the NPRM, the Commission proposed amending the definition of ''campaign traveler'' to include ''[a]ny candidate for Federal office,'' as well as ''any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee'' and ''[a]ny member of the news media traveling with a candidate.'' *See* proposed 11 CFR 100.93(a)(3)(i). The Commission received one comment in support of the proposed change, and no comments in opposition.

The Commission is adopting the proposed change along with one further revision to clarify that a candidate is a ''campaign traveler'' only when ''traveling in connection with an election for Federal office.'' The term ''campaign traveler'' in revised 11 CFR 100.93 does not include Members of Congress when they engage in official travel, or candidates when they engage in personal travel or any other travel that is not in connection with an election for Federal office. Security personnel, including government-provided security personnel (such as the Secret Service), shall be treated as campaign travelers when traveling in connection with a Federal election on behalf of a candidate or a political committee. However, government-provided security personnel are not included when determining a ''comparable aircraft of sufficient size to accommodate all campaign travelers'' under 11 CFR 100.93(e)(1)(i), as discussed below.

3. 11 CFR 100.93(a)(3)(iv) and (v)—Definitions of ''Commercial Travel'' and ''Non-Commercial Travel''

The definition of ''commercial travel'' in new 11 CFR 100.93(a)(3)(iv)(A) corresponds to the new statutory language of HLOGA: Travel aboard an aircraft ''operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules.'' [5] 2 U.S.C. 439a(c)(1) and (2). The definition of ''non-commercial travel'' in 11 CFR 100.93(a)(3)(v) encompasses all air travel not included in the definition of ''commercial travel.'' These definitions are unchanged from the NPRM.

One comment addressed these definitions, supporting both. The Commission did not receive any comments identifying a difference between the universe of aircraft encompassed by the new term ''non-commercial travel'' and the aircraft included in former 11 CFR 100.93(c) (''an airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135'').

The Commission is defining ''commercial travel'' with respect to conveyances other than aircraft as ''other means of transportation operated for commercial passenger service.'' 11 CFR 100.93(a)(3)(iv)(B). This definition is unchanged from the proposed rule. The Commission did not receive any comments on this proposed definition.

The Commission also did not receive any comments on whether the definitions of ''commercial travel'' and ''non-commercial travel'' should specifically address the treatment of aircraft operated under complex multiple ownership or leasing arrangements, such as arrangements in which some of the owners of an aircraft are commercial operators certificated by the FAA but others are not. The Commission has decided not to address this issue in the final rule's definitions because the Commission expects that the structure of the final rule will eliminate any potential for confusion arising from complex ownership arrangements. The final rule focuses on the *operator* of the aircraft at the time of a given flight and whether that particular flight is subject to the applicable FAA safety standards, rather than the owners, service providers, or prior uses of the aircraft as in former 11 CFR 100.93. Multiple ownership arrangements for aircraft owned or leased by a candidate or a candidate's immediate family member through a multiple-ownership arrangement are addressed in 11 CFR 100.93(g), discussed below.

4. 11 CFR 100.93(a)(3)(vi)—Definition of ''Comparable Aircraft''

HLOGA Section 601(a) requires reimbursement of fair market value for flights described within that section based on the charter rate for a ''comparable plane of comparable size''

[5] Both ''air carrier'' and ''commercial operator'' are terms of art defined in FAA regulations. See 14 CFR 1.1. An ''air carrier'' is ''a person who undertakes directly by lease or other arrangement to engage in air transportation.'' A ''commercial operator'' is ''a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property other than as an air carrier or foreign air carrier or under part 375.'' The Federal Aviation Administration's (''FAA'') air carrier safety rules are contained in 14 CFR parts 121 (large airplanes) and 135 (smaller airplanes and other aircraft).

to the one actually flown. 2 U.S.C. 439a(c)(1)(B). The Commission interprets the term ''comparable plane of comparable size'' to mean an aircraft with similar physical dimensions to the aircraft actually flown and that is able to carry a similar number of passengers. The Commission recognizes, however, that there is no ''comparable plane'' for a helicopter and is, instead, construing the statute to require a comparison of similar types of aircraft (*i.e.,* compare a helicopter to a helicopter). Accordingly, the Commission has defined the term ''comparable aircraft'' in new 11 CFR 100.93(a)(3)(vi) as ''an aircraft of similar make and model as the aircraft that actually makes the trip, with similar amenities as that aircraft.'' *See* new 11 CFR 100.93(a)(3)(vi).

This interpretation is consistent with the Commission's interpretation of a similar term, ''comparable commercial airplane,'' in its 2003 travel rules, as explained in the 2003 E&J. *See* 2003 E&J, 68 FR at 69588–89. The definition is also consistent with advisory opinions issued prior to the 2003 travel rules. For example, in Advisory Opinion 1984–48 (Hunt), when applying the then-operative term of a ''comparable commercial conveyance'' to an airplane, the Commission interpreted a ''comparable'' airplane as being of the same ''type (*e.g.,* jet aircraft versus prop plane) and services offered (*e.g.,* plane with dining service or lavatory versus one without)'' as the plane actually used. Therefore, if a candidate used a twin engine prop jet, a single engine prop aircraft would not be a comparable aircraft. The new term ''comparable aircraft'' is intended to require consideration of these distinctions as well as other differences, such as whether a plane is chartered with or without a crew, or with or without fuel.

B. 11 CFR 100.93(b)—Reimbursement of Service Provider Required To Avoid the Receipt of a Contribution

Paragraphs (b)(1) and (b)(2) of section 100.93 require a campaign traveler, or the political committee on whose behalf the travel occurred, to reimburse the provider of the aircraft or other conveyance at the applicable rate specified in 11 CFR 100.93(c), (d), (e), or (g) to avoid receipt of an excessive or prohibited in-kind contribution.

As explained further below, travel on non-commercial aircraft by candidates for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress (''House candidates''), or a person traveling on behalf of any such candidate or any authorized committee or leadership PAC of such candidate, is generally prohibited (*see* 11 CFR 100.93(c)(2)) and cannot be accepted as an in-kind contribution or be reimbursed from campaign funds (*see* 11 CFR 113.5).

The Commission is also renumbering former paragraph (b)(1)(iii) as paragraph (b)(3) and revising it to permit members of the news media and government-provided security personnel traveling with a candidate to reimburse the political committee or to pay the service provider directly for their *pro rata* share of the travel. Ultimately it is the candidate committee's exclusive responsibility to ensure that the service provider is reimbursed for the value of the transportation provided to all persons traveling with the candidate; however, allowing members of the news media to reimburse the political committee or to pay the service provider directly is consistent with former 11 CFR 100.93 and takes into account the variety of billing practices that have been used by members of the media to pay for their travel. *See* 2003 E&J, 68 FR at 69586; *see also* 11 CFR 9004.6 and 9034.6.[6]

Like members of the news media, a Federal or State government provider of security personnel traveling with a candidate, such as the Secret Service and national security staff, also may reimburse the political committee paying for the security personnel's portion of the travel expenses. *See, e.g.,* Advisory Opinion 1992–38 (Clinton/Gore) (loan proposal premised on the obligation of the Secret Service to provide reimbursement); *see also* 11 CFR 9004.6 and 9034.6. Under the revised rule, the government security provider therefore may pay the service provider directly or reimburse the political committee paying for the travel. In either case, members of the news media or the government provider of security must not pay more than their *pro rata* share of the travel costs, as determined in accordance with 11 CFR 100.93(c), (d), (e), or (g).

There is no indication that Congress was concerned about news media or government-provided security personnel paying for their own travel when traveling with Federal candidates or officeholders. Unlike when a corporation or political committee provides free or reduced travel services to a candidate, the reimbursement by news media or government-provided security personnel for their own travel does not implicate the goals of the Act in deterring corruption or the appearance of corruption. Moreover, a candidate may have little or no control over whether to be accompanied by government-provided security personnel. Finally, although several commenters urged the Commission to prohibit political committees from paying any portion of the cost of a Federal candidate's flight, none of the commenters indicated that payments by the news media or government entities would pose the same dangers of corruption or the appearance of corruption, or that the news media and government security providers should be prohibited from paying for their own travel, particularly when paying the same rate as others on the aircraft. Although the rule proposed in the NPRM would have prohibited any form of payment by the news media, the Commission sees no compelling reason to deviate from its longstanding policy of permitting the news media and government-provided security personnel to pay for their *pro rata* share of the fair market value of the travel.

C. 11 CFR 100.93(c)(1)—Non-Commercial Air Travel by or on Behalf of Candidates for President, Vice-President, and U.S. Senate

HLOGA requires candidates for President, Vice President, and the U.S. Senate to pay their ''*pro rata* share of the fair market value'' of non-commercial flights aboard aircraft. The *pro rata* share is ''determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the *number of candidates* on the flight.'' 2 U.S.C. 439a(c)(1)(B) (emphasis added). Accordingly, new 11 CFR 100.93(c)(1) requires that the entire charter rate for a comparable aircraft of comparable size be divided among the candidates aboard the flight, or their representatives, as proposed in the NPRM.

All of the commenters who addressed this topic supported the requirement that presidential, vice-presidential, and Senate candidates pay the entire charter cost, rather than allowing other political committees or non-campaign travelers to pay for their own portion of the flight.

The final rule differs from the proposed rule only in that under the final rule the cost of the flight is split among candidates based on the number of campaign travelers flying on behalf of each candidate, rather than split evenly among the candidates as proposed in the NPRM. 72 FR at 59956. The new rule therefore provides a more accurate reflection of the proportion of the benefit derived from the flight by each candidate, while still requiring

[6] To the extent that any portion of 11 CFR 9004.6 or 9034.6 is inconsistent with 11 CFR 100.93, section 100.93 governs.

presidential, vice-presidential, and Senate candidates to pay the entire charter cost. For example, if Senate Candidate A is traveling with two campaign staffers, and Senate Candidate B is also traveling on the aircraft, and each candidate is traveling on behalf of his or her own campaign, then Candidate A would pay three-fourths of the charter fare and Candidate B would pay one-fourth.

This result is also consistent with the comment submitted by two of the sponsors of HLOGA, Senators Feingold and Obama, who suggested that the cost of the flight be split among candidates in proportion to the benefit derived by each campaign. The Senators stated that this approach would be consistent with the payment for air travel required under the Senate Ethics Rules. *See* Standing Rules of the Senate, Rule XXXV, Paragraph 1(c)(1)(C)(i).

Under new 11 CFR 100.93(c)(1), the ''*pro rata* share'' is calculated based on the number of candidates represented on a flight, regardless of whether the individual candidate is present on the flight. This provision is consistent with HLOGA, which limits expenditures for non-commercial air travel by presidential, vice-presidential, and Senate candidates, and their authorized committees. A candidate is represented on a flight if a person is traveling on behalf of that candidate or the candidate's authorized committee. *See* 11 CFR 100.93(c)(1). Thus, for example, if Senate Candidate A travels with the campaign manager of Senate Candidate B, but Candidate B does not travel, then the two Senate candidates must nonetheless each pay half of the charter rate. Candidate B's committee receives the same benefit from the travel by its staff as if Candidate B had taken the flight. This result is the same as proposed in the NPRM, which was supported by all of the commenters addressing this aspect of the proposed rule.

Under new 11 CFR 100.93(c)(1), when a presidential, vice-presidential, or Senate candidate, or a representative of the candidate, is traveling on behalf of another political committee (such as a political party committee or Senate leadership PAC), rather than on behalf of the candidate's own authorized committee, the reimbursement for that travel is the responsibility of the political committee on whose behalf the travel occurs. If the political committee is other than an authorized committee or House candidate's leadership PAC, then the appropriate reimbursement rate for that political committee is set forth in new 11 CFR 100.93(c)(3), discussed below. In such cases, the presidential, vice-presidential, or Senate candidate, or candidate's representative, is treated the same as any other person traveling on behalf of the political committee.[7]

The reimbursement rates for travel aboard government-operated aircraft or aircraft owned by a candidate or a member of a candidate's immediate family, are treated separately in paragraphs (e) and (g) of 11 CFR 100.93, as discussed below. *See* subsections H and I, below.

2. Alternatives Not Adopted

In the NPRM, the Commission sought comment on three alternative methodologies for calculating the appropriate reimbursement rate for travel by presidential, vice-presidential, or Senate candidates and their representatives.

First, the NPRM included several variations of a ''per committee'' alternative that would have required reimbursement based on the number of represented committees of any type, rather than the number of represented candidates or candidate committees. Second, a ''per passenger'' alternative would have required candidates to reimburse the service provider for only that portion of the normal and usual charter rate that reflected the number of candidate representatives as a percentage of all passengers on the aircraft. Third, a ''comparable aircraft'' alternative would have followed the approach in the Commission's 2003 travel rules by permitting reimbursement at the normal and usual charter rate or rental charge for an aircraft of sufficient size to carry all of the campaign travelers on the flight. *See* 11 CFR 100.93(c)(3) (2004) (requiring reimbursement of ''the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers'').

The Commission has decided not to adopt any of the alternative methodologies proposed in the NPRM. The Commission believes that the methodology in the final rule described above is most consistent with the language of HLOGA. Moreover, the Commission believes that the proposed alternative methodologies might have lent themselves to manipulation, with the result that corporations, political committees, and others could provide a benefit to the candidate or political committee on whose behalf the travel was undertaken by allowing the candidate or political committee to pay less than its *pro rata* share of the charter rate. Most of the commenters agreed that the proposed alternative methodologies were inconsistent with the intent of HLOGA.

One commenter proposed an alternative based on the ''comparable aircraft'' alternative proposed in the NPRM. This alternative would have followed the approach in the Commission's 2003 travel rules by permitting reimbursement at the normal and usual charter rate or rental charge for an aircraft of sufficient size to carry all of the campaign travelers on the flight. *See* 11 CFR 100.93(c)(3) (2004). The Commission is not adopting this commenter's version of the ''comparable aircraft'' alternative because it would allow for the potential reduction of costs by using smaller aircraft for comparison purposes rather than the aircraft actually flown. Moreover, the additional separate calculation of the fair market value of the flight actually taken would add unnecessary complexity to compliance with, and enforcement of, the rules.

3. Travel on Behalf of Leadership PACs of Senate, Presidential, and Vice-Presidential Candidates

HLOGA prohibits non-commercial air travel on behalf of leadership PACs of House candidates, but it does not prohibit such travel on behalf of leadership PACs of Senate, presidential, or vice-presidential candidates. Nor does HLOGA specify the rate at which the Senate, presidential, or vice-presidential candidates' leadership PACs must reimburse a service provider to avoid a contribution, as it does for those candidates and their authorized committees. For the reasons set forth below in section III.E.1, the Commission is applying the reimbursement rates in 11 CFR 100.93(c)(3)(i)–(iii) to travel on behalf of the leadership PAC of any Senate, presidential, or vice-presidential candidate to make the new rules consistent with the Commission's prior travel regulations. These rates were set forth in the Commission's 2003 travel rules: first-class, coach, or charter rates, depending on whether the origin and destination cities are served by regularly scheduled commercial airline service.

[7] One commenter asked the Commission to address a hypothetical scenario in which the chairman of a political party committee and a Senate candidate both travel aboard a non-commercial aircraft to a political party committee fundraiser. In response to this request, the Commission notes that because the candidate would be traveling on behalf of the political party committee, that individual's status as a candidate would be irrelevant. Therefore, the political party committee would pay for the candidate's portion of the travel. *See* 11 CFR 100.93(c)(3).

D. 11 CFR 100.93(c)(2)—Non-Commercial Air Travel by or on Behalf of Candidates for the House of Representatives

New 2 U.S.C. 439a(c)(2) states that ''in the case of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, an authorized committee and a leadership PAC of the candidate may not make any expenditure'' for non-commercial air travel, with exceptions for travel on government-operated airplanes and aircraft owned by the candidate or members of the candidate's immediate family. Both exceptions are discussed below. The effect of this provision is generally to prohibit travel by House candidates on non-commercial aircraft.

In the NPRM, the Commission proposed a general rule that would prohibit non-commercial air travel by House candidates and sought comment on whether House candidates should nonetheless be permitted to travel on non-commercial aircraft on behalf of their own campaigns, if the cost of the travel is provided by a permissible source, by treating the travel as a permissible in-kind contribution. One group of commenters addressed this question and urged the Commission to prohibit non-commercial air travel by House candidates as proposed in the NPRM and not allow such travel if it was provided by a permissible source as a permissible in-kind contribution.

The Commission agrees with the commenters, and is adopting the rule as proposed in the NPRM. *See* 11 CFR 100.93(c)(2). Outside of the exceptions for travel on government-operated and candidate-owned aircraft, there is no discussion in the legislative history of this provision to indicate that Congress contemplated allowing non-commercial air travel by House candidates. Instead, statements by sponsors of the new law referred to a ''ban'' on House travel. *See, e.g.,* 153 Cong. Rec. S10713 (daily ed. Aug. 2, 2007) (statement of HLOGA sponsors offered by Sen. Feinstein). In addition, the statute itself does not include any reimbursement rate for non-commercial travel by House candidates, whereas Congress did specify a rate for Senate and presidential candidates.

New 11 CFR 100.93(c)(2) prohibits House candidates, and individuals traveling on behalf of House candidates, their authorized committees or leadership PACs, from engaging in non-commercial campaign travel on aircraft. This prohibition cannot be avoided by payments to the service provider, even by payments from the personal funds of a House candidate.[8]

The prohibition does not apply, however, when the travel would be considered an expenditure by someone other than the House candidate, House candidate's authorized committee, or House candidate's leadership PAC. For example, travel by a House candidate on behalf of a Senate or presidential candidate, or a political party committee, would be permissible so long as the political party committee or candidate on whose behalf the travel occurs reimburses the service provider at the applicable rate under 11 CFR 100.93(c)(1) or (3).

E. 11 CFR 100.93(c)(3)—Non-Commercial Air Travel by Campaign Travelers Not Traveling on Behalf of Federal Candidates and Their Representatives

In the NPRM, the Commission proposed two alternatives with respect to non-commercial air travel by individuals traveling on behalf of political party committees and other political committees that are not candidates' authorized committees or House candidates' leadership PACs. The first alternative would have applied the charter rate applicable to travel on behalf of Senate or presidential candidates unless one or more candidates or candidate representatives are also aboard the flight (in which case the candidates would already be paying the entire applicable charter rate to the service provider). The second alternative would have retained the rates in the 2003 travel rules, which permitted reimbursement at the first-class or coach rate by campaign travelers other than candidates. For the reasons explained below, the Commission is adopting the second alternative and requiring campaign travelers who are not traveling on behalf of candidates to continue to pay the rates in the 2003 travel rules. *See* 11 CFR 100.93(c)(3).

1. Campaign Travelers Who Are Not Traveling With or on Behalf of Candidates

The Commission is not changing its current reimbursement rate structure for campaign travelers who are traveling on behalf of political party committees, SSFs, nonconnected committees, and certain leadership PACs. Thus, 11 CFR 100.93(c)(3)(i)–(iii) preserves the three reimbursement rates for non-commercial air travel in previous 11 CFR 100.93(c)(1)–(3)—first class, coach, or charter—with the applicable rate depending on whether the travel is between two cities with regularly scheduled first-class or coach commercial airline service.

In 2003, the Commission extended its previous travel regulations to cover all travel in connection with a Federal election, stating, ''[b]y establishing a single rate for travel reimbursement, the new rules will promote greater uniformity among all individuals traveling in connection with a Federal election on behalf of a political committee.'' 2003 E&J, 68 FR at 69585. The Commission promulgated rules that applied to candidates and those traveling on behalf of candidates or their authorized committees, and extended those rules to other campaign travelers.

HLOGA, on the other hand, explicitly addresses the reimbursement rate only for campaign travelers who are candidates or are traveling on behalf of authorized committees. Section 439a(c)(1) applies by its own terms to a candidate (other than a House candidate) or any authorized committee of such a candidate. Section 439a(c)(2) applies by its own terms to House candidates, their authorized committees, and their leadership PACs.

Several commenters argued that HLOGA's silence with respect to coverage of all political actors amounts to implicit approval of the Commission's 2003 travel rule, which permitted all campaign travelers, candidate and non-candidate alike, to pay for travel at either the first class, coach, or charter rate, depending on whether the origin and destination cities are served by regularly scheduled commercial airline service. One commenter argued that to expand the charter rate requirement beyond HLOGA's express language would be tantamount to assuming a legislative role in an area in which Members of Congress operate on a day-in-day-out basis. Two additional commenters noted that HLOGA's silence with respect to these other types of political committees constitutes a form of ''legislative acquiescence'' to the Commission's 2003 regulations. No commenters embraced the proposal included in the NPRM to extend the charter rate requirement to all Federal political committees.

The Commission disagrees with the argument that by enacting HLOGA, Congress set forth the required reimbursement rate for all campaign

[8] Although the general rule in 11 CFR 100.93(b)(2) states that no contribution results where a campaign traveler pays the service provider the required rate in accordance with 11 CFR 100.93(c), there is no rate applicable to House candidates in 11 CFR 100.93(c). Thus, 11 CFR 100.93(b)(2) does not permit House candidates to travel on non-commercial aircraft by paying the service provider.

travelers. HLOGA's supporters spoke most explicitly to the provision's coverage in terms of its impact on Member and lawmaker travel.[9] Thus, together with HLOGA's Section 601, Congress clearly determined the ''normal and usual charge'' for non-commercial travel on aircraft by and on behalf of candidates and their authorized committees without disturbing the Commission's approach that is currently in 11 CFR 100.93(c)(3). This provision requires non-candidate campaign travelers to pay the first class, coach, or charter rate, depending on whether the origin and destination cities are served by regularly scheduled commercial airline service. Each political committee on whose behalf a campaign traveler is flying is responsible for paying the required reimbursement rate. For example, if three representatives of PAC P accompany a representative of Party Committee C, and the travel is to or from a city not served by regularly scheduled commercial airline service, the cost of the charter would be divided by the number of campaign travelers (four). PAC P would pay three-fourths of the charter cost while Party Committee C would pay one-fourth of the charter cost.

2. Candidates Traveling With Non-Candidate Campaign Travelers

When a Federal candidate (other than a House candidate), or person traveling on behalf of a candidate or candidate's authorized committee, shares a non-commercial flight with one or more campaign travelers who are not traveling on behalf of a candidate or candidate's committee, the candidate must pay the cost of the entire charter fare for a comparable aircraft of comparable size pursuant to 11 CFR 100.93(c)(1). Except as permitted under 11 CFR 100.93(b)(3), campaign travelers who are not traveling on behalf of a candidate, candidate's authorized committee, or House candidate leadership PAC, and other passengers cannot relieve the candidate's payment obligation.

For example, Senate Candidate A, Senate Candidate B, and Candidate B's campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The *pro rata* share of the fair market value of the flight is determined by dividing the normal and usual charter rate for the plane by three because there are three individuals who are candidates or traveling on behalf of candidates (Candidate A, Candidate B, and Candidate B's campaign manager). New 11 CFR 100.93(c)(1) bases the rate calculation on the proportional share of travelers attributable to each Senate candidate, so Candidate A pays one-third of the charter rate and Candidate B pays two-thirds.[10]

The PAC need not reimburse the service provider for PAC representative P's travel because the service provider will be compensated at the full charter rate for the flight by the two candidates. Moreover, no in-kind contribution from the service provider to the PAC will result because the payments by Candidate A and Candidate B will fully compensate the service provider for the value of PAC representative P's travel. The authorized committee of each candidate must report its payment to the service provider as an expenditure and need not report any portion of its payments to the service provider as an in-kind contribution to the PAC.[11]

F. Additional Revisions to 11 CFR 100.93(c)

1. Presidential and Vice-Presidential Candidates

The Commission continues to treat travel by publicly financed presidential and vice-presidential candidates the same as travel by presidential and vice-presidential candidates who do not receive public funds. Therefore, 11 CFR 100.93(c)(1) applies to presidential and vice-presidential candidates who do not receive public funds, while 11 CFR 9004.7 and 9034.7, discussed below, continue to incorporate the 11 CFR 100.93 rates by reference for candidates who accept public funds. One important distinction, however, is that a presidential candidate accepting public funds for the general election is prohibited from receiving any in-kind contribution from any person, including an in-kind contribution of non-commercial air travel. The Commission did not receive any comments on this aspect of the rules.

2. Commercially Reasonable Time Frame

HLOGA requires candidates for President, Vice-President, and the U.S. Senate to pay their *pro rata* share of non-commercial travel on aircraft ''within a commercially reasonable time frame after the date on which the flight is taken.'' 2 U.S.C. 439a(c)(1)(B). The Commission implements this requirement by specifying in 11 CFR 100.93(c) that the ''commercially reasonable time frame'' for payment is within seven days after the first day of the flight. This time frame applies to all payments required under new 11 CFR 100.93(c).

The seven-day time frame was established in the 2003 travel rules, and nothing in the record of this rulemaking suggests that a longer or shorter period is warranted. Nor has the Commission's experience in administering and enforcing the 2003 travel rule indicated any reason to adjust the time frame. The Commission received only one comment addressing this time frame, and that comment supported the seven-day time frame.

G. 11 CFR 100.93(d)—Other Means of Transportation

For other means of transportation, such as limousines and all other automobiles, trains, and buses, a

[9] *See, e.g.,* 152 Cong. Rec. S2435 (daily ed. Mar. 28, 2006) (statement of Sen. Obama) (speaking in terms of a company providing a jet ''to a lawmaker''), 152 Cong. Rec. S2500 (daily ed. Mar. 29, 2006) (statement of Sen. McCain) (discussing public perception that ''flights unduly influence Members of Congress and serve as a way for lobbyists to curry favor with legislators''), 153 Cong. Rec. S186 (daily ed. Jan. 4, 2007) (statement of Sen. McCain) (focusing on ''the ability of a Member to travel on a corporate jet''), 153 Cong. Rec. S548–49 (daily ed. Jan. 16, 2007) (statement of Sen. Reid) (describing his own solicitation and acceptance of private travel), 153 Cong. Rec. S1185 (daily ed. Jan. 25, 2007) (statement of Sen. Levin) (''The new rules will ensure that Members traveling on corporate jets would have to reimburse at the charter rate * * *''), 153 Cong. Rec. S8400 (daily ed. June 26, 2007) (statement of Sen. Reid) (''It requires Senators to pay fair market value prices for charter flights, which put an end to the abuses of corporate travel.''), 153 Cong. Rec. S10694 (daily ed. Aug. 2, 2007) (statement of Sen. Feingold) (speaking to ''a requirement that Senators pay the full charter rate on corporate jets for personal, official or campaign purposes * * *''), 153 Cong. Rec. S10703 (daily ed. Aug. 2, 2007) (statement of Sen. Levin) (''The new rules will ensure that Members traveling on corporate jets would have to pay for them at the charter rate * * *''), and 153 Cong. Rec. S10715 (daily ed. Aug. 2, 2007) (statement of Sen. Reid) (the law ''requires Senators to pay fair market prices for charter flights, putting an end to abuses of corporate travel.'').

[10] One commenter posed a hypothetical situation in which the chairman of a political party committee, who is also a Senate candidate, takes non-commercial air travel to serve as the keynote speaker at a fundraiser to benefit a joint fundraising committee between the political party committee and his own campaign for the U.S. Senate. Because the joint fundraising committee is treated as an authorized committee of the Senate candidate, *see* 11 CFR 102.17(a)(1)(i), the Senate candidate's principal campaign committee (another authorized committee) must pay for the travel.

[11] One commenter posed a hypothetical scenario in which the chairman of a political party committee and a Senate candidate both travel aboard a non-commercial aircraft. Assuming that the Senate candidate is traveling on behalf of his own campaign, his authorized committee would be responsible for the full cost of the charter fare. *See* 11 CFR 100.93(c)(3). The commenter suggested that such travel be recorded as an in-kind transfer from the Senate candidate to the political party committee, but the new rules do not require the candidate or political party committee to record any such in-kind transfer.

political committee must pay the service provider an amount equal to the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable. 11 CFR 100.93(d). This provision is substantially identical to the 2003 travel rule and to the rule proposed in the NPRM. NPRM, 72 FR at 59965. HLOGA does not address travel on any conveyances other than aircraft, and the Commission's experience administering the 2003 rule for travel on conveyances other than aircraft does not indicate that a change to the rule regarding travel on conveyances other than aircraft is warranted.

The Commission did not receive any comments on proposed 11 CFR 100.93(d).

H. 11 CFR 100.93(e)—Government Conveyances

The Commission's 2003 travel rules at 11 CFR 100.93(e) required reimbursement for travel aboard airplanes provided by the Federal government, or by any State or local government entity, at the same rate as travel aboard other airplanes. Non-commercial campaign travel aboard government conveyances other than aircraft was reimbursed under former 11 CFR 100.93(e)(2) at the same rate as travel aboard the equivalent means of transportation not provided by a government entity. HLOGA generally prohibits House candidates from using campaign funds for non-commercial travel, except for travel aboard an aircraft ''operated by an entity of the Federal government or the government of any State.'' [12] 2 U.S.C. 439a(c)(2)(B).

As noted above, under the Commission's 2003 rules the required reimbursement rate for travel on government airplanes was the first-class, coach, or charter rate, depending on whether the travel occurred between cities served by regularly scheduled commercial airline service, and whether that service was available at a first-class or coach rate. For travel to or from a military airbase or other location not accessible to the general public, reimbursement was required based on the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class commercial airline service that is geographically closest to the military airbase or other location actually used. Section 601 of HLOGA thus provides an exception to the prohibition on House candidates and their authorized committees and leadership PACs from making expenditures for travel on non-commercial aircraft, but does not specify any particular rate of reimbursement for travel aboard government-operated aircraft.

The NPRM proposed a set of two different rates in 11 CFR 100.93(e)(1) that candidates could choose from for reimbursement for government-operated aircraft. The first rate, proposed in 11 CFR 100.93(e)(1)(i), requires reimbursement of the appropriate government entity at the *pro rata* share per represented candidate of the normal and usual charter fare or rental charge for the flight on a comparable aircraft of sufficient size to accommodate all of the campaign travelers (the ''per candidate campaign traveler'' reimbursement rate). The second rate, proposed in 11 CFR 100.93(e)(1)(ii), requires reimbursement at the private traveler reimbursement rate per campaign traveler, as specified by the government entity operating the aircraft (the ''private traveler'' reimbursement rate). The NPRM did not propose any substantive changes to 11 CFR 100.93(e)(2), which governs travel on government conveyances other than aircraft.

The Commission did not receive any comments on proposed 11 CFR 100.93(e).

Except as discussed below, new 11 CFR 100.93(e) is the same as proposed in the NPRM. Accordingly, a candidate campaign traveler, or the authorized committee or House leadership PAC on whose behalf the travel is conducted, must reimburse a government entity for travel on any government-operated aircraft at either of the two rates set out in new 11 CFR 100.93(e)(1)(i) and (ii).

1. 11 CFR 100.93(e)(1)(i)—''Per Candidate Campaign Traveler'' Reimbursement Rate

Under the revised rules, the applicable charter rate is for a comparable aircraft of sufficient size to accommodate all of the campaign travelers. Unlike 11 CFR 100.93(c)(1), which requires the charter rate to be based on a comparable aircraft of comparable size, the comparable aircraft used for the basis of the charter rate in 11 CFR 100.93(e)(1)(i) need not be the same size as the government-operated aircraft actually used. Similarly, the comparable government aircraft need not be capable of accommodating the non-campaign passengers and equipment aboard the government-operated aircraft.

Members of the media traveling with a candidate, and security personnel not provided by a government entity, must be included in the number of campaign travelers for the purposes of identifying a comparable aircraft of sufficient size to accommodate all of the campaign travelers. A comparable aircraft, however, need not be able to accommodate government-required personnel (*e.g.,* Secret Service or National Security Agency officers provided to protect the candidate) or government-required equipment (*e.g.,* bulky security or communications devices provided for the national security or communications needs of the candidate).[13] For example, a significant portion of Air Force One may be occupied by personnel and equipment mandated by national security requirements and other needs associated with the office of the President, not the campaign.

Government-required security personnel are not included in the number of campaign travelers for the purposes of identifying a comparable aircraft. The purpose for this exclusion is to avoid penalizing candidates who are required to travel with government security personnel by obliging them to pay the charter rate for a larger aircraft than would otherwise be needed to transport such candidates and their campaign travelers. All security personnel, including government-provided security personnel, are included, however, in determining the number of campaign travelers for purposes of calculating each candidate's *pro rata* share. This is consistent with the parallel provision concerning travel on private aircraft (11 CFR 100.93(c)(1)), and with the provision concerning travel on government-operated aircraft that is reimbursed at the ''private traveler'' reimbursement rate (11 CFR 100.93(e)(1)(ii); see discussion below). A candidate's authorized committee must thus reimburse the service provider for the same number of campaign travelers regardless of whether the travel occurs

[12] HLOGA similarly amends the Standing Rules of the Senate regarding travel to require Senators to pay the *pro rata* share of the fair market value of a flight for non-commercial travel, except for travel aboard ''an aircraft owned or leased by a governmental entity.'' *See* Public Law 110–81, sec. 544(c)(1), amending Paragraph 1(c)(1) of rule XXXV of the Standing Rules of the Senate. In order to avoid a regulatory gap with respect to travel on aircraft operated by local governments, new 11 CFR 100.93(e) applies to campaign travel on aircraft operated by local government entities in addition to Federal and State government, as proposed in the NPRM. The Commission did not receive any comments on this provision.

[13] The term ''government-required personnel'' encompasses individuals assigned to accompany a campaign traveler for reasons of national security or other official purposes as required by law or government policy. It does not encompass a Federal officeholder's staff or other individuals who are ''required'' by the officeholder solely by virtue of their staff positions.

on a private or government-operated aircraft, and regardless of whether the candidate is reimbursing at the ''per candidate campaign traveler'' reimbursement rate or at the ''private traveler'' reimbursement rate. The general rule regarding reimbursement to a candidate committee by members of the news media and government-provided security personnel (11 CFR 100.93(b)(3)) applies to both private and government-operated aircraft.

For example, if eleven passengers (Presidential Candidate A and two campaign staffers traveling on behalf of Presidential Candidate A, Senate Candidate B traveling on behalf of her own campaign, PAC representative P, four members of the news media traveling with Presidential Candidate A, and two members of the Secret Service required to travel with Candidate A), travel on a twelve-seat government aircraft, reimbursement would be required at the normal and usual charter rate for a comparable aircraft of sufficient size to accommodate nine passengers. The two Secret Service agents need not be counted when determining the size of a comparable aircraft because they would be ''government-required personnel.'' Given that no portion of the normal and usual charter fare or rental charge may be attributed to any non-candidate campaign traveler or any other passenger, the charter fare would be divided by ten (the number of candidates, their campaign staffers, members of the media, and security personnel traveling with the candidates). PAC representative P would not be required to reimburse the government entity for his or her travel and is not permitted to assume any of the payment otherwise required from the candidates.

Thus, Presidential Candidate A would pay nine-tenths of the full charter rate for the comparable nine-seat aircraft, and Senate Candidate B would pay one-tenth of the charter cost. The four media representatives or their employers may reimburse Presidential Candidate A for up to four-tenths of the cost of the nine-seat charter aircraft, or pay the government that amount directly, pursuant to 11 CFR 100.93(b)(3).[14] Likewise, the Secret Service may reimburse Candidate A up to two-tenths of the cost for the two Secret Service representatives, or it may pay that amount directly to the government entity providing the aircraft.

2. 11 CFR 100.93(e)(1)(ii)—''Private Traveler'' Reimbursement Rate

The second rate of reimbursement, the ''private traveler'' reimbursement rate, requires payment of the rate specified by the Federal, State, or local government agency or other government entity operating the aircraft. If the government entity has established a schedule of rates based on the type of traveler, and the schedule includes a rate for private travel on its aircraft by members of the public, then the campaign traveler choosing this option must reimburse the government at that rate.[15]

For example, if the same eleven travelers (Presidential Candidate A and two campaign staffers traveling on behalf of Presidential Candidate A, Senate Candidate B traveling on behalf of her own campaign, PAC representative P, four members of the media traveling with Presidential Candidate A, and two Secret Service agents required to travel with Presidential Candidate A) travel aboard an aircraft operated by a State government, either candidate could choose to pay the ''private traveler'' reimbursement rate if such a rate is specified by that State government instead of the charter rate for a comparable aircraft of sufficient size to accommodate the campaign travelers. If the State government normally charges $100 per person per hour for use of the aircraft by State or Federal agencies and $200 per person per hour for private travel by authorized State employees and members of the public, then each candidate choosing this rate would pay for the campaign travelers traveling on behalf of that candidate at the $200 per person per hour rate. Presidential Candidate A is responsible for the cost of the travel of the two Secret Service agents under 11 CFR 100.93(e)(1)(ii).[16] Presidential Candidate A's payment for nine campaign travelers is a total of $1,800 per hour, although the four media representatives could reimburse Presidential Candidate A up to a total of $800 per hour to cover the cost of their travel and the two Secret Service agents could reimburse Presidential Candidate A up to a total of $400 per hour for their travel. Candidate B's cost is $200 per hour to cover the candidate's own travel. PAC representative P must pay for his or her own travel at $200 per hour.[17]

If, however, the government entity's private traveler reimbursement rate is based on an hourly rate for the entire aircraft, then the candidate choosing this rate would calculate the amount that he or she must reimburse by determining what his or her share of the entire hourly rate split between the two candidates and the PAC is, in proportion to the number of campaign travelers traveling on behalf of each political committee, including the media representatives traveling with a candidate, and security personnel. There are a total of eleven campaign travelers on the flight (Presidential Candidate A, two campaign staffers traveling on behalf of Presidential Candidate A, Senate Candidate B, four members of the media traveling with Presidential Candidate A, two Secret Service agents required to travel with Presidential Candidate A, and PAC Representative P), so Presidential Candidate A must pay nine-elevenths of the hourly rate, for which the media could reimburse the candidate up to four-elevenths of the charter rate and the Secret Service could reimburse the candidate up to two-elevenths of the charter rate; Candidate B must pay one-eleventh; and PAC Representative P must pay one-eleventh.

The Commission did not receive any comments on this aspect of the proposed rule. The rule is unchanged from that proposed in the NPRM. *See* 11 CFR 100.93(e)(1)(ii).

3. Travel on Air Force One or Two

The Commission sought, but did not receive, comments on whether it should promulgate final rules specifically to address travel on Air Force One and Two.[18] The Commission is not promulgating a separate rule for travel on these aircraft because the application of either of the rates in 11 CFR

[14] The Commission is aware that the White House Travel Office has agreements with the White House Correspondents Association regarding travel arrangements for members of the media, and these rules are not intended to alter those agreements.

[15] The Department of Defense, for example, publishes a list of hourly reimbursement rates for both fixed-wing aircraft and helicopters and includes an ''All Other User'' rate, which is the private traveler rate for those aircraft. *See* Fiscal Year 2010 Reimbursement Rates, *available at http://www.defenselink.mil/comptroller/rates/fy2010/2010_f.pdf* and *http://www.defenselink.mil/comptroller/rates/fy2010/2010_h.pdf.*

[16] Because Candidate A is responsible for the cost of the Secret Service travelers, the Secret Service may reimburse Candidate A for the cost of their travel under 11 CFR 100.93(b).

[17] Pursuant to 11 CFR 100.93(a)(3)(i)(A) any individual traveling in connection with an election for Federal office on behalf of a political committee is a ''campaign traveler.''

[18] Air Force One is a designation assigned to any airplane that is providing transportation to the President of the United States. Air Force Two is the designation assigned to any airplane that is providing transportation to the Vice President of the United States. Marine One is the designation used for any Marine helicopter that is providing transportation to the President. Because ''aircraft'' includes airplanes and helicopters, this discussion is equally applicable to Marine One.

100.93(e)(1) is sufficient to address travel on Air Force One and Two. Specifically, reimbursement for travel on Air Force One or Two using the ''per candidate campaign traveler'' rate (11 CFR 100.93(e)(1)(i)) already provides that the charter rate be based on an aircraft of ''sufficient size to accommodate campaign travelers,'' excluding all government-required personnel and equipment. Travel aboard Air Force One or Two therefore would simply be a specific application of the more general rule applicable for travel on all government-operated aircraft.

4. Non-Candidate Campaign Travelers

The Commission sought, but did not receive, comments on the extent to which campaign travelers fly on government-operated aircraft when not traveling with, or on behalf of, a candidate or candidate's committee. For example, a representative of a political party committee might travel in connection with a Federal election on a government-operated aircraft on which a Federal candidate is not also present. In the absence of a record indicating that this travel is frequent enough to justify a separate provision in the rule, or that a special rule is needed, the final rules do not treat this potentially hypothetical situation differently from other travel by non-candidate campaign travelers on non-commercial aircraft. Thus, new 11 CFR 100.93(e)(2) is the same as the 2003 rule for travel on a government aircraft. That is, if the non-candidate campaign traveler travels to a military base or other location not accessible to the general public, the travel must be reimbursed at the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class commercial airline service that is geographically closest to the military airbase or other location actually used. Otherwise, the campaign traveler must reimburse the government in accordance with 11 CFR 100.93(c)(3).

5. Time Period for Reimbursement of Travel on Government Conveyances

New 11 CFR 100.93(e) provides that payment must be made within the time period specified by the government entity providing the aircraft or other conveyance. This policy defers to a government entity's management of its own aircraft and avoids potential conflicts with that entity's own regulations. The NPRM did not propose a specific time period for reimbursement for travel on government-operated aircraft under either of the alternative rates, and the Commission did not receive any comments on an appropriate period. The government entity's accountability for the use of its aircraft serves as a check on potential abuses in payment delays by campaign travelers.

I. Proposed 11 CFR 100.93(g)—Exception for Aircraft Owned by Federal Candidates and Their Immediate Family Members

HLOGA's amendments to 2 U.S.C. 439a contain an exception from the payment and reimbursement requirements for travel aboard aircraft that are ''owned or leased'' by a candidate or a candidate's immediate family member (hereinafter ''candidate owned''), including an aircraft owned or leased by any entity in which the candidate or a member of the candidate's immediate family ''has an ownership interest,'' provided that (1) the entity is not a ''public corporation'' and (2) the use of the aircraft is not ''more than the candidate's or immediate family member's proportionate share of ownership allows.'' 2 U.S.C. 439a(c)(3)(A). In the NPRM the Commission proposed a rule, new 11 CFR 100.93(g), in which the exception would apply to all of the restrictions on expenditures for air travel in new 2 U.S.C. 439a(c). *See* discussion of new 11 CFR 113.5, below. The Commission requested comments on this proposed exception, new 11 CFR 100.93(g), but received none.

While the exception relieves the restrictions on expenditures, it still requires a candidate to reimburse the service providers (candidates, members of their immediate family, or entities in which either owns an interest) if the candidate seeks to avoid receiving an in-kind contribution from the service provider for the candidate's use of the aircraft. *See* 11 CFR 100.93. New section 100.93(g) sets out the appropriate reimbursement rates. Even though candidates for Federal office may make unlimited contributions to their own campaigns, those contributions must be reported by their authorized committees.[19] 11 CFR 110.10; Advisory Opinions 1991–09 (Hoagland), 1990–09 (Mueller), 1985–33 (Collins), and 1984–60 (Mulloy). Contributions by all other persons, including immediate family members, are subject to the applicable amount limits and source prohibitions. 11 CFR 110.1 *et seq.*

The NPRM proposed three alternative reimbursement rates as follows:

The first alternative would have required reimbursement for aircraft owned by candidates and their immediate family members at the rates set forth in the Commission's 2003 travel rules: first-class, coach, or charter rates, depending on whether the origin and destination cities are served by regularly scheduled commercial airline service.

The second alternative would have required reimbursement for the ''incremental cost'' of operating the aircraft, meaning the actual cost of fuel and any incremental costs such as landing fees but excluding depreciation.

The third alternative would have been based on the ''actual cost'' of operating the aircraft, such as the hourly, mileage, or other applicable rate charged the candidate, corporation, or immediate family member for the costs of the travel. For example, if a candidate traveled on an aircraft leased by an immediate family member at a cost of $1,000 per hour, the appropriate reimbursement rate to that family member would have been $1,000 per hour.

New 11 CFR 100.93(g) combines several aspects of these alternatives. The Commission is also re-organizing the rule in recognition that an increasing number of aircraft are operated through shared-ownership arrangements, while other aircraft may be owned solely by the candidate or the candidate's immediate family members. In addition, the new rules reflect the statutory limitation in 2 U.S.C. 439a(c)(3)(A) that in situations where the aircraft is owned through a shared-ownership arrangement, the candidate's use of the aircraft must not exceed the proportional ownership interest attributable to the candidate or the candidate's immediate family member.

The new rule provides three alternative rates to address three different scenarios: (1) A shared-ownership arrangement where the candidate uses the aircraft within the limits of the relevant ownership interest; (2) a shared-ownership arrangement where the candidate uses the aircraft in excess of the limits of the relevant ownership interest; or (3) the aircraft is wholly owned by a candidate or a candidate's immediate family members.

Because the exception in 2 U.S.C. 439a(c)(3) for travel on aircraft owned by candidates or members of their immediate family permits otherwise restricted or prohibited expenditures by candidates and their committees, the exception is limited only to travel by candidates or persons traveling on behalf of candidates, their authorized

[19] There is one exception to this general rule: a $50,000 limit applies to publicly-funded presidential candidates in the primary and the general election. *See* 11 CFR 9003.2(c), 9033.2(b)(2), and 9035.2(a)(1).

committees, and House candidate leadership PACs. Similarly, the exception applies only to travel by a candidate on an aircraft owned or leased by that candidate or that candidate's immediate family member. The exception does not extend, however, to travel by other candidates who are traveling on behalf of their own campaigns, or for individuals traveling on behalf of other political committees. These latter campaign travelers must reimburse the candidate or other owner of the aircraft according to the rates set forth in 11 CFR 100.93(c).

For example, if Senate Candidate A is traveling on behalf of his or her own campaign with Candidate B on behalf of his or her own campaign on an aircraft owned by Candidate B, then Candidate A must pay half of the cost of the normal and usual charter rate for a comparable aircraft of comparable size. Candidate B must pay for (or treat as a personal contribution) the candidate's own portion of the flight pursuant to the applicable rate in 11 CFR 100.93(g). If Party Committee Official C travels with Candidate B on behalf of the party committee on an aircraft owned by Candidate B, the party committee must pay the rate determined in accordance with 11 CFR 100.93(c)(3). The 11 CFR 100.93(c)(3) payment exception for travel with a candidate would not apply to travel on a candidate-owned aircraft because the candidate is not paying a charter rate for the entire aircraft in accordance with 11 CFR 100.93(c)(1).

1. 11 CFR 100.93(g)(1)(i)—Use Within the Limits of a Shared-Ownership Arrangement

The exception in 11 CFR 100.93(g) applies to an aircraft owned or leased by any entity in which the candidate or a member of the candidate's immediate family ''has an ownership interest,'' so long as that entity is not a corporation with publicly traded shares. The rates in 11 CFR 100.93(g) therefore apply to a wide variety of shared-ownership arrangements, including time-sharing arrangements and certain lease arrangements, and regardless of whether the ownership is made available to the candidate through a commercial operator certificated by the FAA.

When a candidate or a candidate's immediate family member owns or leases an aircraft through any form of shared-ownership or lease agreement, 11 CFR 100.93(g)(1)(i) requires the candidate's committee to reimburse the candidate, candidate's immediate family member, or the administrator of the aircraft (*e.g.,* NetJets)—or treat as a personal contribution from the candidate, where the candidate is the owner or lessee—for the hourly, mileage, or other applicable rate charged to the candidate, immediate family member, or corporation or other entity through which the aircraft is ultimately available to the candidate, for the costs of the travel. This reimbursement rate applies only to the extent that the candidate's use of the aircraft does not exceed the proportional share of the ownership interest in the aircraft held by the candidate or candidate's immediate family member, as defined in 11 CFR 100.93(g)(3). Because a candidate would receive an in-kind contribution to the extent that the candidate is provided with something of value at less than the normal and usual cost, the ownership or lease agreement cannot provide a disproportionate benefit to the candidate. Thus, the amount of use to which the candidate or the candidate's immediate family member is entitled under an ownership or lease agreement must be similar to the amount of use to which other similarly situated owners are entitled. For example, if a candidate is one of four owners who each own 25 percent of an aircraft in a shared-ownership arrangement, the ownership agreement cannot allow the candidate to use the aircraft free of charge or at a reduced rate forty percent of the time while each other owner has access to the aircraft for only twenty percent of the time.

2. 11 CFR 100.93(g)(1)(ii)—Use in Excess of the Limits of a Shared Ownership Arrangement

In some shared-ownership agreements, an ownership interest entitles each ''owner'' to a specified amount of use of one or more aircraft. In this case, if a candidate's flight exceeds his or her proportional ownership interest in the aircraft, or that of the candidate's immediate family member, that flight falls outside of 11 CFR 100.93(g). *See* new 11 CFR 100.93(g)(1)(ii). Only a flight that exceeds the use permitted under the ownership agreement, however, would be excluded from the exception in 11 CFR 100.93(g). For example, if a candidate's spouse owns an interest in an aircraft through a time-share arrangement that entitles the spouse to ten hours of flight time per month, and the candidate uses the aircraft for three separate five-hour flights in a single month, the rate provided in 11 CFR 100.93(g)(1)(i) applies to the first 10 hours but does not apply to the last five hour flight. For the purposes of this example, the spouse's ten hours of flight time per month must not have been otherwise used by the spouse or another person. If the spouse or another person does make use of the aircraft for any part of the ten allotted hours, the candidate's use of the aircraft would be combined with the other uses for purposes of calculating the ten hour limit. For the last five hour flight, a Senate, presidential, or vice-presidential candidate must provide reimbursement at the rate established by 11 CFR 100.93(c)(1), in accordance with 11 CFR 100.93(g)(1)(ii). Excessive use by a House candidate, on the other hand, would be subject to the general prohibition on non-commercial air travel by House candidates. *See* 11 CFR 100.93(c)(2).

3. 11 CFR 100.93(g)(1)(iii)—Wholly Owned Aircraft

When the entire aircraft is owned by a candidate as an individual, or by the candidate's immediate family members as individuals, the candidate's authorized committee need reimburse (or report as an in-kind contribution, to the extent permissible) only the *pro rata* share per campaign traveler of the costs associated with the trip.[20] 11 CFR 100.93(g)(1)(iii). These associated costs include, but are not limited to, the cost of fuel and crew, and a proportionate share of annual and recurring maintenance costs. *Id.* For example, because aircraft must periodically undergo regularly scheduled maintenance in order to comply with applicable safety laws, the candidate's committee must pay its proportionate share of these regular costs. The candidate's committee need not pay, however, for general depreciation in the value of the aircraft. Similarly, reimbursement for piloting and crew expense is not required when the candidate or candidate's immediate family member pilots the aircraft and serves as the crew. On the other hand, if a pilot or crew is employed for the flight, the cost of their services must be included in the reimbursement rate.

4. 11 CFR 100.93(g)(2) and (3)—Ownership Interest and Proportional Share of an Ownership Interest

HLOGA does not define the term ''ownership interest.'' The Commission interprets the term ''ownership interest'' to include fractional ownership, voting or equity interest, or use arrangements,

[20] As discussed above, with the exception of publicly funded presidential candidates, candidates are permitted to make unlimited contributions to their own campaigns. Contributions by all other persons, including immediate family members, are subject to the applicable amount limits and source prohibitions. An aircraft owned entirely by a family-held corporation would be treated as an aircraft accessed through a multiple ownership arrangement under 11 CFR 100.93(g)(1)(i) or (ii), rather than (iii).

as well as ''time-sharing'' arrangements in which the candidate or an immediate family member pays a fee for a specified amount of travel on the aircraft.

Similarly, HLOGA does not define the term ''public corporation.'' The Commission interprets the term ''public corporation'' as applying to any corporation with publicly traded shares. *See* 11 CFR 100.93(g)(2). Because HLOGA explicitly extends the exception contained in 2 U.S.C. 439a(c)(3)(A) to ''aircraft owned by an entity that is not a public corporation,'' aircraft owned by privately held corporations without publicly traded shares, partnerships without publicly traded equity interests, limited liability companies without publicly traded shares, and all other entities without publicly traded shares or equity interests would fall within 11 CFR 100.93(g), so long as a candidate or a member of the candidate's immediate family owns an equity interest or voting interest in that entity.

The HLOGA exception applies so long as a candidate's use of the aircraft is not ''more than the candidate's or immediate family member's proportionate share of ownership allows.'' 2 U.S.C. 439(c)(3)(A). However, the statute does not specify the exact nature of the relationship between ownership shares and use of the aircraft.

New 11 CFR 100.93(g)(3) defines a ''proportional share of the ownership interest'' as ''the amount of use to which a candidate or immediate family member is entitled under an ownership or lease agreement.'' Rather than account for all of the potential ownership structures of an entity that may own or lease an aircraft, new 11 CFR 100.93(g)(3) establishes one general condition for the exception to apply: Unless the aircraft is owned entirely by the candidate or the candidate's immediate family members, the amount of use of the aircraft to which each ownership share is entitled must be specified in writing prior to the candidate's use of the airplane. The Commission does not intend to delve into the various ownership structures, so long as the ownership or lease agreement does not provide a benefit to the candidate that is disproportionally greater than the benefit provided to others with similar ownership interests in the aircraft.

In order to ensure that the candidate's use of the aircraft remains within the parameters of use specified in the agreement, the candidate's committee must, prior to each flight, obtain certification from the individual or entity making the aircraft available that the candidate's planned use, in combination with the other uses of the aircraft by the person or persons with the ownership interest in the aircraft, will not exceed the amount of use permitted under the ownership or lease agreement. If any part of a flight does exceed the use permitted under the ownership interest, then payment for the entire flight must be made under 11 CFR 100.93(c), not 11 CFR 100.93(g). For example, if a candidate plans a five-hour flight and the candidate's spouse is entitled to use an aircraft for ten hours per month through the spouse's position with a partnership that participates in a time-share agreement, the candidate must not make use of the aircraft until it obtains certification from the spouse, the partnership, or time-share provider that the candidate's planned five-hour flight will not cause the spouse to exceed the spouse's ten-hour limit. If the spouse has already used the aircraft for six hours that month, the candidate's planned use would cause the spouse to exceed the ten-hour limit and the entire five-hour flight would fall under 11 CFR 100.93(c), not 11 CFR 100.93(g). *See* 11 CFR 100.93(g)(1)(ii).

Some ownership agreements, however, may include specific fees for any use of an aircraft above or beyond the normal amount of permitted use under the agreement. For example, an ownership agreement might provide that one annual ownership share entitles that owner to use an aircraft for twenty hours per month without additional charge, and up to an additional one hundred hours per month at an additional charge of $1,000 per hour. In such cases, the hourly fee for the additional hundred hours would be included within the ''proportional share'' of that ownership interest. A candidate with such an ownership interest could therefore use the aircraft for up to one hundred and twenty hours in a month and reimburse the entity operating the aircraft at the rate in 11 CFR 100.93(g)(1)(i). The candidate would be required to pay the operator for one-twelfth of the ownership share (the cost of one month of the annual ownership share) to cover the first twenty hours, plus $1,000 for each of the additional hundred hours ($100,000).

5. Specific Time Period for Repayment

The NPRM inquired whether the Commission should require the candidate's committee to make the payment required by 11 CFR 100.93(g) within a specific time period, such as no later than seven days from the first day of travel, which would be consistent with payment for travel on other aircraft under 11 CFR 100.93(c). The Commission did not receive any comments on this issue. The Commission is not specifying a time period for repayment in the rule itself in expectation that, in shared-ownership or lease arrangements, the candidate will make the repayment in accordance with the normal business practices of the entity administering the shared-ownership or lease agreements. If not, that entity will be deemed to have made a loan to the candidate's committee that would, if not repaid within the required commercially reasonable period, become an in-kind contribution to the candidate's authorized committee, subject to the limits, prohibitions, and reporting requirements of the Act.

J. 11 CFR 100.93(i)—Reporting Requirements

The Commission is relocating the reporting requirements of 11 CFR 100.93 from paragraph (h) to paragraph (i), as proposed in the NPRM, but is not making any substantive revisions to those requirements. The Commission did not receive any comments on the reporting requirements.

K. 11 CFR 100.93(j)—Recordkeeping Requirements

Consistent with the changes to the reimbursement rates required for candidates, authorized committees of candidates, and leadership PACs of House candidates, the Commission is updating the recordkeeping requirements for non-commercial travel at 11 CFR 100.93(i), which are being relocated to new 11 CFR 100.93(j).

First, the revised recordkeeping requirements maintain the basic elements of the Commission's 2003 travel rules. Depending on the eligible reimbursement rate, *see* new 11 CFR 100.93(c), (e), and (g), political committees are required to maintain the appropriate records for non-commercial travel under this section. What records are necessary depends on whether a campaign traveler may pay first-class or a coach rate for a flight, or is required to reimburse at the charter rate or one of the rates applicable for use of government conveyances.

Second, the Commission is requiring candidate committees to obtain and keep copies of any shared-ownership or lease agreements, as well as the pre-flight certifications of compliance with those agreements, that the candidate's committee must obtain to comply with the requirements of 11 CFR 100.93(g)(1)(i) and (g)(3). These records are necessary to determine whether a candidate's use of the aircraft would cause the person with the ownership interest in the aircraft (the candidate or the candidate's immediate family

member) to exceed the amount of use of the aircraft included in that ownership interest.

The Commission also sought comment on the appropriate duration of this record retention requirement, but did not receive any comments. Thus, the general record retention period of three years applies to these documents. *See* 11 CFR 104.14(b)(3). All other applicable recordkeeping requirements remain in effect with respect to these documents. *See, e.g.,* 11 CFR 104.14(b).

IV. Restrictions on Use of Campaign Funds for Flights on Noncommercial Aircraft (2 U.S.C. 439a(c))—11 CFR 113.5

In addition to amending the travel reimbursement regulations at 11 CFR 100.93, the Commission is adding new 11 CFR 113.5 to implement the limit on expenditures for non-commercial air travel established by HLOGA. The Commission is promulgating new 11 CFR 113.5 to provide guidance regarding the making of expenditures, which is parallel to the guidance provided in 11 CFR 100.93 regarding contributions. The final rule is identical to proposed 11 CFR 113.5. In the NPRM, the Commission requested comments as to whether a new rule (11 CFR 113.5) is necessary to implement new 2 U.S.C. 439a(c) in light of the proposed revisions to 11 CFR 100.93, but did not receive any comments addressing the question.

A. New 11 CFR 113.5(a)—Presidential, Vice-Presidential and Senate Candidates

New 11 CFR 113.5(a)(1) implements the general prohibition in new 2 U.S.C. 439a(c) on the expenditure of funds by candidates for President, Vice-President or the Senate and their authorized committees for aircraft flights, with the two exceptions provided in HLOGA (in addition to the special provisions for travel on government-operated aircraft and candidate-owned aircraft). The first exception is for air travel on ''commercial'' flights. *See* 11 CFR 113.5(a)(1). The second exception is for air travel on ''non-commercial'' flights if either the candidate, the authorized committee, or another political committee, reimburses the provider of the aircraft for the candidate's *pro rata* share per candidate campaign traveler of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size within seven days of when the flight began. *See* 11 CFR 113.5(a)(2). New 11 CFR 113.5(a)(1) and (2) provide cross-references to definitions of the terms ''commercial travel'' and ''non-commercial travel'' in 11 CFR 100.93(a)(3)(iv) and (v). The ''candidate's *pro rata* share per candidate campaign traveler of the normal and usual charter fare'' is calculated in the same manner as in 11 CFR 100.93(c)(1). A candidate's committee will not be considered to have made an expenditure when members of the media and government-provided security personnel pay the service provider directly for their portion of the travel as permitted under 11 CFR 100.93(b)(3). Travel on aircraft provided by a Federal, State or local government entity is addressed in new 11 CFR 113.5(a)(3), consistent with new 11 CFR 100.93(e)(1) (government conveyances). Travel on candidate-owned aircraft is addressed below.

The Commission received no comments specifically addressing new 11 CFR 113.5(a).

B. New 11 CFR 113.5(b)—House Candidates

As noted above, HLOGA prohibits House candidates and their authorized committees and leadership PACs from spending campaign funds on private, non-commercial air travel. 2 U.S.C. 439a(c)(2). Instead, House candidates must spend campaign funds on air travel only for commercial air travel, or for travel on aircraft owned by the candidate or the candidate's immediate family member, or for flights operated by the Federal government or a State or local government. Because House candidates, their authorized committees, and their leadership PACs are prohibited from spending campaign funds on non-commercial travel, other than travel permitted under 11 CFR 100.93(e) (government conveyances) or 11 CFR 100.93(g) (aircraft owned or leased by a candidate or a candidate's immediate family member), the new rule at 11 CFR 113.5(b) also prohibits House candidates from accepting in-kind contributions in the form of non-commercial air travel. In the NPRM, the Commission requested comment and received one comment, which expressed support. Accordingly, the Commission is implementing this proposal in new 11 CFR 113.5(b)(1) and (2). Paragraph (b)(1) contains the same ''commercial exception'' as is set forth in 11 CFR 113.5(a)(1), discussed above. Travel on government-provided aircraft is reflected in paragraph (b)(2). Travel on candidate-owned aircraft is addressed below.

C. New 11 CFR 113.5(c)—Exception for Aircraft Owned or Leased by Candidates and Immediate Family Members of Candidates

As noted above, the restrictions on expenditures in HLOGA do not apply to travel aboard aircraft that are owned or leased by a candidate or the candidate's immediate family members, including aircraft owned or leased by any entity in which the candidate or a member of the candidate's immediate family ''has an ownership interest,'' provided that the entity is not a ''public corporation,'' and the use of the aircraft is not ''more than the candidate's or immediate family member's proportionate share of ownership allows.'' 2 U.S.C. 439a(c)(3)(A).

New 11 CFR 113.5(c)(1) implements this statutory provision and cross-references the definition of ''proportional share of ownership'' in 11 CFR 100.93(g)(3). New 11 CFR 113.5(c)(2) states that candidates and immediate family members will be considered to own or lease aircraft under the conditions described in 11 CFR 100.93(g)(2), namely, when there is an ownership interest in an entity (other than a public corporation) that owns the aircraft. New 11 CFR 113.5(c)(3) cross-references the definition of ''immediate family member'' in 11 CFR 100.93(g)(4). The Commission received no comments specifically addressing 11 CFR 113.5(c) as proposed in the NPRM.

D. New 11 CFR 113.5(d)—In-kind Contribution

New 11 CFR 113.5(d) states that the unreimbursed value of transportation provided to any campaign traveler (as defined in 11 CFR 100.93(a)(3)(i)), is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled, and that such contributions are subject to the limits, prohibitions, and reporting requirements of the Act. As noted above, House candidates are generally prohibited from receiving such contributions. The Commission received no comments specifically addressing 11 CFR 113.5(d) as proposed in the NPRM and is adopting the rule proposed in the NPRM.

E. Change of Title for 11 CFR Part 113

Along with adding new 11 CFR 113.5, which implements new 2 U.S.C. 439a(c), the Commission is changing the title of Part 113. The former title, ''Use of Campaign Accounts for Non-Campaign Purposes,'' does not encompass new section 113.5, which governs use of campaign funds for

campaign travel. The new title for Part 113 is ''Permitted and Prohibited Uses of Campaign Accounts.'' The Commission received no comments addressing this change and is adopting the rule proposed in the NPRM.

V. Publicly-Financed Presidential and Vice-Presidential Candidates—11 CFR 9004.7 and 9034.7

Although HLOGA does not amend either the Presidential Election Campaign Fund Act (Fund Act) (26 U.S.C. 9001 *et seq.*) or the Presidential Primary Matching Payment Account Act (Matching Payment Act) (26 U.S.C. 9031 *et seq.*), the Commission proposed in the NPRM to make certain amendments to its regulations implementing these laws to conform them to the changes it proposed to 11 CFR 100.93. The Commission received no comments regarding these proposals and is implementing them without change from the NPRM.

Sections 9004.7 and 9034.7 are substantively identically worded regulations promulgated under the authority of the Fund Act and the Matching Payment Act, respectively, and cross-reference 11 CFR 100.93. Both regulations prescribe the procedures that publicly funded primary and general election presidential campaigns must follow in attributing their travel expenses to campaign-related and to non-campaign-related activities. The Commission is making the following technical amendments to these regulations.

A. Aircraft

Revised 11 CFR 9004.7(b)(5)(i), (iii), and (v), and 11 CFR 9004.7(b)(8) replace the word ''airplane'' with the word ''aircraft.'' These changes conform the regulations to the terminology in HLOGA, as well as revised 11 CFR 100.93 and new 11 CFR 113.5.

B. Recordkeeping Requirements

Former 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) required the authorized committees of presidential and vice-presidential candidates to maintain documentation of the lowest unrestricted non-discounted airfare as required in former 11 CFR 100.93(i)(1) or (2). Former sections 100.93(i)(1) and (2) contained recordkeeping requirements relating to rates of reimbursement prescribed in former 11 CFR 100.93(c) and (e). Revised 11 CFR 100.93, however, replaces the old reimbursement rate for non-commercial air travel by presidential and vice-presidential candidates with a rate based on the ''*pro rata* share per campaign traveler'' of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size, and sets out the corresponding recordkeeping requirements in 11 CFR 100.93(j)(1). The Commission is therefore revising 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) to conform them to the new recordkeeping requirements in amended 11 CFR 100.93(j)(1). The Commission is also amending the final sentence in sections 9004.7(b)(5)(v) and 9034.7(b)(5)(v), which address recordkeeping requirements for travel on other conveyances to reflect that the recordkeeping requirements for other conveyances are now addressed in 11 CFR 100.93(j)(3).

C. 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8)—Conforming Changes in Terminology

The Commission is revising 11 CFR 9004.7(b)(8) and 9034.7(b)(8) to conform the terminology to that used in new 2 U.S.C. 439a(c) and in revised 11 CFR 100.93. Former §§ 9004.7(b)(8) and 9034.7(b)(8) used the same terminology as former section 100.93 in describing aircraft that are ''licensed for compensation or hire'' under various FAA certification authorities. Revised 11 CFR 100.93 defines the term ''non-commercial travel,'' and uses the term ''aircraft'' instead of ''airplane.'' Accordingly, revised 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8) state that travel on non-commercial aircraft is governed by 11 CFR 100.93 and that the term ''non-commercial travel'' is defined in accordance with 11 CFR 100.93(a)(3)(v).

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these final rules, which impose obligations only on Federal candidates, their campaign committees, other individuals traveling in connection with Federal elections, and the political committees on whose behalf this travel is conducted. Federal candidates, their campaign committees, and most political party committees and other political committees entitled to rely on these rules are not small entities. These rules generally clarify or supplement existing rules and are largely intended to implement a statutory directive and simplify the process of determining reimbursement rates. The rules do not impose compliance costs on any service providers (as defined in the rules) that are small entities so as to cause a significant economic impact. With respect to the determination of the amount of reimbursement for travel, the new rules merely reflect an extension of existing similar rules. To the extent that operators of air-taxi services or on-demand air charter services are small entities indirectly impacted by these rules, any economic effects would result from the travel choices of individual candidates or other travelers rather than Commission requirements and, in any event, are likely to be less than $100,000,000 per year.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 113

Campaign funds, Political candidates.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

* * * * *

■ 2. Section 100.93 is revised to read as follows:

§ 100.93 Travel by aircraft or other means of transportation.

(a) *Scope and definitions.*

(1) This section applies to all campaign travelers who use non-commercial travel.

(2) Campaign travelers who use commercial travel, such as a commercial airline flight, charter flight, taxi, or an automobile provided by a rental company, are governed by 11 CFR 100.52(a) and (d), not this section.

(3) For the purposes of this section:

(i) *Campaign traveler* means

(A) Any candidate traveling in connection with an election for Federal office or any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee; or

(B) Any member of the news media traveling with a candidate.

(ii) *Service provider* means the owner of an aircraft or other conveyance, or a person who leases an aircraft or other conveyance from the owner or otherwise obtains a legal right to the use of an aircraft or other conveyance, and who uses the aircraft or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased aircraft or other conveyance, the service provider is the person who makes the aircraft or other conveyance available to the campaign traveler.

(iii) *Unreimbursed value* means the difference between the value of the transportation service provided, as set forth in this section, and the amount of payment for that transportation service by the political committee or campaign traveler to the service provider within the time limits set forth in this section.

(iv) *Commercial travel* means travel aboard:

(A) An aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under Federal Aviation Administration air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority, provided that the flight is required to be conducted under air carrier safety rules; or

(B) Other means of transportation operated for commercial passenger service.

(v) *Non-commercial travel* means travel aboard any conveyance that is not commercial travel, as defined in paragraph (a)(3)(iv) of this section.

(vi) *Comparable aircraft* means an aircraft of similar make and model as the aircraft that actually makes the trip, with similar amenities as that aircraft.

(b) *General rule.*

(1) No contribution is made by a service provider to a candidate or political committee if:

(i) Every candidate's authorized committee or other political committee on behalf of which the travel is conducted pays the service provider, within the required time, for the full value of the transportation, as determined in accordance with paragraphs (c), (d), (e) or (g) of this section, provided to all campaign travelers who are traveling on behalf of that candidate or political committee; or

(ii) Every campaign traveler for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of the transportation provided to that campaign traveler as determined in accordance with paragraphs (c), (d), (e) or (g) of this section. *See* 11 CFR 100.79 and 100.139 for treatment of certain unreimbursed transportation expenses incurred by individuals traveling on behalf of candidates, authorized committees, and political committees of political parties.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler, as determined in accordance with paragraphs (c), (d) or (e) of this section, is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled. Contributions are subject to the reporting requirements, limitations and prohibitions of the Act.

(3) When a candidate is accompanied by a member of the news media, or by security personnel provided by any Federal or State government, the news media or government security provider may reimburse the political committee paying for the pro-rata share of the travel by the member of the media or security personnel, or may pay the service provider directly for that pro-rata share, up to the applicable amount set forth in paragraphs (c)(1), (c)(3), (d), (e), or (g) of this section. A payment made directly to the service provider may be subtracted from the amount for which the political committee is otherwise responsible without any contribution resulting. No contribution results from reimbursement by the media or a government security provider to a political committee in accordance with this paragraph.

(c) *Travel on aircraft.* When a campaign traveler uses aircraft for non-commercial travel, other than a government aircraft described in paragraph (e) of this section or a candidate or family owned aircraft described in paragraph (g) of this section, reimbursement must be provided no later than seven (7) calendar days after the date the flight began at one of the following rates to avoid the receipt of an in-kind contribution:

(1) *Travel by or on behalf of Senate, presidential, or vice-presidential candidates.* A Senate, presidential, or vice-presidential candidate traveling on his own behalf, or any person traveling on behalf of such candidate or the candidate's authorized committee must pay the pro rata share per campaign traveler of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of campaign travelers on the flight that are traveling on behalf of such candidates or their authorized committees, including members of the news media, and security personnel traveling with a candidate. No portion of the normal and usual charter fare or rental charge may be attributed to any campaign travelers that are not traveling on behalf of such candidates or their authorized committees, or any other passengers, except as permitted under paragraph (b)(3) of this section.

(2) *Travel by or on behalf of House candidates and their leadership PACs.* Except as otherwise provided in paragraphs (e) and (g) of this section, a campaign traveler who is a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, or a person traveling on behalf of any such candidate or any authorized committee or leadership PAC of such candidate, is prohibited from non-commercial travel on behalf of any such candidate or any authorized committee or leadership PAC of such candidate.

(3) *Other campaign travelers.* When a candidate's authorized committee pays for a flight pursuant to paragraph (c)(1) of this section, no payment is required from other campaign travelers on that flight. Otherwise, a campaign traveler not covered by paragraphs (c)(1) or (c)(2) of this section, including persons traveling on behalf of a political party committee, separate segregated fund, nonconnected political committee, or a leadership PAC other than a leadership PAC of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, must pay the service provider no less than the following for each leg of the trip:

(i) In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class airfare;

(ii) In the case of travel between a city served by regularly scheduled coach commercial airline service, but not regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or

(iii) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial aircraft of sufficient size to accommodate all

campaign travelers, and security personnel, if applicable.

(d) *Other means of transportation.* If a campaign traveler uses any means of transportation other than an aircraft, including an automobile, or train, or boat, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider within thirty (30) calendar days after the date of receipt of the invoice for such travel, but not later than sixty (60) calendar days after the date the travel began, at the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(e) *Government conveyances.*

(1) *Travel by or on behalf of candidates, their authorized committees, or House candidate Leadership PACs.* If a campaign traveler traveling on behalf of a candidate, an authorized committee, or the leadership PAC of a House candidate uses an aircraft that is provided by the Federal government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the government entity, within the time specified by that government entity, *either:*

(i) The pro rata share per campaign traveler of the normal and usual charter fare or rental charge for the flight on a comparable aircraft of sufficient size to accommodate all campaign travelers. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of campaign travelers on the flight that are traveling on behalf of candidates, authorized committees, or House candidate leadership PACs, including members of the news media, and security personnel, if applicable. No portion of the normal and usual charter fare or rental charge may be attributed to any other campaign travelers or any other passengers, except as permitted under paragraph (b)(3) of this section. For purposes of this paragraph, the comparable aircraft need not accommodate any government-required personnel and equipment; or

(ii) The private traveler reimbursement rate, as specified by the governmental entity providing the aircraft, per campaign traveler.

(2) *Other campaign travelers.* When a candidate's authorized committee, or a House candidate's leadership PAC pays for a flight pursuant to paragraph (e)(1) of this section, no payment is required from any other campaign travelers on that flight. Otherwise, a campaign traveler not covered by paragraph (e)(1) of this section, including persons traveling on behalf of a political party committee, separate segregated fund, nonconnected political committee, or a leadership PAC other than a leadership PAC of a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, must pay the government entity, within the time specified by that government entity, either:

(i) For travel to or from a military airbase or other location not accessible to the general public, the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class commercial airline service that is geographically closest to the military airbase or other location actually used; or

(ii) For all other travel, in accordance with paragraph (c)(3) of this section.

(3) If a campaign traveler uses a conveyance, other than an aircraft, that is provided by the Federal government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the government entity in accordance with paragraph (d) of this section.

(f) *Date and public availability of payment rate.* For purposes of paragraphs (c), (d), (e), and (g) of this section, the payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. The payment rate must be determined by the time the payment is due under paragraph (c), (d), (e) or (g) of this section.

(g) *Aircraft owned or leased by a candidate or a candidate's immediate family member.*

(1) For non-commercial travel by a candidate, or a person traveling on behalf of a candidate, on an aircraft owned or leased by that candidate or an immediate family member of that candidate, the candidate's authorized committee must pay:

(i) In the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, where the travel does not exceed the candidate's or immediate family member's proportional share of the ownership interest in the aircraft, the hourly, mileage, or other applicable rate charged the candidate, immediate family member, or other service provider for the costs of the travel; or

(ii) In the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, where the travel exceeds the candidate's or immediate family member's proportional share of the ownership interest in the aircraft, the rate specified in paragraph (c) of this section (House candidates are prohibited from engaging in such travel); or

(iii) In the case of travel on an aircraft that is not owned or leased under a shared-ownership or other time-share arrangement, the *pro rata* share per campaign traveler of the costs associated with the trip. Associated costs include, but are not limited to, the cost of fuel and crew, and a proportionate share of maintenance costs.

(2) A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft under paragraph (g)(1) of this section if the candidate or the immediate family member of the candidate has an ownership interest in an entity that owns the aircraft, provided that the entity is not a corporation with publicly traded shares.

(3) A proportional share of the ownership interest in an aircraft means the amount of use to which the candidate or immediate family member is entitled under an ownership or lease agreement. Prior to each flight, the candidate's committee must obtain a certification from the service provider that the candidate's planned use of the aircraft will not exceed the candidate's or immediate family member's proportional share of use under the ownership or lease agreement. *See* paragraph (j) of this section for related recordkeeping requirements.

(4) For the purposes of this section, an ''immediate family member'' of a candidate is the father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law of the candidate.

(h) *Preemption.* In all respects, State and local laws are preempted with respect to travel in connection with a Federal election to the extent they purport to supplant the rates or timing requirements of 11 CFR 100.93.

(i) *Reporting.*

(1) In accordance with 11 CFR 104.13, a political committee on whose behalf the unreimbursed travel is conducted must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a political committee on whose behalf the travel is conducted must report the actual dates of travel for which the disbursement is made in the ''purpose of disbursement'' field.

(j) *Recordkeeping.*

(1) For travel on non-commercial aircraft conducted under paragraphs (c)(1), (c)(3)(iii), (e)(1), or (g) of this section, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military aircraft) of the aircraft used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) (A) The rate for the comparable charter aircraft available in accordance with paragraphs (c), (e) and (f) of this section, including the airline, charter or air taxi operator, and travel service, if any, offering that fare to the public, and the dates on which the rates are based; or

(B) The private traveler reimbursement rate available in accordance with paragraph (e)(1)(ii) of this section, and the dates on which the rate is based.

(iv) Where the travel is aboard an aircraft owned in part by the candidate or an immediate family member of the candidate, the ownership or lease agreement specifying the amount of use of the aircraft corresponding to the candidate's or an immediate family member's ownership interest in the aircraft, as required by paragraph (g)(1)(i) and (ii) and (g)(3) of this section, and the certification required by paragraph (g)(3) of this section.

(2) For travel on non-commercial aircraft conducted under paragraph (c)(3)(i), (c)(3)(ii), or (e)(2)(i) of this section, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military aircraft) of the aircraft used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers; and

(iii) The lowest unrestricted non-discounted airfare available in accordance with paragraphs (c)(3), (e)(2)(i), and (f) of this section, including the airline offering that fare, flight number, travel service, if any, providing that fare, and the dates on which the rates are based.

(3) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model and make of the conveyance used;

(ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The commercial fare or rental charge available in accordance with paragraphs (d) and (f) of this section for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable.

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

■ 3. The heading of Part 113 is revised to read as set forth above.

■ 4. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

■ 5. Section 113.5 is added to read as follows:

§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft (2 U.S.C. 439a(c)).

(a) *Presidential, vice-presidential and Senate candidates.* Notwithstanding any other provision of the Act or Commission regulations, a presidential, vice-presidential, or Senate candidate, and any authorized committee of such candidate, shall not make any expenditure for travel on an aircraft unless the flight is:

(1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv);

(2) Noncommercial travel as provided in 11 CFR 100.93(a)(3)(v), and the pro rata share per campaign traveler of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size, as provided in 11 CFR 100.93(c), is paid by the candidate, the authorized committee, or other political committee on whose behalf the travel is conducted, to the owner, lessee, or other person who provides the aircraft within seven calendar days after the date the flight began, except as provided in 11 CFR 100.93(b)(3); or

(3) Provided by the Federal government or by a State or local government.

(b) *House candidates and their leadership PACs.* Notwithstanding any other provision of the Act or Commission regulations, a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, and any authorized committee or leadership PAC of such candidate, shall not make any expenditures, or receive any in-kind contribution, for travel on an aircraft unless the flight is:

(1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or

(2) Provided by the Federal government or by a State or local government.

(c) *Exception for aircraft owned or leased by candidates and immediate family members of candidates.*

(1) Paragraphs (a) and (b) of this section do not apply to flights on aircraft owned or leased by the candidate, or by an immediate family member of the candidate, provided that the candidate does not use the aircraft more than the candidate's or immediate family member's proportional share of ownership, as defined by 11 CFR 100.93(g)(3), allows.

(2) A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft under the conditions described in 11 CFR 100.93(g)(2).

(3) An ''immediate family member'' is defined in 11 CFR 100.93(g)(4).

(d) *In-kind contribution.* Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled. Such contributions are subject to the reporting requirements, limitations and prohibitions of the Act.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 6. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

■ 7. Section 9004.7 is amended by revising paragraphs (b)(5)(i), (b)(5)(iii), (b)(5)(v), and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) (i) If any individual, including a candidate, uses a government aircraft for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an

amount equal to the applicable rate set forth in 11 CFR 100.93(e).

* * *

(iii) If any individual, including a candidate, uses a government conveyance, other than an aircraft, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

* * *

(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(1) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(j)(3) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel, as defined in 11 CFR 100.93(a)(3)(v), on aircraft, and travel on other means of transportation not operated for commercial passenger service, is governed by 11 CFR 100.93.

PART 9034—ENTITLEMENTS

■ 8. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

■ 9. Section 9034.7 is amended by revising paragraphs (b)(5)(i), (b)(5)(iii), (b)(5)(v), and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) (i) If any individual, including a candidate, uses a government aircraft for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(e).

* * *

(iii) If any individual, including a candidate, uses a government conveyance, other than an aircraft, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

* * *

(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(1) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(j)(3) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel on aircraft, and travel on other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: November 20, 2009.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–28637 Filed 12–4–09; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE301; Special Conditions No. 23–241–SC]

Special Conditions: Embraer S.A., Model EMB–505; High Fuel Temperature

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A., Model EMB–505 airplane. This airplane will have a novel or unusual design feature(s) associated with high fuel temperature. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2009. We must receive your comments by January 6, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE301, Room 506, 901 Locust, Kansas City, Missouri 64106. Mark comments: Docket No. CE301. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written data, views, or arguments as they may desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of the comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Discussion

Background

On October 9, 2006, Embraer S.A. applied for a type certificate for their new Model EMB–505. The Model EMB–505 is a commuter category, low-winged monoplane with ''T'' tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. Its design characteristics include a predominance

of metallic construction. The maximum takeoff weight is 17,967 pounds, the V_{MO}/M_{MO} is 320 KCAS/M 0.78 and maximum altitude is 45,000 feet.

Fuel temperatures on the Embraer EMB 505 are higher than envisioned by 14 CFR part 23. The rule governing fuel system hot weather operation is 14 CFR part 23, § 23.961, and the rule requires the following:

> Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, the initial temperature must be 110 °F, −0 °, +5 ° or the maximum outside air temperature for which approval is requested, whichever is more critical.

During other airplane certification projects, the fuel system temperatures associated with the recently designed turbofan engines were much higher than those previously encountered on previous airplane certification projects. The engine oil/fuel heat fuel system includes an exchanger that cools the oil and heats the fuel. Consequently, the motive flow fuel that is returned to the airplane from the engine is hot and heats the airplane wing fuel and tank. As a result, on the PW535E, the engine inlet maximum fuel temperature was determined to reach up to 196.7 °F (91.5 °C) during design development testing.

Initial concerns regarding the safe operation of the airplane with fuel temperatures significantly greater than 110 °F are identified as:

- Fuel degradation with resultant byproducts at high temperatures.
- Operation with the higher vapor liquid ratios.
- Fuel system component qualification at the higher temperatures.
- Solubility of water in fuel.
- Microbial growth.
- Fuel tank material/surrounding structure compatibility with the elevated temperatures.
- Service and maintenance personnel susceptibility to burns.

An initial review of FAA experience regarding airplane fuel temperatures identifies that for large part 25 aircraft, fuel temperature upper limits are characterized by § 25.961 values, i.e., 110–120 °F. Operationally, the buildup of vapor pockets within fuel lines has been an issue from this perspective for large transport category airplanes. A summary of the maximum engine inlet fuel temperatures for engines used in part 23 and part 25 business jet airplanes that are FAA certified follows:

Engine model	Sea level maximum inlet fuel temperature
PWC615F	126 F (52 C) draft IM.
PWC615F	172 F (78 C) Transport Canada.
PWC615F	190 F (88 C).
530A, 535A	135 F (57 C).
545A	135 F (57 C).
305A	135 F (57 C).
308	135 F (57 C).
JT15D–4, –4B, –4D.	135 F (57 C).
FJ44–3A	200 F (93 C).
FJ44–2A	135 F (57 C).
FJ44–1B	135 F (57 C).
TFE731–2/–3	135 F (57 C).
TFE731–20	135 F (57 C).

CAR part 3, as amended to May 15, 1956, defined the maximum anticipated summer air temperatures in § 3.583; ''The maximum anticipated summer air temperature shall be considered to be 100 °F at sea level and to decrease from this value at the rate of 3.6 °F per thousand feet above sea level.'' Concurrently, § 3.438 required that ''* * * fuel system features conducive to vapor formation shall be demonstrated to be free from vapor lock when using fuel at a temperature of 110 °F under critical operating conditions.'' Building from CAR part 3, 14 CFR part 23 envisioned maximum fuel temperatures at or near 110 °F as set forth in 14 CFR part 23, § 23.961. The turbine fuel temperature requirement for hot weather operation is 110 −0, +5 °F, or the maximum outside air temperature for which approval is requested, whichever is more critical. Engine heat rejection such that the airplane fuel temperature is characterized by engine heat rejection rather than ambient air temperature is a new and novel design that was not envisioned by 14 CFR part 23.

14 CFR part 23 certification experience to date has shown that hot weather certification testing with 110 °F fuel temperatures is adequate for fuel system operations for fuel tank fuel temperatures characterized by ambient air temperatures including cooling as a result of the atmospheric temperature lapse rate. Heating that increases the airplane fuel system operational temperatures introduces several fuel system concerns. Each must be shown to be acceptable. Compliance by design (*i.e.,* lack of ability to shutoff the engine motive flow) may be utilized although associated type certificate data sheet information may also be necessary to assure future system changes are compliant.

A special condition for the higher fuel system temperatures of the Embraer EMB–505 airplane was proposed. The special condition requires the compliance to 14 CFR part 23, § 23.961, fuel system hot weather operation test temperature to be commensurate with the highest fuel temperature expected at the maximum outside air temperature for which approval is requested.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Embraer S.A. must show that the Model EMB–505 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–55, thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model EMB–505 because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–505 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as appropriate, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Model EMB–505 will incorporate the following novel or unusual design features:

High Fuel Temperatures.

Applicability

As discussed above, these special conditions are applicable to the Model EMB–505. Should Embraer S.A. apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model, Model EMB–505, of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied

to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for the Embraer S.A. Model EMB–505 airplanes.

1. SC § 23.961:

Instead of compliance with § 23.961, the following apply:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, the initial temperature must be the highest fuel temperature expected at the maximum outside air temperature for which approval is requested.

Issued in Kansas City, Missouri, on December 1, 2009.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29053 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1170; Airspace Docket No. 08–AEA–27]

Amendment of the Atlantic Low Offshore Airspace Area; East Coast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the altitude floor within a part of the Atlantic Low Offshore Airspace Area. This action provides additional controlled airspace to enable air traffic control (ATC) to more efficiently handle arriving instrument flight rules (IFR) aircraft a various coastal airports along the United States (U.S.) east coast.

DATES: *Effective Dates:* 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Wednesday January 21, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend the Atlantic Low Offshore Airspace Area (74 FR 3465). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received. The commenter expressed support for the proposal.

Currently, ATC cannot vector arriving aircraft below 5,500 feet mean sea level (MSL) while operating within the Atlantic Low Offshore Airspace Area, limiting system efficiency and increasing operational complexity. Lowering the floor of the Atlantic Low Offshore Airspace Area provides additional controlled airspace to allowing ATC to use lower altitudes to vector arriving IFR aircraft at various airports along the U.S. east coast, such as those that receive approach control service from Atlantic City airport traffic control tower (ATCT). The change will increase National Airspace System (NAS) efficiency and reduce operational complexity.

In the NPRM, the FAA proposed to lower the airspace floor from 5,500 feet MSL to 1,700 feet MSL throughout the entire Atlantic Low Offshore Airspace Area. Following consultations with the Department of Defense (DOD) and a review of ATC requirements, the FAA determined that a 1,700 foot MSL floor was only needed within an 8 nautical mile (NM) wide segment of airspace along the western boundary of the Atlantic Low Offshore Airspace Area. Based on this review, the airspace extending upward from 1,700 feet MSL will apply only to that portion of the Atlantic Low Offshore Airspace Area that lies between a line drawn 12 miles from and parallel to the U.S. shoreline and a line drawn 20 miles from and parallel to the U.S. shoreline. The floor in the remainder of the Atlantic Low Offshore Airspace Area outward from 20 NM from the shoreline will continue to extend upward from 5,500 feet MSL.

This action does not change the status of any warning areas contained within the Atlantic Low Offshore Airspace Area or affect DOD operations conducted therein. As with all warning areas, a letter of agreement between the controlling and using agencies is executed to define the conditions and procedures under which the controlling agency may authorize nonparticipating aircraft to transit the warning area.

With the exception of the change described above, and editorial changes, this amendment is the same as that proposed in the NPRM.

Offshore Airspace Areas are published in paragraph 6007 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Area listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by lowering the floor in a portion of the Atlantic Low Offshore Airspace Area from 5,500 feet MSL to 1,700 MSL within an 8 NM wide band along the western boundary of the Atlantic Low Offshore Airsace Area. The amendment applies to that segment of the Atlantic Low that lies between a line drawn 12 miles from and parallel to the U.S. shoreline and a line drawn 20 miles from and parallel to the U.S. shoreline. The change provides additional controlled airspace allowing ATC to use lower altitudes to vectoring arriving aircraft to various airports along the U.S.

east coast, increasing NAS efficiency and reducing operational complexity.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is with the scope of that authority as it provides additional controlled airspace for IFR aircraft operations at east coast airports.

ICAO Considerations

As part of this action relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty.

A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves the designation of navigable airspace outside the United States, it has been reviewed by the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Atlantic Low [Amended]

That airspace extending upward from 5,500 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat. 34°00'00''N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline, excluding Federal airways and the East Coast Low offshore airspace area; and that airspace extending upward from 1,700 feet MSL within the portion of the Atlantic Low offshore airspace area that lies between a line drawn 12 miles from and parallel to the U.S. shoreline and a line drawn 20 miles from and parallel to the U.S. shoreline.

* * * * *

Issued in Washington, DC, on November 23, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–28897 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1167; Airspace Docket No. 08–ASO–16]

Amendment of the South Florida Low Offshore Airspace Area; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the altitude floor within a part of the South Florida Low Offshore Airspace Area. This action provides additional controlled airspace to enable air traffic control (ATC) to more efficiently handle arriving instrument flight rules (IFR) aircraft at various coastal airports bordering along the South Florida Low Offshore Airspace Area.

DATES: *Effective Dates:* 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group,

Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Wednesday January 21, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend the South Florida Low Offshore Airspace Area (74 FR 3466). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received. The commenter concurred with the proposal.

Currently, ATC cannot vector arriving aircraft below 2,700 feet mean sea level (MSL) while operating within the South Florida Low Offshore Airspace Area, limiting system efficiency and increasing operational complexity. Lowering the floor of the South Florida Low Offshore Airspace Area to 1,300 feet MSL provides additional controlled airspace allowing ATC to use lower altitudes to vector arriving IFR aircraft at various coastal airports along the southeastern United States (U.S.) and the west coast of Florida. Airports that will benefit from this change include, but are not necessarily limited to, those that receive approach control service Myrtle Beach, SC; Airport Traffic Control Tower/Terminal Radar Approach Control (ATCT/TRACON), Fort Lauderdale, FL; ATCT, Miami, FL; ATCT/TRACON and Fort Myers International, FL, ATCT/TRACON. The change will increase National Airspace System (NAS) efficiency and reduce operational complexity at the terminal areas.

In the NPRM, the FAA proposed to lower the airspace floor from 2,700 feet MSL to 1,300 feet MSL throughout the entire South Florida Low Offshore Airspace Area. Following consultations with the Department of Defense (DOD) and a review of ATC requirements, the FAA determined that a 1,300 foot MSL floor was only needed within an 8 nautical mile (NM) wide segment of airspace along the boundary of the South Florida Low Offshore Airspace Area. Based on this review, the airspace extending upward from 1,300 feet MSL will apply only to that portion of the South Florida Low Offshore Airspace Area that lies between a line drawn 12 miles from and parallel to the U.S. shoreline and a line drawn 20 miles from and parallel to the U.S. shoreline. To clarify the airspace description in the vicinity of the Florida Keys, the new 1,300-foot MSL floor segment between 12 miles and 20 miles from the shoreline extends around the Marquesas Keys, but does not extend out to, or include the airspace around, the Dry Tortugas Islands. The floor in the remainder of the South Florida Low Offshore Airspace Area, outward from 20 NM from the shoreline, will continue to extend upward from 2,700 feet MSL.

This action does not change the status of any warning areas contained within the South Florida Low Offshore Airspace Area or affect DOD operations conducted therein. As with all warning areas, a letter of agreement between the controlling and using agencies is executed to define the conditions and procedures under which the controlling agency may authorize nonparticipating aircraft to transit the warning area.

With the exception of the change described above, and editorial changes, this amendment is the same as that proposed in the NPRM.

Offshore Airspace Areas are published in paragraph 6007 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Area listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by lowering the floor in a portion of the South Florida Low Offshore Airspace Area from 2,700 feet MSL to 1,300 feet MSL. The amendment applies to that segment of the South Florida Low that lies between a line drawn 12 miles from and parallel to the U.S. shoreline and a line drawn 20 miles from and parallel to the U.S. shoreline. The change provides additional controlled airspace allowing ATC to use lower altitudes to vecotor arriving IFR aircraft at various coastal airports along the boundary of the South Florida Low Offshore Airspace Area, increasing NAS efficiency and reducing operational complexity.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is with the scope of that authority as it provides additional controlled airspace for IFR aircraft operations at airports along the coast of the southeastern U.S.

ICAO Considerations

As part of this action relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty.

A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are

exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves the designation of navigable airspace outside the United States, it has been reviewed by the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

South Florida Low, FL [Amended]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00′00″ N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santo Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR; excluding the Grand Bahama TCA and the Nassau TCA; and that airspace extending upward from 1,300 feet MSL within the portion of the South Florida Low that lies between a line drawn 12 miles from and parallel to the U.S. shoreline and a line drawn 20 miles from and parallel to the U.S. shoreline, along the full length of the South Florida Low and extending around the Marquesas Keys, but excluding the Dry Tortugas Islands.

* * * * *

Issued in Washington, DC, on November 23, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–28899 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0937; Airspace Docket No. 09–ASO–27]

Establishment of Class E Airspace; Jackson, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Jackson, AL. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Jackson Muni, Jackson. AL. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the **Federal Register** approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 21, 2010.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2009–0937; Airspace Docket No. 09–ASO–27, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/*

publications/airspace_amendments. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0937; Airspace Docket No. 09–ASO–27''. The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Jackson, AL, providing controlled airspace extending upward from 700 feet above the surface to accommodate IFR operations for SIAPs at Jackson Muni Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Jackson, AL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Jackson, AL [NEW]

Jackson Muni, AL

(Lat. 31°28′14″ N., long. 87°53′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Jackson Municipal.

* * * * *

Issued in College Park, Georgia, on November 23, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group,Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–28889 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0739; Airspace Docket No. 09–AEA–14]

Establishment of Class E Airspace; Fort A.P. Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Fort A.P. Hill, VA. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at A.P. Hill AAF, Fort A.P. Hill, VA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 21, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2009–0739; Airspace Docket No. 09–AEA–14, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments

received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0739; Airspace Docket No. 09–AEA–14.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Fort A.P. Hill, VA, to provide controlled airspace extending upward from 700 feet above the surface to accommodate IFR operations for SIAPs at A.P. Hill AAF (Fort A.P. Hill). Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Fort A.P. Hill, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVIC ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA VA E5 Fort A.P. Hill, VA [NEW]

A.P. Hill AAF (Fort A.P. Hill), VA
(Lat. 38°04′07″ N., long. 77°19′06″ W.)
A.P. Hill NDB (Fort A.P. Hill), VA
(Lat. 38°05′16″ N., long. 77°19′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the A.P. Hill Army Airfield, and within 7 miles southwest and 3 miles northeast of the 343° bearing from the A.P. Hill NDB from the 6.2 mile radius to 10 miles northwest of the NDB.

* * * * *

Issued in College Park, Georgia, on November 23, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group,Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–28892 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0061; Airspace Docket No. 09–ASO–10]

Establishment of Class E Airspace; Mountain City, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Mountain City, TN. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Johnson County Airport, Mountain City, TN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 21, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2009–0061; Airspace Docket No. 09–ASO–10, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0061; Airspace Docket No. 09–ASO–10.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Mountain City, TN, providing controlled airspace extending upward from 700 feet above the surface of the earth to accommodate IFR operations for SIAPs at Johnson County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Mountain City, TN.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Mountain City, TN [NEW]

Johnson County Airport, TN
(Lat. 36°25′04″ N., long. 81°49′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7 -mile radius of the Johnson County Airport and within 1.3 miles each side of the 065° bearing from the airport extending from the 6. 7-mile radius to 10.9 miles northeast of the airport.

* * * * *

Issued in College Park, Georgia, on November 23, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–28894 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30699 Amdt. No 3350]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 7, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for

a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on November 27, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 14 Jan 2010*

Fort Pierce, FL, St. Lucie County Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Malden, MO, Malden Rgnl, RNAV (GPS) RWY 36, Amdt 1A
Collegeville, PA, Perkiomen Valley, Takeoff Minimum and Obstacle DP, Orig-A
North Myrtle Beach, SC, Grand Strand, Takeoff Minimums and Obstacle DP, Orig
Rutland, VT, Rutland-Southern Vermont Rgnl, LOC Y RWY 9, Amdt 3A
Rutland, VT, Rutland-Southern Vermont Rgnl, LOC Z RWY 19, Amdt 1A
Ephrata, WA, Ephrata Muni, RNAV (GPS) RWY 21, Orig-A

** * * Effective 11 Feb 2010*

Noorvik, AK, Robert/Bob/Curtis Memorial, RNAV (GPS) RWY 6, Orig
Noorvik, AK, Robert/Bob/Curtis Memorial, RNAV (GPS) RWY 24, Orig
Noorvik, AK, Robert/Bob/Curtis Memorial, Takeoff Minimums and Obstacle DP, Orig
Lake Village, AR, Lake Village Muni, Takeoff Minimums and Obstacle DP, Orig
Phoenix, AZ, Phoenix-Mesa Gateway, PHOENIX ONE Graphic Obstacle DP
Phoenix, AZ, Phoenix-Mesa Gateway, Takeoff Minimums and Obstacle DP, Amdt 1
Scottsdale, AZ, Scottsdale, MARICOPA ONE Graphic Obstacle DP
Santa Ana, CA, John Wayne-Orange County, ILS OR LOC RWY 19R, Amdt 12
Burley, ID, Burley Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Junction City, KS, Freeman Field, Takeoff Minimums and Obstacle DP, Amdt 2
Henderson, KY, Henderson City County Airport, NDB RWY 9, Amdt 4, CANCELLED
Fort Meade, MD, Col William F. (Shorty) Tipton, NDB RWY 10, Amdt 1, CANCELLED
Glencoe, MN, Glencoe Muni, NDB RWY 31, Amdt 1
Minneapolis, MN, Airlake, ILS OR LOC RWY 30, Orig-D
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), Takeoff Minimums and Obstacle DP, Amdt 5
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, ILS OR LOC RWY 34, Amdt 3
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, RNAV (GPS) RWY 16, Amdt 1
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, RNAV (GPS) RWY 28, Amdt 1
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, RNAV (GPS) RWY 34, Amdt 1
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, VOR/DME RWY 28, Amdt 11
Massena, NY, Massena Intl-Richards Field, ILS OR LOC RWY 5, Amdt 3
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 5, Amdt 1
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 9, Amdt 1
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 23, Amdt 1
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 27, Amdt 1
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) Y RWY 5, Orig, CANCELLED
Massena, NY, Massena Intl-Richards Field, VOR–A, Orig, CANCELLED
Dayton, OH, James M Cox Dayton Intl, RNAV (GPS) RWY 24L, Amdt 1A
Block Island, RI, Block Island State, Takeoff Minimums and Obstacle DP, Amdt 3
Block Island, RI, Block Island State, VOR RWY 28, Amdt 5
Myrtle Beach, SC, Myrtle Beach Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Bridgeport, TX, Bridgeport Muni, RNAV (GPS) RWY 18, Orig
Bridgeport, TX, Bridgeport Muni, VOR/DME RWY 18, Amdt 1
Houston, TX, George Bush Intercontinental/ Houston, ILS OR LOC RWY 27, ILS RWY 27 (CAT II), ILS RWY 27 (CAT III), Amdt 8
Stamford, TX, Arledge Field, NDB OR GPS RWY 35. Orig, CANCELLED
Stamford, TX, Arledge Field, RNAV (GPS) RWY 17. Orig
Stamford, TX, Arledge Field, RNAV (GPS) RWY 35, Orig

Stamford, TX, Arledge Field, Takeoff Minimums and Obstacle DP, Orig
Front Royal, VA, Front Royal-Warren County, VOR–B, Orig
Springfield, VT, Hartness State (Springfield), LOC–A, Amdt 4A, CANCELLED
Springfield, VT, Hartness State (Springfield), LOC/DME RWY 5, Amdt 4
Springfield, VT, Hartness State (Springfield), NDB–B, Amdt 6A, CANCELLED

[FR Doc. E9–28844 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30700; Amdt. No. 3351]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 7, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420)Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore- (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on November 27, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
14–Jan–10	UT	Salt Lake City	Salt Lake City Intl	9/1310	11/20/09	ILS Rwy 17, Amdt 12B.
14–Jan–10	UT	Salt Lake City	Salt Lake City Intl	9/1311	11/20/09	RNAV (GPS) Rwy 34L, Orig-A.
14–Jan–10	UT	Salt Lake City	Salt Lake City Intl	9/1312	11/20/09	RNAV (GPS) Rwy 17, Orig-A.
14–Jan–10	NH	Concord	Concord Muni	9/1350	11/20/09	RNAV (GPS) Rwy 17, Orig.
14–Jan–10	NH	Concord	Concord Muni	9/1352	11/20/09	VOR A, Orig.
14–Jan–10	NH	Concord	Concord Muni	9/1354	11/20/09	RNAV (GPS) Rwy 12, Orig.
14–Jan–10	KS	Great Bend	Great Bend Muni	9/1653	11/23/09	ILS Rwy 35, Orig-A.
14–Jan–10	KS	Hutchinson	Hutchinson Muni	9/9700	11/10/09	ILS Rwy 13, Amdt 16.
14–Jan–10	KS	Olathe	New Century Aircenter	9/9701	11/10/09	VOR A, Amdt 6A.

[FR Doc. E9–29014 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

[Docket No. USCBP–2008–0047; CBP Dec. 09–35]

Extension of Port Limits of Columbus, OH

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) regulations pertaining to CBP's field organization by extending the geographical limits of the port of Columbus, Ohio, to include the Rickenbacker Intermodal Terminal and supporting infrastructure so that it will be within the newly defined port limits. The change will make the boundaries more easily identifiable to the public. The change is part of a continuing program to more efficiently utilize CBP's personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Wendy M. Cooper, Office of Field Operations, 202–344–2057.

SUPPLEMENTARY INFORMATION:

I. Background

In a Notice of Proposed Rulemaking (NPRM) published on May 18, 2009, in the **Federal Register** (74 FR 23133), Customs and Border Protection (CBP) proposed to amend the list of CBP ports of entry at 19 CFR 101.3(b)(1) to extend the limits of the port of Columbus, Ohio, to include the Rickenbacker Intermodal Terminal and supporting infrastructure so that it will be within the newly defined port limits.

In the NPRM, CBP explained that the current port limits of the Columbus, Ohio, port of entry are described in two separate Treasury Decisions (T.D.s): T.D. 82–9, published in the **Federal Register** (47 FR 1286) on January 12, 1982 and effective February 11, 1982; and T.D. 96–67, published in the **Federal Register** (61 FR 49058) on September 18, 1996 and effective October 18, 1996.

T.D. 82–9 specified the limits as follows:

''The geographical boundaries of the Columbus, Ohio, Customs port of entry include all of the territory within the corporate limits of Columbus, Ohio; all of the territory completely surrounded by the city of Columbus; and, all of the territory enclosed by Interstate Highway 270 (outer belt), which completely surrounds the city.''

T.D. 96–67 expanded the port limits of Columbus, Ohio, to encompass the port limits set forth in T.D. 82–9 as well as the following territory:

''Beginning at the intersection of Rohr and Lockbourne Roads, then proceeding southerly along Lockbourne Road to Commerce Street, thence easterly along Commerce Street to its intersection with the N & W railroad tracks, then southerly along the N & W railroad tracks to the Franklin-Pickaway County line, thence easterly along the Franklin-Pickaway County line to its intersection with Pontius Road, then northerly along Pontius Road to its intersection with Rohr Road, thence westerly along Rohr Road to its intersection with Lockbourne Road, the point of beginning, all within the County of Franklin, State of Ohio.''

CBP further explained in the NPRM that the Columbus Regional Airport Authority has partnered with the Norfolk Southern Corporation to create an intermodal facility immediately adjacent to Rickenbacker International Airport. In the NPRM, CBP stated that the creation of the new Rickenbacker Intermodal Terminal is an important part of the Columbus Regional Airport Authority's plan to address a capacity problem at current facilities in the area. The terminal is located to the south of the current port boundaries.

In order to accommodate the new facility and supporting infrastructure so that it falls within the newly defined port limits, the NPRM proposed to amend the port limits of the port of Columbus, Ohio. In the NPRM, CBP explained that this change will make the port boundaries more easily identifiable to the public and will result in better service that is provided by the port to the public by addressing a capacity problem at current facilities in the area. CBP determined that the change will not require a change in the staffing or workload at the port.

Interested parties were given until July 17, 2009, to comment on the proposed changes. No comments were received in response to the notice. Accordingly, CBP has determined to

adopt the proposal as set forth in the NPRM published in the **Federal Register** (74 FR 23133) on May 18, 2009.

II. Conclusion

CBP is extending the geographical limits of the port of Columbus, Ohio. CBP believes that extending the geographical limits of the port of Columbus, Ohio to include the Rickenbacker Intermodal Terminal and supporting infrastructure will enable CBP to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. The port of entry description of Columbus, Ohio, will be revised as proposed in the NPRM.

III. Port Description of Columbus, Ohio

The port limits of Columbus, Ohio, which are expanded to include the Rickenbacker Intermodal Terminal and supporting infrastructure, encompass the port limits set forth in T.D. 82–9 and T.D. 96–67 and are as follows: The geographical boundaries of the Columbus, Ohio, port of entry include all of Franklin County, and that part of Pickaway County east of U.S. Route 23 and north of State Route 752, all in the State of Ohio.

IV. Authority

This change is made under the authority of 5 U.S.C. 301; 19 U.S.C. 2, 66, and 1624; and section 403 of the Homeland Security Act of 202, Public Law 107–296, 116 Stat. 2178 (Nov. 25, 2002) (6 U.S.C. 203).

V. Statutory and Regulatory Reviews

A. Executive Order 12866: Regulatory Planning and Review

This rule is not considered to be an economically significant regulatory action under Executive Order 12866, because it will not result in the expenditure of over $100 million in any one year. The change is intended to expand the geographical boundaries of the Port of Columbus, Ohio, and make it more easily identifiable to the public. There are no new costs to the public associated with this rule. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule does not directly regulate small entities. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. To the extent that all entities are able to more efficiently or conveniently access the facilities and resources within the expanded geographical area of the new port limits, this rule should confer benefits to CBP, carriers, importers, and the general public.

Because this rule does not directly regulate small entities, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

VI. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule is signed by the Secretary of Homeland Security.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendments to CBP Regulations

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * *

§ 101.3 [Amended]

■ 2. The list of ports in § 101.3(b)(1) is amended by removing from the ''Limits of Port'' column for Columbus, Ohio, the present limits description ''Including territory described in T.D. 96–67'' and adding ''CBP Dec. 09–35'' in its place.

Dated: December 2, 2009.

Janet Napolitano,

Secretary.

[FR Doc. E9–29057 Filed 12–4–09; 8:45 am]

BILLING CODE 9111–14–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690

RIN 3046–AA88

Amendment of Procedural and Administrative Regulations To Include the Genetic Information Nondiscrimination Act of 2008 (GINA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission''), through this final rule, amends some of its existing regulations to include references to title II of the Genetic Information Nondiscrimination Act of 2008 (''GINA''), which prohibits employment discrimination based on genetic information.

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Erin N. Norris, Senior Attorney, (202) 663–4876, Office of Legal Counsel, 131 M Street, NE., Washington, DC 20507. Copies of this final rule are available in the following alternate formats: large print, braille, electronic computer disk, and audio-tape. Requests for this final rule in an alternate format should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION: On May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act of 2008 (''GINA'') into law. Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. On May 20, 2009, EEOC proposed to amend its procedural and administrative regulations to add references to GINA and sought public comment (74 FR 23674). EEOC received two comments. One comment expressed support for the proposed changes. The other comment, which raised seven points, was considered; however, we declined to make any of those changes, because the items either dealt with

substantive GINA issues beyond the scope of this rulemaking or asked for inclusion of language that was either already included in the regulations or was unrelated to GINA.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This rule is not a ''significant regulatory action'' under section 3(f) of the Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it only adds references and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Dated: November 30, 2009.

Stuart J. Ishimaru,

Acting Chairman.

■ Accordingly, parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690 are amended as follows:

PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for Part 1601 is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11.

■ 2. Section 1601.1 is revised to read as follows:

§ 1601.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Genetic Information Nondiscrimination Act of 2008. Section 107 of the Americans with Disabilities Act and section 207 of the Genetic Information Nondiscrimination Act incorporate the powers, remedies and procedures set forth in sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964. Based on its experience in the enforcement of title VII, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act, and upon its evaluation of suggestions and petitions for amendments submitted by interested persons, the Commission may from time to time amend and revise these procedures.

■ 3. Section 1601.2 is revised to read as follows:

§ 1601.2 Terms defined in title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act.

The terms *person, employer, employment agency, labor organization, employee, commerce, industry affecting commerce, State* and *religion* as used in this part shall have the meanings set forth in section 701 of title VII of the Civil Rights Act of 1964. The term *disability* shall have the meaning set forth in section 3 of the Americans with Disabilities Act of 1990. The term *genetic information* shall have the meaning set forth in section 201 of the Genetic Information Nondiscrimination Act of 2008.

■ 4. Section 1601.3 is amended by revising paragraph (a) to read as follows:

§ 1601.3 Other definitions.

(a) For the purposes of this part, the term *title VII* shall mean title VII of the Civil Rights Act of 1964; the term *ADA* shall mean the Americans with Disabilities Act of 1990; the term *GINA* shall mean the Genetic Information Nondiscrimination Act of 2008; the term *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives; *Washington Field Office* shall mean the Commission's primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term *FEP agency* shall mean a State or local agency which the Commission has determined satisfies the criteria stated in section 706(c) of title VII; and the term *verified* shall mean sworn to or affirmed before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements, or supported by an unsworn declaration in writing under penalty of perjury.

* * * * *

■ 5. Section 1601.28 is amended as follows:

■ a. In paragraphs (a)(3) and (b)(1), remove the words ''title VII or the ADA'' and add in their place the words ''title VII, the ADA, or GINA'' wherever they appear;

■ b. Revise paragraph (e)(1) to read as follows:

§ 1601.28 Notice of right to sue: Procedure and authority.

* * * * *

(e) * * *

(1) Authorization to the aggrieved person to bring a civil action under title VII, the ADA, or GINA pursuant to section 706(f)(1) of title VII, section 107 of the ADA, or section 207 of GINA within 90 days from receipt of such authorization;

* * * * *

§§ 1601.6, 1601.7, 1601.10, 1601.11, 1601.13, 1601.18, 1601.21, 1601.22, 1601.24, 1601.25, 1601.26, 1601.30, 1601.70, and 1601.79 [Amended]

■ 6. Remove the words ''title VII or the ADA'' and add in their place the words ''title VII, the ADA, or GINA'' wherever they appear in the following places:

a. § 1601.6(a);
b. § 1601.7(a);
c. § 1601.10;
d. § 1601.11(b);
e. § 1601.13(a)(3)(i), (a)(4)(i);
f. § 1601.18(a);
g. § 1601.21(a), (e)(2)(iii);
h. § 1601.22, third sentence;
i. § 1601.24(c);

j. § 1601.25;
k. § 1601.26(a);
l. § 1601.30(a);
m. § 1601.70(d);
n. § 1601.79.

§§ 1601.16, 1601.17, 1601.30, and 1601.34 [Amended]

■ 7. Remove the words ''title VII and the ADA'' and add in their place the words ''title VII, the ADA, and GINA'' wherever they appear in the following places:
a. § 1601.16(a);
b. § 1601.17(a);
c. § 1601.30(a);
d. § 1601.34.

§ 1601.22 [Amended]

■ 8. In the first sentence of § 1601.22 remove the words ''the ADA or title VII'' and add in their place the words ''title VII, the ADA, or GINA'' wherever they appear.

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, AND GINA

■ 9. The authority citation for part 1602 is revised to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.;* 42 U.S.C. 12117; 42 U.S.C. 2000ff–6.

■ 10. The heading for part 1602 is revised to read as set forth above.

■ 11. Section 1602.1 is revised to read as follows:

§ 1602.1 Purpose and scope.

Section 709 of title VII (42 U.S.C. 2000e), section 107 of the Americans with Disabilities Act (ADA) (42 U.S.C. 12117), and section 207(a) of the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff–6) require the Commission to establish regulations pursuant to which employers, labor organizations, joint labor-management committees, and employment agencies subject to those Acts shall make and preserve certain records and shall furnish specified information to aid in the administration and enforcement of the Acts.

§§ 1602.11, 1602.12, 1602.19, 1602.26, 1602.37, 1602.45, and 1602.54 [Amended]

■ 12. Remove the words ''title VII or the ADA'' and add in their place the words ''title VII, the ADA, or GINA''; and remove the words ''section 709(c) of title VII or section 107 of the ADA'' and add in their place the words ''section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA'' wherever they appear in the following places:
a. 1602.11;
b. 1602.12;
c. 1602.19;
d. 1602.26;
e. 1602.37;
f. 1602.45;
g. 1602.54.

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 321 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

■ 13. The authority citation for part 1603 is revised to read as follows:

Authority: 42 U.S.C. 2000e–16c; 42 U.S.C. 2000ff–6(b).

■ 14. Section 1603.102(a) is revised to read as follows:

§ 1603.102 Filing a complaint.

(a) *Who may make a complaint.* Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information, or retaliated against for opposing any practice made unlawful by federal laws protecting equal employment opportunity or for participating in any stage of administrative or judicial proceedings under federal laws protecting equal employment opportunity may file a complaint not later than 180 days after the occurrence of the alleged discrimination.
* * * * *

PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

■ 15. The authority citation for Part 1607 continues to read as follows:

Authority: Secs. 709 and 713, Civil Rights Act of 1964 (78 Stat. 265) as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92–261); 42 U.S.C. 2000e–8, 2000e–12.

§ 1607.2 [Amended]

■ 16. In § 1607.2, paragraph D,, remove the word ''handicap'' and add in its place the word ''disability.''

PART 1610—AVAILABILITY OF RECORDS

■ 17. The authority citation for Part 1610 continues to read as follows:

Authority: 42 U.S.C. 2000e–12(a), 5 U.S.C. 552 as amended by Pub. L. 93–502, Pub. L. 99–570, and Pub. L. 105–231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

■ 18. Section 1610.7(a)(4) is revised to read as follows:

§ 1610.7 Where to make request; form.

(a) * * *

(4) Materials in office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); or the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff *et seq.*).
* * * * *

■ 19. Section 1610.17(f) is revised to read as follows:

§ 1610.17 Exemptions.
* * * * *

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) and Section 207(a) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–6) explicitly adopt the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act.
* * * * *

PART 1611—PRIVACY ACT REGULATIONS

■ 20. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 21. Section 1611.13 is amended by revising the introductory text, the first sentence of paragraph (a), and the first sentence of paragraph (c) to read as follows:

§ 1611.13 Specific Exemptions—Charge and complaint files.

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII, Americans with Disabilities Act, and GINA Discrimination Case Files), EEOC–15 (Internal Harassment Inquiries) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has

determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act have occurred. * * *

* * * * *

(c) Subject individuals of the files in EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII, Americans with Disabilities Act, and GINA Discrimination Case Files), and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. * * *

* * * * *

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

■ 22. The authority citation for Part 1614 is revised to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

■ 23. Section 1614.101 is revised to read as follows:

§ 1614.101 General policy.

(a) It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, or genetic information and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Rehabilitation Act (29 U.S.C. 791 *et seq.*), or the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes.

■ 24. Section 1614.102(a)(4) is revised to read as follows:

§ 1614.102 Agency program.

(a) * * *

(4) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, disability, or genetic information, and solicit their recruitment assistance on a continuing basis;

* * * * *

■ 25. Section 1614.103(a) is revised to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved individual is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), the Equal Pay Act (sex-based wage discrimination), or GINA (discrimination on the basis of genetic information) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

* * * * *

■ 26. Section 1614.105(a) introductory text is revised to read as follows:

§ 1614.105 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

* * * * *

■ 27. Section 1614.204(a)(1) is revised to read as follows:

§ 1614.204 Class complaints.

(a) * * *

(1) A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or genetic information.

* * * * *

■ 28. Section 1614.302(a) is revised to read as follows:

§ 1614.302 Mixed case complaints.

(a) *Definitions*—(1) *Mixed case complaint.* A mixed case complaint is a complaint of employment discrimination filed with a federal agency based on race, color, religion, sex, national origin, age, disability, or genetic information related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

(2) *Mixed case appeals.* A mixed case appeal is an appeal filed with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or genetic information.

* * * * *

■ 29. Section 1614.304(b)(3) is revised to read as follows:

§ 1614.304 Contents of petition.

* * * * *

(b) * * *

(3) A statement of the reasons why the decision of the MSPB is alleged to be incorrect, in whole or in part, only with regard to issues of discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information;

* * * * *

§ 1614.601 [Amended]

■ 30. Section 1614.601 is amended as follows:

■ a. Remove the word ''handicap(s)'' and add in its place the word ''disability'' in paragraph (a);

■ b. Remove the word ''handicap'' and add in its place the word ''disability'' wherever it appears in paragraphs (f) and (g);

■ c. Remove the word ''handicaps'' and add in its place the word ''disabilities'' wherever it appears in paragraph (f).

■ 31. Section 1614.702(j) is revised to read as follows:

§ 1614.702 Definitions.

* * * * *

(j) The term basis of alleged discrimination refers to the individual's protected status (i.e., race, color, religion, reprisal, sex, national origin,

Equal Pay Act, age, disability, or genetic information). Only those bases protected by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.,* the Equal Pay Act of 1963, 29 U.S.C. 206(d), the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.,* the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.,* and the Genetic Information Nondiscrimination Act, 42 U.S.C. 2000ff *et seq.,* are covered by the federal EEO process.

* * * * *

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 32. The authority citation for Part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

§ 1625.31 [Amended]

■ 33. In § 1625.31(a), remove the word ''handicapped'' and add in its place the phrase ''individuals with disabilities.''

PART 1690—PROCEDURES ON INTERAGENCY COORDINATION OF EQUAL EMPLOYMENT OPPORTUNITY ISSUANCES

■ 34. The authority citation for Part 1690 continues to read as follows:

Authority: Sec. 715 of title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14); Reorganization Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

§ 1690.102 [Amended]

■ 35. In § 1690.102, remove the word ''handicap'' and add in its place the word ''disability.''

[FR Doc. E9–29012 Filed 12–4–09; 8:45 am]

BILLING CODE 6570–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2200, 2203, and 2204

Rules of Procedure; Regulations Implementing the Government in the Sunshine Act; Implementation of the Equal Access to Justice Act in Proceedings Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule; corrections and technical amendments.

SUMMARY: The Occupational Safety and Health Review Commission (''OSHRC'') is making various corrections and technical amendments to its rules of procedure and regulations which implement the Government in the Sunshine Act and the Equal Access to Justice Act in proceedings before OSHRC.

DATES: Effective on December 7, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606–5410, by e-mail at *rbailey@oshrc.gov,* or by mail at: 1120–20th Street, NW., Ninth Floor, Washington, DC 20036–3457.

SUPPLEMENTARY INFORMATION:

I. Background

OSHRC is making corrections and amendments to outdated and erroneous cross-references in 29 CFR parts 2200 and 2204, and inconsistencies in word choice, citation form, and capitalization, as well as various grammatical errors, in 29 CFR parts 2200 and 2203. OSHRC is also amending its rule regarding interlocutory review to clarify, as stated elsewhere in the rules, that a petition for interlocutory review is considered filed when received by the Commission. Finally, OSHRC is amending its procedure regarding the filing of documents in cases on review before the Commission to require the filing of only original documents, thus saving paper and easing the parties' filing burden.

Part 2200

OSHRC is making various grammatical corrections and technical amendments to part 2200. First, in § 2200.209(g), the phrase ''the 21 day period'' is amended to include a hyphen between ''21'' and ''day.'' Second, in the second sentence of § 2200.52(d), the word ''the'' is added before the word ''Judge.'' Third, the words ''judge'' and ''judges'' in the text of §§ 2200.8(g) and .52(d) and the title of §§ 2200.67 and .68 are now capitalized in order to make capitalization of that word consistent throughout part 2200. Fourth, the word ''memorandums'' in § 2200.93(e) is amended to ''memoranda,'' which is used elsewhere in the Commission rules. Fifth, the apostrophes in the phrases ''ten days' written notice'' and ''ten days' notice,'' appearing in §§ 2200.56(c) and .60, are deleted because apostrophes are not used in other similar phrases throughout the rules. Sixth, for the sake of consistency, except where a number is the first word of a sentence, the numeral rather than the spelled-out word is now used when the number pertains to a period of time. This change results in amendments to §§ 2200.20(a) and (b), .21(a), .40(b) and (c), .52(a)(2), .56(c), .60, .62(c), .64(b), .70(f), .73(b), .74(b), .95(c)(1) and (h)(1), .104(b)(2), .202(a)(5), .203(b) and (c), and .204(b). Seventh, also for the sake of consistency, parallel cites to the United States Code are now included when referencing the Occupational Safety and Health Act (''Act''), 29 U.S.C. 651–678. This change results in amendments to § 2200.1(b), (i), and (j), as well as § 2200.37(c)(3). Similarly, citation to the Act is now included when referencing the relevant provisions in the United States Code. This change results in amendments to § 2200.120(e). Eighth, when referencing a specific federal rule, the phrase ''Federal Rule of Civil Procedure'' now precedes the number of the rule. This change results in amendments to §§ 2200.51(b); .52(a)(1)(iii); .56(a), (e), (f), (g), and (h); and .61. Ninth, in most of the procedural rules, the Chief Administrative Law Judge is referred to by his or her full title, even when mentioned multiple times in a section. All references to this position are now amended to read ''Chief Administrative Law Judge,'' which results in amendments to §§ 2200.203(c), .204(a), and .209(f). Finally, in order to clarify, as stated in § 2200.8(e)(2), that a petition for interlocutory review is deemed filed when it is received by the Commission, a new paragraph including this requirement is added to § 2200.73, and the reference to § 2200.73(b) in § 2200.8(e)(2) is changed to § 2200.73.

OSHRC is also making amendments to the following outdated cross-references in this part. First, § 2200.37(d)(4) references § 2200.36(c)(2)–(c)(4), which was re-designated as § 2200.35(b)–(d) in 1992. Rules of Procedure, 57 FR 41676, 41685 (Sept. 11, 1992) (final rule). The reference to § 2200.36(c)(2)–(c)(4) is amended to reflect this re-designation. Second, § 2200.56(g) and (h) reference Federal Rules of Civil Procedure 30(b)(7) and (b)(4), respectively, which were re-designated as Rule 30(b)(4) and (b)(3) in the 1993 Revisions to the Federal Rules of Civil Procedure. The references to Rule 30 are amended to reflect these re-designations. Third, § 2200.73(b) references § 2200.36(c), which was re-designated as § 2200.35 in 1992. The reference to § 2200.36(c) is amended to reflect this re-designation. Finally, § 2200.104(d) states, ''All show cause orders issued by the Commission or Judge under paragraph (c) of this section.'' However, paragraph (c) only refers to action by the Commission. Paragraph (b), which refers to action by the Judge, does not appear to require a show cause order. The words ''or Judge'' are therefore deleted from paragraph (d).

OSHRC is making amendments to §§ 2200.8(d)(2), .91(h), and .93(h), all of which require that parties provide the Commission with ''the original and eight copies'' of any petitions for discretionary review and statements in opposition to such petitions, briefs, and any other filings. These provisions are now amended to require that parties file only the original document. These amendments will minimize the amount of paper waste associated with Commission proceedings and ease the parties' filing burden.

Part 2203

OSHRC is making a grammatical correction and a technical amendment to part 2203. Section 2203.3(b) presently states that a Commission meeting may be closed to the public ''where the Commission determines that the meeting, or part of the meeting, or information about the meeting, is likely to: * * * (4) Disclose trade secrets and commercial or financial information obtained from a person are privileged or confidential.'' In order to clarify the meaning of paragraph (4), the word ''that'' is added between the words ''person'' and ''are.'' Additionally, OSHRC is deleting the reference to ''Deputy General Counsel'' in § 2203.2 because that position no longer exists.

Part 2204

OSHRC is making two typographical corrections and one technical amendment to part 2204. Sections 2204.102(d) and 2204.108 incorrectly reference paragraph (i) of 29 U.S.C. 661, rather than paragraph (j) of that statutory provision. OSHRC is correcting these typographical errors. OSHRC is also amending an outdated cross-reference in § 2204.105(c). This section cross-references § 2200.34(d), which was re-designated as § 2200.37(d) in 1986. Rules of Procedure, 51 FR 32002, 32008 (Sept. 8, 1986) (final rule); Rule of Procedure, 51 FR 23184, 23187 (June 25, 1986) (proposed rule).

II. Statutory and Executive Order Reviews

Waiver of Proposed Rulemaking: The technical amendments and corrections to the affected sections are merely procedural in nature and propose no substantive changes on which public comment could be solicited. OSHRC therefore finds that prior notice and opportunity for comment on these changes are unnecessary pursuant to 5 U.S.C. 553(b)(3)(A).

Waiver of 30-Day Delayed Effective Date Requirement: OSHRC finds that good cause exists for the final rule to be exempt from the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because a delay in clarifying these rules would be contrary to the public interest.

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Regulatory Flexibility Act: OSHRC has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), because, as noted, a general notice of proposed rulemaking is not required under 5 U.S.C. 553(b).

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because this final rule does not contain any information collection requirements that require the approval of OMB.

Congressional Notification: OSHRC has determined that the Congressional Review Act, 5 U.S.C. 801, is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this final rule ''does not substantially affect the rights or obligations of non-agency parties.''

List of Subjects

29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

29 CFR Part 2203

Sunshine Act.

29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

Signed at Washington, DC, on the 24th day of November 2009.

Thomasina V. Rogers,

Chairman.

Horace A. Thompson III,

Commissioner.

■ Accordingly, 29 CFR parts 2200, 2203, and 2204 are amended as follows:

PART 2200—RULES OF PROCEDURE

■ 1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted. Section 2200.96 is also issued under 28 U.S.C. 2112(a).

§ 2200.1 [Amended]

■ 2. Section 2200.1 is amended by:
■ a. Adding '', 29 U.S.C. 652'' following the word ''Act'' in paragraph (b).
■ b. Adding '', 29 U.S.C. 658(a)'' following the word ''Act'' in paragraph (i).
■ c. Adding '', 29 U.S.C. 659(a) or (b)'' following the word ''Act'' in paragraph (j).

■ 3. Section 2200.8 is amended by:
■ a. Revising paragraph (d);
■ b. Removing ''§ 2200.73(b)'' in paragraph (e)(2) and adding, in its place, ''§ 2200.73''; and
■ c. Removing the word ''judges'' in the first sentence of paragraph (g)(1) and adding, in its place, the word ''Judges''.

The revision reads as follows:

§ 2200.8 Filing.

* * * * *

(d) *Number of copies.* Unless otherwise ordered or stated in this part, only the original of a document shall be filed.

* * * * *

§ 2200.20 [Amended]

■ 4. Section 2200.20 is amended by:
■ a. Removing the word ''ten'' in the third sentence of paragraph (a) and adding, in its place, the numeral ''10''.
■ b. Removing the word ''ten'' in the first and second sentences of paragraph (b) and adding, in their place, the numeral ''10''.

§ 2200.21 [Amended]

■ 5. Section 2200.21 is amended by removing the word ''ten'' in both the first and second sentences of paragraph (a), and adding, in their place, the numeral ''10''.

§ 2200.37 [Amended]

■ 6. Section 2200.37 is amended by:
■ a. Adding '', 29 U.S.C. 659(a) and (c)'' following the word ''Act'' in paragraph (c)(3).
■ b. Removing ''§ 2200.36(c)(2)–(c)(4)'' in the last sentence of paragraph (d)(4) and adding, in its place, ''§ 2200.35(b) through (d)''.

§ 2200.40 [Amended]

■ 7. Section 2200.40 is amended by:
■ a. Removing the word ''twenty'' in the first sentence of paragraph (b) and adding, in its place, the numeral ''20''.
■ b. Removing the word ''ten'' in the first sentence of paragraph (c) and adding, in its place, the numeral ''10''.
■ c. Removing the word ''five'' in the second sentence of paragraph (c) and adding, in its place, the numeral ''5''.

§ 2200.51 [Amended]

■ 8. Section 2200.51 is amended by removing the words ''Rule 16 of the Federal Rules of Civil Procedure'' in paragraph (b) and adding, in their place,

the words ''Federal Rule of Civil Procedure 16''.

§ 2200.52 [Amended]

■ 9. Section 2200.52 is amended by:
■ a. Removing the words ''Rule 26(a) of the Federal Rules of Civil Procedure'' in paragraph (a)(1)(iii) and adding, in their place, the words ''Federal Rule of Civil Procedure 26(a)''.
■ b. Removing the word ''seven'' in the second sentence of paragraph (a)(2) and adding, in its place, the numeral ''7''.
■ c. Adding the word ''the'' before the word ''Judge'' in the second sentence of paragraph (d).
■ d. Removing the word ''judge'' in the last sentence of paragraph (d) and adding, in its place, the word ''Judge''.

§ 2200.56 [Amended]

■ 10. Section 2200.56 is amended by:
■ a. Removing the citation ''Fed.R.Civ.P. 30'' in paragraph (a) and adding, in its place, the words ''Federal Rule of Civil Procedure 30''.
■ b. Removing the word ''ten'' in both the first and second sentences of paragraph (c) and adding, in their place, the numeral ''10''.
■ c. Removing the apostrophe following the word ''days'' in paragraph (c).
■ d. Removing the citation ''Fed.R.Civ.P. 32'' in paragraph (e) and adding, in its place, the words ''Federal Rule of Civil Procedure 32''.
■ e. Removing the words ''Rule 32(a)(4) of the Federal Rules of Civil Procedure'' in paragraph (f) and adding, in their place, the words ''Federal Rule of Civil Procedure 32(a)(4)''.
■ f. Removing the words ''Rule 30(b)(7) of the Federal Rules of Civil Procedure'' in paragraph (g)(1) and adding, in their place, the words ''Federal Rule of Civil Procedure 30(b)(4)''.
■ g. Removing the words ''Rule 30(b)(4) of the Federal Rules of Civil Procedure'' in paragraph (h) and adding, in their place, the words ''Federal Rule of Civil Procedure 30(b)(3)''.
■ h. Removing the words ''Rule 30(e) (submission to witness) of the Federal Rules of Civil Procedure'' in paragraph (h)(1) and adding, in their place, the words ''Federal Rule of Civil Procedure 30(e) (submission to witness)''.
■ i. Removing the words ''Rule 28(c) of the Federal Rules of Civil Procedure'' in paragraph (h)(3) and adding, in their place, the words ''Federal Rule of Civil Procedure 28 (c)''.

§ 2200.60 [Amended]

■ 11. Section 2200.60 is amended by:
■ a. Removing the word ''thirty'' in the first sentence and adding, in its place, the numeral ''30''.
■ b. Removing the apostrophe following the word ''days'' in the second sentence.
■ c. Removing the word ''ten'' in the second sentence and adding, in its place, the numeral ''10''.

§ 2200.61 [Amended]

■ 12. Section 2200.61 is amended by removing the citation ''Fed.R.Civ.P. 56'' and adding, in its place, the words ''Federal Rule of Civil Procedure 56''.

§ 2200.62 [Amended]

■ 13. Section 2200.62 is amended by removing the word ''seven'' in the first and second sentences of paragraph (c) and adding, in their place, the numeral ''7''.

§ 2200.64 [Amended]

■ 14. Section 2200.64 is amended by removing the word ''five'' in paragraph (b) and adding, in its place, the numeral ''5''.

§ 2200.67 [Amended]

■ 15. Section 2200.67 is amended by removing the word ''judges'' in that section's heading and adding, in its place, the word ''Judges''.

§ 2200.68 [Amended]

■ 16. Section 2200.68 is amended by removing the word ''judge'' in that section's heading and adding, in its place, the word ''Judge''.

§ 2200.70 [Amended]

■ 17. Section 2200.70 is amended by removing the word ''six'' in the fourth sentence of paragraph (f) and adding, in its place, the numeral ''6''.

■ 18. Section 2200.73 is amended by:
■ a. Removing the word ''five'' in the first and second sentences of paragraph (b) and adding, in their place, the numeral ''5''.
■ b. Removing ''§ 2200.36(c)'' in the fifth sentence of paragraph (b) and adding, in its place, ''§ 2200.35''.
■ c. Adding paragraph (g) to read as follows:

§ 2200.73 Interlocutory review.

* * * * *

(g) *When filing effective.* A petition for interlocutory review is deemed to be filed only when received by the Commission.

§ 2200.74 [Amended]

■ 19. Section 2200.74 is amended by removing the word ''three'' in the second sentence of paragraph (b) and adding, in its place, the numeral ''3''.

§ 2200.91 [Amended]

■ 20. Section 2200.91 is amended by removing paragraph (h).

§ 2200.93 [Amended]

■ 21. Section 2200.93 is amended by:
■ a. Removing the word ''memorandums'' in both the first and second sentences in paragraph (e) and adding, in their place, the word ''memoranda''.
■ b. Removing paragraph (h).
■ c. Removing ''(b) through (h)'' in paragraph (i) and adding, in its place, ''(b) through (g)''.
■ d. Redesignating paragraph (i) as paragraph (h).

§ 2200.95 [Amended]

■ 22. Section 2200.95 is amended by:
■ a. Removing the word ''seven'' in paragraph (c)(1) and adding, in its place, the numeral ''7''.
■ b. Removing the word ''five'' in the third sentence of paragraph (h)(1) and adding, in its place, the numeral ''5''.

§ 2200.104 [Amended]

■ 23. Section 2200.104 is amended by:
■ a. Removing the word ''five'' in the first sentence of paragraph (b)(2) and adding, in its place, the numeral ''5''.
■ b. Removing the words ''or Judge'' from paragraph (d).

§ 2200.120 [Amended]

■ 24. Section 2200.120 is amended by:
■ a. Adding ''section 12(g) of the Act,'' before the citation ''29 U.S.C. 661(g)'' in the first sentence of paragraph (e).
■ b. Removing ''section 661(g)'' in the first sentence of paragraph (e) and adding, in its place, ''section 12(g)''.

§ 2200.202 [Amended]

■ 25. Section 2200.202 is amended by removing the word ''two'' in paragraph (a)(5) and adding, in its place, the numeral ''2''.

§ 2200.203 [Amended]

■ 26. Section 2200.203 is amended by:
■ a. Removing the word ''twenty'' in the first sentence of paragraph (b) and adding, in its place, the numeral ''20''.
■ b. Removing the words ''Chief Judge'' in the first sentence of paragraph (c) and adding, in their place, the words ''Chief Administrative Law Judge''.
■ c. Removing the word ''fifteen'' in the second sentence of paragraph (c) and adding, in its place, the numeral ''15''.

§ 2200.204 [Amended]

■ 27. Section 2200.204 is amended by:
■ a. Removing the words ''Chief Judge'' in the last sentence of paragraph (a) and adding, in their place, the words ''Chief Administrative Law Judge''.
■ b. Removing the word ''seven'' in the third sentence of paragraph (b) and adding, in its place, the numeral ''7''.

§ 2200.209 [Amended]

■ 28. Section 2200.209 is amended by:

■ a. Removing the word ''Chief'' in the last sentence of paragraph (f) and adding, in its place, the words ''Chief Administrative Law Judge''.

■ b. Adding a hyphen between the numeral ''21'' and the word ''day'' in the last sentence of paragraph (g).

PART 2203—REGULATIONS IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

■ 29. The authority citation for part 2203 continues to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

§ 2203.2 [Amended]

■ 30. Section 2203.2 is amended by removing '', the Deputy General Counsel,'' in the definition of ''General Counsel.''

§ 2203.3 [Amended]

■ 31. Section 2203.3 is amended by adding the word ''that'' between the words ''person'' and ''are'' in paragraph (b)(4).

PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTCE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

■ 32. The authority citation for part 2204 continues to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

§ 2204.102 [Amended]

■ 33. Section 2204.102 is amended by removing ''661(i)'' in paragraph (d) and adding, in its place, ''661(j)''.

§ 2204.105 [Amended]

■ 34. Section 2204.105 is amended by removing ''§ 2200.34(d)'' in paragraph (c) and adding, in its place, ''§ 2200.37(d)''.

§ 2204.108 [Amended]

■ 35. Section 2204.108 is amended by removing ''661(i)'' in the first sentence and adding, in its place, ''661(j)''.

[FR Doc. E9–28845 Filed 12–4–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–046–FOR; Docket ID No. OSM–2009–0005]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Utah regulatory program (the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Utah proposed revisions to statutes pertaining to remining. Utah revised its program to remain consistent with the Federal Program.

DATES: *Effective Date:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Denver Field Division Chief. *Telephone:* (303) 293–5015. *Internet address: jfulton@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981 **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15, and 944.30.

II. Submission of the Proposed Amendment

By letter dated May 19, 2009, Utah sent us an amendment to its program (SATS number: UT–046–FOR, Administrative Record ID number: OSM–2009–0005–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment at its own initiative. The provisions of the Utah Code Annotated that Utah proposed to revise were: § 40–10–11(5) and § 40–10–17(6).

We announced receipt of the proposed amendment in the July 7, 2009, **Federal Register** (74 FR 32089). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2009–0005–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 6, 2009. We received one comment from a Federal agency (discussed under ''IV. Summary and Disposition of Comments'').

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

Utah proposed deletions from two statutory provisions at UCA § 40–10–11(5)(c) and § 40–10–17(6). These deletions correspond to revisions that were made to SMCRA on December 20, 2006 (HR 6111, Tax Relief and Health Care Act of 2006). The language deleted from SMCRA contained a termination date for two remining provisions. Utah has proposed to delete its corresponding termination dates, thereby retaining its remining provisions which were also slated to expire. As a result of these changes, Utah's Program remains consistent with the Federal Program.

Deleted UCA subsection 40–10–11(5)(c) corresponded to prior SMCRA § 510(e). In the December 20, 2006 revisions to SMCRA, Congress deleted the termination provision in § 510(e) pertaining to both § 510(e) and 515(b)(20)(B). The Utah remining provision to be retained through the deletion of this termination date is UCA § 40–10–11(5), which corresponds to the remaining portions of SMCRA section 510(e).

Deleted UCA subsection 40–10–17(6) also corresponded to the termination date under prior SMCRA § 510(e). The Utah remining provision to be retained through the deletion of this termination date is UCA § 40–10–17(2)(t)(ii). This part corresponds to SMCRA § 515(b)(20)(B).

These changes directly correspond to revisions made to SMCRA on December 20, 2006. The language retained through these changes is the same as or similar to the corresponding Federal language. For these reasons, we find these changes to be in accordance with SMCRA and approve them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM–2009–0005–0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record Document ID No. OSM–2009–0005–0003).

We received one comment from the Bureau of Land Management (BLM) dated June 4, 2009 (Administrative Record Document ID No. OSM–2009–0005–0004). The BLM reviewed the amendment and found it to be acceptable because the changes would modify the Utah Program to match the current provisions of SMCRA.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from the EPA (Administrative Record Document ID No. OSM–2009–0005–0003). The EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 22, we requested comments on Utah's amendment (Administrative Record Document ID No. OSM–2009–0005–0003). By letter dated June 10, 2009, the Utah State Historic Preservation Officer stated that he had no comment concerning the proposed regulation changes (Administrative Record ID No. OSM–2009–0005–0005).

V. OSM's Decision

Based on the above findings, we approve Utah's May 19, 2009 amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Utah program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Utah to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not

constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or Tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2009.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
.		
* *	* *	* * * * *
May 19, 2009	December 7, 2009	UCA § 40–10–11, 40–10–17/Deletion of repeal dates for remining provisions.

[FR Doc. E9–29108 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 30

RIN 1505–AC09

TARP Standards for Compensation and Corporate Governance

AGENCY: Domestic Finance, Treasury.

ACTION: Interim final rule; correction.

SUMMARY: This document contains corrections to the preamble of an interim final rule that was published in the **Federal Register** on Monday, June 15, 2009 (74 FR 28394), relating to certain standards for compensation and corporate governance applicable to financial institutions receiving funds under the Troubled Assets Relief Program (TARP).

FOR FURTHER INFORMATION CONTACT: Office of Domestic Finance, Treasury (202) 927–6618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The interim final rule the preamble of which is subject to these corrections is under section 111 of the Emergency Economic Stabilization Act of 2008, as amended.

Need for Correction

As published, the preamble to the interim final rule contains errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the interim final rule, which was the subject of FR Doc. E9–13868, published on June 15, 2009 (74 FR 28394), is corrected as follows:

1. On page 28399, column 3, in the preamble under the heading **SUPPLEMENTARY INFORMATION**, the first paragraph, line 26 the language ''Section 30.10 (Q–10) of the Interim Final Rule states that TARP recipients will be subject during the TARP period to the bonus limitation requirements based on the total amount of financial assistance outstanding under the TARP.'' is corrected to read ''Section 30.10 (Q–10) of the Interim Final Rule states that TARP recipients will be subject during the TARP period to the bonus limitation requirements based on the gross amount of all financial assistance provided to the TARP recipient, valued at the time the financial assistance was received.''

2. On page 28403, column 2, in the preamble under the heading Supplementary Information, the carryover paragraph, line 33 the language ''(15) certain employees named in the certification are the SEOs and most highly compensated employees for

the current fiscal year based on their compensation during the prior fiscal year;'' is corrected to read ''(15) an accurate list of the employees who are the SEOs and most highly compensated employees for the current fiscal year has been provided to the Treasury;''.

Dated: November 30, 2009.

Herbert M. Allison, Jr.,

Assistant Secretary for Financial Stability.

[FR Doc. E9–29026 Filed 12–4–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

31 CFR Part 30

RIN 1505–AC09

TARP Standards for Compensation and Corporate Governance; Correction

AGENCY: Domestic Finance, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to an interim final rule that was published in the **Federal Register** on Monday, June 15, 2009. The rule relates to certain standards for compensation and corporate governance applicable to financial institutions receiving funds under the Troubled Asset Relief Program (TARP).

DATES: *Effective date:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT: Office of Domestic Finance, Treasury (202) 927–6618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2009, Treasury published an interim final rule (74 FR 29394) entitled TARP Standards for Compensation and Corporate Governance. The interim final rule implemented certain provisions of section 111 of the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5221) (EESA), which directs Treasury to establish executive compensation and corporate governance standards for entities receiving financial assistance under the TARP. This document makes several technical amendments to that interim final rule.

Need for Correction

As published, the interim final rule contains errors that may prove to be misleading and are in need of correction. Section 30.1 of the interim final rule contained definitions applicable for purposes of the interim final rule. The definition of ''most highly compensated employee'' had provided that, for purposes of identifying a most highly compensated employee, senior executive officers (SEOs) were excluded. If this definition were applied literally with respect to Sections 30.10(b)(1)(i) and (ii), the definition would have the effect of exempting SEOs from the bonus limitations applicable to certain most highly compensated employees. Such a result would be contrary to the intent of the regulation and the language of EESA. Accordingly, this provision is corrected to provide that the terms ''most highly compensated employee'' or ''most highly compensated employees'' mean the employee or employees of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, solely for purposes of identifying the employees who are subject to any rule applicable to both the SEOs and one or more of the most highly compensated employees of the TARP recipient, SEOs of the TARP recipient are excluded when identifying the most highly compensated employee(s). So, for instance, if a provision is applicable only to the most highly compensated employee of the TARP recipient, the most highly compensated employee of the TARP recipient is subject to the provision regardless of whether the employee is also a SEO. In contrast, if a provision is applicable to the SEOs and a certain number of the most highly compensated employees of the TARP recipient, the SEOs (because they are already subject to the provision) are excluded for purposes of determining the most highly compensated employees that are also subject to the provision.

Section 30.2 of the interim final rule provides that the requirements of section 111(c) (generally relating to the establishment and maintenance of an independent compensation committee and that committee's review of employee compensation plans, as well as the establishment of a company-wide excessive and luxury expenditures policy) apply through the last day of the TARP period for recipients with an obligation, and through the last day of the recipient's fiscal year including the sunset date (which is the date on which the authorities provided under EESA section 101 and 102 terminate, pursuant to EESA section 120, taking into account any extensions pursuant to EESA section 120(b)) for recipients that never had an obligation. However, the interim final rule erroneously stated that the requirements apply through the later of these dates. Because only one of these dates is potentially applicable to any specific TARP recipient, the ''later of'' language is inoperative, but may render the provision confusing. Accordingly, Section 30.2 is revised to more clearly state the applicable time periods.

Section 30.13 of the interim final rule, relating to the requirement to permit a shareholder vote to approve certain executive compensation, is clarified to provide that TARP recipients must comply with the rules and regulations promulgated by the Securities and Exchange Commission (SEC) with respect to that requirement, but only to the extent the rules and regulations are applicable to the TARP recipient. Accordingly, a TARP recipient that is not subject to those rules because, for example, the TARP recipient is not required to register any securities with the SEC, is not required to permit such a vote.

Section 30.15 of the interim final rule, relating to certain certifications that the principal executive officer and the principal financial officer must provide, is revised to provide that the certification must state that the TARP recipient has provided the Treasury Department a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year, with the non-SEOs ranked in descending order of level of annual compensation. Accordingly, a list of the names of the SEOs and the twenty next most highly compensated employees is not required to be provided in the certification, but may be provided separately. Section 30.15 is also corrected so that the model certification language reflects the deadlines set forth elsewhere in the regulation, and to correct certain cross-references.

Procedural Matters

The June 15, 2009 interim final rule was promulgated pursuant to EESA, as amended, which provides for authority and facilities that the Secretary of the Treasury can use immediately to restore liquidity and stability to the financial system of the United States. Because of exigencies in the financial markets and to encourage entities to choose or continue to participate in the TARP, Treasury issued the interim final rule without prior notice and comment and without a delayed effective date pursuant to 5 U.S.C. 553(b)(B) and (d)(3). Treasury invited interested members of the public to submit comments on the rule and will carefully consider all comments in developing a final rule. The comment period for the interim final rule closed on August 14, 2009.

This document makes technical amendments to the Code of Federal Regulations that do not otherwise

impose or amend any requirements. Accordingly, Treasury finds that it would be contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), to delay the issuance of these technical amendments pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the amendments to become effective immediately upon publication.

This document is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 31 CFR Part 30

Executive compensation, Troubled assets.

■ Accordingly, 31 CFR part 30 is corrected by making the following correcting amendments:

PART 30—TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 5221; 31 U.S.C. 321.

■ 2. In § 30.1, revise paragraph (1) of the definition of ''most highly compensated employee'' to read as follows:

§ 30.1 Q–1: What definitions apply in this part?

* * * * *

Most highly compensated employee. (1) *In general.* The terms ''most highly compensated employee'' or ''most highly compensated employees'' mean the employee or employees of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, solely for purposes of identifying the employees who are subject to any rule applicable to both the SEOs and one or more of the most highly compensated employees of the TARP recipient, SEOs of the TARP recipient are excluded when identifying the most highly compensated employee(s). For this purpose, a former employee who is no longer employed as of the first date of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.

* * * * *

■ 3. In § 30.2, revise the second sentence to read as follows:

§ 30.2 Q–2: To what entities does this part apply?

* * * For a TARP recipient that has had an obligation to the Federal government arising from financial assistance provided under the TARP, and no further financial assistance under the TARP, the requirements of section 111(c) (including portions of § 30.4 (Q–4), § 30.5 (Q–5) and § 30.7 (Q–7), as applicable) and section 111(d) (§ 30.12 (Q–12)) apply through the last day of the period during which that obligation remains outstanding; for a TARP recipient that has never had an obligation to the Federal government arising from financial assistance provided under the TARP, the requirements of section 111(c) (including portions of § 30.4 (Q–4), § 30.5 (Q–5) and § 30.7 (Q–7), as applicable) and section 111(d) (§ 30.12 (Q–12)) apply through the last day of the TARP recipient's fiscal year including the sunset date. * * *

■ 4. Revise § 30.13 to read as follows:

§ 30.13 Q–13: What actions are necessary for a TARP recipient to comply with section 111(e) of EESA (the shareholder resolution on executive compensation requirement)?

As provided in section 111(e) of EESA, any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient that occurs during the TARP period must permit a separate shareholder vote to approve the compensation of executives, as required to be disclosed pursuant to the Federal securities laws (including the compensation discussion and analysis, the compensation tables, and any related material). To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC that are applicable to the TARP recipient.

■ 5. In § 30.15, revise the first sentence of paragraph (a)(5), Appendix A, paragraphs (i), (ii), (iii), (ix), (xi) and (xv) and Appendix B, paragraphs (ii), (iii), (ix), (xi) and (xv) to read as follows:

§ 30.15 Q–15: What actions are necessary for a TARP recipient to comply with the certification requirements of section 111(b)(4) of EESA?

* * * * *

(a) * * *

(5) *Application to private TARP recipients.* The rules provided in this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws, except that the certifications under Appendix A, paragraph (x) and Appendix B, paragraph (x) of this section are not required for such TARP recipients.

* * *

* * * * *

Appendix A to § 30.15—Model Certification for First Fiscal Year Certification

* * * * *

(i) The compensation committee of [identify TARP recipient] has discussed, reviewed, and evaluated with senior risk officers at least every six months during the period beginning on the later of September 14, 2009, or ninety days after the closing date of the agreement between the TARP recipient and Treasury and ending with the last day of the TARP recipient's fiscal year containing that date (the applicable period), the senior executive officer (SEO) compensation plans and the employee compensation plans and the risks these plans pose to [identify TARP recipient];

(ii) The compensation committee of [identify TARP recipient] has identified and limited during the applicable period any features of the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient], and during that same applicable period has identified any features of the employee compensation plans that pose risks to [identify TARP recipient] and has limited those features to ensure that [identify TARP recipient] is not unnecessarily exposed to risks;

(iii) The compensation committee has reviewed, at least every six months during the applicable period, the terms of each employee compensation plan and identified any features of the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee, and has limited any such features;

* * * * *

(ix) The board of directors of [identify TARP recipient] has established an excessive or luxury expenditures policy, as defined in the regulations and guidance established under section 111 of EESA, by the later of September 14, 2009, or ninety days after the closing date of the agreement between the TARP recipient and Treasury; this policy has been provided to Treasury and its primary regulatory agency; [identify TARP recipient] and its employees have complied with this policy during the applicable period; and any expenses that, pursuant to this policy,

required approval of the board of directors, a committee of the board of directors, an SEO, or an executive officer with a similar level of responsibility were properly approved;

* * * * *

(xi) [Identify TARP recipient] will disclose the amount, nature, and justification for the offering during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date of any perquisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds $25,000 for any employee who is subject to the bonus payment limitations identified in paragraph (viii);

* * * * *

(xv) [Identify TARP recipient] has submitted to Treasury a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year and the most recently completed fiscal year, with the non-SEOs ranked in descending order of level of annual compensation, and with the name, title, and employer of each SEO and most highly compensated employee identified; and**[.]**

* * * * *

Appendix B to § 30.15—Model Certification for Years Following First Fiscal Year Certification

* * * * *

(ii) The compensation committee of [identify TARP recipient] has identified and limited during any part of the most recently completed fiscal year that was a TARP period any features of the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient] and has identified any features of the employee compensation plans that pose risks to [identify TARP recipient] and has limited those features to ensure that [identify TARP recipient] is not unnecessarily exposed to risks;

(iii) The compensation committee has reviewed, at least every six months during any part of the most recently completed fiscal year that was a TARP period, the terms of each employee compensation plan and identified any features of the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee, and has limited any such features;

* * * * *

(ix) [Identify TARP recipient] and its employees have complied with the excessive or luxury expenditures policy, as defined in the regulations and guidance established under section 111 of EESA, during any part of the most recently completed fiscal year that was a TARP period; and any expenses that, pursuant to the policy, required approval of the board of directors, a committee of the board of directors, an SEO, or an executive officer with a similar level of responsibility were properly approved;

* * * * *

(xi) [Identify TARP recipient] will disclose the amount, nature, and justification for the offering, during any part of the most recently completed fiscal year that was a TARP period, of any perquisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds $25,000 for any employee who is subject to the bonus payment limitations identified in paragraph (viii);

* * * * *

(xv) [Identify TARP recipient] has submitted to Treasury a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year, with the non-SEOs ranked in descending order of level of annual compensation, and with the name, title, and employer of each SEO and most highly compensated employee identified; and''.

* * * * *

Dated: November 30, 2009.

Herbert M. Allison, Jr.,

Assistant Secretary for Financial Stability.

[FR Doc. E9–29027 Filed 12–4–09; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2009–0638; FRL–9088–8]

Determinations of Attainment of the One-Hour and Eight-Hour Ozone Standards for Various Ozone Nonattainment Areas in New Jersey and Upstate New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that various ozone nonattainment areas in New York and New Jersey have attained the one-hour and eight-hour National Ambient Air Quality Standards (NAAQS) for ozone. For the one-hour standard, the areas are the Atlantic City and Warren County areas in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York. For the 1997 eight-hour standard, the areas are Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County in New York. These determinations are based upon certified ambient air monitoring data that show each area has monitored attainment of ozone NAAQS based on complete, quality-assured ambient air monitoring data for the three-year period ending in 2008. These data demonstrate that the one-hour and eight-hour ozone standards have been attained in these areas. These areas that have attained the one-hour standard have completed their progress toward achieving the one-hour health standard. For the areas that have attained the eight-hour standard, the requirements for the State to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the ozone standards are suspended for as long as the areas continue to attain the eight-hour ozone standard. These determinations of attainment are not redesignations of these areas to attainment. Redesignations must meet additional requirements, including an approved plan to maintain compliance with the air quality standard for ten years after redesignation. In addition, preliminary data for 2009 show that these areas continue to attain the standard.

DATES: *Effective Date:* This rule is effective on January 6, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R02–OAR–2008–0638. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866. To make your visit as productive as possible, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–4249, fax number (212) 637–3901, e-mail *kelly.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. EPA's Action

EPA is determining that the Atlantic City area and Warren County in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York are certified as attaining the one-hour ozone national ambient air quality standard (NAAQS). The Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County eight-hour ozone nonattainment areas in New York have attained the 1997 eight-hour NAAQS for ozone. These determinations are based upon certified ambient air monitoring data that show the areas have monitored attainment of the ozone NAAQS for the three year period from 2006 to 2008. All these data are available in the EPA Air Quality System (AQS) database.

The rationale for EPA's determination is explained in the Proposed Rulemaking published on September 23, 2009 (74 FR 48498) and will not be restated here. No public comments were received on the proposal.

II. The Effect of EPA's Action

The following areas subject to the one-hour standard have completed their progress toward achieving the one-hour health standard: the Atlantic City area and Warren County in New Jersey, and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York.

For the areas that attained the eight-hour standard, that is, the Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County ozone nonattainment areas this determination suspends the requirements for various State Implementation Plan (SIP) items, including, where applicable, the requirement to submit an attainment demonstration, a reasonable further progress plan, and section 172(c)(9) contingency measures for the eight-hour ozone NAAQS for so long as these areas continue to attain the ozone NAAQS. EPA makes this determination under the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.918).

This action does not constitute a redesignation to attainment under Clean Air Act (CAA) section 107(d)(3), because these areas do not have approved maintenance plans as required under section 175A of the CAA, nor are there determinations that the areas have met the other requirements for redesignation. The classification and designation status of these areas will not change from nonattainment for the eight-hour ozone NAAQS until such time as EPA determines that they meet the CAA requirements for redesignation to attainment.

If EPA subsequently determines that any of these areas has violated the current eight hour ozone standard, after notice-and-comment rulemaking in the **Federal Register**, the basis for the suspension of these requirements would no longer exist for that area, and the area that violated the eight hour standard would have to address the pertinent requirements.

III. Final Action

EPA is determining the following areas have attained the 1-hour standard: the Atlantic City and Warren County areas in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York. EPA is also determining that the following areas in New York have attained the eight hour standard: Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County (Whiteface Mountain). For the eight hour ozone nonattainment areas, as provided in 40 CFR 51.918, this determination suspends the requirements for New York to submit attainment demonstrations, reasonable further progress plans, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the eight hour ozone NAAQS for these areas, where applicable. If an area no longer attains the standard, that area must submit the required SIP planning elements required by the CAA.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data, and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it determines that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 24, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1582 is amended by revising paragraph (l) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(l) *Attainment Determination.* EPA is determining that the 1-hour ozone nonattainment areas in New Jersey listed below have attained the 1-hour ozone standard on the date listed and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) (contingency measures) of the Clean Air Act do not apply to these areas.

(1) Philadelphia-Wilmington-Trenton (consisting of Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties) as of November 15, 2005. EPA also has determined, as of November 15, 2005, the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area is not subject to the imposition of the section 185 penalty fees.

(2) Atlantic City (consisting of Atlantic and Cape May Counties) as of *January 6, 2010.*

(3) Warren County as of *January 6, 2010.*

* * * * *

Subpart HH—New York

■ 2. Section 52.1683 is amended as follows:

■ a. By revising paragraph (f)(1).

■ b. In paragraph (f)(2)(i) by removing the comma at the end of the paragraph and adding a period in its place.

■ c. In paragraph (f)(2)(ii) by removing '', and'' at the end of the paragraph and adding in its place a period.

■ d. By adding paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii).

§ 52.1683 Control strategy: Ozone.

* * * * *

(f) * * *

(1) EPA is determining that the 1-hour ozone nonattainment areas in New York listed below have attained the 1-hour ozone standard on the date listed and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) (contingency measures) of the Clean Air Act do not apply to these areas.

(i) Albany-Schenectady-Troy (consisting of Albany, Greene, Montgomery, Rensselaer, Saratoga, and Schenectady Counties) as of *January 6, 2010.*

(ii) Buffalo-Niagara Falls (consisting of Erie and Niagara Counties) as of *January 6, 2010.*

(iii) Essex County as of *January 6, 2010.*

(iv) Jefferson County, as of *January 6, 2010.*

(v) Poughkeepsie (consisting of Dutchess, and Putnam Counties and northern Orange County) as of *January 6, 2010.*

(2) * * *

(iv) Buffalo-Niagara Falls (consisting of Erie and Niagara Counties) as of *January 6, 2010.*

(v) Jamestown (consisting of Chautauqua County) as of *January 6, 2010.*

(vi) Poughkeepsie (consisting of Dutchess, Orange and Putnam Counties) as of *January 6, 2010.*

(vii) Essex County (consisting of Whiteface Mountain) as of *January 6, 2010.*

* * * * *

[FR Doc. E9–28971 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2009–0338–200908; FRL–9089–1]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of Great Smoky Mountains National Park 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a request submitted on July 24, 2009, from the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), Division of Air Quality (DAQ), to redesignate the Great Smoky Mountains National Park (GSMNP) 1997 8-hour ozone nonattainment area (herein referred to as the ''GSMNP Area'') to attainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The GSMNP Area for the 1997 8-hour ozone standard is comprised of portions of Haywood and Swain Counties in North Carolina. EPA's approval of the redesignation request is based on the determination that the GSMNP Area has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the GSMNP Area has attained the 8-hour ozone standard. Additionally, EPA is approving a revision to the North Carolina State Implementation Plan (SIP) including the 8-hour ozone maintenance plan for the GSMNP Area that contains the new 2011 and 2020 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and an insignificance finding for volatile organic compounds (VOC) contribution from motor vehicles to the 8-hour ozone pollution in the GSMNP Area. Through this action, EPA is also finding the NO_X MVEBs and the VOC insignificance finding adequate for the purposes of transportation conformity. This action also approves the emissions inventory submitted with the maintenance plan

(under the CAA section 172(c)(3)). On March 12, 2008, EPA issued a revised ozone standard. EPA later announced on September 16, 2009, that it may reconsider this revised ozone standard. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the GSMNP Area under the 2008 standard will be addressed in the future.

DATES: *Effective Date:* This rule will be effective January 6, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0338. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Jane Spann may be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov*. The telephone number for Ms. Ward is (404) 562–9140 and the electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Is the Background for the Actions?

On July 24, 2009, North Carolina, through the NCDENR, DAQ, submitted a request to redesignate the GSMNP Area to attainment for the 1997 8-hour ozone standard, and for EPA approval of the North Carolina SIP revision containing a maintenance plan for the GSMNP Area. In an action published on October 16, 2009, (74 FR 53198) EPA proposed to approve the redesignation of the GSMNP Area to attainment. EPA also proposed approval of North Carolina's plan for maintaining the 1997 8-hour NAAQS as a SIP revision, including the emissions inventory submitted pursuant to CAA section 172(c)(3); and proposed to approve the NO_X MVEBs and VOC insignificance finding for the GSMNP Area that were contained in the maintenance plan. In the October 16, 2009, proposed action, EPA also provided information on the status of EPA's transportation conformity adequacy determination for the GSMNP Area NO_X MVEBs and the VOCs insignificance finding. EPA received no comments on the October 16, 2009, proposal.

In this action, EPA is also finalizing its determination that the new NO_X MVEBs and the VOC insignificance finding for the GSMNP Area are adequate for transportation conformity purposes. The MVEBs included in the maintenance plan area are as follows:

TABLE 1—GSMNP AREA MVEBS

[Kilograms per day[1]]

	2011	2020
NO_X MVEBs	179.9	127.0

[1] North Carolina has provided the conversion factor of 907.1847 kilograms per ton, rounded to two decimal places for tons to allow for comparison of the MVEBs to the emissions inventory (expressed in tons per day) in this Area.

EPA's adequacy public comment period on these MVEBs and the VOC insignificance finding (as contained in North Carolina's submittal) began on May 18, 2009, and closed on June 17, 2009. No comments were received during EPA's adequacy public comment period. Through this **Federal Register** notice, EPA is finding the 2011 and 2020 NO_X MVEBs, and the VOC insignificance finding, as contained in North Carolina's submittal, adequate. These MVEBs and the insignificance finding meet the adequacy criteria contained in the Transportation Conformity Rule. The new NO_X MVEBs must be used for future transportation conformity determinations. Additionally, transportation partners in this area should note the VOC insignificance finding in future conformity determinations.

As was discussed in greater detail in the October 16, 2009, proposal, this redesignation is for the 1997 8-hour ozone designations finalized in 2004 (69 FR 23857, April 30, 2004). Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour ozone standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity

regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that for those areas with 1-hour MVEBs in their 1-hour maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. The GSMNP Area was never designated nonattainment for the 1-hour ozone standard and thus does not have 1-hour MVEBs to consider.

For the above reasons, and those set forth in the October 16, 2009, proposal for the redesignation of the GSMNP Area, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the GSMNP Area to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

II. What Actions Is EPA Taking?

EPA is taking final action to approve North Carolina's redesignation request and to change the legal designation of the GSMNP Area from nonattainment to attainment for the 8-hour ozone NAAQS. The GSMNP Area is comprised of portions of Haywood and Swain Counties in North Carolina. EPA is also approving North Carolina's 8-hour ozone maintenance plan for the GSMNP Area (such approval being one of the CAA criteria for redesignation to attainment status), including the emissions inventory which was submitted pursuant to CAA section 172(c)(3). The maintenance plan is designed to help keep the GSMNP Area in attainment for the 8-hour ozone NAAQS through 2020. These approval actions are based on EPA's determination that North Carolina has demonstrated that the GSMNP Area has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the GSMNP Area has attained the 8-hour ozone standard. EPA's analyses of North Carolina's 8-hour ozone redesignation request and maintenance plan are described in detail in the proposed rule published October 16, 2009 (74 FR 53198).

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2011 and 2020 MVEBs for NO_X, and a VOC insignificance finding for the GSMNP Area. In this action, EPA is approving these 2011 and 2020 MVEBs, and the VOC insignificance finding. For regional emission analysis years that involve years prior to 2020, the new 2011 MVEB are the applicable budgets (for the purpose of conducting transportation conformity analyses). For regional emission analysis years that involve the year 2020 and beyond, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the new 2020 MVEB. In this action, EPA is also finding adequate the GSMNP Area's new NO_X MVEBs and North Carolina's insignificance finding for VOC contribution from motor vehicles to the 8-hour ozone pollution for the GSMNP Area.

III. Why Is EPA Taking These Actions?

EPA has determined that the GSMNP Area has attained the 8-hour ozone standard and has also determined that North Carolina has demonstrated that all other criteria for the redesignation of the GSMNP Area from nonattainment to attainment of the 8-hour ozone NAAQS have been met. *See,* section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for the GSMNP Area as meeting the requirements of sections 175A and 107(d) of the CAA, and the emissions inventory as meeting the requirements of section 172(c)(3) of the CAA. Furthermore, EPA is finding adequate and approving the new 2011 and 2020 regional MVEBs contained in North Carolina's maintenance plan because these MVEBs are consistent with maintenance for the GSMNP Area. In the October 16, 2009, proposal to redesignate the GSMNP Area, EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this final rulemaking.

IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of the portions of Haywood and Swain Counties in North Carolina (in association with the GSMNP Area) for the 1997 8-hour ozone NAAQS, found at 40 CFR part 81. The approval also incorporates into the North Carolina SIP a plan for maintaining the 8-hour ozone NAAQS in the GSMNP Area through 2020. The maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS, establishes NO_X MVEBs for the years 2011 and 2020 for the GSMNP Area, and provides a finding that VOC are an insignificant contributor from motor vehicles to the 8-hour ozone pollution in the GSMNP Area. Additionally, this action approves the emissions inventory for this area pursuant to section 172(c)(3) of the CAA.

V. Final Action

After evaluating North Carolina's redesignation request, EPA is taking final action to approve the redesignation and change the legal designation of the portions of Haywood and Swain Counties in North Carolina (in association with the GSMNP Area) from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Through this action, EPA is also approving into the North Carolina SIP the 8-hour ozone maintenance plan for the GSMNP Area, which includes the new NO_X MVEBs of 179.9 kilograms per day (kgd) for the year 2011, and 127.0 kgd for the year 2020. EPA is also finding adequate and approving the new 2011 and 2020 MVEBs contained in North Carolina's maintenance plan for the GSMNP Area. If transportation conformity is implemented in this area, the North Carolina transportation partners will need to use these new MVEBs pursuant to 40 CFR 93.104(e). Additionally, EPA is approving the emissions inventory for the GSMNP Area pursuant to section 172(c)(3) of the CAA.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources or allow a State to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 5, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the CAA.)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 20, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. Section § 52.1770(e) is amended by adding a new entry at the end of the table for ''8-Hour Ozone Maintenance Plan for the Great Smoky Mountains National Park Area'' to read as follows:

§ 52.1770 Identification of plan

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation
* * * *		*	* *
8-Hour Ozone Maintenance Plan for the Great Smoky Mountains National Park Area.	7/24/2009	12/07/09	[Insert first page of publication].

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In Section § 81.334, the table entitled ''North Carolina—Ozone (8-Hour Standard)'' is amended under ''Haywood and Swain Cos. (Great Smoky NP), NC'' by revising the entries for ''Haywood County (part)'' and ''Swain County (part)'' to read as follows:

§ 81.334 North Carolina

* * * * *

NORTH CAROLINA—OZONE
[8-Hour standard]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Haywood and Swain Cos. (Great Smoky NP), NC:				
Haywood County (part)	This action is effective 12/07/09	Attainment.		
Swain County (part)	This action is effective 12/07/09	Attainment.		
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until April 15, 2008.
[3] November 22, 2004.

* * * * *

[FR Doc. E9–28967 Filed 12–4–09; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130102–91386–02]

RIN 0648–AX59

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to establish a catch limit for bigeye tuna (*Thunnus obesus*) in the U.S. pelagic longline fisheries in the western and central Pacific Ocean for each of the years 2009, 2010, and 2011. Once the limit of 3,763 metric tons (mt) is reached in any of those years, retaining, transshipping, or landing bigeye tuna caught in the western and central Pacific Ocean will be prohibited for the remainder of the year, with certain exceptions. The limit will not apply to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). This action is necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: The rule is effective December 12, 2009.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR), environmental assessment (EA), and Supplemental EA, as well as the proposed rule, are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov*. Those documents, and the small entity compliance guide prepared for this final rule, are also available from the Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared for this rule are included in the proposed rule and this final rule, respectively.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–944–2219.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is also accessible at *http://www.gpoaccess.gov/fr*.

Background

On July 8, 2009, NMFS published a proposed rule in the **Federal Register** (74 FR 32521) that would revise regulations at 50 CFR part 300, subpart O, in order to implement certain decisions of the WCPFC. The proposed rule was open to public comment through August 7, 2009.

This final rule is implemented under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

The objective of this final rule is to implement, with respect to U.S. longline vessels, a Conservation and Management Measure (CMM) adopted by the WCPFC in December 2008, at its Fifth Regular Annual Session: CMM 2008–01, ''Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean.''

This final rule provides for the timely implementation for U.S. longline fisheries of the annual catch limit for bigeye tuna established in CMM 2008–01 for each of the years 2009, 2010, and 2011. This final rule does not apply to the longline fisheries of American Samoa, Guam, or the CNMI, as described further below.

The preamble to the proposed rule includes further background information, including information on the Convention and the WCPFC, the international obligations of the United States under the Convention, the provisions of CMM 2008–01 as they relate to longline vessels, and the basis for the proposed regulations.

New Requirements

This final rule establishes annual bigeye tuna catch limits in U.S. longline fisheries in the Convention Area as follows:

Establishment of the Limit

CMM 2008–01 includes longline fishery-related provisions specifically applicable to Participating Territories in the WCPFC, which include American Samoa, Guam, and the CNMI. The longline fisheries of Participating Territories are subject to annual bigeye

tuna catch limits of 2,000 mt. Where the Participating Territory is undertaking responsible development of its domestic fisheries, it is not subject to those annual limits. Given these provisions, and the fact that the 2,000 mt catch level is well in excess of historical bigeye tuna catches in American Samoa, Guam, and the CNMI, NMFS has determined there is no need to establish bigeye tuna catch limits in the longline fisheries of any of the U.S. Participating Territories at this time. Accordingly, the bigeye tuna catch limit established in this final rule applies only to U.S. longline fisheries other than those of American Samoa, Guam, and the CNMI.

Under CMM 2008–01, the bigeye tuna limit for U.S. longline fisheries in each of the years 2009, 2010, and 2011 is the amount of bigeye tuna captured in the Convention Area by the Hawaii and west coast longline fleets in 2004 and retained on board, less 10 percent. The amount captured and retained in 2004, which is specified in CMM 2008–01 based on information provided by the United States to the WCPFC, was 4,181 mt. Therefore, the annual limit is 3,763 mt.

For the purpose of this final rule, the longline fisheries of the three U.S. Participating Territories are distinguished from the other longline fisheries of the United States based upon a combination of the types of Federal longline fishing permits registered to the fishing vessel and where the bigeye tuna are landed. Specifically, bigeye tuna landed in any of the three U.S. Participating Territories, with certain provisos, will be assigned to the longline fishery of that Participating Territory. Furthermore, bigeye tuna that are captured by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, with certain provisos, will be assigned to the longline fishery of American Samoa. The provisos in both these cases are that: (1) the bigeye tuna must not be captured in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago, and (2) they must be landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region developed by the Western Pacific Fishery Management Council (WPFMC) and the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species developed by the Pacific Fishery Management Council; specifically, a permit issued under 50 CFR 660.707 or 665.21. Any bigeye tuna assigned to the longline fisheries of any of the three U.S. Participating Territories as described above will not be subject to the limit. All other bigeye tuna captured by longline gear in the Convention Area by U.S. longline vessels and retained will be subject to the limit.

Announcement of the Limit Being Reached

Once NMFS determines in any of the years 2009, 2010, or 2011 that the limit is expected to be reached by a specific future date in that year, NMFS will publish a notice in the **Federal Register** announcing that specific restrictions will be effective on that specific future date until the end of the calendar year. NMFS will publish the notice at least seven calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS will also endeavor to make publicly available, such as on a web site, regularly updated estimates and/or forecasts of bigeye tuna catches in order to help fishermen plan for the possibility of the limit being reached.

Prohibited Activities Once the Limit is Reached

Starting on the announced date and extending through the last day of that calendar year, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) that the current trip type is shallow-setting is not subject to this 14–day landing restriction. Furthermore, for the same reasons described above in establishing the limit, bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are captured by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit or if they are landed in American Samoa, Guam, or the CNMI, with the following provisos: First, the bigeye tuna must not have been caught in the portion of the EEZ surrounding the Hawaiian Archipelago, and second, they must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

Starting on the announced date and extending through the last day of that calendar year, it will also be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

These restrictions do not apply to bigeye tuna caught by longline gear outside the Convention Area, such as in the eastern Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, this final rule establishes two additional, related, prohibitions that will be in effect starting on the announced date and extending through the last day of that calendar year. First, it will be prohibited to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel will still be required to land any bigeye tuna taken within the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These additional prohibitions do not apply to the following vessels: (1) vessels on declared shallow-setting trips pursuant to pursuant to 50 CFR 665.23(a); or (2) vessels operating for the purposes of this rule as part of the longline fisheries of the U.S. Participating Territories, including vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the provisos described above.

Comments and Responses

Comment 1: Fishing restrictions that protect leatherback and loggerhead turtles should not be relaxed. If longline fishing practices in Hawaii push these magnificent animals toward extinction then maybe those practices must be reduced or banned altogether.

Response: This rule would not relax any current measures that protect endangered species and marine mammals, and in fact would establish a catch limit where one does not currently exist.

Comment 2: All longline fishing, which is horribly environmentally destructive and responsible for species decimation, should be banned, and needs to be stopped in all U.S. waters.

Response: The purpose of this rule is to implement the longline fishery-related aspects of WCPFC CMM 2008–01, which establishes annual catch limits for the longline fisheries of WCPFC members. Because CMM 2008–01 does not call for banning longline fishing anywhere, considering such a ban would be beyond the scope of the purpose of and need for this rule.

Comment 3: Without catch rates based on sustainability of the bigeye tuna fish stocks bigeye tuna will be overfished; the human population of the earth is growing but the tuna stocks are not; we need strong regulations that are rigorously enforced to protect bigeye tuna; the proposed catch limits for bigeye tuna should be adopted.

Response: NMFS acknowledges the comment.

Comment 4: The CNMI strongly recommends that the final rule clearly reflect the relevant provisions of CMM 2008–01, specifically, that: (1) the longline fisheries of the CNMI are limited to a catch of 2,000 mt of bigeye tuna each year, from 2009 through 2011; (2) the catch of bigeye tuna in the longline fisheries of the CNMI is not limited if the CNMI is undertaking a program of responsible development; and (3) the CNMI may enter into ''charter, lease or other similar arrangements'' to utilize its fish catch limit subject to a determination by the CNMI that the vessels involved are an integral part of the domestic fleet of the CNMI.

Response: NMFS agrees with the first two statements and has included explanatory remarks in the preamble, noting that consistent with paragraphs 32 and 34 of CMM 2008–01, the longline fisheries of American Samoa, Guam, and the CNMI are not subject to the annual limits established by this rule. NMFS also agrees that the CNMI, as a Participating Territory, may enter into charter, lease or other similar arrangements with U.S. vessels with respect to catches of bigeye tuna, to the extent permitted by law. NMFS, however, does not agree that catches under such agreements must be assigned to the Participating Territory in the United States' reports to the WCPFC, or that U.S. Participating Territories necessarily determine whether vessels operated under charter are ''integral'' parts of their domestic fleets. First, paragraph 2 of the CMM states in relevant part, ''For the purposes of these measures, vessels operated under charter, lease or other similar mechanisms by developing islands States and participating territories, as an integral part of their domestic fleet, shall be considered to be vessels of the host island State or territory.'' Accordingly, paragraph 2 does not mandate the implementation of charters, but merely instructs WCPFC members to attribute the catches of vessels operating under charters to the host State if the vessel is operated as an integral part of its domestic fleet, and to the flag State if it is not. Second, all U.S. longline fisheries on the high seas and in the EEZ are federally managed, and are subject to regulations implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). The provisions concerning annual catch limits for U.S. Participating Territories under CMM 2008–01 are not effective until implemented by appropriate regulations, such as regulations under the WCPFC Implementation Act or regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement FMP amendments, and until such time do not give rise to an interest in federally managed fish stocks. In this regard, NMFS notes that the WPFMC is currently evaluating a proposal to establish a charter scheme as an amendment to the Pelagics FMP for the purpose of aiding Participating Territories in the responsible development of their fisheries.

Comment 5: The CNMI strongly recommends that the final rule reflect that the CNMI, under both WCPFC rules and the MSA, has the authority and responsibility to manage its fisheries to ensure that the catch limits are not exceeded. In this context, the CNMI believes it has the right and authority to enter into a ''charter, lease or other similar arrangement'' for the utilization of the fish catch limit set by the WCPFC. The CNMI is a ''State'' under the MSA and has authority to regulate its fisheries beyond its waters as long as the regulations do not conflict with Federal regulations. The CNMI is not aware of any provision of law or regulation that impedes this authority. If NMFS has a different position, it must identify in the final rule the provisions of law or regulation that prevent the CNMI from exercising authority over the catch limits set by the WCPFC. The CNMI insists on its rights in this matter and looks forward to working with the U.S. Government and U.S. fishing interests to develop means to utilize its allocations in a manner that furthers the fishery development goals of the CNMI and benefits the CNMI and other U.S. interests to the maximum extent practicable.

Response: NMFS disagrees that either MSA section 306, which applies to the States' (including Territories') authority to regulate vessels registered under their laws outside their boundaries, or the Convention, as applied to Participating Territories, creates enforceable rights in the U.S. Participating Territories to implement charter arrangements under CMM 2008–01. Additionally, NMFS is not aware of any existing CNMI law or regulation that applies to fishing vessels operated under charter or other arrangement. As stated above, however, the WPFMC is currently evaluating a proposal to establish a charter scheme as an amendment to the Pelagics FMP for the purpose of aiding Participating Territories in the responsible development of their fisheries. NMFS will continue to work closely with the WPFMC in evaluating the feasibility of such a proposal, consistent with the Pelagics FMP.

Comment 6: Under paragraphs 32 and 34 of CMM 2008–01, the U.S. Participating Territories have 2,000 mt bigeye tuna catch limits in their longline fisheries in each of the years 2009–2011, and no bigeye tuna catch limits if undertaking responsible fisheries development. This should be clarified in the final rule.

Response: The final rule makes clear that under WCPFC 2008–01 U.S. Participating Territories are not subject to the annual limit applicable to U.S. fisheries, and if undertaking responsible development of their fisheries, are not subject to any WCPFC annual limit. The establishment of annual catch limits for the U.S. Participating Territories is beyond the limited scope of this rule.

Comment 7: In part because it may preclude any realistic, near-term opportunities for U.S. Participating Territories to utilize their international allocations, NMFS should discuss and analyze the ramifications of the catch attribution scheme in the proposed rule specifically, the proposal that all longline-caught bigeye tuna landed in Hawaii, even if caught on the high seas or in the portion of the EEZ around American Samoa, would be assigned to the U.S. longline fishery rather than the longline fishery of the Participating Territory.

Response: NMFS has analyzed the effects of the proposed rule in accordance with the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act, and Executive Order 12866 in the EA, the IRFA, and the RIR, respectively. As more fully described in the response to

comment 9, the catch attribution scheme of the proposed rule has undergone minor modifications in this final rule. The impacts of this modified scheme have been analyzed and are provided in a Supplemental EA prepared for this final rule, in the FRFA, and in a revision to the RIR.

Comment 8: Currently, the major regional U.S. bigeye tuna market is Honolulu, and to attribute all bigeye tuna landings in Hawaii to the catch limit for the United States would prevent U.S. Participating Territories from entering into domestic charter arrangements with Hawaii longline limited access permitted vessels and eliminate needed funding opportunities for responsible fisheries development. NMFS offers no justification as to why it is relying on its current policy practice of attributing all landings in Hawaii in this manner. This major policy decision may be limiting the legitimate rights of the U.S. Participating Territories in the WCPFC, and NMFS is doing so without discussion. NMFS' policy, by default, is having a regulatory effect, and therefore, at a minimum should have been thoroughly analyzed in detail in the draft EA.

Response: Under the proposed rule, bigeye tuna catches would be attributed based upon the place of landing, which closely aligns with the past practice of NMFS in its reporting to the WCPFC. NMFS believes that fish caught by a Hawaii- or West Coast-based vessel on the high seas or in the portion of the EEZ surrounding the Hawaiian Archipelago and subsequently landed in Hawaii acquire little or no nexus with a Participating Territory, and ordinarily are not attributable to that Territory for reporting purposes to the WCPFC. CMM 2008–01 does provide that when a vessel is operating under a charter, lease, or similar arrangement as an ''integral part'' of a host Participating Territory's domestic fleet, it shall be considered a vessel of the host Participating Territory for example, its catch should be attributed to the host Participating Territory's fishery for WCPFC reporting purposes. Although NMFS does not rule out the possibility that Hawaii- and West Coast-based vessels might operate under charter agreements with U.S. Participating Territories, such arrangements must be consistent with the applicable FMP and U.S. laws and regulations. Moreover, NMFS does not believe that CMM 2008–01 requires NMFS to assign catches to the chartering Participating Territory without regard to where the fish are caught or landed, particularly where the Participating Territory's sole connection to the vessel and its catch is the contractual relationship established by the charter agreement. Accordingly, a determination would have to be made by NMFS as to whether such vessels are operating as an ''integral part'' of the U.S. Participating Territory's domestic fleet. To conclude otherwise would allow practices that undercut the important conservation objectives of CMM 2008–01. However, NMFS recognizes that in certain circumstances a Participating Territory may acquire a sufficient nexus to a catch even if it is not landed within its borders please see the response to comment 9 for an example.

As to the sufficiency of the analysis in the draft EA of the proposed catch attribution scheme, please see the Supplemental EA, where responses to this and other comments on the draft EA are provided.

Comment 9: NMFS should modify the proposed rule to be consistent with established practices where catch is attributed to the permit program for the vessel, not the landing location. If a vessel that lands bigeye tuna and other fish species in Hawaii has both a Hawaii Longline Limited Access Permit and an American Samoa Longline Limited Access Permit or any future territorial permits, the catch should be assigned based on a determination of which permit program the vessel was attributing its catches to with respect to the landing involved.

Response: NMFS' practice for the purpose of reporting longline catches (i.e., to U.S. fisheries or to the fisheries of the U.S. Participating Territories) to the WCPFC has been to assign catches according to landing location, not permit type. Under the proposed rule, catches would be assigned based upon the place of landing, since the place of landing acquires the strongest nexus to the catch. However, NMFS acknowledges that in certain cases, considerations other than the landing site may also establish a sufficient nexus with the catch, such that the balance of contacts favors attributing the catch to a place other than where the fish actually has been landed. One such consideration is participation in the American Samoa Longline Limited Access Program. To qualify for a permit, an applicant must establish a documented history of participation in the pelagic longline fishery in the portion of the EEZ around American Samoa, as required by 50 CFR 665.36. NMFS believes that the catch of a vessel with an American Samoa Longline Limited Access Permit may be assigned to the longline fishery of American Samoa for WCPFC reporting purposes, even though it is not landed in American Samoa, provided certain requirements are met. Accordingly, the proposed rule has been modified in this final rule as follows: a vessel that operates with a valid American Samoa Longline Limited Access Permit and that lands its bigeye tuna catch in Hawaii will have its catch assigned to the longline fishery of American Samoa, provided that the catch was not made in the portion of the EEZ surrounding the Hawaiian Archipelago, and further provided that the fish are landed by a U.S. vessel operated in compliance with one of the permits required under the regulations implementing the Pelagics FMP and the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species that is, a permit issued under 50 CFR 660.707 or 665.21. As for treating ''any future territorial permits'' similarly, the final rule does not do so. If such permit programs are established during the effective period of this final rule, NMFS would consider whether and how to revise the rule.

Comment 10: In the final rule to implement the provisions of CMM 2008–01 for U.S. purse seine vessels (74 FR 38544, published August 4, 2009), the potential fishing effort of all 40 licenses authorized under the South Pacific Tuna Treaty (SPTT) was included as a basis for setting the effort limit for purse seine vessels [even though 40 licenses were not issued in the base years specified in the CMM]. However, the last clause of paragraph 7 in CMM 2008–01 explicitly prohibits such expansions for bilateral agreements. NMFS argues that the SPTT is not a bilateral agreement, but in reality, the SPTT is a similar arrangement with the primary objective of the U.S. purse seine fleet gaining access to the exclusive economic zones of Pacific Island countries in lieu of a substantial amount of taxpayer money. NMFS argues that the SPTT grandfathers the existing permits when calculating effort limits, so NMFS should apply the same logic to catch limits for the Hawaii-based longline fleet, where participation has been capped at 164 permits since 1991. Using that methodology, the 4,181 mt of bigeye tuna caught by the 125 Hawaii-based longline vessels active in 2004 would be expanded to represent the 5,486 mt catch that would have been caught if all 164 authorized vessels under the Hawaii longline limited access permit program were active. That baseline of 5,486 mt would then be reduced by the 10 percent required in paragraph 35 of CMM 2008–01 to yield a 2009–2011 annual catch limit of 4,936

mt. NMFS should either use this expansion methodology for the U.S. longline fishery or explain its deliberately lopsided allocation of fishery resources among domestic fisheries.

There is further disparity in the way NMFS has applied CMM 2008–01 to the purse seine fishery versus the longline fishery by failing to include an alternative for the latter that would utilize a three-year rolling management period, as proposed for purse seine vessels.

Response: NMFS believes that its implementation of the purse seine fishery-related provisions of CMM 2008–01 (in the final rule published August 4, 2009; 74 FR 38544; hereafter, ''WCPFC Purse Seine Rule'') is balanced relative to its implementation of the longline fishery-related aspects of the CMM (in this final rule). The purse seine fishing effort limits established in the WCPFC Purse Seine Rule are fully consistent with CMM 2008–01, which includes a provision (paragraph 7) that states that the determination of levels of fishing effort for the purpose of implementing the CMM shall include, as applicable, fishing rights organized under existing regional arrangements. As explained more fully in the response to comment 7 in the preamble to the WCPFC Purse Seine Rule, the South Pacific Tuna Treaty, the parties to which include the United States and sixteen other States, is one such regional arrangement, and accordingly, the number of U.S. purse seine vessels authorized under that treaty was appropriately used by NMFS as part of the basis for the fishing effort limits established in the WCPFC Purse Seine Rule. In contrast with the purse seine fishery-related provisions of CMM 2008–01, its longline fishery-related provisions, which establish limits on catches, not fishing effort, do not provide for the determination of the required catch limits to include fishing rights organized under existing regional arrangements, or indeed, to include fishing authorizations available under domestic permit programs, as suggested by the commenter. NMFS believes that implementation of the longline bigeye tuna catch limits as suggested by the commenter would not be consistent with CMM 2008–01.

With respect to considering a three-year rolling management period for the purpose of the bigeye tuna catch limits, the purpose of this rule is to make effective a provision of CMM 2008–01 that requires immediate implementation. Although using a three-year rolling management period would be outside the limited scope of this rule, NMFS is not foreclosed from considering an alternative that includes a multi-year bigeye tuna catch limit as part of a future rulemaking.

Comment 11: The proposed rule reveals an almost willful lack of consideration of the wider perspective in terms of potential impacts of the bigeye tuna catch limit. By counting landings in Hawaii of all fish caught beyond the portion of the EEZ around Hawaii against the limit for U.S. fisheries, NMFS is precluding any realistic chartering arrangements with the U.S. territories and Hawaii longline vessels. There is no text in CMM 2008–01 that requires implementation as in the proposed rule.

Response: As indicated in the response to comment 7, NMFS believes that the potential impacts of the proposed rule have been appropriately assessed, and further information and analyses are provided in the Supplemental EA, the FRFA, and a revision to the RIR.

As recognized in the preamble to the proposed rule, distinguishing the longline fisheries of the U.S. Participating Territories from other U.S. longline fisheries for the purpose of implementing CMM 2008–01 is challenging, but NMFS believes that the proposed rule both offers a reasonable way to resolve those challenges and is fully consistent with CMM 2008–01. Nonetheless, as described in the response to comment 9, the proposed rule has been modified in this final rule with regard to which longline fisheries bigeye tuna catches will be assigned.

NMFS acknowledges that this rule would indeed preclude bigeye tuna catches made in the portion of the EEZ surrounding the Hawaiian Archipelago from being assigned to the longline fishery of American Samoa, regardless of whether the vessel that caught the fish was based in American Samoa, registered for use under an American Samoa Longline Limited Access Permit, or involved in a chartering arrangement with American Samoa. Since under the Pelagics FMP, only vessels issued Hawaii Longline Limited Access Permits may harvest fish within the portion of the EEZ surrounding Hawaii, NMFS believes that the Participating Territories have little or no nexus to those fish for purposes of implementing the limit under WCPFC. NMFS believes that the requirements set forth in this rule are necessary and appropriate to implement the catch limit established by the WCPFC, consistent with the objectives of CMM 2008–01, while preserving opportunities for responsible fisheries development by the U.S. Participating Territories. For the reasons given in the response to comment 8, NMFS believes this is appropriate.

Comment 12: The proposed regulations are defective in that instead of harmonizing bigeye tuna conservation and the promotion of fisheries of Participating Territories, as is clearly the intent of CMM 2008–01, NMFS seeks to broadly enforce the ten percent reduction in U.S. Pacific longline bigeye tuna catch while establishing insurmountable regulatory barriers to the ability of American Samoa, Guam, and the CNMI to: (1) use their separate 2,000 mt bigeye tuna catch limits; (2) responsibly develop their fisheries subject to no catch limit; and (3) engage vessels by charter, lease, or other similar mechanisms to operate as an integral part of their domestic fleet. Because the proposed regulations are a direct attempt to enforce selected provisions of CMM 2008–01, while rendering useless other applicable provisions of CMM 2008–01, the proposed regulations violate the WCPFC Implementation Act NMFS is not authorized to adopt implementing regulations that circumvent the express provisions of the WCPFC Implementation Act; nor may NMFS pick and choose among those provisions of CMM 2008–01 it likes and dislikes so as to implement one of WCPFC's laudable purposes (bigeye tuna conservation) while entirely frustrating another clear, important, and laudable purpose (development of bigeye tuna fisheries of Participating Territories through separate or no catch limits).

Response: The objectives of CMM 2008–01, as stated in paragraph 1, include maintaining bigeye tuna and yellowfin tuna stocks at levels capable of producing their maximum sustainable yield, and achieving specific fishing mortality rates for those stocks. The CMM does include provisions specific to small island developing State Members and Participating Territories, but those provisions are simply intended to take into account, in accordance with the Convention, the special requirements of small island developing State Members and Participating Territories, in keeping with the objectives of the CMM, as set forth in paragraph 1.

NMFS is not choosing to implement only select provisions of CMM 2008–01 (but note that the purse seine-related provisions of the CMM have been implemented in a separate rule). NMFS recognizes that CMM 2008–01 contains provisions specifically applicable to the fisheries of Participating Territories, including separate bigeye tuna catch limits in longline fisheries (or no limits at all if the Participating Territory's

domestic fisheries are being developed responsibly). NMFS has determined that no regulatory action is needed at this time to implement those provisions, so this rule is limited in scope to the U.S. longline fisheries that are not fisheries of American Samoa, Guam, or the CNMI.

NMFS does not agree that the proposed rule (or this final rule) would prevent any of the three U.S. Participating Territories from utilizing the bigeye tuna catches available to their longline fisheries or from developing those fisheries responsibly. Nothing in this rule prohibits U.S. Participating Territories from entering into charter arrangements with other vessels, provided that they operate consistently with applicable laws and regulations, including those implementing the Pelagics FMP. The proposed rule (and this final rule), would include criteria that would serve to clearly differentiate the longline fisheries of the U.S. Participating Territories from other U.S. longline fisheries for the purpose of reporting bigeye tuna catches to the WCPFC. As indicated in the response to comment 8, NMFS recognizes that the criteria used to differentiate the fisheries would preclude bigeye tuna catches made in the portion of the EEZ surrounding the Hawaiian Archipelago from being assigned to the longline fisheries of the U.S. Participating Territories, regardless of whether the vessel that caught the fish was based in one of the U.S. Participating Territories, registered for use under an American Samoa Longline Limited Access Permit, or involved in a chartering arrangement with one of the U.S. Participating Territories. However, NMFS believes that differentiating the longline fisheries in this way is necessary to satisfy the provisions of CMM 2008–01 that are being implemented in this rule.

Comment 13: Discussions have taken place between the Hawaii Longline Association (HLA) and NMFS and the U.S. Department of State regarding American Samoa's intent to enter into a charter agreement to engage longline vessels [that do not necessarily have American Samoa Longline Limited Access Permits and that would not necessarily land their catch in American Samoa] to fish for bigeye tuna as an integral part of American Samoa's domestic fleet. [A copy of this charter agreement, signed by both parties, was submitted to NMFS with this comment.] In these discussions, NMFS has insisted that existing provisions of the MSA and its implementing regulations conflict with and prevent U.S. Participating Territories from exercising their rights under CMM 2008–01 to either fish under the separate catch limit (or no catch limit) allocated to them by the WCPFC, and to enter into domestic charter agreements under the express provisions of paragraph 2 of CMM 2008–01. However, NMFS has yet to identify any specific provisions of the MSA or its implementing regulations that establish a conflict.

Response: NMFS does not believe that the MSA or its implementing regulations prevent the longline fisheries of the U.S. Participating Territories from catching bigeye tuna within the constraints imposed by CMM 2008–01 or from entering into domestic charter arrangements with U.S. vessels. NMFS, however, acknowledges that the rule would not permit catch to be assigned to the U.S. Participating Territories for WCPFC reporting purposes unless the catch satisfies the nexus requirements established in the rule. As explained above, paragraph 2 of CMM 2008–01 does not mandate the implementation of charters, but merely instructs WCPFC members to attribute the catches of vessels operating under charters to the host State if the vessel is operated as an integral part of its domestic fleet, and to the flag State if it is not. In addition, all U.S. longline fisheries on the high seas and in the EEZ are federally managed, and are subject to regulations implementing the Pelagics FMP. The provisions concerning annual catch limits for U.S. Participating Territories under CMM 2008–01 are not effective until implemented by appropriate regulations, such as regulations under the WCPFC Implementation Act or regulations under the MSA to implement FMP amendments. Until such time, the U.S. Participating Territories do not have an interest in federally managed fish stocks caught on the high seas or in the EEZ that may be assigned by charter agreement or other arrangement. As stated above, the WPFMC is currently evaluating a proposal to establish a charter scheme as an amendment to the FMP for the purpose of aiding Participating Territories in the responsible development of their fisheries.

In establishing a catch limit for the other U.S. longline fisheries, the final rule, by necessity, establishes clear criteria to distinguish those fisheries from the longline fisheries of the U.S. Participating Territories. NMFS recognizes that those distinctions will effectively limit what can be considered the longline fisheries of the U.S. Participating Territories for the purpose of CMM 2008–01. Yet meaningful limits are clearly needed to ensure that the important conservation objectives of CMM 2008–01 are achieved. For example, a bigeye tuna that is caught on the high seas by a vessel without an American Samoa Longline Limited Access Permit and landed in Hawaii would not be considered a bigeye tuna caught in the American Samoa longline fishery. This is because a vessel operated under such circumstances would have little or no connection to American Samoa, would not be subject to its laws and regulations, and the fish would not be subject to American Samoa's management authority.

Comment 14: It is express and clear that the WCPFC intended to establish separate and different bigeye tuna catch limits, if any, for American Samoa, Guam, and the CNMI. Accordingly, the ten percent reduction catch limit applicable to U.S. Pacific longline fisheries is not applicable to American Samoa, Guam, and the CNMI. Nothing under the MSA addresses how bigeye tuna fishing rights granted under international law to those territories may or must be implemented, or by whom. Additionally, the WCPFC intended to promote longline bigeye tuna fisheries development in Participating Territories, including through the use of charters, leases, and other similar mechanisms. Accordingly, the goal of reducing bigeye tuna catch [sic] is not applicable to Participating Territories, and instead, the WCPFC has established through CMM 2008–01 that bigeye tuna fisheries development is the higher priority and guiding principle for Participating Territories.

Response: NMFS agrees that in its adoption of CMM 2008–01, the WCPFC intended to establish separate and different bigeye tuna catch limits for each Participating Territory, and that the ten percent reduction in longline catches of bigeye tuna applicable to the other U.S. longline fisheries is not applicable to the longline fisheries of American Samoa, Guam, or the CNMI. Indeed, the proposed rule (and this final rule) would not establish any catch limits for the longline fisheries of the three U.S. Participating Territories.

With respect to the intent of the WCPFC as expressed in CMM 2008–01, NMFS does not agree that development of the bigeye tuna fisheries of Participating Territories is an objective of CMM 2008–01, or that the WCPFC intended that such development be accomplished through the use of charter, leases, or other similar mechanisms. As indicated in the response to comment 12, the objectives of CMM 2008–01 are explicit in paragraph 1 of the CMM and are limited to maintaining bigeye tuna and yellowfin tuna stocks at specified levels

and achieving specific fishing mortality rates for those stocks. The provisions of CMM 2008–01 that relate to the use of charters, leases, and similar arrangements relate only to how the activities of vessels operating under such arrangements, such as their catch and fishing effort, are to be accounted for for example, whether their catches should be attributed to the flag State or the host State. The CMM does not in any way require the development or use of such arrangements. Although CMM 2008–01 includes provisions specific to the fisheries of Participating Territories, NMFS does not agree that those provisions establish bigeye tuna fisheries development in the Participating Territories as a priority or guiding principle.

Comment 15: The provisions of CMM 2008–01 are clear and the United States is obligated to either implement all of its provisions or the Secretary of State must take action under the WCPFC Implementation Act to disapprove CMM 2008–01. In the former case, there is nothing in existing U.S. law that impairs or impedes NMFS' ability to fully implement the CMM, and in doing so, to harmonize existing MSA provisions with new requirements necessitated by international convention. The proposed regulations, however, would not achieve such harmony, and instead would establish barriers specifically designed to block American Samoa, Guam, and the CNMI from fishing under their separate bigeye tuna catch limits, developing their bigeye tuna fisheries, and entering into domestic charter agreements to accomplish those purposes. [The commenter included with the comment a copy of a ''Domestic Charter Agreement'' between American Samoa and Hawaii Longline Association, signed by representatives of both parties.]

Response: See responses to comments 12 and 13.

Comment 16: Under the proposed rule, NMFS proposes to assign bigeye tuna catches based on the area of catch and the area of landing, regardless of the authority under which the vessel was fishing, a proposal that NMFS asserts ''closely aligns'' with past practice. This proposal, which is specifically designed to block American Samoa, Guam, and the CNMI from exercising their international fishing rights under CMM 2008–01, is contrary to CMM 2008–01, based on factual inaccuracies, and illogical. Specifically, nothing about ''past practice'' under unrelated provisions of the MSA informs implementation of rights provided for in CMM 2008–01. Nothing remotely suggests that past practices of the United States were the premise for any provision of CMM 2008–01, nor does the plain language of CMM 2008–01 suggest that the specially negotiated and recognized rights of Participating Territories should be constrained by the location of catch or the landing location of the domestic fleet CMM 2008–01 grants each Participating Territory, at a minimum, the right for its longline fisheries to catch up to 2,000 mt of bigeye tuna within the Convention Area without regard to landing location. Even if past practice were relevant to implementation of CMM 2008–01, which it is not, there is no practice of or logic to attributing catch based on landing location, and there is extensive precedent for ignoring catch location as a determining factor in allocation of catch limits. For example, landings in California by vessels with Hawaii Longline Limited Access Permits have been attributed to the Hawaii fisheries and not to California fisheries, and landings in Cook Islands by vessels with American Samoa Longline Limited Access Permits have been attributed to American Samoa fisheries. Furthermore, if existing MSA regulations are determinative in interpreting unrelated international law, which they are not, what matters is flag or permit under which the vessel was fishing, not just the area of catch or the area of landing.

Response: NMFS believes that past practices of NMFS or the United States are relevant in the implementation of CMM 2008–01 and that they were the premise for certain provisions of CMM 2008–01. The longline bigeye tuna catch limits mandated under CMM 2008–01 refer to specific baseline catches, from which catches in 2009–2012 are to be reduced by specified amounts. In the case of the longline fisheries of the United States, the baseline is the catch in 2004, as specified in Attachment F to the CMM. Attachment F indicates that the baseline catch for the United States is 4,181 mt. Attachment F also indicates that the baseline catch for American Samoa is 185 mt (Attachment F does not include baseline catches for the longline fisheries of Guam or the CNMI because no bigeye tuna catches in those fisheries in the relevant years had been reported to the WCPFC by the United States). These baseline catch levels specified in Attachment F of CMM 2008–01 are as reported by the United States to the WCPFC and were dependent on NMFS' past practice in assigning catches. As indicated in the preamble to the proposed rule, that practice has been to assign catches according to where the fish are landed.

As to whether the expectations of Participating Territories should be constrained under CMM 2008–01 by the location of catch or the landing location of the domestic fleet, NMFS believes that the issue in question is how the longline fisheries of the U.S. Participating Territories are distinguished from the other longline fisheries of the United States. CMM 2008–01 does not speak to this question. As explained in the preamble to the proposed rule, NMFS proposed to distinguish them based on where the fish are landed, as in NMFS' past practice in reporting longline bigeye tuna catches to the WCPFC, with some modifications. Those modifications were intended to ensure that the rule does not lead to shifts in fishing patterns and practices that would undermine the objectives of CMM 2008–01. With regard to attributing to Hawaii landings made in California by the Hawaii-based longline fleet, NMFS may indeed have counted catches as asserted by the commenter in certain contexts, and may continue to do so. However, in the context of reporting longline bigeye tuna catches of U.S. fishing vessels to the WCPFC, NMFS has only reported longline bigeye tuna catches for the United States as a whole and for each of the Participating Territories it has not attributed catches to specific states within the United States (other than the U.S. Participating Territories), and there is no reason to do so since the WCPFC's conservation and management measures apply to the United States as a whole. In the case of a U.S. vessel landing its catch in a foreign nation, NMFS may or may not assign the catch to the fisheries of the United States (or of a U.S. Participating Territory), depending foremost on the context (e.g., reporting to the WCPFC versus other purposes), and then on such factors as the location of the catch and the status of the vessel with respect to the foreign nation. In short, NMFS assigns catch in context. The attribution scheme established in this rule is solely for the purpose of assigning catches in the context of the WCPFC and particularly for the implementation of the relevant provisions of CMM 2008–01.

With respect to the importance of the type of permit under which a vessel is fishing, NMFS agrees that in the case of an American Samoa Longline Limited Access Permit, it is relevant in the context of WCPFC-mandated catch limits, because the issuance of a permit establishes a connection between the vessel and the longline fishery of American Samoa. That is, only persons with a documented history of fishing for pelagic species with longline gear in the portion of the EEZ around American

Samoa are eligible for American Samoa Longline Limited Access Permits. This documented history establishes a sufficient nexus to American Samoa for purposes of catch attribution. Accordingly, as indicated in the response to comment 8, NMFS has modified the catch attribution scheme in this final rule such that any bigeye tuna captured by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit would be assigned to the longline fishery of American Samoa regardless of where the fish are landed, provided that: (1) the fish are not caught in the portion of the EEZ surrounding the Hawaiian Archipelago, and (2) they are landed by a U.S. vessel operated in compliance with one of the permits issued under 50 CFR 660.707 or 665.21.

Comment 17: The reason for the proposed prohibition of transshipments of bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21 is understood. The Hawaii Longline Association trusts that the United States will ensure that all WCPFC members are equally attentive to controls to prevent transshipments that allow disguising of the flag of the vessel that caught the fish and thereby circumvent the limits of CMM 2008–01. However, there is no reason to control the areas being fished when the bigeye tuna limit is reached. Also, it is not clear that prohibiting fishing in both the Convention Area and the EPO [during the same trip] or that requiring stowing of gear in the Convention Area during a trip in which fishing was done in the EPO enhances the monitoring and enforcement of the WCPFC catch limit. NMFS must more clearly explain what is gained by these proposed measures or eliminate these unnecessary provisions.

Response: As a part of U.S. delegations to meetings of the WCPFC, NMFS will work to ensure that all WCPFC members are implementing the provisions of CMM 2008–01 as required.

On controlling the areas being fished after the limit is reached, under the proposed rule (and this final rule), it would be prohibited to retain, transship, or land bigeye tuna caught by longline gear in the portion of the EEZ surrounding the Hawaiian Archipelago, even by a vessel with an American Samoa Longline Limited Access Permit. This is one part of the criteria to distinguish the longline fishery of American Samoa from the other longline fisheries of the United States. The rationale for this criterion is that fishing in the portion of the EEZ surrounding the Hawaii Archipelago for which a Hawaii Longline Limited Access Permit is required creates too attenuated a nexus with the longline fishery of American Samoa to be considered part of that fishery.

Once the limit is reached, the provisions to: (1) prohibit fishing in the Convention Area and the EPO during the same trip, and (2) require that fishing gear be stowed while the vessel is in the Convention Area during a trip in which fishing takes place in the EPO, help provide effective mechanisms to enforce this rule. Both would substantially improve the likelihood of compliance with, and the ability to enforce, the more fundamental requirements of the rule. Specifically, both prohibitions are designed to ensure that vessels that are fishing in the EPO do not make any longline sets in the Convention Area and retain bigeye tuna from those sets after the limit established by this rule is reached. However, NMFS acknowledges that these two prohibitions should not apply to two categories of longline vessels, specifically: (1) vessels on declared shallow-setting trips pursuant to pursuant to 50 CFR 665.23(a), since they do not target bigeye tuna and they are subject to 100 percent observer coverage; and (2) vessels operating for the purposes of this rule as part of the longline fisheries of the U.S. Participating Territories, since they are not subject to the fishing restrictions established by this rulemaking once the annual limit is reached. Accordingly, the proposed rule has been slightly modified in this final rule such that the two prohibitions do not apply to these categories of vessels.

Comment 18: The proposed regulations would do far more harm than good by: (1) contravening the intent of the WCPFC, (2) impeding desperately needed economic opportunities in American Samoa, Guam, and the CNMI, (3) seriously damaging the domestic Pacific longline bigeye tuna fishery to the benefit of foreign fisheries without a detectable conservation benefit, (4) seriously impeding the adoption of regulations currently being worked on by the WPFMC that would fully and fairly implement all the provisions of CMM 2008–01, and (5) causing serious conservation harm to other protected species through transferred effects. We recommend that NMFS withdraw the proposed regulations and defer adoption of regulations implementing CMM 2008–01 until the WPFMC has analyzed alternatives and developed implementing fishery management plan amendments pursuant to the MSA.

Response: With regard to the benefits and costs of the proposed rule and to the second, third, and fifth points, NMFS' findings on the benefits, costs, and impacts of the proposed rule and this final rule can be found in the EA and the Supplemental EA, the IRFA and FRFA, and the RIR. NMFS has selected the alternative that NMFS believes appropriately balances benefits and adverse impacts while satisfying the obligations of the United States to implement the relevant longline bigeye tuna catch limits established by the WCPFC in CMM 2008–01.

With regard to the first point the proposed rule contravening the intent of the WCPFC, see the response to comment 12.

NMFS does not agree that adoption of the proposed regulations would impede the adoption of regulations being worked on by the WPFMC the fourth point raised in the comment. This rule will not in any way impede or prevent the WPFMC from evaluating or recommending additional management measures under the MSA process. NMFS believes that this final rule is needed to provide for the timely implementation of the annual catch limit for bigeye tuna established by the WCPFC for longline fisheries, which is effective starting in 2009. NMFS will continue to work with the WPFMC to the extent that it develops and recommends other measures related to implementation of CMM 2008–01.

Comment 19: The EA should consider a bigeye tuna catch limit for the swordfish sector of the longline fishery, which averages about 17 bigeye tuna incidentally caught per set [the commenter subsequently clarified this to mean 17 bigeye tuna per trip], which are brought to shore and sold. Such a catch limit would reduce bycatch, avoid waste, and promote optimum yields.

Response: The bigeye tuna catch limit established by the WCPFC and implemented through this rule applies to bigeye tuna captured by all fishing activities of the Hawaii and west coast-based longline fleets. Bigeye tuna caught and retained in both the shallow-set (swordfish-directed) and deep-set sectors would be counted against the limit, and the activities of both sectors would be similarly restricted after the limit is reached.

NMFS received several comments that questioned the adequacy of the analysis in the draft EA. NMFS prepared a Supplemental EA that contains detailed responses to these comments.

Changes from the Proposed Rule

As explained in the responses to comments 9 and 16, above, and after

giving full consideration to public comments received on the proposed rule, NMFS has decided to make a minor change from the proposed rule such that bigeye tuna caught by longline gear in the Convention Area by fishing vessels with American Samoa Longline Limited Access Permits would not be counted against the bigeye tuna catch limit established in this rule, provided that: (1) the fish are not caught in the portion of the EEZ surrounding the Hawaiian Archipelago, and (2) they are landed by a U.S. vessel operated in compliance with one of the permits issued under 50 CFR 660.707 or 665.21. Accordingly, § 300.224, ''Longline fishing restrictions,'' is revised to include paragraphs (c) and (e)(iii) that were not included in the proposed rule, and other paragraphs have been renumbered accordingly.

In § 300.224, ''Longline fishing restrictions,'' paragraphs (e)(3) and (e)(4) are revised to clarify that the two prohibitions intended to help ensure compliance with the main restrictions triggered by the bigeye tuna catch limit being reached no fishing with longline gear both inside and outside the Convention Area during the same fishing trip and the gear stowage requirements for vessels that fish outside the Convention Area and then enter the Convention Area do not apply to: (1) vessels on declared shallow-setting trips pursuant to 50 CFR 665.23(a), since they do not target bigeye tuna and they are subject to 100 percent observer coverage; and (2) vessels operating for the purposes of this rule as part of the longline fisheries of the U.S. Participating Territories, since they are not subject to the main fishing restrictions that would be triggered by the limit being reached, including vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the provisos necessary for them to be considered part of the longline fisheries of the U.S. Participating Territories. Furthermore, with respect to vessels on declared shallow-setting trips, the requirement that the number of bigeye tuna retained on board, transshipped, or landed not exceed the number on board upon the effective date of the prohibitions, as recorded by the NMFS observer, is no longer deemed necessary and has been removed from paragraph (e)(1)(i) of § 300.224.

In § 300.211, ''Definitions,'' the definition of ''fishing trip'' has been omitted because since publication of the proposed rule, a definition for ''fishing trip'' has been established in a separate rulemaking (final rule published August 4, 2009; 74 FR 38544). Although the established definition is not identical to the one included in the proposed rule, it is functionally the same, so there is no need to revise the definition in this final rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication of this final rule. Compliance with the 30–delay requirement would be impracticable and contrary to the public interest, since NMFS would be unable to ensure that the bigeye tuna catch limit mandated by the WCPFC for 2009 is not exceeded, and would consequently be frustrated in promulgating the regulations needed to satisfy the international obligations of the United States under the Convention.

National Environmental Policy Act

Pursuant to the requirement of the National Environmental Policy Act (NEPA), NMFS prepared an EA that analyzed the effects of the proposed rule on the human environment. In the EA, NMFS analyzed the potential environmental effects of the proposed rule, as well as three alternatives to the proposed rule, including the no-action, or baseline, alternative. NMFS issued the EA in draft form for public review and comment in conjunction with the proposed rule. Comments on the draft EA stated that the EA contained insufficient information and inadequate analysis to assess the potential environmental impacts of the proposed rule and suggested that an Environmental Impact Statement (EIS) should be prepared.

The EA also contained analysis of another action a rule implementing provisions of CMM 2008–01 for the U.S. purse seine fishery operating in the WCPFC's area of competence and a final version of the EA (July 2009 version) was issued in conjunction with the final rule for that other action on August 4, 2009. In order to provide detailed responses to the comments regarding the EA's analysis of the proposed rule for the bigeye tuna catch limit, NMFS prepared a Supplemental EA. The Supplemental EA also includes analysis of another action alternative, which is the alternative implemented in this final rule. Overall, the expected impacts on bigeye tuna and other living marine resources from the alternative implemented in this final rule are expected to be minor and generally beneficial, because it would implement a catch limit where one does not currently exist. The alternative implemented in this final rule is similar to the proposed rule in that it would prohibit the retention, landing, and transshipment of bigeye tuna by U.S. longline vessels in the Convention Area once the catch limit is reached. However, under this alternative, bigeye tuna caught by vessels registered for use under an American Samoa Longline Limited Access Permit would be considered to be fish caught as part of the American Samoa longline fishery regardless of where the fish are landed, and thus, would not be subject to the catch limit established by the rule, so long as they are caught outside the portion of the EEZ surrounding the Hawaiian Archipelago and are landed by a vessel with a valid permit issued under 50 CFR 660.707 or 50 CFR 665.21.

The alternative implemented in this final rule is less restrictive on fishermen than the proposed rule or other action alternatives analyzed in the EA. However, the impacts on the human environment from the final rule would be similar to the impacts from the proposed rule or other action alternatives. The overall impacts would be minor for the following reasons: the duration of the rule would be limited to three years, so unless similar or more restrictive actions are taken in the future, conditions would likely rebound to conditions similar to those under the no-action, or baseline, alternative; and the final rule would likely not cause substantial changes to the fishing practices and patterns of the affected fleets.

However, unlike the proposed rule, the catch of bigeye tuna outside the portion of the EEZ surrounding the Hawaiian Archipelago of vessels with both a Hawaii Longline Limited Access Permit and an American Samoa Longline Limited Access Permit would not be counted against the limit. Thus, vessels with an American Samoa Longline Limited Access Permit that currently fish inside the portion of the EEZ surrounding the Hawaiian Archipelago would likely shift some of their effort to outside the portion of the EEZ surrounding the Hawaiian Archipelago, where their catch would not be counted against the limit. Under the final rule, then, the catch limit would likely be reached later in the year, and the total catch of bigeye tuna

would be greater than under the proposed rule or the other action alternatives. Vessels with both a Hawaii Longline Limited Access Permit and an American Samoa Longline Limited Access Permit may also respond to this final rule by increasing their fishing effort to meet market demand for bigeye tuna landed in Hawaii after the catch limit is reached, when fewer vessels may be landing bigeye tuna in Hawaii, again, leading to greater bigeye tuna catches than under the other action alternatives. So, the final rule would be more similar to the no-action alternative than would the proposed rule or any of the other action alternatives. However, since there would be some operational constraints imposed on the fishing activities of U.S. longline vessels once the catch limit is reached, the final rule would be expected to result in a total annual bigeye tuna catch that is less than the catch that would be expected under the no-action alternative. The final rule could provide a small, beneficial contribution to the cumulative environmental impacts experienced by the affected environment. Other future actions for the conservation and management of HMS could cause similar beneficial effects. Together with the effects of those actions, the cumulative impacts on the affected environment from the final rule could be greater than if the final rule were implemented in isolation. The overall cumulative, or additive, impacts on the affected environment from the final rule, other present actions, and all reasonably foreseeable future actions would likely be beneficial. However, some other reasonably foreseeable future actions actions that are not a result of this final rule could cause some adverse effects that would counteract these beneficial impacts. These reasonably foreseeable future actions could involve changes in ocean conditions and potential changes to current fishing operations caused by the activities of fishermen.

Based on the analysis in the EA and Supplemental EA, NMFS concluded that there will be no significant impact on the human environment as a result of this rule and an EIS need not be prepared. The economic impacts of the rule are addressed in the EA only insofar as they are related to impacts to the biophysical environment. They are addressed more fully in the RIR, IRFA, and FRFA. Copies of the EA and Supplemental EA are available from NMFS (see **ADDRESSES**).

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

NMFS prepared this final regulatory flexibility analysis (FRFA) for the rule, Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011. The FRFA incorporates the IRFA prepared for the proposed rule (74 FR 32521; July 8, 2009; available from NMFS see ADDRESSES). The analysis provided in the IRFA is not repeated here in its entirety.

The need for, reasons why action by the agency is being considered, and the objectives of the action are explained in the preambles to the proposed rule and final rule and are not repeated here. There are no disproportionate economic impacts between small and large vessels resulting from this rule. Furthermore, there are no disproportionate economic impacts from this rule based on vessel size, gear, or homeport. There are no new recordkeeping or reporting requirements associated with this rule. Other compliance requirements are described in the IRFA. This rule is issued under authority of the WCPFC Implementation Act.

Description of Small Entities to Which the Rule Will Apply

The rule will apply to owners and operators of U.S. vessels used for fishing using longline gear in the Convention Area, except those that are part of the longline fleets of American Samoa, Guam, and the CNMI. The total number of affected vessels is approximated by the number of vessels with Hawaii Longline Limited Access Permits (issued under 50 CFR 665.21). There are 164 such permits available. During the period 2006–2008 the number of vessels permitted ranged from 121 to 140. The number of vessels actually permitted as of October 2009 was 131. Owners and operators of U.S. longline vessels based on the U.S. west coast would also be affected by this proposed rule, but based on the inactivity of that fleet in the Convention Area since 2005, it is expected that very few, if any, such vessels would be affected. The Hawaii longline fleet targets bigeye tuna using deep sets, and during certain parts of the year, portions of the fleet target swordfish using shallow sets. In each of the years 2005 through 2008, the estimated numbers of Hawaii longline vessels that fished were 124, 127, 129, and 128, respectively. Of those vessels, the numbers that engaged in deep-setting were 124, 127, 129, and 127, and the numbers that engaged in shallow-setting were 31, 35, 27, and 24, respectively. The numbers that did both were 31, 35, 27, and 23, respectively. Most of the fleet's fishing effort has traditionally been in the Convention Area, but fishing has also taken place to the east of the Convention Area. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2007 were about $60 million. Given the number of vessels active during that period (127, on average), this indicates an average of about $0.5 million in annual revenue per vessel. Therefore, NMFS has determined that all vessels in the fishery are small entities based on the Small Business Administration's definition of a small fish harvester (i.e., gross annual receipts of less than $4.0 million).

Statement of any Changes Made to the Proposed Rule as a Result of Public Comment

In response to public comment that fish catches should be assigned among fisheries based on which permit program the vessel was operating under rather than the landing location, NMFS has made a change from the proposed rule such that both landing location and permit type are taken into account when assigning catches. The change is described in more detail in the following section.

Steps Taken To Minimize the Significant Economic Impact on Small Entities

NMFS explored alternatives that would achieve the objective of this action (to satisfy the international obligations of the United States under WCPFC CMM 2008–01 with respect to U.S. longline vessels) while minimizing economic impacts on small entities. Upon publication of the proposed rule, three action alternatives had been identified and considered (in addition to the no-action alternative). One alternative would prohibit longline fishing in the Convention Area once the limit is reached, rather than just prohibiting the retention, landing, and transshipment of bigeye tuna caught by longline in the Convention Area. Another alternative would prohibit deep-set longline fishing once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna are retained, landed, or transshipped. The third alternative, which would be implemented under the proposed rule (hereafter, ''proposed rule alternative''), would allow both shallow-set and deep-

set longline fishing in the Convention Area to continue after the limit is reached, provided that no bigeye tuna are retained, landed, or transshipped. As described in the IRFA, among those three alternatives, the proposed rule alternative would result in the least adverse economic impacts on small entities, as it would leave open greater alternative fishing opportunities in the event the catch limit is reached. For that reason, the proposed rule alternative was preferred by NMFS over the other two action alternatives. Since publication of the proposed rule, and based in part on public comments received on the proposed rule, NMFS has identified an additional alternative, which is being implemented in this final rule. This new alternative (hereafter, ''final rule alternative'') is the same as the proposed rule alternative except in the way that the longline fisheries of the U.S. Participating Territories (the catches of which will not be subject to the limit) are distinguished from the other U.S. longline fisheries. Under the final rule alternative, bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits will be considered to be fish caught in the longline fishery of American Samoa, regardless of where the fish are landed (provided they are not caught in the portion of the EEZ surrounding the Hawaiian Archipelago and are landed by a vessel with a valid permit issued under 50 CFR 660.707 or 50 CFR 665.21). Such bigeye tuna catches will not be subject to the limit. Because of the way bigeye tuna catches will be assigned under the final rule alternative, the economic impacts on affected small entities are expected to be less adverse than under the proposed rule alternative or either of the other two action alternatives, as follows:

First, unlike under the proposed rule alternative or either of the other two action alternatives, bigeye tuna catches (outside the portion of the EEZ surrounding the Hawaiian Archipelago) of vessels with both a Hawaii Longline Limited Access Permit and an American Samoa Longline Limited Access Permit (''dual permit vessels'') that are landed somewhere other than in one of the U.S. Participating Territories (e.g., Hawaii) will generally not be subject to the limit. Therefore, the likelihood of the limit being reached in a given year is lower, and the likely date of the limit being reached in a given year is later than under the proposed rule alternative or either of the other two action alternatives. The economic impacts on all affected small entities will consequently be somewhat less adverse in comparison with those of the proposed rule alternative and the other two action alternatives (as described in the IRFA). The degree to which the impacts will be less adverse cannot be determined because of the difficulty in predicting the responses of fishermen to the requirements of the final rule.

Second, under the final rule alternative, businesses that operate dual permit vessels will be impacted substantially less than will other participants in the Hawaii longline fleet, by virtue of their history of participation in the American Samoa Longline Limited Access program. Once the limit is reached in a given year, operators of dual permit vessels would continue to be able to land in Hawaii bigeye tuna that are caught in the Convention Area, provided that they are not caught in the portion of the EEZ surrounding the Hawaiian Archipelago. Their inability to fish in the portion of the EEZ surrounding the Hawaiian Archipelago would constrain their operational flexibility and thus be costly, but those costs would likely be offset by benefits stemming from the fact that no other longline vessels would be able to catch bigeye tuna in the Convention Area that can be landed in Hawaii. Specifically, because the supply of bigeye tuna to the Hawaii market would be constrained after the limit is reached, the price of bigeye tuna would likely respond by increasing, and operators of dual permit vessels would benefit from such increases (as would businesses operating vessels without dual permits that land in Hawaii bigeye tuna caught outside the Convention Area). As of October 2009 there were 11 dual permit vessels. There have been 10–12 dual permit vessels in each of the three full years that the American Samoa Longline Limited Access program has been in place (2006–2008). Since the benefits of owning and operating a dual permit vessel will act as an incentive for fishing businesses to obtain both permits for their vessels, the number of dual permit vessels could increase as a result of the final rule. The maximum possible number of dual permit vessels is 60, which is the maximum number of American Samoa Longline Limited Access Permits that are available. Given the substantial cost of obtaining a Hawaii Longline Limited Access Permit (such permits are transferable on the open market and typically sell for tens of thousands of dollars) and the strict eligibility requirements for obtaining an American Samoa Longline Limited Access Permit (only persons with a documented history of fishing for pelagic species with longline gear in the portion of the EEZ around American Samoa are eligible for such permits), it is unlikely that the number of dual permit vessels will reach as high as 60 during the period of effectiveness of this final rule. In sum, the economic impacts of this final rule on business entities that own and operate dual permit vessels are expected to be much less adverse than the impacts of the proposed rule alternative or either of the other two action alternatives, and it is possible that they will be beneficial.

The three action alternatives other than the final rule alternative were rejected by NMFS because they would be expected to result in more severe adverse economic impacts on affected entities than would the final rule alternative.

The alternative of taking no action at all was rejected because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

The final rule alternative would accomplish the objective of the WCPFC Implementation Act and satisfy the international obligations of the United States with respect to implementing WCPFC CMM 2008–01 for U.S. longline vessels, and do so with minimal adverse economic impacts on small entities, and for these reasons was adopted in the final rule.

Comments and Responses

No public comments were received on the IRFA.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) has been prepared. The guide will be sent to all current holders of longline permits issued under 50 CFR 665.21. Copies of this final rule and the guide are available from NMFS (see **ADDRESSES**) and are available at: *http://www.fpir.noaa.gov/IFD/ifd__documents__data.html*.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 2, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.211, definitions of ''Hawaiian Archipelago'' and ''Longline gear'' are added, in alphabetical order, to read as follows:

§ 300.211 Definitions.

* * * * *

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached, where ''protected species zone'' is used as defined at § 665.12 of this title.

* * * * *

■ 3. In § 300.222, paragraphs (bb), (cc) and (dd) are added to read as follows:

§ 300.222 Prohibitions.

* * * * *

(bb) Use a fishing vessel to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.224(e)(1) or (e)(2).

(cc) Use a fishing vessel to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.224(e)(3).

(dd) Fail to stow longline gear as required in § 300.224(e)(4).

■ 4. A new § 300.224 is added to read as follows:

§ 300.224 Longline fishing restrictions.

(a) For each of the years 2009, 2010, and 2011, there is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during the calendar year.

(b) Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will not be counted against the limits established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(c) Bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.21(c) of this title will not be counted against the limits established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(d) NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section in each of the calendar years using data submitted in logbooks and other available information. After NMFS determines that the limit in any of the applicable years is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the **Federal Register** announcing that specific prohibitions will be in effect starting on that specific future date and ending at the end of the calendar year.

(e) Once an announcement is made pursuant to paragraph (d) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14–day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.21(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(3) A fishing vessel of the United States, other than a vessel meeting the requirements of paragraphs (e)(1)(ii) or (e)(1)(iii) of this section or a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (d) of this section, in which case the bigeye tuna on board the vessel may be retained on board, transshipped, and/or landed, to the extent authorized by

applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(4) If a fishing vessel of the United States, other than a vessel meeting the requirements of paragraphs (e)(1)(ii) or (e)(1)(iii) of this section or a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

[FR Doc. E9–29072 Filed 12–4–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0809251266–81485–02]

RIN 0648–XS93

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for 2009 Winter II Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the scup commercial coastwide fishery from Maine through North Carolina for the remainder of the Winter II Period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that this quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing scup in these states. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2009 Winter II quota period.

DATES: Effective 0001 hours December 9, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, (978) 281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.121 require the Regional Administrator to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Summer Period. Based upon recent projections, the Regional Administrator has determined that the Federal commercial quota of 1,349,751 lb (612 mt) for the 2009 Winter II Period will be fully harvested by or before December 31, 2009. To maintain the integrity of the 2009 Winter II Period quota by avoiding or minimizing quota overages, the commercial scup fishery will close for the remainder of the Winter II Period (through December 31, 2009) in Federal waters, effective as of the date specified above (see **DATES**).

Section 648.4(b) provides that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, Wednesday, December 9, 2009, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through December 31, 2009. Effective 0001 hours, Wednesday, December 9, 2009, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter II Period (through December 31, 2009). The 2010 Winter I Period for commercial scup harvest will open on January 1, 2010.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 1, 2009.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–29064 Filed 12–4–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

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

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Doc. No. AMS–FV–09–0071;FV–09–708]

Mango Promotion, Research and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service.

ACTION: Referendum Order.

SUMMARY: This notice directs that a referendum be conducted among eligible first handlers and importers of mangos to determine whether they favor continuance of the Mango Promotion, Research and Information Order (Order).

DATES: This referendum will be conducted by mail ballot from March 15, 2010, through March 26, 2010. First handlers receiving 500,000 or more pounds of mangos from producers in a calendar year and importers importing 500,000 or more pounds of mangos into the United States, during the two year representative period from January 1, 2008, to December 31, 2009, are eligible to vote. Ballots must be received by the close of business on March 26, 2010, to be counted.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RPB), Fruit and Vegetable Programs (FVP), AMS, USDA, Stop 0244, Room 0632–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, *telephone:* 888–720–9917 (toll free), *facsimile:* 202–205–2800, *e-mail: Kathie.Notoro@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by eligible first handlers and importers of mangos covered under the program. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the two year period from January 1, 2008, to December 31, 2009. First handlers receiving 500,000 or more pounds of mangos from producers in a calendar year and importers importing 500,000 or more pounds of mangos into the United States, during the two year representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from March 15, 2010, through March 26, 2010.

Section 518 of the Act authorizes continuance referenda. Under section 1206.71(b) of the Order, the Department of Agriculture (Department) shall conduct a referendum every five years or when 10 percent or more of the eligible voters petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the Order. The Department would continue the Order if continuance of the Order is approved by a majority of the first handlers and importers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately five first handlers and 100 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Kathie Notoro and Sonia Jimenez, RPB, FVP, AMS, USDA, Stop 0244, Room 0632–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures 7 CFR 1206.100 through 1206.108, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known first handlers receiving 500,000 or more pounds of mangos from producers in a calendar year and importers importing 500,000 or more pounds of mangos into the United States, during the two year representative period prior to the first day of the voting period. Persons who are first handlers and importers during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible first handler and importer who does not receive a ballot should contact the referendum agent no later than one week before the end of the voting period. Ballots must be received by the referendum agent by the March 26, 2010 deadline, in order to be counted.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, mango promotion, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

Dated: November 30, 2009.

Rayne Pegg,

Administrator.

[FR Doc. E9–28925 Filed 12–4–09; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–10; NRC–2000–0026]

State of Nevada; Denial of Portions of Petition for Rulemaking, Consideration of the Remaining Portions in the Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Closure of petition for rulemaking docket; Partial Denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying, in part, a petition for rulemaking (PRM 73–10) submitted by the State of Nevada on June 22, 1999. The NRC will consider the remainder of the petition in the rulemaking process. The petitioner requested that NRC amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The petitioner also requested that the NRC conduct a comprehensive assessment of the

consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure used during nuclear waste shipments, attacks involving capture of nuclear waste shipments and use of high energy explosives against a cask or casks, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons. This action closes the docket for PRM–73–10.

DATES: The docket for the petition for rulemaking PRM–73–10 is closed on December 7, 2009.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Public comments and supporting materials related to this petition for rulemaking can be found at the Federal rulemaking Web site *http://www.regulations.gov* by searching on Docket ID: NRC–2000–0026. Further NRC action on the remaining issues raised by this petition will be accessible at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0163. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report'' (NUREG–0936).

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6103, e-mail *Naiem.Tanious@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

The petition, dated June 22, 1999, was filed with NRC by the State of Nevada and assigned Docket No. PRM 73–10 on July 13, 1999. The NRC published a notice of receipt of a petition for rulemaking on September 13, 1999 (64 FR 49410). The petitioner (the State of Nevada) states that it is a corridor State for spent nuclear fuel (SNF) shipments, and has been a destination and origin State for SNF shipments to and from Federal research facilities. Nevada is also the potential host State for a Federal geologic repository and could become the ultimate destination for shipments of SNF and high-level radioactive waste.

The petitioner requests that NRC amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. Specifically, the petitioner requests seven amendments to 10 CFR Part 73:

(1) Clarification of the meaning of the term ''hand-carried equipment'' in 10 CFR 73.1(a)(1)(i)(D) to include: (a) One or more large military demolition devices, such as the U.S. Army M3A1 shaped charge weighing 40 pounds; (b) a significant quantity (limited only by the carrying capacity of the vehicle) of commercial explosives packaged in crates, boxes, suitcases, or other hand-carried containers; and (c) numerous man-portable antitank weapon systems such as the Carl Gustav M2 recoilless gun (weight 15 kg), the Milan antitank missile (weight 32 kg), and the infantry version of the TOW 2 antitank missile (weight 116 kg with tripod launcher);

(2) Clarify the definition of ''radiological sabotage'' in 10 CFR 73.2 to include actions against SNF shipments which are intended to cause a loss of shielding or a release of radioactive materials as well as those deliberate actions which cause, or are intended to cause economic damage or social disruption regardless of the extent to which public health and safety are actually endangered by exposure to radiation;

(3) Amend the advance route approval requirements in 10 CFR 73.37(b)(7) to specifically require shippers and carriers to identify primary and alternative routes which minimize highway and rail shipments through heavily populated areas, adopt the route selection criteria in NUREG–0561, and require shippers and carriers to minimize use of routes which fail to comply with the route selection criteria;

(4) Amend 10 CFR 73.37(c) to eliminate the differential armed escort requirements based on population for SNF shipments by road;

(5) Amend 10 CFR 73.37(d) to eliminate the differential armed escort requirements based on population for SNF shipments by rail;

(6) Amend 10 CFR 73.37(b) to make applicable to SNF shipments the 10 CFR 73.26(b)(1) planning and scheduling requirements for special nuclear material in transit; and

(7) Amend 10 CFR 73.37(d) to require that SNF rail shipments be made by dedicated trains.

In addition, the petitioner requests that NRC, in support of the aforementioned rulemaking, conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure used during nuclear waste shipments, attacks involving capture of nuclear waste shipments and use of high energy explosives against a cask or casks, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons.

The petitioner's rationale for requesting a rulemaking to better deter, prevent, and mitigate the consequences of any attempted radiological sabotage, as well as a comprehensive assessment of the consequences of terrorist attacks is based on the following:

(1) The petitioner asserts that the thousands of shipments to a geologic repository will create opportunity for terrorist attacks or sabotage of spent fuel shipments. The petitioner contends that opportunity is created because the spent fuel shipments will be over long distances, many in number, regular and predictable, and to a fixed destination.

(2) The petitioner asserts that the means for mounting an attack are available. The petitioner contends that several varieties of high energy explosives are currently available including the M3A1 shaped charge, commercial shaped charges, and thousands of antitank weapons that have been produced world-wide in the last several years including the Milan and TOW 2 antitank missiles.

(3) The petitioner asserts that the spent fuel shipments may be attractive targets. The petitioner contends that a national repository may have a greater symbolic value to terrorists as a target than current reactor storage facilities, and that ''enhanced symbolic value'' may extend to spent fuel shipments. The petitioner also contends that a single facility with a large stockpile of spent fuel might be a more tempting target. Further, the petitioner suggests that a facility operated by the

Department of Energy (DOE), the U.S. Government agency responsible for producing nuclear weapons, may have greater symbolic value to terrorists as a target than commercial storage facilities, and that ''enhanced symbolic value'' may extend to DOE's shipments of spent fuel.

(4) The petitioner asserts that after 1984 when NRC last evaluated the adequacy of spent fuel transportation safeguards, the nature of the terrorist threat has changed significantly. The petitioner contends that during the past 17 years major changes have occurred, including: an increase in the lethality of terrorist attacks in the United States; an increase in serious terrorist attacks against transportation systems; and renewed concern about nuclear terrorism generally, and terrorist actions involving potential radioactive contamination specifically.

(5) The petitioner asserts that shipping casks are vulnerable to terrorist attack using high-energy explosive devices. The petitioner contends that this vulnerability is caused by two developments: the capabilities and availability of explosive devices, especially antitank weapons, have increased significantly; and new shipping casks, developed to increase payloads without exceeding specified weight limits, appear to be more vulnerable to attack using commercial explosives or past, current, and future weapons systems. The petitioner perceives that after the early 1980s, portable antitank weapons have become more powerful, reliable, and available world-wide. The petitioner states that most of the antitank missiles, identified in its attachment, have warheads capable of completely perforating a truck cask and its spent fuel cargo, and deeply penetrating a rail cask and damaging its spent fuel cargo. The petitioner also states that spent fuel shipping casks are vulnerable to attack using military and commercial explosives, particularly a conical-shaped charge with an incendiary device. Lastly, the petitioner claims that shaped charges developed for use in oil and gas well perforating are particularly powerful, efficient, and stable.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. During the comment period, which closed on January 28, 2000,[1] the NRC received 24 comment letters: 15 from States and agencies or counties within States; 2 from Federal agencies; and 1 each from the Nuclear Energy Institute, Western Governors Association, Northeast High-Level Radioactive Waste Transportation Task Force, Association of American Railroads, Heartland Operation to Protect the Environment, an NRC licensee, and a private individual. Comment letter number 21 from the Agency for Nuclear Projects, State of Nevada provided additional information. The comments have been divided into three groups: (1) Those supporting assessment only, (2) those supporting both assessment and rulemaking, and (3) those opposing both assessment and rulemaking.

Nine commenters support assessment only. They agree with the petitioner that the estimated risks and potential consequences to the public from a terrorist attack of spent fuel in transit should be made current, and if indicated, the regulations should be revised accordingly.

The State of Louisiana urges NRC to review and strengthen, where necessary, the applicable procedures and safeguards to ensure the security and safety of both the spent nuclear fuel shipments and the citizens that would be affected by any act of terrorism, sabotage, or more importantly, an accident which would result in the release of radioactive materials. Also, the State of Louisiana notes that the technology for tracking sensitive freight shipments is available and should be a required safeguard. For example, Automatic Vehicle Location Technology allows near real-time tracking of vehicles.

The Department of Environmental Quality of the Commonwealth of Virginia indicates that it is reasonable for NRC to reevaluate its requirements for safeguarding spent fuel shipments against sabotage and terrorism.

The Department of Public Safety of the State of Oklahoma agrees that assessment of safeguards for the shipment of spent fuel and response to emergency situations during shipments should be current.

The Western Governors Association recommends that NRC: (1) Reevaluate the adequacy of current physical protection regulations for transporting spent fuel, (2) conduct a comprehensive consequence assessment of attacks that have the potential for radiological sabotage, (3) create a stakeholder advisory group to assist NRC in the comprehensive consequence assessment, and (4) publish a full report on all unclassified assessment findings.

The Nuclear Energy Institute concurs that NRC should complete a comprehensive assessment of credible threats of sabotage and terrorism on spent fuel in transit.

Six commenters support both assessment and rulemaking. They agree with the petitioner that the safeguards requirements for spent fuel in transit should be strengthened and that a proposed rulemaking effort should be supported by a comprehensive assessment of the potential consequences of sabotage or terrorist attack.

Nye County, Nevada asserts that there is a need for a comprehensive assessment of the consequences of terrorist attacks that covers the entire spectrum of nuclear waste and spent fuel shipments to a repository, and that the petition raises legitimate and substantial issues that should be fully explored in a proposed rulemaking.

Clark County, Nevada supports both assessment and rulemaking because it believes that NRC's standards for safety and security for spent fuel in transit are out of date.

Eureka County, Nevada asserts that the petition raises legitimate and substantial issues that should be fully explored in a notice and comment rulemaking.

The State of Utah agrees with the need to reevaluate requirements for safeguarding shipments of spent nuclear fuel due to the changing nature of threats involving terrorism and sabotage, wants any assessment to address the need for a more comprehensive and reliable system to track shipments, and recommends increased armed escort for shipments of spent nuclear fuel.

The State of Utah also asserts that the nature of the terrorist threat has significantly changed since NRC last assessed the adequacy of its spent fuel transportation safeguards regulations, and that the current regulations are predicated on outdated assessments.

Eight commenters oppose both assessment and rulemaking. They disagree with the petitioner that either an assessment or proposed rulemaking is necessary.

One licensee asserts that the existing safeguards regulations are adequate and no rulemaking change to Part 73 is necessary. Moreover, any assessment undertaken in response to the petition should consider the physical protection requirements for spent fuel shipments both in the context of all hazardous material shipments and in comparison to other targets for terrorist attack.

The Department of Emergency Services within the Commonwealth of Virginia acknowledges that terrorism poses one of the most challenging

[1] The NRC extended the comment period, which originally was to close on November 29, 1999, to January 28, 2000 (64 FR 59684, November 3, 1999).

threats to public safety today and agrees that the possibility of such an attack involving spent fuel warrants serious consideration. However, this Department believes that NRC, the DOE, the U.S. Federal Bureau of Investigation (FBI), and the national security agencies should consider the issue of terrorism involving nuclear shipments as part of the overall domestic preparedness mission. Moreover, this Department states that changes in the nation's security programs and domestic preparedness must be based on sound risk assessment and threat analysis. When such an analysis results in additional risk factors, only then should resources be committed to making necessary regulatory changes.

The Northeast High-Level Radioactive Waste Transportation Task Force, representing nine States, asserts that transportation casks are very robust and do not make an attractive target, the nature of a terrorist threat has not changed significantly, and additional rulemaking on safeguards for spent fuel transportation is not necessary because current safeguards provide adequate protection. The Task Force points out that there are a high number of shipments routinely occurring without difficulty, spent fuel shipments in NRC certified casks have an excellent safety record, and 2380 safe shipments have occurred during the past 35 years without radiological release, sabotage, or terrorism. Moreover, leaving the spent fuel in place has undesirable features with respect to protecting public health and safety since most reactor storage sites are located near rivers, lakes, or sea shores.

The Association of American Railroads disagrees with the petitioner's assertion that ''the NRC should specifically require shippers and carriers to identify primary and alternate routes that minimize highway and rail shipments through heavily populated areas.'' The Association points out that a premise of hazardous materials transportation is that transportation time should be minimized. Thus, routing to avoid heavily-populated areas would be counter productive by causing large increases in transportation time because routes around urban areas are almost always significantly more circuitous.

The DOE asserts that the petition does not offer compelling reasons for either a comprehensive assessment or rulemaking. DOE states that there is no evidence that either a reassessment or rulemaking would result in any measurable increase in public health or safety. DOE also states that their most recent sabotage analyses indicate that the current regulations adequately protect public health and safety and the environment. Moreover, the petition's reference to terrorist events throughout the world does not reflect the actual situation in the U.S. or mean that spent fuel shipments are actually terrorist targets. Recent studies by DOE show that the fundamental response of casks to offensive weapons has not dramatically changed. In addition, the estimated consequences of credible sabotage scenarios continue to be bounded by the consequences evaluated under severe accident conditions.

The Naval Nuclear Propulsion Program (NNPP), Department of the Navy, states that the petitioner has not provided sufficient justification for the requested actions. Since 1957, the NNPP has made 700 shipments of naval spent fuel by rail, all safely. There have not been any accidents, releases of radioactivity, or acts of terrorism or sabotage. Also, the NNPP disagrees that the nature of the terrorist threat has changed substantially from that which the existing regulations are designed to protect against. Moreover, simply listing U.S. terrorist attacks of the past two decades and speculating about increased concerns for terrorist attacks against spent fuel shipments does not support the position that regulatory changes are necessary. NNPP further states that if a terrorist group could obtain and use military weapons, they would be likely to select targets where they could cause large numbers of immediate fatalities. Furthermore, NNPP asserts that the petition provides neither new technical information nor other justification for the proposed regulatory changes.

The NRC reviewed and considered the comments in its decision to deny, in part, the petition for rulemaking and to consider the remainder of the petition in the rulemaking process. In reaching its decision, the NRC has also considered the intervening events since 1999, when the petition was filed and the comments were received, including the terrorist attacks of September 11, 2001, and since those attacks, the various security assessments that have been conducted and the various security measures that have been put in place. The NRC's analysis is set forth below.

Petition Resolution

The NRC is denying the following two specific requests from the petitioner: (1) The request for amending the design basis threat (DBT) for radiological sabotage to include a clarification in the meaning of the phrase ''hand-held equipment'' in 10 CFR 73.1(a)(i)(D) and to amend the DBT to include use of explosive devices and other weapons larger than those commonly considered to be hand-carried or hand-held, and the use of vehicles other than four wheel drive civilian land vehicles; and (2) the request that the NRC conduct comprehensive security assessment studies. The remaining petition requests are being considered in the NRC rulemaking process.

Petition Requests that are being denied:

1. Amending the DBT To Clarify the Meaning of Hand-Carried Equipment and To Include the Use of Explosive Devices, Other Weapons Larger Than Those Considered Hand-Carried, and Vehicles Other Than 4-Wheel Drive

The Petitioner requested that the NRC clarify the meaning of the phrase ''hand-carried equipment'' in 10 CFR 73.1(a)(i)(D) to include: (a) One or more large military demolition devices, such as the U.S. Army M3A1 shaped charge weighing 40 pounds; (b) a significant quantity (limited only by the carrying capacity of the vehicle) of commercial explosives packaged in crates, boxes, suitcases, or other hand-carried containers; and (c) man-portable antitank weapon systems such as the Carl Gustav M2 recoilless gun (weight 15 kg), the Milan antitank missile (weight 32 kg), and the infantry version of the TOW 2 antitank missile (weight 116 kg with tripod launcher).

The NRC is denying this request for rulemaking. On March 19, 2007, the Commission issued a final rule amending 10 CFR 73.1 (72 FR 12705), Design Basis Threat. This rule contained the Design Basis Threat with which affected licensees must comply. However, the Commission was careful to set forth rule text that did not compromise licensee security, but also balances the necessity to keep the public informed of the types of attacks against which nuclear power plants and Category I facilities are required to defend. Specific information on adversary capabilities (*e.g.,* specific weapons, ammunition type, etc) are contained in adversary characteristics documents which contain classified or Safeguards Information (SGI).

The technical bases for the adversary characteristic documents are derived largely from intelligence information. They contain classified or SGI information which cannot be publicly disclosed. These documents must be withheld from public disclosure and made available on a need-to-know basis to those who are cleared for access. Consequently, the petitioner's suggested changes to this regulation would be

inconsistent with the Commission's recent revision of § 73.1.

The Petitioner also requested that the NRC consider amending the DBT to include use of explosive devices and other weapons larger than those commonly considered to be hand-carried or hand-held, and the use of vehicles other than four wheel drive civilian land vehicles. Well-trained and dedicated adversaries could conceivably obtain and use military attack vehicles or military aircraft armed with bombs, missiles, or other powerful weapons.

The NRC is denying this request. The specific details of the adversary's capabilities are now contained in adversary characteristics documents which contain classified or SGI information. The adversary characteristics documents are derived largely from intelligence information. These documents must be withheld from public disclosure and made available on a need to know basis to those who are cleared for access. The petitioner's suggested changes to this regulation would not be consistent with the Commission's recent revision to § 73.1.

2. Comprehensive Assessment of the Consequences of Terrorist Attacks

The petitioner requested that the NRC conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage to include: Attacks against transportation infrastructure used by nuclear waste shipments, attacks involving capture of a nuclear waste shipment and use of high energy explosives against the cask, and direct attacks upon a nuclear waste shipping cask using antitank missiles.

The NRC is denying this request because it does not involve (*i.e.,* contain) a request to amend, create, or revise the NRC's existing regulations, as is required by the provisions of 10 CFR 2.802, ''Petition for Rulemaking.'' Instead of requesting changes to the NRC's regulations (as it has specified for other topics elsewhere in its petition) the Petitioner has requested the NRC complete a comprehensive assessment. A comprehensive assessment is not a change to the language of the NRC's regulations.

It is important to note however, that relevant studies (which accomplish the objectives of the Petitioner) were performed at the request of the Commission following the September 11, 2001, terrorist attacks. As a result of these studies, the staff has developed a security assessment decision-making framework to be used as a tool for NRC to determine the appropriate level of security measures and mitigating strategies required for a given threat scenario, including threat scenarios involving spent fuel storage casks and certified radioactive material transportation package designs.

Consideration in Rulemaking

The NRC will consider the issues raised in PRM–73–10 and the remainder of the petitioner's requests in a proposed SNF transportation security rulemaking, which is expected to be available for public comment in 2010. The NRC has determined that the underlying technical considerations regarding the physical security of SNF shipments are sufficiently related to this ongoing rulemaking activity; therefore, the issues raised in PRM–73–10, other than the requests that are being denied, are being considered in the rulemaking activity.

Specifically, the NRC is considering a proposed SNF transportation security rulemaking which will require that licensees plan and coordinate SNF shipments, including routes and safe havens, with the States through which the shipment will pass. The proposed rulemaking would also require including armed escorts along the entire length of the route, continuous and active monitoring of the SNF shipment, redundant communications capabilities among the transport, local law enforcement agencies and a licensee movement control center, and planning and development of normal and contingency procedures.

The NRC is continuing work to develop this proposed rulemaking. Although the NRC will consider the issues raised in the petition, other than the requests being denied, the petitioner's concerns may not be addressed exactly as the petitioner has requested. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before issuing a final rule. If the NRC does not issue a proposed rule, the NRC will issue a document in the **Federal Register** that addresses why the petitioner's requested rulemaking changes were not adopted by the NRC.

For the reasons provided above, the NRC is denying the petition, in part, and considering the remainder of the petitioner's requests in the NRC's ongoing rulemaking process. With this action the NRC closes the docket for PRM–73–10.

Dated at Rockville, Maryland, this 10th day of November, 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–29054 Filed 12–4–09; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2009–26]

Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules regarding participation by Federal candidates and officeholders at non-Federal fundraising events under the Federal Election Campaign Act of 1971, as amended. These proposed changes are in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Shays* v. *FEC.* The Commission has made no final decision on the issues presented in this rulemaking.

DATES: Comments must be received on or before Monday, February 8, 2010. Reply comments must be limited to the issues raised in the initial comments and must be received on or before Monday, February 22, 2010. The Commission will hold a hearing on these proposed rules on Wednesday, March 10, 2010 at 10 a.m. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and submitted in either electronic, facsimile or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments should be sent to *SolicitationShays3@fec.gov.* If the electronic comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with hard copy follow-up. Hard copy comments and hard copy follow-up of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the

commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC, 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Attorneys Mr. David C. Adkins or Mr. Neven F. Stipanovic, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 [1] (''BCRA'') contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (''the Act''). The Commission promulgated a number of rules to implement BCRA, including rules regarding Federal candidate and officeholder solicitations at State, district, and local party committee fundraising events at 11 CFR 300.64. The Court of Appeals for the District of Columbia Circuit found aspects of these rules invalid in *Shays* v. *FEC,* 528 F.3d 914 (DC Cir. 2008) (''*Shays III''*). The Commission seeks comment on proposed changes to the rules at 11 CFR 300.64 to implement the *Shays III* decision.

I. Background Information

A. BCRA

In 2002, Congress amended the Act by restricting the fundraising activity of Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, controlled by, or acting on behalf of, any such candidates or Federal officeholders. *See* BCRA at sec. 323(e); 2 U.S.C. 441i(e). For both Federal and non-Federal elections, these persons may not ''solicit, receive, direct, transfer or spend'' funds unless the funds comply with the amount limitations and source prohibitions of the Act.[2] *See* 2 U.S.C. 441i(e)(1)(A) and (e)(1)(B); 11 CFR 300.61 and 300.62. Furthermore, Congress prohibited State, district and local party committees from accepting or using as Levin funds those funds that have been solicited, received, directed, transferred, or spent by or in the name of Federal candidates and officeholders. Thus, Federal candidates and officeholders were effectively prohibiting from raising Levin funds.[3] *See* 2 U.S.C. 441i(b)(2)(C)(i); 11 CFR 300.31(e).

As one principal BCRA sponsor noted, ''The basic rule in the bill is that Federal candidates and officials cannot raise non-Federal (or soft) money donations—that is, funds that do not comply with Federal contribution limits and source prohibitions.'' 148 Cong. Rec. H407 (daily ed. Feb. 13 2002) (statement of Rep. Shays). As that ban related to party committees, another of BCRA's main sponsors noted: ''The rule here is simple: Federal candidates and officeholders cannot solicit soft money funds, funds that do not comply with Federal contribution limits and source prohibitions, for any party committee—national, State, or local.'' 148 Cong. Rec. S2139 (daily ed. Mar. 20, 2002) (statement of Sen. McCain).

Notwithstanding these restrictions, though, section 323(e)(3) of BCRA states explicitly that Federal candidates and officeholders are permitted to ''attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.'' *See* 2 U.S.C. 441i(e)(3).

B. 2002 Rulemaking

In 2002, the Commission commenced a rulemaking to establish rules governing Federal candidate and officeholder participation in State, district, and local party committee fundraising events. The Commission proposed alternative interpretations of 2 U.S.C. 441i(e)(3). One interpretation would have allowed Federal candidates and officeholders only to attend, speak, or be a featured guest at State, district, and local party committee fundraising events, but, consistent with the Act's prohibition on the solicitation of funds outside the limitation and prohibitions of the Act by Federal candidates and officeholders, would have prohibited those persons from soliciting, receiving, directing, transferring, or spending funds or participating in any other fundraising aspect of a State, district, or local party committee fundraising event. *See* Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35654, 35672, 35688 (May 20, 2002) (''2002 NPRM'').

An alternative interpretation proposed a ''total exemption from the general solicitation ban.'' 2002 NPRM at 35672–73; *see also* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. Under this interpretation, Federal candidates and officeholders would be permitted to ''speak freely at [party fundraising events] without restriction or regulation.'' 2002 NPRM at 35672–73.

The Commission separately explored how 2 U.S.C. 441i(e)(3)—specifically its reference to ''featured guests''—affected the role that Federal candidates and officeholders could play in publicizing State, district, and local party committee events. *See* 2002 NPRM at 35673. For example, the Commission sought comment on whether this provision of BCRA allowed Federal candidates and officeholders to be named in invitation materials and appear as members of a host committee. *Id.*

The Commission concluded that Section 441i(e)(3) was a total exemption from the general solicitation ban. Under the Commission's regulation, Federal candidates and officeholders were permitted to attend, speak, and appear as featured guests at State, district, and local party committee fundraising events ''without restriction or regulation.'' *See* Final Rules on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 49064, 49108 (July 29, 2002) (''2002 Final Rule''); 11 CFR 300.64(b). The Commission justified its interpretation by citing to statutory structure, legislative intent, general First Amendment concerns, and the special relationships that Federal candidates and officeholders share with State, district, and local party committees. *See* 2002 Final Rule at 49108.

The Commission did not, however, interpret 2 U.S.C. 441i(e)(3) to allow unrestricted participation in pre-event publicity by Federal candidates and officeholders. Indeed, the Commission concluded that Federal candidates and officeholders were ''prohibited from serving on 'host committees' for a party fundraising event or from personally signing a solicitation in connection with a State, local, or district party fundraising event on the basis that these pre-event activities are outside the permissible activities * * * flowing from a Federal candidate's or officeholder's appearance or attendance at the event.'' *See* 2002 Final Rule at 49108.

[1] Public Law 107–155, 116 Stat. 81 (2002).

[2] The amount limits on contributions depend on the type of contributor and the recipient. *See* 2 U.S.C. 441a(a)(1), (2), and (3). For example, individuals and non-multicandidate PACs may contribute up to $2,400 per election to a candidate, up to $5,000 per calendar year to a PAC, and up to $10,000 per year (combined) to State, district, and local party committees. A multicandidate PAC, by contrast, may give up to $5,000 per election to a candidate, up to $5,000 per calendar year to a PAC, and up to $5,000 (combined) to State, district, and local party committees. Sources prohibited under the Act include national banks, corporations, labor organizations, and foreign nationals. *See* 2 U.S.C. 441a, 441b, and 441e; *see also* 2 U.S.C. 441c (government contractors) and 441f (contributions made in the name of another).

[3] ''Levin funds'' are funds raised by State, district, or local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

C. Shays I

The Commission's 2002 regulation implementing 2 U.S.C. 441i(e)(3) was challenged in *Shays* v. *FEC.* 337 F. Supp. 2d 28 (D.D.C. 2004) (''*Shays I*''). The district court held that the meaning of 2 U.S.C. 441i(e)(3) was ambiguous and so the Commission's regulation was not necessarily contrary to congressional intent. *Shays I* at 90 (applying *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984)). And, while the court acknowledged that the regulation created ''the potential for abuse,'' it did not find that the regulation unduly compromised BCRA's purpose such that it was not entitled to deference from the court. *Id.* at 91. The court did, however, find that the Commission's explanation of the rule was inadequate and, therefore, in violation of the Administrative Procedure Act, 5 U.S.C. 553. *Id.* at 92–93. The Commission did not challenge this holding by the district court.

D. 2005 Rulemaking

Upon remand, the Commission commenced a rulemaking to implement the *Shays I* district court's opinion. *See* Revised Explanation and Justification for Final Rules on Candidate Solicitation at State, District and Local Party Fundraising Events, 70 FR 37649 (June 30, 2005) (''2005 Revised E&J''). This rulemaking provided additional explanation and justification of the 2002 Final Rule, but it did not change the text of that rule. The Commission, as it did in 2002, concluded that 2 U.S.C. 441i(e)(3) was a total exemption from the general solicitation ban. Thus, Federal candidates and officeholders were permitted, as before, to attend, speak, and appear as featured guests at State, district, and local party committee fundraising events ''without restriction or regulation.'' *See* 2005 Revised E&J at 37650–51.

E. Advisory Opinions

The Commission has previously been asked for advisory opinions regarding the participation of Federal candidates and officeholders in non-Federal fundraising events for State, district, and local party committees, as well as for non-Federal candidates, State political organizations, and other non-Federal entities.

In Advisory Opinions 2003–03 (Cantor) and 2003–36 (Republican Governor's Association), the Commission stated that a Federal candidate or officeholder may attend and speak at non-Federal fundraisers for non-Federal candidates and other non-Federal political organizations, even if non-Federal funds are being raised at the event. The Commission concluded that this type of participation would not violate BCRA's restrictions on soliciting funds outside the limits and prohibitions of the Act because attending such an event or giving a speech at such an event is not a solicitation under Commission regulations.

In those same advisory opinions, the Commission also determined that Federal candidates and officeholders may solicit funds at events at which non-Federal funds are being raised if their solicitations are limited to funds that comply with the amount limitations and source prohibitions of the Act. To ensure that these solicitations are properly limited, Federal candidates and officeholders have had to either (1) make a specific solicitation such as ''I am soliciting $500 from individuals only,'' or (2) condition a general solicitation with a disclaimer indicating that the solicitation is only for funds within the limitations and prohibitions of the Act. This disclaimer may be made orally by the Federal candidate or officeholder or, alternatively, in writing by posting at the event a clear and conspicuous notice limiting the solicitation.

The Commission also issued several advisory opinions addressing the role that Federal candidates and officeholders may play in publicizing non-Federal fundraising events for State, district, and local party committees and other non-Federal entities. *See* Advisory Opinions 2003–03 (Cantor), 2003–36 (Republican Governor's Association), and 2007–11 (California State Party Committees). The Commission reasoned that if pre-event publicity does not contain a solicitation, then it is not subject to BCRA's solicitation restrictions. *See id.* If the pre-event publicity does contain a solicitation, and the Federal candidate or officeholder consents to be featured or appear in the publicity, then the publicity must contain a clear and conspicuous disclaimer limiting the solicitation to funds compliant with the source prohibitions and amount limitations of the Act. *See id.* The Commission made clear, however, that Federal candidates and officeholders may not solicit funds in excess of the amount limitations and source prohibitions of the Act and then qualify that impermissible solicitation with a limiting disclaimer. *See* Advisory Opinion 2003–36 (Republican Governor's Association).

As of 2007, Commission regulations and advisory opinions created two sets of procedures governing activities by Federal candidates and officeholders at fundraising events at which funds outside the Act's limitations and prohibitions are raised. Commission regulations provided that Federal candidates and officeholders could attend fundraising events for State, district, and local party committee events, whether as a featured guest or not, and could speak at such events ''without restriction or regulation.'' As a result, Federal candidates and officeholders were permitted to solicit directly non-Federal funds at such events. Further, through its advisory opinions the Commission had clarified that Federal candidates and officeholders could also attend, speak, or be a featured guest at non-party fundraising events at which funds outside the Act's limitations and prohibitions are raised. Solicitations at these events, however, were subject to the Act's fundraising restrictions; Federal candidates and officeholders were required to issue disclaimers—oral or written—that any solicitation made by them was only for funds that complied with the limitations and restrictions of the Act.

The guidance relating to pre-event publicity for non-Federal fundraisers—both for State, district, and local party committees as well as other non-Federal fundraising events, did not evolve as clearly, however. The Commission was unable to resolve whether a Federal candidate or officeholder could be named as honorary chairperson or featured speaker in a solicitation for non-Federal funds that is not otherwise signed by the Federal candidate or officeholder. *See* Advisory Opinions 2003–36 (Republican Governor's Association) and 2007–11 (California State Party Committees). In addition, the Commission was unable to resolve whether a Federal candidate or officeholder may be named as a featured speaker on pre-event publicity that is mailed with (*e.g.,* in the same envelope as) a solicitation for non-Federal funds that does not name a Federal candidate or officeholder. *See* Advisory Opinion 2007–11 (California State Party Committees).

F. Shays III

Against this backdrop, the Commission's rule implementing 2 U.S.C. 441i(e)(3) was again challenged in court. The District Court for the District of Columbia upheld the Commission's regulation. *Shays* v. *FEC,* 508 F.Supp.2d. 10 (D.D.C. 2007).

On appeal, however, the United States Court of Appeals for the District of Columbia Circuit reversed the District

Court, concluding that the total exemption from the general solicitation ban ''allows what BCRA directly prohibits.'' *Shays III* at 933. In addressing the Commission's regulation, the Court first concluded that 2 U.S.C. 441i(e)(3) did not create an ambiguity in the law, but should be read as ''clarif[ying] that * * * Federal candidates may still 'attend, speak, or be a featured guest' at State party events where soft money is being raised, which the statute might otherwise be read as forbidding.'' *Id.* at 933. The court then held that the Commission had ''no basis'' to read 2 U.S.C. 441i(e)(3) as creating ''an implied fourth exception'' to the solicitation restrictions at Section 441i(e)(1), given that Congress had explicitly enumerated the instances in which Federal candidates and officeholders could ''solicit'' funds outside BCRA's restrictions. *Id.* at 933–34. The court found compelling the specific language in the statute—noting that ''Congress repeatedly used the term 'solicit' and 'solicitation' in Section 441i—over a dozen times—yet chose not to do so in Section 441i(e)(3).'' *Id.* at 934.

II. Proposed Revisions to 11 CFR 300.64

To comply with the *Shays III* decision, the Commission proposes revising the exemption for attending, speaking and being a featured guest at non-Federal fundraising events at 11 CFR 300.64. The Commission seeks comment on three alternative proposals. Alternative 1 addresses only non-Federal fundraising events for State, district, and local party committees, while Alternatives 2 and 3 address participation by Federal candidates and officeholders at all non-Federal fundraising events, including fundraisers for State and local candidates.

The Commission has not made any determination as to which of the alternative provisions to adopt in the final rule. The final rule may contain only aspects of one alternative or elements from some or all of the alternatives. The Commission invites comment on which, if any, of the three alternatives would be best and why. The Commission is particularly interested in whether the proposed alternatives would satisfy the court of appeals decision in *Shays III.*

A. Alternative 1

Alternative 1 proposes an amendment to current 11 CFR 300.64 in order to remedy the deficiencies identified by the court of appeals in *Shays III.* It would make fewer changes to the existing rule than either Alternative 2 or Alternative 3. Alternative 1 would not address non-Federal fundraising events for entities other than State, district, and local committees of political parties. Accordingly, Alternative 1 does not attempt to extend or limit the advice given in Advisory Opinions 2003–03 (Cantor) and 2003–36 (Republican Governor's Association).

First and foremost, Alternative 1 would delete paragraph (b) of 11 CFR 300.64, which allows Federal candidates and officeholders to speak at State, district, and local party committee fundraising events without restriction or regulation. This change is meant to address the *Shays III* court's concerns that the provision ''allows what BCRA directly prohibits'': the raising of funds outside the limitations and prohibitions of the Act by Federal candidates and officeholders. *See Shays III* at 933. The Commission seeks comment on this proposed deletion. In particular, would it be sufficiently responsive to the *Shays III* court's opinion? By deleting this paragraph, would the rule properly interpret and give effect to the language of 2 U.S.C. 441i(e)(3)?

In addition, Alternative 1 would designate the introductory paragraph of 11 CFR 300.64 as paragraph (a) and amend it to provide that: (1) Federal candidates and officeholders may attend, speak, or be featured guests at State, district, and local party committee fundraising events at which funds outside the limitations and prohibitions of the Act or Levin funds are raised, and (2) Federal candidates and officeholders who solicit, receive, direct, transfer, or spend funds at such events must do so in accordance with Commission regulations. In general, Federal candidates and officeholders may not solicit funds in connection with any election outside the limitations and prohibitions of the Act. 2 U.S.C. 441i(e)(1).[4] The exceptions to this general rule are set forth in subpart D of 11 CFR 300.

Although the statutory limitation contained in 2 U.S.C. 441i(e)(1) applies at *any time* and *in any context* that a Federal candidate or officeholder might make a solicitation in connection with any election, 2 U.S.C. 441i(e)(3) provides that Federal candidates and officeholders may ''attend, speak, or be a featured guest'' at *fundraising events* for State, district and local party committees.

Alternative 1 is intended to implement 2 U.S.C. 441i(e)(3) by permitting certain activities by Federal candidates and officeholders—attending, speaking at, or being a featured guest at a State, district, or local party committee event at which funds outside the limits and prohibitions of the Act are being solicited or directed by the host party committee—that might otherwise be limited by the Act because they could be viewed as soliciting, receiving, directing, transferring, and spending funds outside the limitations and prohibitions of the Act in connection with any election.

The Commission seeks public comment on proposed paragraph (a). Does the proposal provide sufficient guidance to Federal candidates and officeholders regarding their conduct at fundraising events for State, district, and local committees of political parties, including how they may solicit at such events?

Proposed paragraph (a) would also effect a technical correction in the rule. The proposal would delete the reference to 11 CFR 100.24 in the current rule and replace it with a reference to 11 CFR 300.31(e)(2). This change would track more closely with cross-references in the Act. *See* 2 U.S.C. 441i(e)(3). Section 441i(e)(3) of the Act includes a cross reference to Section 441i(b)(2)(C), which in effect prohibits Federal candidates and officeholders from soliciting, receiving, directing, transferring or spending Levin funds. *See* 2 U.S.C. 441i(b)(2)(C). However, 11 CFR 300.64, the rule implementing Section 441i(e)(3) of the Act, does not include a parallel cross-reference to 11 CFR 300.31(e), the rule implementing Section 441i(b)(2)(C). Instead, 11 CFR 300.64 cross-references 11 CFR 100.24, which defines Federal election activity and thus is not directly related to the issue of attending, speaking, or being a featured guest at a State, district or local party committee fundraising event.

Alternative 1 would also redesignate paragraph (a) of the current rule, which addresses advertising, announcing, or otherwise publicizing a Federal candidate or officeholder's appearance at a State, district, or local party committee fundraising event, as paragraph (b). Because publicity for a fundraising event for a State, district, or local committee of a political party was not at issue in the *Shays* litigation, Alternative 1 does not propose any substantive changes to the current rule regarding publicity. As the Commission has stated previously, the purpose of this paragraph is to clarify that State parties are free to advertise, announce or

[4] 2 U.S.C. 441i(e)(1)(A) applies to a candidate or officeholder soliciting funds ''in connection with an election for Federal office'' and 2 U.S.C. 441i(e)(1)(B) applies to a candidate or officeholder soliciting funds ''in connection with any election other than an election for Federal office.''

otherwise publicize, including in pre-event invitations, a Federal candidate or officeholder's attendance, speaking, being a featured guest at a State, district, or local party committee fundraising event as long as that publicity does not constitute a solicitation of funds outside the limits and prohibitions of the Act by the Federal candidate or officeholder. *See* 2002 Final Rules at 49108; 2005 Revised E&J at 37651. In light of the *Shays III* court's ruling that Federal candidates and officeholders may not solicit funds outside the prohibitions and limitations of the Act at such events, should the rule explicitly state that they also may not solicit such funds in pre-event publicity materials? Alternatively, should paragraph (b) be deleted altogether?

The proposed rule text in Alternative 1 addresses only Federal officeholders' and candidates' attendance, speaking, or being a featured guest at State, local, and district party fundraising events. Alternative 1 also provides that State, district, and local party committees may publicize Federal candidates' and officeholders' participation at such events, but does not specifically address the parameters of such publicity, such as whether the publicity may include solicitations of funds outside the limits and prohibitions of the Act by the event sponsor if the Federal candidate or officeholder appears on the publicity, and what would constitute a solicitation by the Federal candidate or officeholder in this context. Alternative 1 also would continue to leave unaddressed whether, and under what conditions, Federal officeholders and candidates may participate at non-party fundraising events that are in connection with any election at which funds outside the limits and prohibitions of the Act are raised.

Although the text of the rule would not address whether Federal candidates and officeholders may serve on ''host committees'' for a party fundraising event at which funds outside the prohibitions and limitations of the Act are raised or may sign or otherwise make a solicitation in connection with a party fundraising event at which such funds are raised, such activities would continue to be prohibited. *See* 2002 Final Rules at 49108; 2005 Revised E&J at 37651.

B. Scope of Alternatives 2 and 3

Under proposed Alternatives 2 and 3, 11 CFR 300.64 would be more extensively revised to comply with the court of appeals' decision, as well as to provide additional guidance on participation by Federal candidates and officeholders in all fundraising events at which funds outside the limits and prohibitions of the Act are raised (''non-Federal fundraising events''). The scope of activities covered by Alternatives 2 and 3 is the same, although the two proposals diverge in how they would regulate those activities.

Paragraph (a), which is the same in both of these alternatives, establishes that the scope of the proposed rule is more comprehensive than current 11 CFR 300.64. In addition, paragraph (a) provides that the proposed rule would address a fuller spectrum of Federal candidate and officeholder activity—specifically, Federal candidate and officeholder participation at non-Federal fundraising events, as well as Federal candidates and officeholder participation in the pre-event publicity for such events.

However, proposed paragraph (a) limits the scope of Alternatives 2 and 3 in three important respects. First, it provides that the rule would cover only participation by Federal candidates and officeholders in *non-Federal fundraising events*—those fundraising events at which funds outside the limits and prohibitions of the Act, or Levin funds, are raised, even if Federal funds are also raised at the event. The proposed rule would not cover fundraising events at which *only* Federal funds are raised, nor would it apply to fundraising events in connection with any non-Federal election at which only funds within the limitations and prohibitions of the Act are raised (*e.g.,* a small-dollar, non-corporate, non-union fundraiser for a State candidate).

Second, proposed paragraph (a) provides that Alternatives 2 and 3 would cover only those non-Federal fundraising events that are ''in connection with any election for Federal office or any non-Federal election.'' In other words, the Commission does not intend these alternatives to affect Federal candidate and officeholder participation in fundraising events that are in no way election related. The purpose of this provision is two-fold: first, it applies the Act's prohibition on Federal candidates and officeholders soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with any election for Federal office or any non-Federal elections, *see* 2 U.S.C. 441i(e)(1)(B); second, it ensures that the proposed rule does not reach activity that is outside the Commission's jurisdiction.

Third, proposed paragraph (a) states explicitly that nothing in proposed 11 CFR 300.64 shall alter the fundraising exception for Federal candidates and officeholders who are also State candidates, found at 11 CFR 300.63, or the fundraising exceptions for certain tax-exempt organizations, found at 11 CFR 300.65. *See also* 2 U.S.C. 441i(e)(2) and (e)(4). To the extent that Alternative 2 or 3 could be read to limit in any way these pre-existing statutory exceptions, the Commission wishes to make clear that they do not.

The Commission seeks comment on the scope of Alternatives 2 and 3 as set forth in proposed paragraph (a) of each. Does it correctly establish the scope of the proposed rule? Is it appropriate for the rule to address the full range of Federal candidate and officeholder participation in non-Federal fundraising events? Do Alternatives 2 and 3 set forth proposed rules that clearly state the manner in which Federal candidates and officeholders may participate in such events? Are there other forms of participation in these types of events which the rules neglect to cover? The Commission intends for the scope to cover activities at all fundraising events at which funds outside the limitations and prohibitions of the Act are raised, including dual purpose fundraisers (*i.e.,* fundraising events at which Federal funds and non-Federal funds are raised). The Commission seeks comment on whether it is necessary to include an explicit statement in the rule indicating that such dual-purpose events are covered.

Does proposed paragraph (a) appropriately limit the scope of Alternatives 2 and 3? By covering participation by Federal candidates and officeholders only in fundraising events that are in connection with any election for Federal office or any non-Federal election and at which funds outside the limits and prohibitions of the Act are raised, has the rule been crafted too narrowly? Are there other types of fundraising events that should be addressed by the proposed rule that are not under the current construction? Is the scope of Alternatives 2 and 3 correctly limited to only participation in those events at which funds outside the limitations and prohibitions of the Act and Levin funds are raised, regardless of whether Federal funds are also raised at the event?

Importantly, the Commission seeks comment on whether proposed paragraph (a)—and its use of the ''in connection with any election for Federal office or any non-Federal election'' standard—establishes a clear and administrable standard. Does this standard provide clear guidance to Federal candidates and officeholders as to which types of events will—and will not—be affected under the proposed rule? Do prior Commission advisory opinions already provide sufficient

guidance for the meaning of this term? *See, e.g.,* Advisory Opinions 2005–10 (Berman/Doolittle) (solicitation of donations by Federal officeholders to a State ballot measure committee was not in connection with any election), 2004–14 (Davis) (solicitation of donations by a Federal officeholder to a charity was not in connection with any election), and 2003–20 (Hispanic College Fund) (solicitation of donations by a Federal officeholder to a scholarship fund was not in connection with any election). *Cf.* Advisory Opinion 2003–12 (Flake) (solicitation of donations by Federal officeholders for a political organization supporting a State referendum was in connection with an election if the measure had qualified for the ballot). Alternatively, should the Commission define what constitutes ''in connection with any election for Federal office or any non-Federal election'' for purposes of Alternatives 2 and 3? If so, how should the Commission define this standard?

As proposed, Alternatives 2 and 3 cover participation in *fundraising events* that are ''in connection with any election for Federal office or any non-Federal election.'' Does this establish the correct standard? Should the rule instead look to the *organization or entity* that is the beneficiary of the fundraiser for purposes of determining whether the ''in connection with any election for Federal office or any non-Federal election'' standard is met? *See, e.g.,* Advisory Opinion 2003–36 (Republican Governor's Association).

Finally, the Commission seeks comment on whether proposed paragraph (a) sufficiently preserves the statutory exclusions at 2 U.S.C. 441i(e)(2) and (3). Are the cross-references to 11 CFR 300.63 and 300.65 clear and helpful? Are they necessary?

C. Alternative 2

Under Alternative 2, Federal candidates and officeholders would be permitted to: (1) Attend, speak, and be featured guests at non-Federal fundraising events; (2) solicit funds in compliance with the limitations and prohibitions of the Act at such events; and (3) be featured, with certain limitations, in pre-event publicity for such events. Alternative 2 is based on the statement in the *Shays III* decision that 2 U.S.C. 441i(e)(3) ''merely clarifies'' that Federal candidates may attend, speak, or appear as featured guests at State, district, or local party committee events without such activities constituting an unlawful ''solicitation.'' *Shays III* at 933. The court explained that if Congress had intended for 2 U.S.C. 441i(e)(3) to create an exception to the general solicitation ban, it would have done so explicitly, as it did in other provisions of Section 441i(e). *Id.* at 933–34.

To that end, Alternative 2 does not distinguish between State, district, and local party events and other non-Federal fundraising events. Under proposed paragraph (b)(1) of Alternative 2, Federal candidates and officeholders may attend, speak, and be featured guests at all non-Federal fundraising events. This provision reflects that, under Alternative 2, attending, speaking at, or being a featured guest at non-Federal fundraising events does not constitute a solicitation and, therefore, these activities are not subject to the Act's restrictions on Federal candidates and officeholders.

The proposed rule in Alternative 2 is in part informed by, and adopts, some of the Commission's conclusions reached in Advisory Opinions 2003–03 (Cantor) and 2003–36 (Republican Governors Association). Although Alternative 2 is consistent with certain conclusions contained in previous Commission advisory opinions, Alternative 2 is based entirely on the reasoning set forth in this notice.

The Commission seeks comment on this approach. Does it correctly interpret and implement the court's decision in *Shays III*? Is it appropriate to allow Federal candidates and officeholders to attend, speak at, and be featured guests at all non-Federal fundraising events—whether for State, district, or local party committees or for other entities? Does such an approach give appropriate meaning to 2 U.S.C. 441i(e)? If it is correct to interpret the *Shays III* decision to mean that merely being a featured guest at a State, district, or local party committee fundraiser is not in and of itself an unlawful solicitation according to the Act (2 U.S.C. 441i(e)(3)), how could being a featured guest at a non-party, non-Federal fundraiser transform such activity into an unlawful solicitation? So long as a Federal candidate or officeholder does not solicit funds outside the limitations and prohibitions of the Act, what statutory authority does the Commission have to limit Federal candidates and officeholders from attending, speaking at, or appearing as featured guests at non-party, non-Federal fundraising events? And if such statutory authority exists, how can it be harmonized with the court's reasoning in *Shays III*?

Proposed paragraph (b)(2) allows Federal candidates and officeholders to solicit funds at non-Federal fundraising events so long as the solicitations are in amounts and from sources that are consistent with State law and do not violate the Act's contribution limits or source prohibitions. Proposed paragraphs (b)(2)(i) and (ii) clarify the manner in which Federal candidates and officeholders may so limit their solicitations at non-Federal fundraising events. Specifically, proposed paragraph (b)(2)(i) states that a Federal candidate or officeholder may properly limit such a solicitation either by displaying a written notice or by making an oral statement that the solicitation is limited to funds permitted under the Act. Paragraph (b)(2)(ii) provides that, whether done orally or in writing, the notice would have to be clear and conspicuous.

The Commission seeks comment on proposed paragraph (b)(2). Does it faithfully implement the restrictions imposed by the Act on Federal candidates and officeholders in their solicitation of funds in connection with non-Federal elections? *See* 2 U.S.C. 441i(e)(1)(B); *see also* 11 CFR 300.62. Should the Commission be more explicit regarding notices limiting solicitations at non-Federal fundraising events? For example, should the final rule include examples of notices that satisfy the rule? Further, should the Commission articulate more clearly how a notice will be considered clear and conspicuous? What factors should the Commission consider in making this determination? Are such notices effective?

Finally, paragraph (c) of Alternative 2 addresses publicity associated with non-Federal fundraising events, including advertisements, announcements, and pre-event invitations, regardless of form (*e.g.,* phone calls, mail, e-mail, facsimile), and the extent to which Federal candidates and officeholders may participate in such publicity. The proposal distinguishes between publicity that solicits funds outside the limitations and prohibitions of the Act and publicity that does not. Proposed paragraph (c) is intended to be consistent with the conclusions that were reached in Advisory Opinions 2003–36 (Republican Governor's Association) and 2007–11 (California State Party Committees) and also answer the questions raised in those advisory opinions that the Commission was unable to resolve.

Proposed paragraph (c)(1) provides that Federal candidates and officeholders may without limitation approve, authorize, agree, or consent to the use of their names or likenesses in publicity for non-Federal fundraising events, if the publicity does not contain a solicitation. Such publicity may use the name or likeness of a Federal candidate or officeholder to indicate

that such person will attend, speak, or be a featured guest at the event.

If pre-event publicity solicits funds outside the limitations or prohibitions of the Act or Levin funds, though, proposed paragraph (c)(2) establishes two different standards for participation by Federal candidates and officeholders that are contingent upon whether the solicitation is made by the Federal candidate or officeholder or by another person or entity associated with the event.

Specifically, under proposed paragraph (c)(2)(i), Federal candidates and officeholders would be prohibited from authorizing the use of their names or likenesses in publicity that would constitute a solicitation by them of funds outside the limitations and prohibitions of the Act. Proposed paragraph (c)(2)(i)(A) states that this prohibition covers publicity in which a Federal candidate or officeholder solicits funds outside the limitations and prohibitions of the Act, such as by signing a solicitation letter. Publicity that identifies a Federal candidate or officeholder as serving in a role tied to fundraising, such as serving on the event's ''host committee,'' is a solicitation of funds outside the limitations and prohibitions of the Act by that individual and also would be prohibited. By contrast, proposed paragraph (c)(2)(i)(B) provides that being identified on pre-event publicity as merely serving as a ''featured speaker'' or ''honorary chairperson'' would not be in and of itself a solicitation because this Alternative presumes that those are not roles tied to fundraising and therefore would be permitted.

Proposed paragraph (c)(2)(ii) permits a Federal candidate or officeholder to approve, authorize, agree, or consent to the use of his or her name or likeness on publicity that contains a solicitation of funds outside the limitations and prohibitions of the Act *if* the solicitation is made by—and clearly attributable to—a person or entity other than the Federal candidate or officeholder. Such publicity must include a clear and conspicuous statement noting that the solicitation of funds outside the limitations and prohibitions of the Act is not being made by the Federal candidate or officeholder whose name or likeness is featured. Such a statement would be required to meet the requirements of 11 CFR 110.11(c)(2) in order to be considered ''clear and conspicuous.''

The Commission seeks comments on how pre-event publicity for non-Federal fundraising events is treated in proposed paragraph (c). Given the court's statement in *Shays III* that 2 U.S.C. 441i(e)(3) provides that ''Federal candidates may * * * be a featured guest at a State party event where soft money is raised,'' *Shays III* at 933, is there any reason why pre-event publicity regarding that activity should not be allowed? Should such publicity be limited in any way, or do such limitations infringe upon a Federal candidate's or officeholder's ability to be a *featured* guest?

As above, the Commission also requests comments on whether the discussion in *Shays III* regarding this issue was limited to State party events, or whether the court's reasoning applies more broadly to all non-Federal fundraising events. If the latter, does its reasoning apply also to how Federal candidates and officeholders may be ''featured'' in pre-event publicity? Is proposed paragraph (c) of Alternative 2 consistent with the *Shays III* decision on this issue? Is it consistent with 2 U.S.C. 441i(e)?

Additionally, does proposed Alternative 2 establish a generally workable standard that provides clear guidance to Federal candidates and officeholders? Does the proposal adequately address all types of publicity associated with these events? Does the proposal correctly implement the prohibition in the Act and in Commission regulations regarding the solicitation, receipt, direction, transfer, spending, and disbursement of funds outside the limitations and prohibitions of the Act by Federal candidates and officeholders? Is the identification of a Federal candidate or officeholder as member of a ''host committee'' appropriately treated under the proposal as being a solicitation by the Federal candidate or officeholder, or is it common for such an individual to be identified as a ''host'' in a capacity not related to solicitation or fundraising? Is it appropriate for the proposal to exclude titles on pre-event publicity such as featured guest, featured speaker, or honorary chairperson, or should such titles similarly be considered to be a solicitation by the individual?

Is the distinction between publicity that includes a solicitation by Federal candidates and officeholders and publicity that includes a solicitation by another person associated with the non-Federal fundraising event a reasonable one? Could a Federal candidate or officeholder be featured in publicity that solicits funds outside the limitations and prohibitions of the Act without having that solicitation attributed, at least in part, to that candidate or officeholder? Is proposed paragraph (c) of Alternative 2 consistent with proposed paragraph (b), governing participation by Federal candidates and officeholders at non-Federal fundraising events?

In conclusion, the Commission seeks comment on proposed Alternative 2 in all respects. Does it appropriately resolve the *Shays III* court's criticisms of the Commission's previous implementation of 2 U.S.C. 441i(e)(3) and does it appropriately implement that Section, as well as Section 441i(e) generally?

D. Alternative 3

As noted above, the proposed scope of Alternative 3 is the same as that proposed in Alternative 2. As with Alternative 2, Alternative 3 does not cover participation by Federal candidates or officeholders in fundraising events at which *only* Federal funds are raised, nor would it apply to fundraising events in connection with any non-Federal election at which only funds subject to the limitations and prohibitions of the Act are raised (*e.g.,* a small-dollar, non-corporate, non-union fundraiser for a State candidate). Though Alternatives 2 and 3 would cover the same universe of activity, they diverge in the manner in which that activity would be addressed. Specifically, Alternative 3 would treat participation by Federal candidates and officeholders at non-Federal fundraising events for State, district, and local party committees differently from participation by Federal candidates and officeholders at all other non-Federal fundraising events (*e.g.,* for a local candidate, a State PAC, or an organization making independent expenditures). This approach is informed both by the court's decision that found invalid the Commission's previous rule allowing Federal candidates and officeholders to speak at certain non-Federal fundraising events without ''restriction or regulation,'' and by the plain language of the Act, specifically, by the focus in 2 U.S.C. 441i(e)(3) on State, district, and local party committee fundraisers only.

As the court noted in *Shays III,* 2 U.S.C. 441i(e)(3) permits Federal candidates to attend, speak or be a featured guest at State, district, and local party committee fundraisers—activities which the Act and, specifically, its fundraising restrictions, ''might otherwise be read as forbidding.'' *Shays III* at 933. This language could be read as an acknowledgement by the court that Section 441i(e)(1) may permissibly and plausibly be construed to limit attending, speaking, and being a featured guest as fundraising activities.

If such a construction of Section 441i(e)(1) had not been possible, Section 441(i)(e)(3) would not have been necessary.

Whether the statute would affect such activities is largely a function of the Commission's definition of ''solicit,'' which was promulgated subsequent to the passage of BCRA and 2 U.S.C. 441i(e)(3). The Commission initially defined ''to solicit'' as ''to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.'' 11 CFR 300.2(m) (2003). The Court of Appeals stuck down this definition for failing to enact a restriction equal in breadth to that intended by Congress. *Shays* v. *FEC,* 414 F.3d 76, 103–05 (DC Cir. 2005). Specifically, the Court held that the Commission's prior definition failed to cover indirect requests. *Id.* In order to comply with the court's ruling, the Commission revised its definition of ''to solicit'' to mean ''to ask, request or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.'' 11 CFR 300.2(m).

Federal candidates and officeholders are often included at fundraising events for the specific purpose of drawing more donors (and more donations) to the events. The fundraiser's motivation to include Federal candidates and officeholders at the event is, as one commenter in the 2005 rulemaking explained, ''to increase attendance and the [fundraiser]'s yield from that event.'' 2005 Revised E&J at 37654. When a Federal candidate or officeholder allows his or her name to be used to increase the number of donors and amount of donations, that helps to raise funds—potentially funds outside the limitations and prohibitions of the Act. Participating in non-Federal fundraisers in this way would constitute an implicit ask, request, or recommendation that individuals attend and donate funds as part of the fundraising event, and thus would be prohibited for Federal candidates and officeholders to the extent the event seeks to raise funds outside the limitations and prohibitions of the Act.

Under this reading, 2 U.S.C. 441i(e)(3) does, indeed, provide a limited exception to the Act's fundraising restrictions—specifically, for Federal candidates and officeholders who appear as featured guests at non-Federal fundraising events for State, district, or local party committees. Importantly, given 2 U.S.C. 441i(e)(3)'s specific focus on only State, district, and local party committee events, this exception would not extend to other election-related non-Federal fundraising events. As such, proposed paragraph (b)(1)(i) of Alternative 3 provides that a Federal candidate or officeholder may attend, speak, or be a featured guest at a State, district or local party fundraiser. By contrast, proposed paragraph (c) provides that a Federal candidate or officeholder may attend a non-party, non-Federal fundraising event and speak at such an event (so long as the speech does not itself constitute a solicitation), but may not consent to the use of his or her name or likeness in publicity for non-party, non-Federal events. This aspect of the proposal is intended to prohibit activities by Federal candidates and officeholders in connection with non-Federal fundraising events that constitute the solicitation of funds outside the limits and prohibitions of the Act, which would violate the Act.

The Commission seeks comment on this approach. As a threshold matter, does the proposed bifurcated structure of the rule appropriately recognize the Act's unique treatment of participation by Federal candidates and officeholders at State, district, and local party committee fundraisers? If the Commission were to adopt a rule that treats Federal candidate and officeholder participation at all non-Federal fundraising events the same, would it, in effect, render Section 441i(e)(3) of the Act meaningless? Would it be responsive to the *Shays III* court's concern that the Commission's initial regulation was too permissive? Is the approach proposed in Alternative 3 consistent with the court's opinion in *Shays III*? Does the court's opinion provide guidance on whether the rule should treat State, district, and local party committee fundraisers differently from other election-related non-Federal fundraising events, given that these other events were not at issue in the prior regulation?

The Commission invites comments on whether the Commission should provide additional guidance by promulgating a regulatory definition of ''featured guest,'' and if so, what should that definition be? Are there different ways in which a guest might be featured and would some of those ways constitute a solicitation while others would not? What does it mean to be a featured guest? Is being featured as a guest limited to appearing on written materials or can a guest be featured in some other manner? Is there a difference between simply appearing on a list of attendees and being featured on such a list? If pre-event publicity for a fundraising event indicates that a Federal candidate or officeholder will be attending, or will be speaking, is that alone enough to make the Federal candidate or officeholder a featured guest?

What factors should the Commission consider in determining when a person should be considered to be a featured guest? If a person is listed in pre-event publicity as ''invited'' (but for which there is no confirmation the person will attend), should the person still be considered a featured guest? Should a person be considered a featured guest even though the word ''featured'' is not used? Can a person be a ''guest'' if the person is a usual attendee or a member of the group hosting the event?

Similarly, because the exemption for participating as a featured guest only applies when a Federal candidate does so at a State, district, or local party committee's fundraising event, should the Commission promulgate a regulatory definition of what qualifies as a ''fundraising event''? For instance, is there a minimum number of attendees required to constitute a fundraising event? Or is the term ''fundraising event'' generally understood by those who participate in them, such that no definition is required?

Regarding the specifics of Alternative 3, proposed paragraph (b)(1)(i) of Alternative 3 provides that a Federal candidate or officeholder may attend, speak, or be a featured guest at a State, district or local party fundraiser. Proposed paragraph (b)(1)(ii) provides that Federal candidates and officeholders may solicit funds at such non-Federal fundraising events if the solicitation is not for Levin funds and is limited to funds that do not exceed the Act's contribution limits or come from prohibited sources under the Act. Each proposed paragraph implements, almost verbatim, a provision of the Act. Proposed paragraph (b)(1)(i) addresses 2 U.S.C. 441i(e)(3) of the Act, which provides that a Federal candidate or officeholder may attend, speak, or be a featured guest at a State, district or local party fundraiser. Proposed paragraph (b)(1)(ii) states that Federal candidates and officeholders may solicit funds for State, district and local party committees so long as the solicitation is consistent with 2 U.S.C. 441i(e)(1)(B). Proposed paragraph (b)(1)(ii) is intended to require all solicitations made by Federal candidates and officeholders at such events to be limited to funds that comply with the Act's amount limitations and source prohibitions. This proposal would neither preserve nor extend the disclaimer regime of Advisory Opinions 2003–36 (Republican Governor's Association) and 2003–03 (Cantor).

The Commission seeks comment on the proposed distinctions between party committee non-Federal events and other non-Federal fundraising events. Does the proposal faithfully implement the Act? Does it appropriately recognize Congress's different statutory treatment of Federal candidates' and officeholders' participation in non-Federal party committee events and other non-Federal fundraising events? Or, consistent with Alternative 2, does the statute merely clarify that Federal candidates and officeholders may participate in non-Federal party committee events, without necessarily differentiating between party versus non-party events? Does proposed paragraph (b)(1)(ii) establish clear guidance for Federal candidates and officeholders who wish to solicit funds at fundraising events for a State, district, or local committee of a political party?

Proposed paragraph (b)(2) of Alternative 3 would address publicity associated with non-Federal fundraising events for State, district, and local committees of political parties. It would provide that a Federal candidate or officeholder may approve, authorize, agree, or consent to the use of his or her name or likeness in publicity for a non-Federal fundraising event for a State, district, or local party committee for the purpose of indicating that he or she will be attending, speaking, or will be a featured guest at the event *only if* the publicity does not solicit funds outside the limitations and prohibitions of the Act or Levin funds. Publicity covered by proposed paragraph (b)(2) would include, but not be limited to, pre-event invitation materials. Like proposed paragraph (b)(1)(ii), proposed paragraph (b)(2) is intended to ensure that Federal candidate and officeholder participation in publicity for State, district and local party committee fundraisers is consistent with the Act's prohibition on raising funds outside the limitations and prohibitions of the Act. *See* 2 U.S.C. 441i(e)(1)(B).

The Commission seeks comments on paragraph (b)(2)'s treatment of publicity in connection with non-Federal fundraising events for State, district, and local party committees. Does the proposal properly implement 2 U.S.C. 441i(e)(3)? Does it preserve the Act's restrictions on the raising of Levin funds and funds outside the limitations and prohibitions of the Act? Does proposed paragraph (b)(2) establish clear guidance as to how Federal candidates and officeholders may and may not be featured in such publicity? Would it clearly establish the types of publicity that would solicit Levin funds or funds outside the limitations and prohibitions of the Act?

Proposed paragraph (c) of Alternative 3 in turn would establish rules governing participation by Federal candidates and officeholders at all other non-Federal fundraising events. Given the absence of a statutory provision addressing specifically non-party, non-Federal fundraisers, it follows that no special exceptions exist for Federal candidates and officeholders at such events. Accordingly, rules governing participation by Federal candidates and officeholders at such events would be guided only by to the Act's general fundraising restrictions. *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62. Accordingly, a Federal candidate or officeholder could participate in non-party, non-Federal fundraisers only if his or her participation did not constitute a solicitation otherwise prohibited by the Act.

To that end, proposed paragraph (c)(2) provides that a Federal candidate or officeholder may attend a non-party, non-Federal fundraising event and speak at such an event so long as the speech does not, itself, constitute a solicitation. Although this type of participation at non-party, non-Federal fundraisers is not explicitly exempted by the Act, it is also not specifically prohibited by the Act or Commission regulations. *See, e.g.,* 11 CFR 300.2(m). So long as a Federal candidate or officeholder can attend or speak at a non-party, non-Federal fundraising event without soliciting funds outside the limitations and prohibitions of the Act, the Commission is not proposing to prohibit such attendance and speech.

Proposed paragraph (c)(1) of Alternative 3, however, prohibits Federal candidates and officeholders from consenting to the use of their names or likenesses in publicity for non-party, non-Federal fundraisers. This aspect of Alternative 3 is based upon the premise that Federal candidates and officeholders lend their names to publicity for fundraising events for one reason: to help raise funds. Therefore, it follows that appearing in publicity as a featured guest at an event where funds outside the limitations and prohibitions of the Act will be raised amounts to an implicit request that someone make a contribution beyond the limits of the Act and Commission regulations. *See* 2 U.S.C. 441i(e)(1)(B); 11 CFR 300.62, 11 CFR 300.2(m) (stating that a solicitation may be made ''explicitly or implicitly'' and is any activity that ''in context'' contains a clear message asking for a contribution or donation). To the extent that the purpose of a Federal candidate or officeholder's participation is to attract contributors and contributions to an event that solicits funds outside the limitations and prohibitions of the Act, such participation is prohibited under proposed paragraph (c)(1). A Federal candidate or officeholder may not participate in those efforts.

The Commission seeks comment on this approach. Would allowing Federal candidates and officeholders to attend or speak at such non-Federal fundraisers undermine the Act's restrictions on soliciting Levin funds and funds outside the limitations and prohibitions of the Act? Does the Commission have statutory authority to restrict Federal candidates and officeholders from attending or speaking at non-party, non-Federal fundraisers, if they do not ask for funds outside the limitations and prohibitions of the Act?

In conclusion, the Commission seeks comment on proposed Alternative 3 in all respects. Does it appropriately resolve the *Shays III* court's criticisms of the Commission's previous implementation of 2 U.S.C. 441i(e)(3) and does it appropriately implement that section? Does Alternative 3 provide a generally workable standard that provides clear guidance to Federal candidates and officeholders?

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

Regulatory Flexibility Act

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the entities affected by this proposed rulemaking do not meet the definition of ''small entity'' under 5 U.S.C. 601. That definition requires that the enterprise be independently owned and operated and not dominate in its field. 5 U.S.C. 601(4).

This proposed rulemaking would affect State, district, and local party committees, as well as Federal candidates and their campaign committees. Federal candidates, as individuals, do not fall within the definition at 5 U.S.C. 601, and campaign committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals.

State, district, and local party committees also fall outside the definition of ''small entity.'' These committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In

addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arenas of their States and are thus dominant in their fields. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered ''small organizations,'' the number affected by this proposal is not substantial.

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapter C of Chapter 1 of title 11 of the Code of Federal Regulations would be amended to read as follows:

PART 300—NON-FEDERAL FUNDS

1. The authority citation for part 300 would continue to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. Section 300.64 would be revised to read as follows:

Alternative 1

§ 300.64 Attending, speaking, or appearing as a featured guest at State, district, or local party committee fundraising events (2 U.S.C. 441i(e)(3)).

(a) A Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including, but not limited to, a fundraising event at which funds outside the limits and prohibitions of the Act or Levin funds are raised. Federal candidates and individuals holding Federal office who solicit, receive, direct, transfer, or spend funds at any such fundraising event shall only do so in accordance with 11 CFR 300.31(e)(2), 300.61, and 300.62.

(b) State, district, or local committees of a political party may advertise, announce or otherwise publicize that a Federal candidate or individual holding Federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-event invitation materials and in other party committee communications.

Alternative 2

§ 300.64 Participation By Federal Candidates and Officeholders at Non-Federal Fundraising Events (2 U.S.C. 441i(e)(1) and (3)).

(a) *Scope.* This section covers participation by Federal candidates and officeholders at fundraising events in connection with any election for Federal office or any non-Federal election at which funds outside the limitations and prohibitions of the Act or Levin funds are raised, and in publicity related to such non-Federal fundraising events. This section applies even if funds that comply with the limitations and prohibitions of the Act are also raised at the event. Nothing in this section shall be construed to alter the fundraising exception for State candidates at 11 CFR 300.63 or the fundraising exceptions for certain tax-exempt organizations at 11 CFR 300.65.

(b) *Participation at non-Federal fundraising events.* A Federal candidate or officeholder may:

(1) Attend, speak, or be a featured guest at a non-Federal fundraising event.

(2) Solicit funds at a non-Federal fundraising event, provided that the solicitation is limited to funds that comply with the limitations and prohibitions of the Act and is consistent with State law.

(i) A Federal candidate or officeholder may limit such a solicitation by displaying at the fundraising event a clear and conspicuous written notice, or making a clear and conspicuous oral statement, that the solicitation is not for Levin funds, does not seek funds that exceed the Act's contribution limits, and does not seek funds from prohibited sources under the Act.

(ii) A written notice or oral statement is not clear and conspicuous if it is difficult to read or hear or if its placement is easily overlooked.

(c) *Publicity for non-Federal fundraising events.* For the purposes of this paragraph, publicity for a non-Federal fundraising event includes, but is not limited to, advertisements, announcements, or pre-event invitation materials, regardless of format or medium of communication.

(1) *Publicity not containing a solicitation.* A Federal candidate or officeholder may approve, authorize, agree, or consent to the use of his or her name or likeness in publicity for a non-Federal fundraising event that does not contain a solicitation.

(2) *Publicity containing a solicitation.*

(i) *Solicitation by the Federal candidate or officeholder.* A Federal candidate or officeholder may not solicit funds outside the limitations or prohibitions of the Act or Levin funds in any publicity for a non-Federal fundraising event.

(A) A solicitation by the Federal candidate or officeholder occurs if the Federal candidate or officeholder approves, authorizes, agrees, or consents to being identified as serving in a position specifically related to fundraising, such as on a host committee, or signs the communication, even if the communication contains a written statement as described in paragraph (c)(2)(ii) of this section.

(B) Titles such as featured guest, featured speaker, or honorary chairperson are not positions specifically related to fundraising for purposes of this paragraph.

(ii) *Solicitations by someone other than the Federal candidate or officeholder.* A Federal candidate or officeholder may approve, authorize, agree, or consent to the use of his or her name or likeness in publicity for a non-Federal fundraising event that contains a solicitation of funds outside the limitations and prohibitions of the Act or Levin funds only if the solicitation is made by someone other than the Federal candidate or officeholder. Any such publicity must include a clear and conspicuous written statement that the solicitation is not being made by the Federal candidate or officeholder. The written statement must meet the requirements in 11 CFR 110.11(c)(2).

Alternative 3

§ 300.64 Participation By Federal Candidates and Officeholders at Non-Federal Fundraising Events (2 U.S.C. 441i(e)(1) and (3)).

(a) *Scope.* This section covers participation by Federal candidates and officeholders at fundraising events in connection with any election for Federal office or any non-Federal election at which funds outside the limitations and prohibitions of the Act or Levin funds are raised, and in publicity related to such non-Federal fundraising events. This section applies even if funds that comply with the limitations and prohibitions of the Act are also raised at the event. Nothing in this section shall be construed to alter the fundraising exception for State candidates at 11 CFR 300.63 or the fundraising exceptions for certain tax-exempt organizations at 11 CFR 300.65.

(b) Non-Federal fundraising event for a State, district, or local committee of a political party.

(1) Participation by a Federal candidate or officeholder. A Federal candidate or officeholder may:

(i) Attend, speak, or be a featured guest at a non-Federal fundraising event for a State, district, or local committee of a political party; and

(ii) Solicit funds at such non-Federal fundraising events, provided that the solicitation is limited to funds in amounts that do not exceed the Act's contribution limits and do not come from prohibited sources under the Act.

(2) Publicity for a non-Federal fundraising event for a State, district, or local committee of a political party. A Federal candidate or officeholder may approve, authorize, agree, or consent to the use of his or her name or likeness in an advertisement, announcement, or other publicity for a fundraising event for a State, district, or local committee of a political party for the purpose of indicating that the Federal candidate or officeholder will attend, speak, or be a featured guest at the fundraising event, provided that the advertisement, announcement, or other publicity does not solicit funds outside the limitations and prohibitions of the Act or Levin funds. Such advertisements, announcements, or other publicity may include but are not limited to pre-event invitation materials.

(c) Other non-Federal fundraising events.

(1) For non-Federal fundraising events that are not described in paragraph (b) of this section, a Federal candidate or officeholder may not approve, authorize, agree, or consent to the use of his or her name or likeness in an advertisement, announcement or other publicity for the event, including but not limited to pre-event invitation materials.

(2) Nothing in paragraph (c)(1) would prohibit a Federal candidate or officeholder from attending or speaking at such a non-Federal fundraising event as long as he or she does not solicit funds outside the limitations and prohibitions of the Act.

Dated: November 24, 2009.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–28733 Filed 12–4–09; 8:45 am]

BILLING CODE 6715–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

RIN 3245–AF53

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Tribal Consultation

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule; notice of tribal consultation meeting; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) announces that it is holding tribal consultation meetings in Seattle, Washington and Albuquerque, New Mexico on the topic of the proposed 8(a) Business Development (BD) program regulations. Testimony presented at this tribal consultation meeting will become part of the administrative record for SBA's consideration when the Agency deliberates on approaches to changes in the regulations pertaining to the 8(a) BD program.

DATES: The tribal consultation meetings will be held on Wednesday, December 16, 2009 from 9 a.m. to 4 p.m. in Seattle, Washington, and on Thursday, January 14, 2010 from 9 a.m. to 4 p.m. in Albuquerque, New Mexico.

The tribal consultation meeting pre-registration deadline dates are: December 10, 2009 at 5 p.m. Eastern Standard Time (EST) for the Seattle location; and January 8, 2010 at 5 p.m. EST for the Albuquerque location.

ADDRESSES: 1. The Seattle Tribal Consultation meeting address is South Seattle Community College's Georgetown Campus, Building C—Gene J. Colin Ed. Bldg., 6737 Corson Avenue South, Seattle, WA 98108.

2. The Albuquerque Tribal Consultation meeting address is American Indian Cultural Center, 2401 12 Street, NW., Albuquerque, NM 87104.

3. Send pre-registration requests to attend and/or testify to Ms. Carol Walker, Office of Native American Affairs, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; by e-mail to *carol.y.walker@sba.gov;* or by facsimile to (202) 481–0614.

4. Send all written comments to Mr. Joseph Loddo, Associate Administrator for Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; *Joseph.Loddo@SBA.gov;* or by facsimile to (202) 481–2740.

FOR FURTHER INFORMATION CONTACT: If you have any questions on this proposed rulemaking, call or e-mail LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205–5852, or *leann.delaney@sba.gov.* If you have any questions about registering or attending the tribal consultation please contact Ms. Carol Walker at 202–205–7094, or *carol.y.walker@sba.gov;* or by facsimile to (202) 481–0614.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2009 (74 FR 55694–01), SBA issued a Notice of Proposed Rulemaking (NPRM), publicly available at *http://edocket.access.gpo.gov/2009/E9-25416.htm.* In that document, SBA proposed to make a number of changes to the regulations governing the 8(a) BD Program Regulations and several changes to its Small Business Size Regulations. Some of the changes involve technical issues. Other changes are more substantive and result from SBA's experience in implementing the current regulations. In addition to written comments, SBA is requesting oral comments on the various approaches for the proposed changes.

II. Tribal Consultation Meetings

The purpose of these tribal consultation meetings is to conform to the requirements of Executive Order 13175, Tribal Consultations; to provide interested parties with an opportunity to discuss their views on the issues; and for SBA to obtain the views of these SBA's stakeholders on approaches to the 8(a) BD program regulations. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that this tribal consultation meeting will allow for constructive dialogue with the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives.

The format of these tribal consultation meetings will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony.

SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the tribal consultation is to allow the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives to comment

on SBA's proposed rulemaking. SBA requests that the comments focus on the proposed changes as stated in the NPRM. SBA requests that commentors do not raise issues pertaining to other SBA small business programs.

Presenters may provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

SBA will also hold additional general public meetings before the close of the comment period for this rulemaking.

The tribal consultation meetings will be held for one day. The meeting in Seattle will begin at 9 a.m. and end at 4 p.m. (Pacific Standard Time), with a break from 12 p.m. to 1 p.m. The meeting in Albuquerque will begin at 9 a.m. and end at 4 p.m. (Mountain Standard Time), with a break from 12 p.m. to 1 p.m. SBA will adjourn early if all those scheduled have delivered their testimony.

III. Registration

SBA respectfully requests that any elected or appointed representative of the tribal communities that are interested in attending please pre-register in advance and indicate whether you would like to testify at the hearing. Registration requests should be received by SBA by December 10, 2009 at 5 p.m. EST for the Seattle location, and by January 8, 2010 at 5 p.m. EST for the Albuquerque location. Please contact Ms. Carol Walker in SBA's Office of Native American Affairs in writing at *carol.y.walker@sba.gov* or by facsimile at (202) 481–0614.

If you are interested in testifying please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, E-mail address and Fax number. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will confirm in writing the registration of presenters and attendees.

IV. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Ms. Carol Walker at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592; and, E.O. 13175, 65 FR 67249.

Dated: December 2, 2009.

Clara Pratte,

National Director for the Office of Native American Affairs.

[FR Doc. E9–29115 Filed 12–4–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0031]

Nationally Recognized Testing Laboratories; Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to adjust the approach it uses for calculating the fees the Agency charges Nationally Recognized Testing Laboratories (NRTLs) and to require prepayment of all of the fees. OSHA charges fees for specific types of services it provides to NRTLs. OSHA began charging these fees in 2000, and has revised its fee schedule only twice (in 2002 and 2007), mainly to account for cost of living adjustments. The proposed change in calculation approach would result in an increase of the current fees and the issuance of a revised fee schedule. However, for existing NRTLs and pending applicants, the Agency intends to phase in, over three years, any proposed fee increase that is greater than $200.

DATES: You must submit information or comments by the following dates:

Hard copy: Postmarked or sent by January 21, 2010.

Electronic transmission or facsimile: Sent by January 21, 2010.

ADDRESSES: You may submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0031, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this notice (OSHA Docket No. OSHA–2007–0031). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.*

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; fax (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: For press inquiries, contact Ms. Jennifer Ashley, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Ms. MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3655, Washington, DC 20210; telephone (202) 693–2110. Our Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html* or see *http://www.osha.gov* and select ''N'' in the site index).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Occupational Safety and Health Administration (OSHA) is proposing to adjust the approach it uses to calculate the fees charged to Nationally Recognized Testing Laboratories (NRTLs). The proposed change will recoup a larger percentage of the cost of administering the NRTL Program. The adjusted approach would allow OSHA to continue to charge each NRTL for the core application processing and audit services provided to that NRTL while also recouping the shared costs of certain activities (referred to as ''ancillary activities'' in this notice) that benefit all NRTLs. These ancillary activities, which result in special benefits to NRTLs, currently represent a significant portion of OSHA's costs of running the NRTL Program. We explain these special benefits later in this notice. The revised fee approach would also recognize that the cost of leave earned by all staff directly involved in the NRTL Program should be factored into the personnel cost component of the fees. The current fee structure only incorporates leave costs for some of the staff working on the program.

Because the proposed changes would result in a large increase to the fees for existing NRTLs and pending applicants, OSHA is proposing a three-year phase in of any fee increase that is greater than $200. OSHA also is proposing to revise language in 29 CFR 1910.7(f) (the OSHA rule implementing the NRTL fee structure) to clarify the nature of the costs upon which the fees are based. In addition, OSHA proposes to require advance payment of all NRTL fees, which complies with instructions to Federal agencies issued by the Office of Management and Budget (OMB).

In section II, OSHA explains the NRTL Program and the existing fee structure for charging NRTLs for application processing and audits. In section III, OSHA explains the legal authority for recovering costs for ancillary activities and leave. The Agency also explains the basis for advance collection of the fees. Section IV describes how OSHA is proposing to recoup the ancillary and leave costs and, in section V, shows the derivation of the fee amounts. Sections VI and VII present the proposed revised fee schedule and fee descriptions, respectively. Finally, in section IX, OSHA explains the change it is making to the regulatory text of 29 CFR 1910.7(f). The remaining sections address other matters necessary for this rulemaking.

II. Background

Many of OSHA's safety standards require that equipment or products used in the workplace be approved (i.e., tested and certified) to help ensure that they can be used safely. *See, e.g.,* 29 CFR Part 1910, Subpart S. In general, this approval must be performed by an NRTL. In order to ensure that the testing and certification are done appropriately, OSHA administers the NRTL Program.

The NRTL Program requirements are set forth in 29 CFR 1910.7, ''Definition and requirements for a nationally recognized testing laboratory,'' which specifies that to be recognized and to maintain recognition as an NRTL, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures. 29 CFR 1910.7(b).

OSHA requires that organizations seeking initial recognition as an NRTL provide detailed and comprehensive information about their programs, processes, and procedures in writing when they apply. To process these applications, OSHA reviews the written information for completeness and adequacy, and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (i.e., an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits primarily to ensure that each NRTL maintains its programs and continues to meet the recognition requirements. Currently, there are 15 NRTLs operating 49 recognized sites in the U.S., Canada, Europe, and the Far East. Application processing and audits are the core functions that OSHA performs for the NRTL Program.

In order to perform these core functions, OSHA must also perform a number of ancillary activities that support these functions. OSHA investigates complaints filed against NRTLs to ensure that the laboratories are adequately performing their testing and certification functions. OSHA represents the NRTL Program in a variety of forums related to conformity assessment [1] of products used in the workplace. OSHA also maintains a detailed Web site that both explains the program, and, more importantly for the NRTLs, lists all the laboratories that are currently recognized, the products each can test, and their registered certification marks.

On August 30, 2000, OSHA established a schedule of fees for certain services rendered to NRTLs; specifically, the application processing and audit functions. In the **Federal Register** notice announcing the fee schedule (65 FR 46797, July 31, 2000), OSHA found that laboratories receive ''special benefits'' from the NRTL Program and that charging these laboratories was appropriate under the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701), OMB Circular A–25 ''User Charges,'' and other legal authorities. 65 FR 46803. OSHA stated:

> NRTLs accrue ''special benefits'' from the services that OSHA renders to them. These ''special benefits'' are the product of OSHA's initial and continuing evaluation of their qualifications to test and certify products used in the workplace, e.g., the acknowledgement of their capability as an NRTL. The primary special benefits of NRTL recognition are the resulting business opportunities to test and certify products for manufacturers, the NRTL's clients. These opportunities may be in the form of new, additional, or continuing revenue and clients. Once the NRTL has properly certified a product, a manufacturer may then sell this product to employers, enabling them to comply with product approval requirements in OSHA standards. 65 FR 46807.

Through this rulemaking, OSHA promulgated 29 CFR 1910.7(f). Paragraph (f) states that each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. 29 CFR 1910.7(f)(1). Specifically, the Agency assesses fees for the following: (1) Processing of applications for initial recognition, expansion of

[1] OSHA generally uses the term ''approval'' to describe the type of testing or certification activities performed by NRTLs. Conformity assessment is a term used internationally to describe such activities and is defined as ''any activity concerned with determining directly or indirectly that requirements are fulfilled.''

recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and (2) audits. The rule also sets forth that fees are based, in part, on the staff costs per hour of performing application processing and/or audit activities.

This proposed rule would adjust the approach that OSHA uses to calculate the fees it currently charges for the services it provides to NRTLs. OSHA is proposing this adjustment because the current fee schedule only recovers about half of the allowable reimbursable costs of the NRTL Program.[2] In particular, the current approach does not recover the costs of the ancillary activities that are necessary to the program's functioning. The proposed adjusted approach would also take into account the value of the leave earned by all of the personnel involved in the program, whereas, the current approach accounts for leave earned by only a few of these personnel.

III. Legal Considerations

This proposed rule adjusts the approach that the Agency uses to calculate the fees it charges NRTLs for services performed to the benefit of the NRTLs by including the costs for benefits that are shared by all NRTLs. As described above, these include certain costs associated with ancillary activities and leave. Although OSHA would still not charge separate fees for the time spent on ancillary activities and leave, the rate charged for the fee-generating activities would be adjusted to account for the portion of the program costs attributable to ancillary activities and leave. This section describes the legal basis for OSHA recouping these costs from the NRTLs.

A. Legal Authority for Charging Fees

1. Statutory Authority

In Title V of the IOAA, Congress set forth its mandate for executive agencies to collect fees for services and things of value that the agencies provide. Congress intended that the agency programs that provide benefits to specific individuals or companies be funded by these beneficiaries and not by taxpayers at large. ''It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a). The Congressional Committee urging the measure indicated, ''The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries.'' *Nat'l Cable Television Ass'n* v. *U.S.,* 415 U.S. 336 (1974) *quoting* H.R. Rep. No. 82–384, at 2–3 (1951).

In addition to establishing a source of funding, Congress also provided general guidance to agency heads on the establishment of fees. The fees are to be ''fair'' and based on:

(A) The costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

31 U.S.C. 9701(b).

The 1993 OMB Circular A–25 (discussed in greater detail below) embodies the authority of the IOAA and reflects interpretations from the related case law decisions.

Since 1997, in OSHA's yearly appropriations, Congress has specifically authorized the Secretary of Labor to collect and retain fees charged to sustain the NRTL Program. ''[T]he Secretary of Labor is authorized * * * to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums * * * to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace.'' *See e.g.,* Consolidated Appropriations Act for FY 2000, Public Law No. 106–113 (113 Stat. 1501A–222) and Consolidated Appropriations Act, 2009, Public Law No. 111–8 (123 Stat. 524).

2. Case Law

The Supreme Court and the Courts of Appeals have issued decisions addressing the application of the IOAA and its interpretation by Federal agencies. These cases provide guidance that is more specific as to the fee schedules and the methods of assessing fees that agencies may use. They make clear that agencies may recoup all of the Governmental costs associated with providing private entities with specific benefits.

In 1974, the Supreme Court decided the companion cases of *Nat'l Cable Television Ass'n,* 415 U.S. 336 and *Fed. Power Comm'n* v. *New England Power Co.,* 415 U.S. 345 (1974). In *Nat'l Cable,* the Court found that an agency may charge a fee for services but that the fee should be based on ''value to the recipient.'' *Nat'l Cable,* 415 U.S. at 342–43. In *New England Power Co.,* the Court held that pursuant to the IOAA and OMB Circular A–25, agencies can only recoup specific charges for specific services to specific individuals or companies. *Fed. Power Comm'n,* 415 U.S. at 349.

In *Nat'l Cable Television Ass'n, Inc.* v. *FCC,* 554 F.2d 1094 (DC Cir. 1976), the Court of Appeals also made clear that the fees must be for specific services. The court upheld charging both an application fee and an annual fee provided that the agency makes clear which activities are covered by each of the fees to prevent charging twice for the same service. *Nat'l Cable Television Ass'n,* 554 F.2d at 1105. Furthermore, the court agreed that fees based on reasonable approximations of costs for the services would be acceptable. ''It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class * * * in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received.'' *Nat'l Cable Television Ass'n,* 554 F.2d at 1105–1106.

In *Elec. Indus. Ass'n* v. *FCC,* 554 F.2d 1109 (DC Cir. 1976), the Court of Appeals indicated that ''expenses incurred to serve some independent public interest cannot * * * be included in the cost basis for a fee, although the Commission is not prohibited from charging an applicant or grantee the full cost of services rendered * * * which also result in some incidental public benefits.'' *Elec. Indus. Ass'n,* 554 F.2d at 1115. Moreover, the court held that the agency can only include, in the cost basis of the fees, expenses incurred to confer value upon the recipient. *Id.* Along similar lines, the Court of Appeals held in *Capital Cities Communications, Inc.* v. *FCC,* 554 F.2d 1135 (DC Cir. 1976), that ''the proper standard is not value derived by the recipient but rather value conferred on the recipient. In our view, this standard requires the fee assessed to bear a reasonable relationship to the cost of the services rendered to identifiable recipients.'' *Capital Cities Communications, Inc.,* 554 F.2d at 1138.

Lastly, in *Miss. Power and Light* v. *U.S. Nuclear Regulatory Comm'n,* 601 F.2d 223 (5th Cir. 1979), the 5th Circuit Court of Appeals upheld the NRC's fee schedule methodology because the NRC did not seek to recover the entire cost of regulating. The NRC charged a fee

[2] In February 2007, OSHA issued a revision of its Fee Schedule to account for increases in program costs (*see* 72 FR 7468). This revision, however, did not alter OSHA's method for calculating fees. The increase in the February 2007 fees was based on cost of living and time adjustments, but employed the same calculation set forth in the initial **Federal Register** notice published in July 2000. OSHA had previously updated the initial fees in January 2002 (see 67 FR 5299).

based only on the costs of providing a specific benefit to identifiable private parties. *Miss. Power and Light,* 601 F.2d at 230.

3. OMB Circular No. A–25

Circular No. A–25 was issued by OMB pursuant to the IOAA, to establish ''Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources * * * [I]t provides guidance for agency implementation of charges and the disposition of collections.'' User Charges, Circular No. A–25, OMB (July 8, 1993).

In section 6 of the Circular, OMB directs agencies to assess user charges ''against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' Furthermore, user charges ''will be sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as sovereign.'' Finally, the Circular defines full cost to include ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.''

In order to fulfill the mandate of the IOAA that agency programs should be self-sustaining to the extent that they provide special benefits to identifiable recipients, the OMB Circular directs agencies to recoup the ''full cost to the Federal Government'' of providing a service. It further specifies that full costs ''includes all direct and indirect costs'' of providing this service. Examples of such costs provided by the Circular include personnel costs (including salaries and fringe benefits), physical overhead, management and supervisory costs, and costs of enforcement and research. Circular No. A–25, OMB 6(d)(1)(a)–(e).

The legal authorities described above establish several considerations for determining how agencies can assess certain fees for services rendered: (1) The fees must be based upon special benefits derived from Federal activities beyond those received by the general public; (2) the benefits must be conferred on identifiable recipients; and (3) the fees must bear a reasonable relationship to the cost of the services rendered. In addition, the OMB circular makes clear that agencies can recoup indirect costs of services rendered to special beneficiaries and that agencies should strive to make agency programs self-sustaining to the extent that they provide special benefits to identifiable recipients. Assessing NRTL fees that recover the cost of ancillary activities and leave satisfies these considerations, which we further discuss below.

B. Explanation for Charging Fees for Ancillary Activities

First, the proposed fee structure is based on special benefits. As noted earlier, NRTLs and applicants accrue special benefits from the services that OSHA renders for the fees. These special benefits are the product of OSHA's initial and continuing evaluation of an organization's qualifications to test and certify products used in the workplace. Primarily, these special benefits are the business opportunities that result from OSHA recognition of these organizations as NRTLs, which allows them to offer their testing and certification services to manufacturers whose products, when used in the workplace, must be tested and certified by an NRTL to comply with OSHA's requirement. These opportunities are ''special benefits derived from Federal activities beyond those received by the general public,'' as described in OMB Circular A–25.

Ancillary activities performed OSHA under the NRTL Program result in identifiable costs from the provision of those specific services and benefits to NRTLs. Examples of ancillary activities include administration of the program, budgetary, and policy matters; training OSHA personnel to perform program activities; interagency and international coordination; responses to requests for information related to the program; handling complaints; Web site development and maintenance; and participation in meetings with stakeholders and outside interest groups.

OSHA is *required* to recover the costs of these activities because such costs are incurred solely for the administration of the NRTL Program, from which NRTLs derive special benefits. The absence of these necessary activities would severely reduce, if not eliminate, many of the benefits that NRTLs derive from recognition by OSHA. Two examples illustrate this point. Through application processing and audits, OSHA determines which organizations qualify as NRTLs and which products each individual NRTL is qualified to approve. By maintaining a Web site, OSHA shares this information with the public. This benefits NRTLs by making their current and potential clients, as well as employers, aware that the NRTLs are qualified to approve products. Complaint handling is a valuable tool that OSHA relies upon, especially between audits, to learn of inappropriate or questionable activities by a particular NRTL. If, for example, OSHA receives a complaint that a lab is testing equipment that is to be used in very hazardous environments, but it is not recognized by OSHA to perform this testing, OSHA would investigate to determine whether the testing jeopardizes the safety of the equipment. If it does, OSHA could take steps to prevent an accident stemming from the use of this equipment. Thus, through complaint handling, OSHA reinforces the program's effectiveness, which maintains confidence in the program, and thus, the benefits derived by NRTLs from the program.

Second, the benefits are conferred on identifiable recipients. As with the prior schedules, OSHA is assessing fees to identifiable recipients of the NRTL Program benefits. The ancillary activities result in benefits shared among all NRTLs, in contrast to the benefits of the core application and auditing services, which are more easily identified with individual NRTLs. In order to share the costs of these benefits equitably, while still ensuring that the fees charged are specific charges for specific services to specific companies, OSHA is apportioning the costs of the shared benefits in accordance with the time OSHA spends on core services provided to each NRTL. This approach recognizes that an individual NRTL's portion of the shared benefits is directly related to the core benefits it receives. OSHA is, therefore, retaining its fee structure of charging the NRTLs fees when a core action is directed at or initiated by an NRTL, while adjusting the rate used to compute the fee in order to recoup a greater portion of the actual program costs.

OSHA will charge an NRTL a fee when the NRTL applies, for example, for an expansion of its recognition by OSHA. In this situation, the NRTL is asking OSHA to review its application for expansion so that the NRTL can expand its scope of recognition. The fee that OSHA would charge in this instance is directly related to the NRTL seeking the expansion. The converse is also true: If in any particular year an NRTL does not apply to expand its recognition, it will not be charged an expansion application fee. The proposed Fee Schedule would thus reimburse OSHA for ancillary activities but would do so by charging specifically identified laboratories only when they receive the core services of the program.

Third, the fees charged bear a reasonable relationship to the costs of the program. OSHA is basing the fee schedule on the average cost of certain activities performed to the benefit of the NRTLs. These costs are documented by

the Agency. Through this proposed revised fee schedule, OSHA would recover a large percentage of the costs of the program. To ensure that it does not overcharge, OSHA has targeted this proposal to capture approximately 95% of the costs of the program.

Finally, by including the costs of ancillary activities in the fees, OSHA would, for the first time, be fully compliant with the IOAA and OMB Circular A–25, both of which require Agency programs to be self-sustaining to the extent that they confer special benefits on identifiable recipients. In fact, until implementation of a revised fee schedule in February 2007 that allowed recovery of approximately 50% of program costs, OSHA had been recovering only about 30% of the costs of the NRTL Program. Taxpayers had been funding the remaining 70% through OSHA's annual appropriations. This does not comport with the IOAA and OMB Circular A–25, and OSHA is proposing to correct that with this proposed rule.

Therefore, as explained above, OSHA concludes that including the cost of ancillary activities in the fees fits squarely within the legal framework described in the preceding section. That is, the fees are based on special benefits to NRTLs; assessed to identifiable beneficiaries of the NRTL Program; and reasonably related to OSHA's costs of providing the services to NRTLs.

OSHA recognizes that this proposal differs from the position the Agency took in the 2000 rulemaking implementing the initial fee structure. In that rulemaking, OSHA stated that it would not seek to recover costs for certain types of ancillary activities such as training of compliance officers on the NRTL Program and Web site development. *See, e.g.,* 65 FR 46802. At the time of that rulemaking, however, OSHA believed those activities would utilize only a small portion of NRTL Program's resources. Recent workload reviews show that these activities have become a large part of the program and are now more critical in supporting the NRTL Program's core functions. It is, therefore, appropriate for OSHA to include these costs in the fees.

Because this work on ancillary activities has grown so much faster than program resources over the last several years, OSHA has less time available for application processing and audits. Moreover, because the existing fees only recoup the cost of time spent on core services, this means that OSHA is recovering a dwindling percentage of the NRTL Program costs. Thus, OSHA's ability to meet, on a timely basis, the needs of the NRTLs in application processing and auditing, while recovering its costs for providing those services, has been severely challenged. OSHA intends to provide, through this rule, resources to improve the program's effectiveness in rendering these core services.

C. Explanation for Assessing Costs for Leave

Although the initial and current fee structures account for ''personnel costs'' for core NRTL activities, they do not actually represent all personnel costs. In fact, they do not even represent the total time spent on core activities. As Federal employees, Department of Labor/OSHA employees earn leave as part of their regular compensation. However, the initial fee structure failed to account for leave earned by OSHA employees, even though that leave is part of the personnel costs of rendering the services.[3] In this respect, the initial fee structure was not compliant with OMB Circular A–25 and the other legal authorities described above. Thus, in this proposed revised fee structure, OSHA is adjusting the personnel costs to include leave earned by all employees performing services in support of the NRTL Program.

D. Explanation for Advance Collection of the Fees

Currently, OSHA requires that NRTLs and applicants pay an application review fee when submitting their application, and, for initial applications, prepay the fee for the on-site assessment. The remainder of the fees is generally billed to the NRTLs or applicants after the services are rendered. When OSHA adopted this billing system in its final rule issued in 2000, it expected the system to ''reduce collection activity of the Agency, since only one bill would need to be sent to the NRTL for an audit, rather than the two contemplated under the NPRM.'' 65 FR 46802 (July 31, 2000). It therefore predicted a ''minimal financial burden'' to the Agency by delaying collection. *Id.*

In practice, however, those predictions have not proven true. In recent years, the post-collection system has created problems and resulted in the loss of some funds. For example, to ensure that the Agency retained all fees that were due for audits conducted during a fiscal year, OSHA had to request that NRTLs pay fees in advance for any audits that were conducted during the last two months of the Federal Government fiscal year. OSHA requested advance payment because, to comply with federal mandates, it could not retain any of these fees if received after the end of a fiscal year, but would forfeit them to a general Federal Government fund. The current fee collection system has also made it difficult in practice to ensure that the Agency complies with OMB Circular A–25, described above. In addition to providing guidance regarding the collection and retention of user fees, OMB Circular A–25 generally requires agencies to collect user fees in advance. *See* OMB Circular A–25, Section 6.a.2.(c) (''User charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services.''); *see also* OMB Circular A–11, ''Preparation, Submission, And Execution Of The Budget'' (June 2008), section 20.13.[4]

The program exists for the benefit of NRTLs, but OSHA is currently required to advance funds to cover the program costs until they are reimbursed by NRTLs or applicants. Given competing demands on the appropriations from which these funds must be drawn, the continued use of general operating funds to front fund the NRTL Program could adversely impact OSHA's ability to perform other aspects of its mission.

In summary, OSHA proposes to bill in advance for audits and fees to ensure compliance with the OMB guidance and to reduce any financial impact on OSHA's other activities caused by advancing funds to the NRTL Program. Where the fees are based on actual cost, the travel costs and other expenses would be estimated and billed in advance, with any difference between the actual cost and the estimate adjusted after the completion of the audit or other service. OSHA believes the advance collection may help NRTLs to schedule payments in that they will be made in advance of the mutually-agreed-upon date for OSHA's audits of the NRTLs.

IV. Explanation of Proposed Change in Approach for Calculating Fees

Under the proposed rule, OSHA will continue to calculate the fee for each of the service activities listed in the fee schedule by multiplying an *equivalent*

[3] A small portion of NRTL fees covers the costs of legal services performed by attorneys in the Office of the Solicitor of Labor. Leave costs are included in that portion of the fees.

[4] Section 20.13(a) is a description of revolving funds that also provides that in the absence of a revolving fund ''advance payments must accompany orders.'' Section 20.13(b) specifies that obligations by expenditure accounts may be covered in one of two ways: Through ''advances collected up to the amount of accompanying orders'' or by ''[w]orking capital that is available for this purpose.''

average cost per hour rate (ECR) by the time it takes to perform that activity: *Fee for activity = ECR x Time for activity.*

In the July 31, 2000, **Federal Register** notice, OSHA explained that the initial fee schedule's ECR was derived by dividing the *total estimated direct and indirect costs of the program, excluding travel,* (*TPC*) [5] by the total *available annual work hours of the NRTL Program and legal staff* that perform the services (*TAW*).[6] Although the derivation of the ECR was not illustrated as an equation in the 2000 notice, we do so here for clarification and refer to it as ECR2000 (to contrast it with the equation for ECR2009, which is explained later in this notice): *ECR2000 = TPC2000/TAW2000.*[7] As discussed above, this resulted in fees that recouped the costs only of the time spent actually performing individualized audits and application processing, and did not recoup the other costs associated with running the program and providing other benefits that are shared among all NRTLs.

To properly account for the costs associated with these shared benefits, we have calculated the new ECR (ECR2009): dividing the new estimate of the total cost of the NRTL Program (TPC2009) by the *total annual service hours (TAS2009).* This latter term is a new figure that equals the total estimated hours that the staff spend on the *core service activities for which NRTLs will be billed.* In terms of an equation: *ECR2009 = TPC2009/TAS2009.* By way of comparison with the initial and current fee schedules, TAS equals TAW minus estimated hours spent on ancillary activities (AH) and leave (LH): TAS = TAW – AH – LH. By continuing to include the full program costs in the numerator, but including, in the denominator, only the amount of time spent on providing ''billable'' core services, the revised ECR is more accurately tied to the hours spent on those core activities, which are the hours for which OSHA bills the NRTLs.

OSHA could have achieved the same result by charging each NRTL separately for its share of the program resources used to produce the shared benefits. OSHA is not proposing this method primarily because the shared nature of these costs makes it impractical to calculate and track them separately for each NRTL and attribute them appropriately to individual NRTLs through separate fees. As explained above, the existing fee approach in which NRTLs are only charged for core services provides a more straightforward and manageable method of ensuring that OSHA recoups only ''specific charges for specific services to specific individuals or companies.'' *Fed. Power Comm'n,* 415 U.S. at 349.

In addition to this methodological change, the proposed fee schedule presented in this notice also includes updated calculations of the total resources committed to the NRTL Program (TPC2009) and of the average time spent on some of the service activities for which fees are charged.

OSHA has estimated that TAS2009 = 3.5075 FTEs (7295.6 hours), which is 50.11% of total available annual work hours (TAW2009), 7.0 FTE.[8] Using the TPC2009 of $1,079,090, shown in Figure 1, below, the new rate is: ECR2009 = $1,079,090/7295.6 hours = $147.90.

The table below shows a summary of program costs and value of the revised ECR2009, which is later used to generate the proposed fee schedule in section VI, below.

FIGURE 1—NRTL PROGRAM ANNUAL COST ESTIMATES—PROPOSED NEW ECR2009 CALCULATION

[Including ancillary costs and leave]

Description	Costs
Direct Expenses	$512,342
Indirect Expenses *	566,748
Total Program Costs (excluding travel) *(aka "TPC2009")*	1,079,090
Travel Expenses	72,600
Overall Program Costs (includes travel) **	1,151,690
TAS2009 (3.5075 FTE × 2,080 hours per FTE)	7,295.6
ECR2009 = TPC2009/TAS2009	147.90

* This amount consists of $441,408 for management, ancillary, and support costs; and $125,340 for equipment and other costs. Note: These are costs incurred mostly by OSHA but also include applicable costs of a division of the Department of Labor's Office of the Solicitor.

** The amount of fee collections is estimated to be approximately 95.2% of this total or $1,096,000.

Finally, as mentioned above, the total cost of administering the program has increased since the last revision to the fee schedule published on February 15, 2007. This cost increase is due to two main reasons: The proposed increase in the program's staff resources and the annual salary adjustments for Federal employees. As a result of the increase to the TPC and the revised approach of calculating the ECR2009 proposed in this notice, OSHA's base rate (ECR) would increase almost 132%, from $63.80 (in effect since February 15, 2007) to the $147.90 shown above. Without the change in approach but with the increase in staffing, the rate and estimated total collections would have increased to $73.72 and $583,000, respectively.

For existing NRTLs and pending applicants, OSHA proposes to phase in, over three years, any proposed fee increase that is greater than $200: a 33% increase for the first year's fees; a similar amount for the second year's fees; and the remainder in the third year. OSHA is proposing this $200 threshold because it limits the number of fees that would increase 100% for the first year; the increase for the remaining fees would be phased in, thus reducing the financial impact the increase has on any NRTL. As evident from the comparison of fees shown in section VIII, only three fees are affected, which would increase by a combined total of $510. OSHA seeks comment on the $200 threshold and on the three-year phase-in period, which is intended to balance the need for a period of adjustment for some existing NRTLs against OSHA's responsibility to recoup the full costs of the NRTL Program as soon as possible. Commenters who support these approaches or who suggest alternatives are encouraged to include a rationale for their recommendations.

The entire increase would be effective immediately for any organization whose

[5] The TPC include personnel costs for the NRTL Program and legal staff (including support and management staff), equipment, contract, and other costs necessary for the operation of the program. Travel expenses are not included in the ECR because OSHA charges for the actual staff travel expenses of the on-site visits after they are completed.

[6] In discussing total hours in this notice, we often refer to FTEs, which stands for full-time equivalents and, for purposes of this notice, equals total work hours divided by 2,080, the total available annual work hours (TAW) for one full-time employee; that is, 1 FTE equals 2,080 hours.

[7] We will use the TPC abbreviation in discussing our calculations in this proposed rule, but the total amount shown in the July 2000 notice (i.e., TPC2000) will, of course, differ from the total shown now in this proposed rule (i.e., TPC2009) because total costs of the program have changed.

[8] TAW2009 equals 7.0 FTE; AH2009 equals 2.6675 FTE; and LH2009 equals 0.825 FTE. As a result, TAS2009 equals 7.0 minus 2.6675 minus 0.825, which is equal to 3.5075 FTE. **Note**: We can also derive the ECR2009 from the ECR2007 ($63.80) using a factor that takes into account the effects due to leave and ancillary activities and the use of TAS instead of TAW. We do not illustrate this here since the calculation is more involved and gives the same result as the simpler equation above.

application to become a new NRTL is received by OSHA after the effective date of the revised fee schedule in the final rule. Unlike currently recognized NRTLs and pending applicants, new applicants do not have a current stake in the program at the current fee schedule; new applicants are free to choose whether or not to participate in the program.

V. Basis and Derivation of Fee Amounts

Figures 2, 3, 4, and 5, below, present the proposed costs of the major activities for the various fees categories. In general, OSHA calculated the cost of these activities by multiplying the staff activity time [9] by ECR and adding any applicable average travel costs. However, because OSHA charges for actual travel, only the non-travel costs serve as the basis for the fees later shown in Tables A and B. In deriving the fee amounts shown in the fee schedule (Table A or B), OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest $5 or $10 amount.

FIGURE 2—INITIAL APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
Initial Application Review	office and field staff time	120	$17,749
Additional Review Time	office staff	16	2,367
Limited Review Time	office staff	24	3,550
On-site Assessment—first day (per site, per assessor).	field staff time (16 hours preparation, 6 hours travel documents processing, and 8 hours at site).	30	4,437
	field staff travel expense ($700 airfare/other + $100 per diem).	not applicable	800
	Total		5,237
On-site Assessment—each addnl. day ** (per site, per assessor).	field staff time (at site)	8	1,183
	field staff travel expense (per diem only)	not applicable	100
	Total		1,283
On-site Assessment travel time—per day (per site, per assessor).	field staff	8	1,183
Review and Evaluation (10 test standards)	office staff time	2	296
Final Report & Federal Register notice	field and office staff time	132	19,524
Fees Invoice Processing	office staff time	2	296

* Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($147.90).
** Note: 2 additional days are estimated if there are 2 assessors and 4 additional days are estimated if there is 1 assessor.
See notes to Table A Fee Schedule for more information concerning the activities listed in this figure.

FIGURE 3—EXPANSION APPLICATION (ADDITIONAL SITE) COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
Application Review (expansion for site)	office and field staff time	56	$8,283
Additional Review Time	office staff	8	1,183
On-site Assessment—first day (per site, per assessor).	field staff time (12 hours preparation, 4 hours travel documents processing, and 8 hours at site).	40	5,916
	field staff travel time expense (700 airfare/other + 100 per diem).	not applicable	800
	Total		6,716
On-site Assessment—additional day ** (per site, per assessor).	field staff time (at site)	8	1,183
	field staff travel expense (per diem only)	not applicable	100
	Total		1,283
On-site Assessment travel time—per day (per site, per assessor).	field staff	8	1,183
Review and Evaluation Fee (10 test standards)	office staff time	2	296
Final Report & Federal Register notice	field and office staff time	50	7,396
Fees Invoice Processing	office staff time	2	296

* Average cost for staff time = average hours × equivalent average direct staff cost/hr. (147.90).
** Note: 2 additional days are estimated if there is 1 assessor.
See notes to Table A Fee Schedule for more information concerning the activities listed in this figure.

[9] The term ''staff'' encompasses federal employees as well as any contract employees retained by OSHA for work on the NRTL Program.

FIGURE 4—RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
Application Review (renewal or expansion other than additional site).	office and field staff time	2	$296
Additional Review Time	office staff	8	1,183
Renewal Application—Information Review	office staff	40	5,916
On-site Assessment—first day (expansion) (per site, per assessor).	field staff time (8 hours preparation, 4 hours travel documents processing, and 8 hours at site).	20	2,958
	field staff travel expense (700 airfare/other + 100 per diem).	not applicable	800
	Total		3,758
On-site Assessment—first day (renewal) (per site, per assessor).	field staff time (16 hours preparation, 4 hours travel documents processing, and 8 hours at site).	28	4,141
	field staff travel expense (700 airfare/other + 100 per diem).	not applicable	800
	Total		4,941
On-site Assessment—addnl. day** (per site, per assessor).	field staff time (at site)	8	1,183
	field staff travel expense (covers per diem only)	not applicable	100
	Total		1,283
On-site Assessment travel time—per day (per site, per assessor).	field staff	8	1,183
Review and Evaluation Fee (10 test standards) (expansion).	office staff time	2	296
Final Report & Federal Register notice	office and field staff time (if there is an on-site assessment).	50	7,396
Final Report & Federal Register notice	office and field staff time (if there is NO on-site assessment).	30	4,437
Supplemental Program Review	office and field staff time (per program requested incl. consultation and assessor's memo).	4	592
Fees Invoice Processing	office staff time	2	296

* Average cost for staff time = average hours × equivalent average direct staff cost/hr. (147.90).
** Note: 2 additional days are estimated for renewal assessment; no additional days for expansion assessment.
See notes to Table A Fee Schedule for more information concerning the activities listed in this figure.

FIGURE 5—ON-SITE AUDIT COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost *
On-site Audit—first day (per site, per auditor)	field staff time (12 hours pre-site review preparation, 4 hours travel documents processing, and 8 hours at site).	24	$3,550
	prepare report/contact NRTL plus office review staff time (2 days for field staff and 2 hours for office staff).	26	3,846
	Subtotal (first day)		7,396
	field staff travel expense (700 airfare/other + 100 per diem).	not applicable	800
	Total		8,196
On-site Audit—addnl. day** (per site, per auditor)	field staff time (at site)	8	1,183
	travel expense (covers per diem only)	not applicable	100
	Total		1,283
On-site Audit travel time—per day (per site, per auditor).	field staff	8	1,183
Fees Invoice Processing	office staff time	2	296

* Average cost for staff time = average hours × equivalent average direct staff cost/hr. (147.90)
** Note: 1.0 additional day is estimated if there is 1 auditor.
See notes to Table A Fee Schedule for more information concerning the activities listed in this figure.

VI. Proposed Fee Schedules

A. Proposed First Phase Fee Schedule

OSHA proposes the adjusted fee schedules shown below as Tables A and B. If the revised fees were to go into effect as proposed, all existing NRTLs would be charged the fees set forth in Table A in the first year. New applicants would be charged the fees set forth in Table B.

The fees in Table A represent only the first phase of OSHA's fee increase. As explained above, for existing NRTLs and pending applicants, OSHA would phase in any increase in fees that is greater than $200 over a period of three years: 33% of the increase in this current revision; another 33% in the second year; and the final 34% in the third year. The percentage increase in the next two years, however, would be adjusted by any increase or decrease in fees calculated for each of those years when OSHA performs its annual review of the fees. During this review, OSHA would determine the amount of time we have actually charged for application processing and audits, and the actual indirect travel we performed, and adjust the amount in any proposed fee schedule by the amount over- or underestimated.

TABLE A—FEE SCHEDULE NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM): FEE SCHEDULE

[Effective (to be provided in final notice published in the **Federal Register**)] [12]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
APPLICATION PROCESSING.	Initial Application Review [1, 8]	$17,750.
	Expansion Application Review (per additional site) [1, 8]	$3,420.
	Renewal or Expansion (other) Application Review [1]	$300.
	Renewal Information Review Fee [7]	$1,470.
	Additional Review—Initial Application (if the application is substantially revised, submit one-half Initial Application Review fee) [7].	$2,370.
	Additional Review—Renewal or Expansion Application [7]	$730.
	Limited Review—Initial Application [7]	$3,550.
	Assessment—Initial Application (per person, per site—first day) [2, 10] [$2,740, if application is pending on effective date above].	$4,440 + travel expenses.
	Assessment—Renewal Application (per person, per site—first day) [3, 10]	$2,570 + travel expenses.
	Assessment—Expansion Application (additional site) (per person, per site—first day) [3].	$2,200 + travel expenses.
	Assessment—Expansion Application (other) (per person, per site—first day) [3]	$1,830 + travel expenses.
	Assessment—each addnl. day or each day on travel (per person, per site) [2, 3] [$1,180 for new applications; $730 for pending or other applications].	$730 or $1,180 + travel expenses.
	Review & Evaluation [5] ($30 per standard if it is already recognized for NRTLs and requires minimal review; OR else $296 per standard).	$30 per standard OR $296 per standard.
	Final Report/Register Notice—Initial Application [5, 9] [$12,080, if application is pending on effective date above].	$19,520.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment) [5, 9].	$4,580.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment) [5, 9].	$2,740.
AUDITS	On-site Audit (per person, per site, first day) [6]	$4,240 + travel expenses.
	On-site Audit—each addnl. day or each day on travel (per person, per site) [6]	$730 + travel expenses.
	Office Audit (per person, per site) [6]	$730.
MISCELLANEOUS	Supplemental Travel (per site—for sites located outside the 48 contiguous States or the District of Columbia) [4].	$1,000.
	Supplemental Program Review (per program requested) [4]	$270.
	Fees Invoice Processing (per application or audit) [4]	$300.
	Travel Document Processing (6 hours, per application or audit) [4]	$890.
	Late Payment [11]	$150.
	Comp Time (per hour) [10]	$56.40.

NOTES TO TABLE A, OSHA FEE SCHEDULE FOR NRTLS:

[1] Must I pay the Application Review fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and submit this fee concurrently with your expansion or renewal application. *See* note 7 if you amend or revise your initial or expansion application.

[2] What assessment fees do I pay for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, and we accept your application, we bill you for the assessment fee and you must pay it before we perform the assessment. The prepaid assessment fee will be based on estimated staff time and travel costs. After completing the actual assessment, we calculate the actual assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We calculate this fee at the rate of $4,440 for the first day at the site, $1,180 for each additional day at the site, and $1,180 for each day in travel, plus actual travel expenses, for each assessor [if pending, the rates are $2,740, $730, and $730, respectively.]. (NOTE: Days charged for being in travel status are those allowed under government travel rules. This note applies to any assessment or audit.) Actual travel expenses are determined by government per diem and other travel rules. We bill or refund the difference between the amount you prepaid and the actual assessment fee. We reflect this difference in the final bill that we send to you for the application.

[3] What assessment fees do I submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we bill you for this fee and you must pay it before we perform the assessment. The prepaid fee will be based on estimated staff time and travel costs. Following the assessment, we will calculate the actual fee based on the actual staff time and travel costs we incurred in performing the assessment. We calculate this fee at the rate of $2,570, $2,220, or $1,830 for the first day at the site of a renewal, expansion (site), and expansion (other) assessment, respectively. We also include $730 for each additional day at the site and $730 for each day in travel, plus actual travel expenses, for each assessor. Actual travel expenses are determined by government per diem and other travel rules. When more than one site of the NRTL is visited during one trip, we charge the $730 additional day fee, plus actual travel expenses, for each day at a site. We bill or refund the difference between the amount you prepaid and the actual assessment fee. We reflect this difference in the final bill that we send to you for the application.

[4] When do I pay the Supplemental Travel, the Supplemental Program Review, the Fees Invoice Processing fees, or the Travel Document Processing fee?

You must pay the Supplemental Travel fee when you submit an initial application for recognition and the site you wish to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The current supplemental travel fee is $1,000. We factor in this prepayment when we bill for the actual costs of the assessment, as described in our note 2, above. See note 8 for possible refund of application or assessment fees. You must pay the Supplemental Program Review fee when you apply for approval to use other qualified parties or facilities to perform specific activities. See Chapter 2 of the NRTL Program Directive for more information. We will include the Fees Invoice Processing fee in the total for each of our invoices to you. You must pay the Travel Document Processing fee in advance to cover the costs of arranging and obtaining reimbursement for travel. It is generally included in the first day fee for assessments and audits. We charge this fee separately for trips to a location when the preparation time for the trip is minimal. An example is trips to a site that the NRTL has qualified to perform specific or limited testing or certification activities for the NRTL.

[5] When do I pay the Review and Evaluation and the Final Report/Register Notice fees?

An applicant or an NRTL must pay the appropriate fees in advance of OSHA performing the assessment for the application. We calculate the Review and Evaluation Fee at the rate of $30 per test standard requested for those standards that OSHA previously recognized for any NRTL and that require minimal review or do not represent a new area of testing for the NRTL. Otherwise, this fee is $296 per standard requested.

[6] When do I pay the Audit fee?

Each NRTL must pay this fee (on-site or office, as deemed necessary) in advance of OSHA commencing the audit, and we calculate this prepaid fee based on estimated staff time and travel costs. Following the audit, we will calculate the actual fee based on actual staff time and travel costs incurred in performing the audit. We calculate our fee at the rate of $4,240 for the first day at the site, $730 for each additional day at the site, and $730 for each day in travel, plus actual travel expenses for each auditor. Actual travel expenses are determined by government per diem and other travel rules. We may add any underpayment(s) or credit any overpayments to the invoice for a future audit of the NRTL's site.

[7] When do I pay the Additional Review fee, Renewal Information Review fee, or Limited Review fee?

The Additional Review fees cover the staff time in reviewing new or modified information submitted after we have completed our preliminary review of an application. There is no charge for review of a ''minor'' revision, which entails modifying or supplementing less than approximately 10% of the documentation in the application. You must pay the Additional Review fee when submitting revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, when submitting your revised documentation, you must pay half the Initial Application Review fee or the full Expansion Application Review fee ($3,420), as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition. You must pay the Additional Review or Renewal Information Review fee when submitting the additional or updated information. The Limited Review Fee covers the time to review and return a new application that we find to be substantially deficient. This fee is deducted from any refund issued to the applicant.

[8] When and how can I obtain a refund for the fees that I paid?

If you withdraw your initial application or your expansion application to include an additional site, we will refund half of the application review fee. If you withdraw your application before we commence travel to your site to perform the on-site assessment, we will refund any prepaid assessment fees or credit your account. We will also credit your account for any amount of the prepaid assessment or audit fees collected that is greater than the actual cost of the assessment. If the Limited Review fee applies, we will refund the amount of the initial application review fee in excess of the limited fee. If an organization is no longer part of the program, we will refund any funds collected in excess of all valid actual costs incurred through the date of the termination. Other than these cases, we do not generally refund or grant credit for any other fees that are due or collected.

[9] Am I still liable for any fees even if my application is rejected or my recognition is terminated?

If we reject your application, we will retain the fees pertaining to tasks that we have performed. For example, if we perform an assessment for an expansion application but deny the expansion, we will retain your prepaid assessment fee. Similarly, we will retain the Final Report and **Federal Register** fee if we also wrote the report and published the notice. *See* note 11 for the consequences of nonpayment.

[10] What rate does OSHA use to charge for staff time (including Comp Time)?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, contract services, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $147.90. The hourly rate for Comp Time is based on the direct staff average salary and fringe costs only ($56.40).

[For more information about Comp Time, *see additional explanation in section* VIII of this notice (Major Changes to the Fee Schedule).]

[11] What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill (for any assessment and for the Review and Evaluation and Final Report/Register Notice fees) in advance of the assessment. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 10). We will halt any work on the application. If we do not receive payment within 30 days of the original due date, we will cancel your application. If you do not pay the prepaid fee for an audit by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. However, OSHA may decide to proceed with the audit. If we do not receive payment within 30 days of the original due date, for an audit, we will publish a **Federal Register** notice stating our intent to revoke recognition. However, please note that in either case, you may be subject to collection procedures under U.S. (Federal) law.

[12] How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's Web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''N'' in the Subject Index at *www.osha.gov.* Any application review fees are those in effect on the date you submit your application. Other application processing fees are those in effect when the activity covered by the fee will be performed. Audit fees are those in effect on the date we will begin our audit.

B. Proposed Final Fee Schedule as Projected

As explained above, OSHA has decided not to phase in the increase in fees for new applicants that apply after the effective date of the new fee schedule. These applicants, unlike currently recognized NRTLs or pending applicants, do not have a stake in the current fee schedule; new applicants are free to choose whether or not to participate in the program and would be charged the full amount of the fee increase. Table B represents the final fee schedule as currently projected. It shows the amounts that would be charged to new applicants immediately, and to existing NRTLs or pending applicants in the third and later years after this rule becomes effective. Table

B assumes that OSHA makes no additional adjustments during its annual review of the NRTL fees; in fact, however, it is likely that these fees will be adjusted during the annual fee review process.

TABLE B—FEE SCHEDULE NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM): FEE SCHEDULE

[Effective—if fully implemented] [12]

Type of service	Activity or category fee charged per application unless noted otherwise)	Fee amount
APPLICATION PROCESSING.	Initial Application Review [1, 8]	$17,750.
	Expansion Application Review (per additional site) [1, 8]	$8,280.
	Renewal or Expansion (other) Application Review [1]	$300.
	Renewal Information Review Fee [7]	$2,370.
	Additional Review—Initial Application (if the application is substantially revised, submit one-half Initial Application Review fee) [7].	$2,370.
	Additional Review—Renewal or Expansion Application [7]	$730.
	Limited Review—Initial Application [7]	$3,550.
	Assessment—Initial Application (per person, per site—first day) [2, 10]	$4,440 + travel expenses.
	Assessment—Renewal Application (per person, per site—first day) [3, 10]	$4,140 + travel expenses.
	Assessment—Expansion Application (additional site) (per person, per site—first day) [3]	$3,550 + travel expenses.
	Assessment—Expansion Application (other) (per person, per site—first day) [3]	$2,960 + travel expenses.
	Assessment—each addnl. day or each day on travel (per person, per site) [2, 3]	$1,180 + travel expenses.
	Review & Evaluation [5] ($30 per standard if it is already recognized for NRTLs and requires minimal review; OR else $296 per standard).	$30 per standard OR $296 per standard.
	Final Report/Register Notice—Initial Application [5, 9]	$19,520.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment) [5, 9].	$7,390.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment) [5, 9].	$4,440.
AUDITS	On-site Audit (per person, per site, first day) [6]	$7,400 + travel expenses.
	On-site Audit—each addnl. day or each day on travel (per person, per site) [6]	$1,180 + travel expenses.
	Office Audit (per person, per site) [6]	$1,180.
MISCELLANEOUS	Supplemental Travel (per site—for sites located outside the 48 contiguous States or the District of Columbia) [4].	$1,000.
	Supplemental Program Review (per program requested) [4]	$590.
	Fees Invoice Processing (per application or audit) [4]	$300.
	Travel Document Processing (6 hours, per application or audit) [4]	$890.
	Late Payment [11]	$150.
	Comp Time (per hour) [10]	$56.40.

The Notes to Table B would be the same as shown for Table A above, except for the fee amounts included in notes 2, 3, 6, and 7.

VII. Description of Fees

The following is a description of the major tasks and functions currently covered by each type of fee category, e.g., application fees, and the basis used to charge each fee. A description already included in the notes to the fee schedule is not repeated below.

Application Fees: This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a determination on the test standards requested, which is reflected in the Review and Evaluation fee. Application fees are based upon the average cost per type of application. OSHA uses an average cost since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees: This fee is different for the initial, renewal, expansion (site) and expansion (other) applications. It is based on the number of days for staff preparatory and on-site work and related travel. Six types of fees are shown, and five are charged per site and per person. The four fees for the first day reflect time for office preparation and 8 hours at the applicant's facility. There is one fee covering either additional days at the facility and/or days in travel. Additional days or days in travel are assessed for either a half or a full day. A supplemental travel amount is assessed for travel outside the contiguous 48 states or the District of Columbia. For initial applications, an amount to cover the assessment must be submitted ''up-front'' with the application. In addition to the first day and additional day amounts, the applicant or NRTL must pay actual travel expenses, based on government per diem and travel rules. For initial applications, any difference between actual travel expenses and the up-front travel amount is reflected in the final bill or refund sent to the applicant.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for performing the on-site work. The fee for the additional day reflects time spent at the facility and the actual travel expenses for that day.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent during the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. In general, the fee is based on the estimated time necessary to review test standards to determine whether each one is ''appropriate,'' as defined in 29 CFR 1910.7, and whether each test standard covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to

determine the current designation and status (i.e., active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. When the review is minimal, these activities take approximately 2 hours for 10 standards, or $30 per standard. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to $296 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to do testing in a ''new'' area, i.e., for a type of product not similar to any currently included under its scope of recognition.

Final Report/Register Notice Fees: Each of these fees are charged per application. The fee reflects the staff time to prepare the report of the on-site review of an applicant's or an NRTL's facility, which includes contacting the applicant or NRTL to discuss issues or items in its response to our findings during our assessment. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received in response to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA does not perform an on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a memo to recommend the expansion or renewal.

Audit (Post-Recognition Review) Fees: These fees reflect the time for office preparation, time at the facility and travel, and time to prepare the report of the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons described for the assessment fee and because the audit is generally limited to between one and two days. As previously described, the audit fee includes amounts for travel, and, as with assessments, OSHA will bill the NRTL for actual travel expenses.

Miscellaneous Fees: The sample fee schedule only shows the average cost for one full day of staff time. OSHA uses this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment of the annual audit fee. The amount for the late fee is based on 1 hour of staff time charged at the fully implemented rate.

Also shown is a fee for Supplemental Program Review, which represents the time OSHA needs to review the documents that the NRTL submits to show how it meets our criteria for use of a supplemental program. Under each program, NRTLs can use other qualified parties or facilities to perform the specific tasks that are covered by the program and that are necessary for product testing and certification.

VIII. Major Changes to the Fee Schedule

The following table shows the major adjustments (i.e., increases or decreases of $100 or more) that we propose to make to the fee schedule in Table A as compared to the current fee schedule.[10]

TABLE OF MAJOR ADJUSTMENTS TO FEE SCHEDULE

Description of activity or category	Current fee amount	Proposed fee amount—first year increase	Proposed fee amount—full increase
Initial Application Review	$5,100	$17,750	$17,750.
Expansion Application Review	$1,020	$3,420	$8,280.
Additional Review—Initial Application	$1,020	$2,370.	$2,370.
Renewal Application Information Review	$1,020	$1,470	$2,370.
Additional Review—Renewal or Expansion Application	$510	$730	$1,180.
Limited Review—Initial Application	$0	$3,550	$3,550.
Assessment—Initial Application (per person, per site—first day	$1,910	$4,440	$4,440.
Assessment—Renewal Application (per person, per site—first day)	$1,790	$2,570	$4,140.
Assessment—Expansion (additional site) (per person, per site—first day)	$1,530	$2,200	$3,550.
Assessment—Expansion (other) (per person, per site—first day)	$1,280	$1,830	$2,960.
Assessment—each addnl. day OR travel time—each day (per person, per site)	$510	$1,180 (new applications); $730 other applications.	$1,180.
Review & Evaluation	$13 per standard	$30 per standard	$30 per standard.
Final Report/Register Notice—Initial Application	$8,420	$19,520	$19,520.
Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment).	$3,190	$4,580	$7,390.
Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment).	$1,910	$2,740	$4,440.
On-site Audit (first day)	$2,680	$4,240	$7,400.
Supplemental Program Review	$260	$270	$590.
Invoice Processing	$130	$300	$300.

Clarification About Travel Expenses Fee. The fee schedule states that OSHA will charge for time on travel following government travel rules. Those rules currently permit a traveler to earn a special type of overtime called Compensatory Time For Travel, or simply travel comp time. This time is generally earned when the traveler is engaged in government business beyond his or her regular work schedule. The travel comp time amounts to earning time off as opposed to receiving an overtime payment. The amount of travel comp time will vary depending on the

[10] Our current fee schedule is available on the OSHA Web site.

specific circumstances of the travel. In general, it is greater for trips outside the contiguous 48 states than for trips within those states. This travel comp time exceeds an employee's regular work hours, i.e., the total available work hours (TAW) discussed under section IV, above. Because this time is specific to a particular trip, it will be included in the travel fee that OSHA charges for that trip. The travel comp time is not included in the total time used to develop the ECR, i.e., the TAS. Instead, it will be charged at the average rate for direct OSHA staff time, which would be $56.40 under the revised fee schedule.

IX. Proposed Changes to 29 CFR 1910.7(f)

As noted earlier, 29 CFR 1910.7(f) provides the overall parameters for determining the fees. The rule states that OSHA will assess fees for the processing of applications for initial recognition, expansion of recognition, or renewal of recognition, review and evaluation of the applications, and preparation of reports, evaluations and **Federal Register** notices, and audits of sites. It further states that OSHA calculates the fees based on either the average or actual time required to perform the work necessary, the staff costs per hour, and the average or actual costs for travel when on-site reviews are involved. 29 CFR 1910.7(f)(1) and (2). In addition, the rule states that OSHA will review costs annually and will propose a revised fee schedule, if warranted. OSHA proposes to replace the reference to an ''annual'' review with a ''periodic'' review to allow for more flexibility in adjusting fees where appropriate. OSHA does not expect that it would review the fee schedule more than once annually, but anticipates situations where the review of costs may not be fully completed within a single-year period.

OSHA is proposing to make a small change to the language in paragraph (f) to clarify the basis used for calculating fees, consistent with OMB Circular A–25. Specifically, when discussing the ''costs'' that the agency charges, OSHA will make clear that it means the ''full'' costs of performing the activities that benefit the NRTLs. Thus, as revised, the proposed paragraph (f)(2) would read: ''The fee schedule established by OSHA reflects the *full* cost of performing the activities for each service listed in paragraph (f)(1) of this section.'' (Emphasis added). Similarly, OSHA proposes to revise paragraph (f)(3)(i) to clarify that the two references to the cost of the program mean the *full* cost of the program.

OSHA is also proposing to change the language in paragraphs 29 CFR 1910.7(f)(1) and (4) to require advance payment of the fees. The first sentence of 29 CFR 1910.7(f)(1) would be revised to specify that NRTLs must pay all applicable fees in advance. In addition, the table in 29 CFR 1910.7(f)(4), which sets out important billing periods and related actions, would be revised to accommodate the proposed advanced-billing process. Included in the proposed changes to this section is a revision of the amount of time that OSHA must wait before publishing its intention to revoke its recognition of NRTLs that have not paid their audit fees: ''60 days after the bill date'' would be changed to ''30 days after due date.'' *See* ''III. Audit Fees'' in proposed 29 CFR 1910.7(f)(4).

X. Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis

Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA), as amended in 1996, require Federal agencies to analyze the costs, and other consequences and impacts, including small business impacts, of their rules. Consistent with these requirements, OSHA has analyzed the costs of the proposed rule and the impacts of the rule on affected laboratories and small businesses.

Affected Industry

When the Agency established its NRTL fee schedule in 2000, there were 17 NRTLs with 42 sites of operation. Today, there are 15 NRTLs (including two foreign-owned and operated NRTLs) with 49 sites (see Table C).

TABLE C—NATIONALLY RECOGNIZED TESTING LABORATORIES (NRTLS)

NRTL name	Number of sites
Canadian Standards Association (CSA)	6
Communication Certification Laboratory, Inc. (CCL)	1
Curtis-Straus LLC (CSL)	1
FM Global Technologies LLC (FM)	2
Intertek Testing Services NA, Inc. (ITSNA)	13
MET Laboratories, Inc. (MET)	1
National Technical Systems, Inc. (NTS)	1
NSF International (NSF)	1
SGS U.S. Testing Co., Inc. (SGSUS)	1
Southwest Research Institute (SwRI)	1
TUV America, Inc. (TUVAM)	3
TUV Product Services GmbH (TUVPSG)	1
TUV Rheinland of North America, Inc. (TUV)	1
Underwriters Laboratories Inc. (UL)	15
Wyle Laboratories, Inc. (WL)	1
Total (15 NRTLs)	49

OSHA: Directorate of Technical Support and Emergency Management.

Costs

The Agency had estimated in 2000 that approximately $239,000 in fees would be collected annually (65 FR 46815). OSHA most recently updated its fees in February 2007, and showed total estimated program costs of approximately $755,000 (72 FR 7469), only about half of which (about $380,000) would have been collected through the 2007 updated fees. As Figure 1, above, shows, revising the approach of calculating OSHA costs and updating Federal-employee salary levels will increase the fees collected to about $1,152,000. In comparison, if costs were updated using the original approach of calculation (without adjustment for ancillary activities and leave), and included the increase in staff resources, the total fees collected would have increased to about $583,000. The impact of the revised approach on all existing NRTLs is $772,000 ($1,152,000 minus $380,000). The actual impact on these NRTLs would be less because some of the increase will be paid by new applicants.

Economic Impacts

The proposed fee increase represents a tiny impact on *industry* revenues and profits. NAICS 54138 Testing Laboratories had $8.77 billion in revenues in 2002 (2002 Bureau of Economic Census publication EC02–54A–1 US), and the Agency estimates that revenues in 2006 have grown to approximately $11.0 billion. In the 2000 rulemaking, as here, the Agency estimated that net before-tax profits were 5.7 percent of revenues (Robert Morris Associates, Annual Statement Studies). The Agency, therefore, estimates 2006 industry before-tax profits as $627 million (5.7% of $11 billion). Even the entire $1.15 million in user fees represents 0.000104, or 0.0104 percent, of *industry* revenues ($1.15 million/$11 billion) and 0.0018, or 0.18 percent, of *industry* profits (1.15/627). The impact of the additional, new user fees of $772,000 would be even less. The Agency concludes that imposition of higher user fees is economically feasible for the industry.

Average cost *per affected firm* of the higher NRTL fees is about $76,867 ($1,152,000/15); while average cost per affected NRTL *establishment* (site) is about $23,510 ($1,152,000/49). Larger firms with more recognized sites are expected to have higher total user fees. The Agency believes that higher proposed NRTL user fees would have little, if any, impact on the affected firms. Demand for NRTL services continues to grow and there was no apparent adverse affect of the imposition of the NRTL fees in 2000.

Any impact on the NRTLs would hinge on whether or not they can raise prices to their customers. The Agency believes that there are no good substitutes for the certification supplied by NRTLs, and that it is likely that the higher user fees would be passed on to the very large number of NRTL customers via small price increases. The Agency preliminarily concludes that the new, higher NRTL fees will have little economic impact on the affected firms and establishments.

Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), federal agencies must assess the impact of their proposed rules on small entities and prepare an initial regulatory flexibility analysis unless the head of the agency can certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, the Agency has also estimated the relative effect of the new user fees on small businesses. In the original fees rulemaking in 2000, small businesses were defined as those with less than $5 million in sales (the Small Business Administration criterion for the industry). These businesses have fewer than 100 employees and average revenue of about $2.4 million. User fees were estimated to be about $6,000 per ''small'' testing laboratory, which was less than 0.3 percent of average small business revenues and less than 5 percent of before-tax profits (Table 6, 65 FR 46817). The February 15, 2007, revision raised the average establishment's fee to about $7,700 ($380,000/49). The higher user fees proposed by the Agency herein increases the expected average user fee for a small testing laboratory to about $23,500.

Revenues for the industry have also increased, from $5 billion in 1992 to an estimated $11 billion in 2006 (1992 and 2002 Economic Census). Similarly, the SBA size criterion of a small business in the testing laboratory industry has increased to $11 million in annual revenues (SBA Web site). The Agency estimates that the new user fees still represent less than 1 percent of revenues and 5 percent of profits for small businesses in this industry. The marginal increase in user fees, which is about $15,800 per testing laboratory (to $23,500 from $7,700), is an even smaller fraction of current revenues and profits. The economic costs are less than 1 percent of revenues and 5 percent of before-tax profits, and the Agency believes that the costs will be passed on to the firms' customers. The Agency, therefore, certifies that the proposed higher NRTLs fees will not have a significant impact on a substantial number of small entities. The Agency has preliminarily concluded that 13 of the 15 affected NRTLs are small entities, as defined by SBA size criterion.

Finally, as noted in the 2000 rulemaking, the collection of user fees from NRTLs is not a new cost to society, but represents a transfer of the governmental cost of the NRTL Program from taxpayers to an industry directly consuming government services.

References

1. U.S. Department of Commerce, Bureau of the Census, 1992 Census of Service Industries: Industry Series: SC92–S–1, –4, –5. Washington, DC, February 1995.
2. U.S. Department of Commerce, Bureau of the Census, Economic Census, 2002, publication EC02–54A–1 US.
3. Risk Management Associates (formerly Robert Morris Associates), Annual Statement Studies, September 1995.
4. U.S. Small Business Administration Web site *http://www.sba.gov.* Table of Small Business Size Standards Matched to North American Industry Classification System Codes *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

XI. Unfunded Mandates Reform Act

For the purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501, *et seq.*), this rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments, or an increased expenditure by the private sector of more than $100 million.

XII. Paperwork Reduction Act

This rule does not impose or remove any information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

XIII. Federalism

OSHA has reviewed this proposed rule in accordance with Executive Order 13132. This final rule would only set fees for services provided by the Federal government to private entities and has no impact on Federalism. The rule does not limit or restrict State policy options.

XIV. State Plan States

The 26 States and territories with their own OSHA-approved occupational safety and health plans are not affected by this final rule. These 26 States and territories include: Alaska; Arizona; California; Hawaii; Indiana; Iowa; Kentucky; Maryland; Michigan; Minnesota; Nevada; New Mexico; North Carolina; Oregon; Puerto Rico; South Carolina; Tennessee; Utah; Vermont; Virginia; Washington; and Wyoming; all of which operate plans covering both private and public sector employees. Connecticut, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

XV. Public Participation

OSHA invites comments on all aspects of the proposed rule. OSHA will carefully review and evaluate these comments, information, and data, as well as all other information in the rulemaking record, before it decides how to proceed.

You may submit comments in response to this document (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for this rulemaking. You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (*see* **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth.

Although all submissions in response to this **Federal Register** notice and exhibits referenced in this **Federal Register** notice are listed in the *http://www.regulations.gov* and/or *http://dockets.osha.gov* indexes, some information (e.g., copyrighted material) is not publicly available to read or download through those Webpages. All submissions and exhibits, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using *http://www.regulations.gov* to submit comments and access dockets is available at the Webpage's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Webpage and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also are available at OSHA's Webpage at *http://www.osha.gov*.

XVI. List of Subjects

Fees, Occupational safety and health, Product testing and certification, Safety, Testing laboratories.

XVII. Authority and Signature

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. This action is taken pursuant to Section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657); Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR Part 1911. This action is also taken pursuant to the Independent Offices Appropriations Act (31 U.S.C. 9701); Public Law 111–8; the Administrative Procedures Act (31 U.S.C. 553); 29 U.S.C. 9a; and OMB Circular A–25.

Signed at Washington, DC, on November 30, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

XVIII. Proposed Changes

For the reasons stated in the preamble of this proposed rule, OSHA is proposing to amend Subpart A of 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart A—General—[Amended]

1. The authority citation for Subpart A of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31159), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 are also issued under 29 CFR Part 1911. Section 1910.7(f) is also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); Public Law 111–8; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. In § 1910.7, revise the first sentence of paragraphs (f)(1) and (f)(2) and revise paragraphs (f)(3)(i) and (f)(4) to read as follows:

§ 1910.7 Definition and requirements for a nationally recognized testing laboratory.

* * * * *

(f) * * *

(1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA in advance of the provision of those services. OSHA will assess fees for the following services:

* * * * *

(2) The fee schedule established by OSHA reflects the full cost of performing the activities for each service listed in paragraph (f)(1) of this section. * * *

(3)(i) OSHA will review the full costs periodically and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated full costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation shown in paragraph (f)(4) of this section.

* * * * *

(4) OSHA will implement periodic review, and fee assessment, collection, and payment, as follows:

Dates	Action required
I. Periodic Review of Fee Schedule	
When review completed	OSHA will publish any proposed new Fee Schedule in the **Federal Register,** if OSHA determines changes in the schedule are warranted.
Fifteen days after publication	Comments due on the proposed new Fee Schedule.
When Fee Schedule is approved.	OSHA will publish the final Fee Schedule in the **Federal Register,** making it effective.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees in the Fee Schedule that are due when submitting an application; OSHA will not begin processing until fees are received. OSHA may cancel an application if the fees are not paid when due.
Before assessment performed.	Applicant must pay the estimated staff time and travel costs for its assessment based upon the fees in effect at the time of the assessment. Applicant also must pay the Final Report/Register notice and other applicable fees, as specified in the Fee Schedule. OSHA will cancel an application if the fees are not paid when due.
III. Audit Fees	
Before audit performed	NRTL must pay the estimated staff time and travel costs for its audit based upon the fees in effect at the time of the audit. NRTL also must pay other applicable fees, as specified in the Fee Schedule. After the audit, OSHA adjusts the audit fees to account for the actual travel and staff time costs.
On due date	NRTLs must pay the estimated audit fees or any balance due by the due date established by OSHA; OSHA will assess a late fee if audit fees (or any balance of fees due) is not paid by the due date. OSHA may still perform the audit.
Thirty days after due date	OSHA will publish a notice in the **Federal Register** announcing its intent to revoke recognition for NRTLs that have not paid the estimated audit fees and any balance of fees due.

For the purposes of 29 CFR 1910.7(f)(4), ''days'' means ''calendar days,'' and ''applicant'' means ''the NRTL'' or ''an applicant for NRTL recognition.''

* * * * *

[FR Doc. E9–28958 Filed 12–4–09; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 080102007–91368–02]

RIN 0648–AW18

Magnuson-Stevens Fishery Conservation and Management Act; Regional Fishery Management Councils; Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplementary proposed rule; request for comments.

SUMMARY: NMFS proposes changes to the regulations that address the operations and administration of Regional Fishery Management Councils (Councils). The regulatory changes are needed to clarify which Council documents should be available to the public, clarify Council member nomination procedures, clarify financial disclosure requirements for Council members, and revise the security assurance procedures for nominees to and members of the Councils.

DATES: Written comments must be received no later than 5 p.m. e.d.t. on January 6, 2010.

ADDRESSES: You may submit comments, identified by ''RIN 0648–AW18,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Fax:* 301–713–1175.
- *Mail:* Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910. Please mark the outside of the envelope ''Council Operations.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter n/a in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe pdf file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Sustainable Fisheries at the mailing address or fax number specified above and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: William Chappell, at 301–713–2337.

SUPPLEMENTARY INFORMATION: Section 302 of the Magnuson-Stevens Act includes provisions for the establishment and administration of the Councils. On March 27, 2009 at 74 FR 13386, NMFS published a proposed rule affecting these regulations. Subsequent to the publication of that proposed rule, several issues regarding Council operations and appointments to the Councils have demonstrated a need for additional proposed changes to the regulations. These proposed changes are all administrative in nature and would increase the transparency of the Council process to the public or improve the efficiency of the Council member appointments process. A discussion of the specific proposed changes follows.

Government Accounting Office (GAO) report recommendations.

On May 20, 2009, the GAO submitted a report on the Western Pacific Fishery Management Council (GAO–09–508R Fisheries Management) that provided several recommendations to improve the transparency of the Council's operations. NMFS' considers two of those recommendations appropriate for all Councils. The first recommendation was for the Council to maintain current and archived copies of documents available for public inspection, such as the Council's meeting minutes and briefing book materials, on the Council's Web site. The second recommendation was for the Council to adopt procedures that require Council meeting minutes to include not only a Council member's statement of recusal from voting, but also the nature of the financial interest that would be affected.

Some of the Councils already maintain many of their documents on their web sites. Among documents that may be available are current drafts of fishery management plan (FMP) amendments the Council is developing, proposed regulatory amendments to FMPs, and analysis for those actions. Documentation (briefing book documents) for upcoming Council meetings may also be posted, as are meeting summaries. In some cases, transcripts of past meetings may also be available. Some Councils have their FMPs and amendments posted, along with current regulations or links to them. Other archival documents such as histories of the FMPs and synopses of FMPs are often available.

Posting of information is limited by the size of the server supporting the Council's Web site and the staff time and expertise in posting and maintaining documents on the server. In some cases, documents are so large that posting them on the Web site is impracticable, so they are made available for retrieval through a file sharing protocol (FTP) site. Because of variations among the Councils, NMFS proposes that Councils post their documents ''to the extent practicable.'' Current documents and information related to current and recent meetings are of a higher priority than documents related to past actions. However, both are of interest to the public. Posting them on the Internet or making them readily available through an FTP site or other technology improves the transparency of the Council process to the public and reduces the amount of staff time needed in responding to inquiries from the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council must provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents thorough the mail.

In response the GAO's recommendation, NMFS proposes that a Council member's statement of recusal from voting would also include the nature of the financial interest that would be affected and to require that Council meeting minutes include that information. Under the current regulations at § 600.235(e), Council members are already required to identify the financial interest that would be affected if they wanted to participate in the deliberations on an issue for which they have recused themselves. This proposal would go a step further in requiring them to identify the financial interest any time they recuse themselves. This identification would make the reason behind the recusal and the interests at stake more transparent to the other members of the Council and to the public.

Obligatory/at large issue for Council member nominations.

Sec. 600.215 (b)(5) contains confusing language regarding nominations for non-concurrent expiration of obligatory and at-large seats. It is uncertain whether this situation has ever arisen. Due to the standard expiration date of appointments (August 10), this particular situation may never arise. In the unlikely event that a Council seat would be vacated near to the time of the annual appointment process, the Secretary has the authority to either include that seat in the general solicitation for nominees or require a separate nomination process.

Financial disclosure and corporate connections.

Current guidance, either in the regulations at § 600.235(a) or on the financial disclosure form, do not specify disclosing corporate connections of companies for which a nominee works. This has become a concern, particularly if the company in question is solely owned by another corporation, meaning that there can be conflict of interest that is not necessarily obvious or disclosed. The financial disclosure regulations are proposed to be expanded to cover this situation. Further, NMFS plans to substantially update the financial disclosure form to better accommodate the revised requirements of the law and the fact that some Council members are neither actively fishing nor do they directly own fisheries related businesses.

In addition, NMFS is proposing to amend the regulations at § 660.235(b)(2) to clarify that Council members must update their financial disclosure forms annually and file the updated form with the Executive Director of the Council by February 1 of each year, regardless of whether any information has changed on that form.

Security assurances

Sec. 600.240(a) currently requires a background check (NACI) for all nominees and members. This check can take in excess of three months to complete, especially when a large number of checks are requested simultaneously, as for Council member nominees. In order to reduce the large glut of work caused by the nomination process, as well as the extra work done by the nominees that are not appointed, NMFS proposes that only those nominees selected be required to submit the forms necessary to begin a background investigation. Further, NMFS proposes that appointments be made conditional upon a favorable background investigation. Otherwise, under current regulations, it would take a 2/3 vote of the Council to remove a member.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This proposed rule would update operational and administrative procedures of the eight Regional Fishery Management Councils. It consists of varied measures that respond to emerging Council issues. The proposed rule includes:

1. Requirement for Councils to maintain publically available documents on its Internet site to the extent practicable;

2. Removing confusing language regarding the non simultaneous appointment of obligatory and at large seats;

3. Requirement for Councils members to identify whether organizations they are associated with are subsidiaries of companies having interests in the fisheries;

4. Requirement for Council members to identify the financial interest affected when recusing themselves from votes; and

5. Removing a requirement for nominees for membership to Fishery Management Council to submit forms for a background check and make other minor changes to conform to current security practice.

6. Clarifies that Council members must update their financial disclosure forms annually and file the updated form with the Executive Director of the Council by February 1 of each year, regardless of whether any information has changed on that form.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under Control Number 0649–0192. Public reporting burden for completing and submitting the Statement of Financial Interests, Form 88–195, is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: December 1, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.150, add paragraph (b) to read as follows:

§ 600.150 Disposition of records.

* * * * *

(b) Each Council is required, to the extent practicable, to maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plan amendments under consideration, analysis of actions the Council has under review, minutes of past meetings of the Council its committees, materials provided to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council must provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents thorough the mail.

3. In § 600.215, revise (b)(5) to read as follows:

§ 600.215 Council nomination and appointment procedures.

* * * * *

(b) * * *

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees.

* * * * *

4. In § 600.235, revise paragraph the definition of *Financial interest in harvesting processing lobbying, advocacy, or marketing* in paragraph (a) and paragraphs (b)(2) and (d) to read as follows:

§ 600.235 Financial disclosure.

(a) * * *

Financial interest in harvesting processing lobbying, advocacy, or marketing (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity or any subsidiary of such entities engaging in any harvesting, processing, or marketing activity in any fishery under the jurisdiction of the Council concerned;

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity or any subsidiary of such entities that provides equipment or other services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, such as a chandler or a dock operation.

(iii) Employment with, or service as an officer, director, or trustee of, an association whose members include companies, vessels, or other entities engaged in harvesting, processing, or marketing activities, or companies or other entities providing services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity or any subsidiaries of such entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to, harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, or to any association whose members include entities engaged in the activities described in paragraphs (1)(i) and (ii) of this definition;

* * * * *

(b) * * *

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year, regardless of whether any information has changed on that form.

* * * * *

(d) Voluntary recusal. An affected individual who believes that a Council decision would have a significant and predictable effect on that individual's financial interest disclosed under paragraph (b) of this section may, at any time before a vote is taken, announce to the Council an intent not to vote on the decision and identifying the financial interest that would be affected.

* * * * *

5. In § 600.240, revise paragraph (a) to read as follows:

§ 600.240 Security assurances.

(a) DOC Office of Security will issue security assurances to Council members following completion of favorable background investigations. A Council member's appointment is conditional until such time as the background investigation has been favorably adjudicated. The Secretary will revoke the member's appointment if that member receives an unfavorable background investigation. Security assurances will be valid for 5 years from the date of issuance. A security assurance will not entitle the member to access classified data. In instances in which Council members may need to discuss, at closed meetings, materials classified for national security purposes, the agency or individual (e.g., Department of State, U.S. Coast Guard) providing such classified information will be responsible for ensuring that Council members and other attendees have the appropriate security clearances.

* * * * *

[FR Doc. E9–29062 Filed 12–7–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

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

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Rhode Island Coastal Resources Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR Part 923, Subpart L. The CZMA requires continuing review of the performance of States with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a State has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. A public meeting will be held as part of the site visit. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

Dates and Times: The Rhode Island Coastal Resources Management Program evaluation site visit will be held January 25–29, 2010. One public meeting will be held during the week. The public meeting will be held on Wednesday, January 27, 2010, at 6 p.m. at the Rhode Island Department of Administration, Conference Room A, One Capitol Hill, Providence, Rhode Island.

ADDRESSES: Copies of States' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for Minnesota's Lake Superior Coastal Program and the Narragansett Bay (Rhode Island) and Kachemak Bay (Alaska) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal States with respect to approval of CMPs and the operation and management of NERRs.

The State of Minnesota was found to be implementing and enforcing its Federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The Narragansett Bay and Kachemak Bay NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Dated: November 20, 2009.

Donna Wieting,

Acting Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

Federal Domestic Assistance Catalog 11.419.

Coastal Zone Management Program Administration.

[FR Doc. E9–29055 Filed 12–4–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–944]

Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') has determined that countervailable subsidies are being provided to producers and exporters of certain oil country tubular goods from the People's Republic of China (''PRC''). For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

DATES: *Effective Date:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT: David Neubacher, Shane Subler, Magd Zalok, Maryanne Burke, and Henry Almond, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5823, (202) 482–0189, (202) 482–4162, (202) 482–5604, and (202) 482–0049, respectively.

Petitioner

Petitioners in this investigation are Maverick Tube Corporation, United States Steel Corporation, TMK IPSCO, V&M Star LP, Wheatland Tube Corporation, Evraz Rocky Mountain Steel, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''United Steelworkers'') (collectively, ''Petitioners'').

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2008, through December 31, 2008.

Case History

The following events have occurred since the announcement of the preliminary determination published in the **Federal Register** on September 15, 2009. *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination,* 74 FR 47210 (September 15, 2009) (''*Preliminary Determination*'').

On September 16, 2009, the Department issued a letter to Jiangsu Changbao Steel Tube Co., Ltd. (''Changbao Steel''), Tianjin Pipe (Group) Co. (''TPCO''), Wuxi Seamless Oil Pipe Co., Ltd. (''WSP''), Zhejiang Jianli Enterprise Co., Ltd. (''Jianli''), and the Government of China (''GOC'') setting September 21, 2009 as the deadline for responses to questions in the June 4, 2009 original questionnaire and subsequent supplemental questionnaires. We received submissions from the above-mentioned mandatory respondents and the GOC on September 21, 2009. The Department also issued supplemental questionnaires to TPCO on September 23, 2009. We received a response from TPCO on September 29, 2009.

On September 28, 2009, Changbao Steel submitted ministerial error allegations in regard to the *Preliminary Determination.* On October 21, 2009, we issued our finding that none of the ministerial errors alleged by the parties constituted a significant ministerial error, as defined by 19 CFR 351.224(f) and 19 CFR 351.224(g) to 19 CFR 351, and did not amend the *Preliminary Determination.*

On September 18, 2009, the Department determined that petitioners had provided sufficient support to investigate certain new subsidy allegations, dated July 30, 2009. *See* Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''New Subsidy Allegations'' (September 18, 2009). On October 21, 2009, the Department postponed its investigation of those newly alleged subsidies until the first administrative review (should this investigation result in a countervailing duty order). *See* Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Status of New Subsidies'' (October 21, 2009).

From October 12, 2009 to October 16, 2009, we conducted verification of the questionnaire responses submitted by GOC, Changbao Steel, TPCO, WSP, and Jianli. *See* Memorandum from Shane Subler and David Neubacher, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce'' (October 29, 2009); Memorandum from David Neubacher, Magd Zalok, and Maryanne Burke, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Steel Tube Co., Ltd. Verification Report'' (October 29, 2009); Memorandum from Shane Subler and David Layton, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Verification Report: Tianjin Pipe (Group) Corporation (''TPCO Group''), Tianjin Pipe Iron Manufacturing Co., Ltd. (''TPCO Iron''), Tianguan Yuantong Pipe Product Co., Ltd. (''Yuantong''), Tianjin Pipe International Economic and Trading Co., Ltd. (''TPCO International''), and TPCO Charging Development Co., Ltd. (''Charging'') (collectively, ''TPCO'')'' (October 29, 2009) (''TPCO Verification Report'') ; Memorandum from Maryanne Burke, Magd Zalok, and David Neubacher, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Wuxi Seamless Oil Pipe Co., Ltd., Jiangsu Fanli Steel Pipe Co., Ltd., and Mengfeng Special Steel Co., Ltd. Verification Report'' (October 29, 2009) (''WSP Verification Report''); and Memorandum from Scott Holland and Henry Almond, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Verification Report: Jianli Group'' (October 28, 2009).

We received case briefs from the GOC, Changbao, TPCO, WSP, Jianli and Petitioners (separately filed by Maverick Tube Corporation, United States Steel Corporation, and TMK IPSCO, V&M Star LP, Wheatland Tube Corporation, Evraz Rocky Mountain Steel, and United Steelworkers) on November 9, 2009. The same parties submitted rebuttal briefs on November 16, 2009.

The Department placed information on the record of this investigation on November 12, 2009 regarding electricity rates. The GOC filed comments on this information on November 16, 2009 and the United States Steel Corporation filed rebuttal comments on November 17, 2009.

TPCO, Maverick Tube Corporation, and United States Steel Corporation requested a hearing. The same parties later withdrew their requests. Therefore, no hearing was held.

Scope of the Investigation

The scope of this investigation consists of OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock. Excluded from the scope of the investigation are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80,

7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the ''Act''), section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On June 10, 2009, the U.S. International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of certain oil country tubular goods from the PRC. *See Certain Oil Country Tubular Goods from China; Determinations,* 74 FR 27559 (June 10, 2009) and *Certain Oil Country Tubular Goods from China: Investigation Nos. 701–TA–463 and 731–TA–1159 (Preliminary)* (June 2009).

Critical Circumstances

In the *Preliminary Determination,* the Department concluded that critical circumstances did not exist with respect to imports of OCTG from the PRC, in accordance with 703(e)(1) of the Act, because, there have not been massive imports of the subject merchandise over a relatively short period.

We have not received any information since the *Preliminary Determination* that would lead us to change our preliminary finding. Therefore, in accordance with 705(a)(2) of the Act, we continue to find that critical circumstances do not exist with respect to imports of subject merchandise from the PRC.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled *''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the People's Republic of China''* (November 23, 2009) (hereafter ''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 in the main building of the Commerce Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, to determine that the GOC's dominance of the market in the PRC for steel round billets results in significant distortion in that market. Consequently, we are not relying on domestic prices in the PRC in determining whether a benefit was conferred through the GOC's provision of steel round billets to the mandatory respondents. Similarly, we have continued to apply AFA to determine that all of the steel round billets were provided by government authorities.

In a departure from the *Preliminary Determination,* the Department now finds that the use of ''facts otherwise available'' is warranted with regard to the GOC's provision of electricity to the mandatory respondents. The Department requested information regarding electricity in its August 11, 2009 supplemental questionnaire. This information was not provided in the GOC's August 26, 2009, supplemental questionnaire response or its September 21, 2009, response. By not responding to our questionnaire, the GOC has failed to act to the best of its ability. Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Specifically, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A)(D)(iv) of the Act. We have also relied on an adverse inference in selecting a benchmark for determining the existence and amount of the benefit.

The Department also now finds that the use of ''facts otherwise available'' is warranted with regard to certain loans provided to TPCO and WSP under the ''Policy Loans'' program. In the Department's June 4, 2009, original questionnaire at page III–6, we requested respondents to ''report all loans to your company from State-owned commercial banks or Government of the People's Republic of China (GOC) policy banks that were outstanding during the POI.'' The same request was again made of WSP, in our August 7, 2009, supplemental questionnaire. At verification, both companies notified the Department that certain loans were not reported. *See* WSP Verification report at 2 and TPCO Verification Report at 17. By failing to report these loans, these companies failed to act to the best of their ability. Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act in regard to these unreported loans. As adverse facts available, we are assigning the highest rate calculated for a loan subsidy program in a PRC countervailing duty proceeding to the unreported loans. This rate will be weight-averaged with the calculated rate of reported loans found countervailable under the ''Policy Loans'' program.

For a full discussion of these issues, please see the Decision Memorandum, at ''Use of Facts Otherwise Available and Adverse Facts Available.''

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated individual rates for each producer/exporter of the subject merchandise individually investigated. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we

will determine an ''all others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Exporter/manufacturer	Net subsidy rate
Jiangsu Changbao Steel Tube Co. and Jiangsu Changbao Precision Steel Tube Co., Ltd.	11.98
Tianjin Pipe (Group) Co., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd.	10.36
Wuxi Seamless Pipe Co., Ltd., Jiangsu Fanli Steel Pipe Co, Ltd., Tuoketuo County Mengfeng Special Steel Co., Ltd.	14.61
Zhejiang Jianli Enterprise Co., Ltd., Zhejiang Jianli Steel Steel Tube Co., Ltd., Zhuji Jiansheng Machinery Co., Ltd., and Zhejiang Jianli Industry Group Co., Ltd.	15.78
All Others	13.20

As a result of our *Preliminary Determination,* we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of OCTG from the PRC which were entered or withdrawn from warehouse, for consumption on or after September 15, 2009, the date of the publication of the *Preliminary Determination* in the **Federal Register** and to collect countervailing duty deposits or bonds in the amount of the preliminary countervailing duty rates.

In accordance with section 705(c)(1)(C) of the Act, we are directing CBP to continue to suspend liquidation of all imports of the subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation instructions will remain in effect until further notice. We are also directing CBP to collect countervailing duty deposits or bonds at the rates described above.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: November 23, 2009.

Carole A. Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

APPENDIX

List of Comments and Issues in the Decision Memorandum

[FR Doc. E9–28779 Filed 12–4–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR75

Fisheries of the Northeastern United States; Essential Fish Habitat (EFH) Components of Fishery Management Plans (Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Atlantic Herring, Skates, Atlantic Salmon, and Atlantic Deep-Sea Red Crab) 5–year Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental notice of intent (NOI) to prepare an environmental impact statement (EIS); comment period reopened.

SUMMARY: NMFS is reopening the public comment period for the supplemental NOI to prepare an EIS for the Omnibus Habitat Amendment that was published on October 5, 2009. This is necessary because some comments that were submitted via e-mail may not have been delivered properly. This notice reopens the comment period to ensure all interested parties' comments are received and addressed correctly.

DATES: Written comments must be received on or before 5 p.m. e.s.t., December 21, 2009.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *HabitatNOI@noaa.gov*.
- Mail: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.
- Fax: (978) 465–3116.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: On October 5, 2009, the New England Fishery Management Council (Council) announced that it is in the process of preparing a programmatic Environmental Impact Statement (EIS) and Omnibus Amendment to the fishery management plans for Northeast multispecies, Atlantic sea scallop, monkfish, Atlantic herring, skates, Atlantic salmon, and Atlantic deep-sea red crab (74 FR 51126). This NOI proposed that the Council would prepare one final EIS that incorporates all topics considered in the development of the Omnibus Amendment, rather than preparing a final Phase 1 EIS prior to completing work on Phase 2 topics. During that scoping period, the Council sought comments on its intent to not complete a Phase 1 Final EIS, as well as comments on any new scientific information identified since the 2004 scoping period that is pertinent to the development of the Omnibus Amendment.

The comment period for that NOI closed on November 4, 2009. Since that time it has come to the Council's attention that comments submitted via e-mail may not have been delivered. This problem did not impact written comments submitted through the mail or by fax.

However, the Council has decided to reopen the comment period and encourages individuals that submitted information through e-mail to resubmit their comments. For additional information regarding this action, please consult the prior NOI cited above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 2, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–29065 Filed 12–04–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non–Alloy Steel Pipe From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded non–alloy steel pipe from Mexico. This administrative review covers mandatory respondents Mueller Comercial de Mexico, S. de R.L. (Mueller) and Tuberia Nacional, S.A. de C.V. (TUNA). The Department also selected Hylsa S.A. de C.V. (Hylsa) as a mandatory respondent for this review. Hylsa was subject to a concurrent changed circumstances review of this order. In its changed circumstances review the Department determined Ternium Mexico, S.A. de C.V. (Ternium) is the successor–in-interest to Hylsa. *See Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico*, 74 FR 41681 (August 18, 2009) (*Final Results Changed Circumstances Review*). Therefore, we are treating Ternium as the successor–in-interest to Hylsa for these preliminary results and consider them a single entity (*see* ''Background'' section of this notice for further explanation). The period of review (POR) is November 1, 2007 through October 31, 2008.

We preliminarily determine that sales of subject merchandise have been made at less than normal value (NV) because two of the three companies, Ternium and Mueller, refused to cooperate with the Department in the conduct of this administrative review. We also are preliminarily rescinding this administrative review in part with respect to respondent TUNA, which has claimed it made no shipments of subject merchandise during the POR. The Department's review of import data supported TUNA's claim (*see* ''TUNA's No–Shipment Claim'' section of this notice for further explanation). Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 7, 2009.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Robert James AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5604 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, the Department published the antidumping duty order on certain circular welded non–alloy steel pipe from Mexico. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non–Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non–Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) (*Antidumping Duty Order*). On November 3, 2008, the Department published the opportunity to request an administrative review of, *inter alia*, certain circular welded non–alloy steel pipe from Mexico for the period November 1, 2007 through October 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 65288 (November 3, 2008). In response, on December 1, 2008, United States Steel Corporation (U.S. Steel)

requested that the Department conduct an administrative review of entries of subject merchandise made by seven Mexican producers, including, TUNA, Mueller, Hylsa, Niples del Norte, S.A. de C.V. (Niples del Norte), Productos Laminados de Aceros, S.A. de C.V. (Productos Laminados), Tuberias Procasa S.A. de C.V./Tuberias Procarsa S.A. de C.V. (Tuberias Procasa/Tuberias Procarsa) and PYTCO, S.A. de C.V. (PYTCO).[1]

Also, on December 1, 2008, the Department received a request for review from Ternium to conduct an administrative review of its U.S. sales and those of its affiliates. In its request for review, counsel for Ternium indicated its predecessor was Hylsa. Ternium added it had provided information detailing its relationship with Hylsa on the record of the concurrent changed circumstances review of this order (*see Initiation of Antidumping Duty Changed Circumstances Review: Circular Welded Non–Alloy Steel Pipe from Mexico*, 73 FR 63682 (October 27, 2008)). Additionally, on December 1, 2008, the Department received a request from Mueller and its affiliated importer, Southland Pipe Nipples Co., Inc. (Southland), to conduct an administrative review. Southland requested the Department conduct an administrative review of Southland's entries and imports of merchandise produced and/or exported by Mueller. On December 24, 2008, the Department initiated a review of the eight companies, including Hylsa and Ternium, that produced or exported subject merchandise for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008).

On January 21, 2009, the Department released U.S. Customs and Border Protection (CBP) data for entries of the subject merchandise during the POR to all parties granted access to business proprietary information under the Department's Administrative Protective Order (APO) in this segment of the proceeding and invited such parties to comment on these data for purposes of respondent selection in this review.

On January 23, 2009, TUNA informed the Department that it had no shipments or entries of subject merchandise to the United States during the POR. Further, TUNA requested the Department rescind this administrative review with respect to TUNA because it did not have any reviewable entries, shipments or sales of subject merchandise to the United States during the POR.

On January 28, 2009, U.S. Steel commented on the Department's CBP data and rebutted TUNA's claim that it had no shipments to the United States during the POR.

On February 9, 2009, TUNA responded to U.S. Steel's arguments concerning the CBP data claiming it did not have knowledge the merchandise would be exported to the United States at the time of sale. Rather, TUNA explained that it sold pipe within the scope of this review to unaffiliated customers in the home market and that some of those customers exported such material. TUNA certified that it does not know the final destination or where the pipe will be exported at the time of sale and argued the Department has treated such home–market sales as ''co–export'' sales in prior administrative reviews of this order.

On March 10, 2009, the Department determined it was not practicable to examine all eight producers of subject merchandise and issued a memorandum indicating its intention to limit the number of respondents selected for review to the three largest companies by export volume. These three respondents were TUNA, Hylsa and Mueller. *See* Memorandum to Richard O. Weible, ''Selection of Respondents,'' dated March 10, 2009. On March 18, 2009, the Department issued its antidumping duty questionnaire to all three companies chosen as mandatory respondents in this review.

On March 24, 2009, U.S. Steel submitted a withdrawal of its request for reviews of Niples del Norte, Productos Laminados, Tuberias Procasa/Tuberias Procarsa and PYTCO of which the review was originally initiated. On May 6, 2009, the Department rescinded the review with respect to these four firms. *See Certain Circular Welded Non–Alloy Steel Pipe from Mexico: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 20919 (May 6, 2009).

With respect to the remaining mandatory respondents, the chronology of this review is as follows: On April 8, 2009, Hylsa jointly with Ternium submitted a letter to the Department indicating they would not be providing a response to the Department's March 18, 2009 antidumping questionnaire. At the same time, both entities withdrew Ternium's request for review and further asked the Department to extend the deadline described under 19 CFR 351.213(d)(1) and terminate the review with respect to Ternium and Hylsa.

On July 17, 2009, the Department issued a letter to counsel for Ternium and Hylsa in response to its April 8, 2009 submission. The Department informed Ternium and Hylsa that where an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may resort to the use of facts available, including inferences adverse to the party, in determining that party's margin. *See* letter to Ternium and Hylsa, dated July 17, 2009.

On April 22, 2009, TUNA stated it also would not be responding to the Department's antidumping questionnaire and reiterated it had no entries, exports or sales of subject merchandise to the United States during the POR. TUNA restated its position in its submission to the Department, dated November 10, 2009. (For a full discussion, *see* ''TUNA's No–Shipment Claim'' section below.)

On May 4, 2009, U.S. Steel submitted comments in response to Ternium's and Hylsa's joint letter, dated April 8, 2009. U.S. Steel argues there is no basis for withdrawal because it has not withdrawn its own request for review of Hylsa. (For a full discussion, *see* ''Ternium'' section below.)

We received Mueller's response to section A of the Department's questionnaire on April 22, 2009. On May 29, 2009, the deadline for the remainder of the questionnaire responses, Mueller and its affiliate Southland, informed the Department that they would not be providing any further questionnaire responses relevant to the instant administrative review. Mueller also requested the return of business proprietary information disclosed under the Department's APO, to which request the Department acceded in its October 6, 2009 letter to Mueller and Southland. *See* Letter from the Department to Mueller, dated October 6, 2009; *see also* Memorandum to the File, dated October 6, 2009; *and* Letter from the Department to U.S. Steel and all parties privy to the APO, dated October 7, 2009.

On June 15, 2009, U.S. Steel filed comments in response to the request for withdrawal from the review made by TUNA, Ternium and Mueller. On June 25, 2009, Mueller submitted comments in response to U.S. Steel's June 15, 2009 letter. On July 9, 2009, U.S. Steel submitted a response to Mueller's June 25, 2009 letter. On September 2, 2009, Mueller replied to U.S. Steel's July 9, 2009 comments. For a full summary of all comments concerning application of adverse facts available (AFA) filed by

[1] On January, 16, 2009, U.S. Steel submitted clarification of its original request for review of Tuberias Procasa S.A. de C.V. U.S. Steel stated Tuberias Procasa S.A. de C.V. is also referred to as Tuberias Procarsa S.A. de C.V. and confirmed both spellings refer to the same company.

Mueller and U.S. Steel, *see* Memorandum ''Certain Circular Welded Non–Alloy Steel Pipe from Mexico: Use of Facts Available for Ternium and Mueller and the Corroboration of Secondary Information,'' dated November 30, 2009 (Facts Available Memorandum).

On July 21, 2009, the Department extended the deadline for the preliminary results of this review from August 2, 2009 to November 30, 2009. *See Certain Circular Welded Non–Alloy Steel Pipe from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 35844 (July 21, 2009).

Scope of the Order

The products covered by this order are circular welded non–alloy steel pipes and tubes, of circular cross–section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load–bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load–bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

The merchandise covered by the order and subject to this review are currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

TUNA's No–Shipment Claim

TUNA maintains that while the CBP data placed on the record indicate there were shipments of the subject merchandise manufactured by TUNA during the POR, in fact, it was not the exporter for any entries. TUNA emphasizes it made ''co–export sales'' of subject standard pipe to a home–market customer, but that it had no knowledge at the time of sale that any of its domestic sales would be exported to the United States. As such, TUNA asserts it is appropriate to treat these sales as home–market sales, and thus it is not necessary for TUNA to respond to the Department's questionnaire.

TUNA originally submitted a ''no–shipment'' letter, dated January 23, 2009, in which the company claimed it did not have exports, sales, or entries of subject merchandise to the United States during the POR. Rather, TUNA asserts it made sales of subject merchandise to unaffiliated companies in the Mexican home market and believes some of those home market customers export the subject merchandise to the United States. However, TUNA insists it did not know where the material was destined at the time of TUNA's sale to its customers. TUNA states that sales made under such type of an arrangement are ''co–export'' sales and have been treated as home market sales in prior segments of this proceeding. Therefore, pursuant to 19 CFR 351.213(d)(3), TUNA requests we rescind this administrative review with respect to TUNA.

Meanwhile, on January 28, 2009, U.S. Steel submitted comments arguing TUNA's ''no–shipment'' claims are not supported by record evidence. With respect to ''co–export'' sales, U.S. Steel states the Department had in prior administrative reviews investigated sales by Ternium's predecessor, Hylsa, to home–market customers where the merchandise was exported to the United States. While U.S. Steel acknowledges such sales by Hylsa were determined to be home–market sales, U.S. Steel adds there is no evidence showing either that the Department investigated TUNA's sales of in–scope merchandise to home–market customers for export, or that it made any determination to classify such sales made by TUNA as home–market sales. Consequently, U.S. Steel maintains TUNA's characterization of its sales as ''co–export'' sales is unfounded and avers that the Department must investigate TUNA's claim it did not know, or have reason to know its merchandise was destined for the United States. *See* U.S. Steel's Comments, dated January 28, 2009 at 4 and 5.

In its rebuttal comments, dated February 9, 2009, TUNA reiterates that it made ''co–export'' sales to home market customers in Mexico and argues the Department's long standing practice is to treat the first party in the chain of distribution that has knowledge of the U.S. destination of the merchandise as the proper party to be reviewed. Citing the Department's decision in *Certain Cut–to-Length Carbon–Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 5, 2006) and accompanying Issues and Decision Memorandum at Comment 1, TUNA states that knowledge is determined by considering such factors as:

> (1) whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to the Department that it knew that its shipments were destined for the United States.

See TUNA's Rebuttal Comments, dated February 9, 2009 at 2.

In light of the Department's ''knowledge test'' as outlined above, TUNA described its sales process and provided sample sales documentation which included a purchase order, internal order and sales invoice. TUNA states these documents do not identify the United States as the final destination and thus demonstrate it did not have knowledge its merchandise was destined for the United States. *Id.* at 3. TUNA maintains it also did not package or label the product as destined for the United States, nor did it prepare or sign shipping documents identifying the United States as the destination. Additionally, TUNA states it did not produce merchandise to a unique specification destined for the United States and, pursuant to the Department's own criteria, did not have knowledge at the time of sale that its products were destined for the United States. *Id.*

Department Position

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a

particular exporter or producer if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise to the United States by that producer. On June 9, 2009, the Department investigated TUNA's ''no shipment'' claim by requesting further documentation from CBP (*e.g.*, customs entry form CBP–7501, manufacturer certificates) using U.S. import data we released to interested parties on January 21, 2009. In particular, we selected certain entries listed in the import data which had identified TUNA as the manufacturer of subject merchandise. On June 19, 2009, and August 18, 2009, we received the requested information from CBP. On November 30, 2009, we placed these customs documents on the record of this proceeding.

From our examination of the customs entry documentation, we saw no evidence to suggest TUNA had made entries of subject merchandise to the United States. Rather, the documentation indicated sales were made to a certain home market customer and showed no indication that the merchandise's final destination would be the United States. Therefore, we did not receive any information from CBP that contradicted TUNA's claim that it did not have knowledge its merchandise would be exported to the United States during the POR. As a result, we preliminarily find TUNA had no knowledge its merchandise entered the United States and thus, we intend to rescind the administrative review with respect to TUNA. If we continue to find at the time of our final results that TUNA had no knowledge and made no shipments of subject merchandise during the POR, we will rescind the administrative review with respect to TUNA.

Ternium and Hylsa

On May 4, 2009, U.S. Steel submitted comments in response to Ternium and Hylsa's joint letter, dated April 8, 2009, requesting their rescission from the instant review. U.S. Steel argues the Department should continue its review with respect to Hylsa, because U.S. Steel did not withdraw its request. U.S. Steel argues the Department should establish Ternium as the successor–in-interest to Hylsa in the instant review, as determined in *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 74 FR 14957 (April 2, 2009) (*Wire Rod From Mexico*). U.S. Steel argues that in *Wire Rod From Mexico* the Department found ''there was little to no change in management structure, supplier relationships, production facilities, or customer base'' between Hylsa and Ternium. *See* U.S. Steel Comments, dated May 4, 2009 at 4. Referencing 19 CFR 351.401(f)(1), U.S. Steel asserts the Department will treat two or more producers as a single entity when three criteria are satisfied:

> (1) the producers are affiliated; (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for the manipulation of price or costs of production.

See U.S. Steel Comments, dated May 4, 2009 at 5.

U.S. Steel argues that each criteria is met in this review. U.S. Steel argues that Ternium and Hylsa are ''affiliated persons'' within the statutory definition at section 771(33)(E) of the Act which states ''{a}ny person directly owning, controlling, or holding power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization''. *See* U.S. Steel Comments, dated May 4, 2009 at 5. According to U.S. Steel, Hylsa has demonstrated in its submissions placed on the record of the changed circumstances review of this order that it is a wholly owned subsidiary of Ternium and operates under the corporate framework of Ternium. *Id.* at 6 and 7. Additionally, U.S. Steel maintains Ternium and Hylsa use the same production facilities to produce subject merchandise. U.S. Steel maintains that on April 1, 2008, Hylsa's production and sales operations were transferred to Ternium and consequently, Ternium now produces subject merchandise at those facilities previously owned and operated by Hylsa. *Id.* at 6. Futher, U.S. Steel states 19 CFR 351.401(f)(2) provides factors to consider in determining whether a significant potential for manipulation exists which include, *inter alia*, the level of common ownership and the extent to which the companies' operations are intertwined. *See* U.S. Steel Comments, dated May 4, 2009 at 6. Finally, U.S. Steel asserts that because Hylsa is wholly owned and operated by Ternium, both companies are intertwined and represent a significant potential for manipulation.

Department Position

The Department determines it is not necessary to conduct a successor–in-interest analysis in the context of the instant review. Rather, the Department already made this determination in the changed circumstances review of this order, finding that Ternium is the successor–in-interest to Hylsa. *See Final Results Changed Circumstances Review*. Therefore, for purposes of the instant review we also consider Ternium the successor–in-interest to Hylsa. In the Department's letter to Ternium and Hylsa, dated July 17, 2009, we cited our findings in the preliminary results of the changed circumstances review of this order which found Ternium is the successor–in-interest to Hylsa for purposes of antidumping duty liability.[2] *See Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico*, 74 FR 28883 (June 18, 2009) (Preliminary Results Changed Circumstances Review). The Department further stated that if the preliminary results of the changed circumstances review were affirmed in the final results of the changed circumstances review, we would apply Hylsa's antidumping duty rate determined in the instant review to its successor–in-interest, Ternium, both for cash deposit and assessment purposes. Ternium/Hylsa did not respond to the Department's letter. The *Preliminary Results Changed Circumstances Review* remained unchanged for the final results and the Department upheld its preliminary findings that Ternium is the successor–in-interest to Hylsa for antidumping duty cash deposit purposes. *See Final Results Changed Circumstances Review*.

Under 19 CFR 351.213(d)(1) the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Although Ternium withdrew its own request for review, we are not in a position to rescind this review. As noted, we have deemed Ternium is the successor–in-interest to Hylsa. Accordingly, Ternium remains subject to review because U.S. Steel did not withdraw its request for an administrative review of Hylsa. As such, the Department preliminarily determines this review should not be rescinded with respect to Ternium.

Use of Facts Available

Section 776(a)(2) of the Act, provides that if an interested party withholds

[2] The *Final Results Changed Circumstances Review* had not been published when the Department issued its July 17, 2009 letter. The final results were later published on August 18, 2009.

information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Because both Ternium and Mueller have not responded to the Department's original questionnaire in the instant administrative review, their actions constitute a refusal to provide information necessary to conduct the Department's antidumping analysis under sections 776(a)(2)(A) and (B) of the Act. Due to its refusal to participate in this review, Mueller has not responded to sections B, C and E of the Department's original questionnaire.[3] Similarly, because of Ternium's refusal to participate in the review it has not responded to sections A through E of the Department's original questionnaire. Thus, Mueller and Ternium withheld information requested by the Department's original questionnaire, and significantly impeded the administrative review. *See* section 776(a)(2)(A) and (C) of the Act. Therefore, we preliminarily determine to base the margin for Mueller and Ternium on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.

Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, in reaching the applicable determination under this title the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) at 870 (*SAA*). Further, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

Mueller failed to cooperate to the best of its ability by failing to answer sections B, C and E of the Department's questionnaire, and by withdrawing its previously submitted proprietary information from the record. Similarly, Ternium failed to cooperate to the best of its ability by failing to answer sections A through E of the Department's questionnaire. As a result, we determine that both Mueller and Ternium failed to cooperate by not acting to the best of their ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where a respondent failed to respond to subsequent antidumping questionnaires).

Selection and Corroboration of Information Used as Facts Available

Section 776(b) of the Act provides that the Department may use as AFA information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. When selecting an AFA rate from among the possible sources of information, the Department's practice has been to ensure the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner. *See e.g.*, *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

Accordingly, as total AFA, we have assigned Mueller and Ternium the rate of 48.33 percent, which is the highest calculated transaction–specific margin from the most recently completed administrative review of this antidumping duty order. *See Circular Welded Non–Alloy Steel Pipe From Mexico: Amended Final Results of Antidumping Duty Administrative Review*, 66 FR 37454 (July 18, 2001); *see also Magnesium Metal From the Russian Federation: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 39919 (August 10, 2009) (single–highest transaction margin assigned as AFA to respondent AVISMA); *and* Facts Available Memorandum. We find this rate is sufficiently adverse to serve the purpose of facts available and is appropriate, as it is the highest transaction–specific margin determined in the most recently completed review.

Section 776(c) of the Act provides that, to the extent practicable, the Department shall corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information. *See SAA* at 870; *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004). The word ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). To corroborate secondary information, the Department will examine, to the extent

[3] Mueller was subject to its first administrative review and was not required to respond to section D (Cost of Production/Constructed Value). Section E of the questionnaire requests information of products covered by this review which underwent additional processing in the United States before they were delivered to unaffiliated customers.

practicable, the reliability and relevance of the information used.

As fully explained in the Facts Available Memorandum, the Department finds the rate of 48.33 percent to be reliable and relevant for use as AFA. As such, the Department finds this rate to be corroborated to the extent practicable consistent with section 776(c) of Act. We have, therefore, selected the rate of 48.33 percent to apply as an AFA rate to Mueller and Ternium and consider it to be sufficiently high so as to encourage participation in future segments of this proceeding. *See* Facts Available Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted–average dumping margins exist for the period November 1, 2007, through October 31, 2008:

Manufacturer/Exporter	Weighted–Average Margin (percentage)
Ternium (formerly known as Hylsa)	48.33 percent
Mueller	48.33 percent

Disclosure and Public Comment

We will disclose pertinent memoranda concerning these preliminary results to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. *See* 19 CFR 351.309(d). Any hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total AFA to establish Mueller's and Ternium's dumping margin, we will instruct CBP to apply a dumping margin of 48.33 percent *ad valorem* to all entries of subject merchandise during the POR that was produced and/or exported by Mueller and Ternium. The Department intends to issue instructions to CBP 41 days after the publication of the final results of review.

Cash Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) the cash–deposit rate for Mueller and Ternium (formerly known as Hylsa) will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash–deposit rate will continue to be the all–others rate established in the LTFV investigation which is 32.62 percent. *See Antidumping Duty Order*. These cash–deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–29105 Filed 12–4–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Reopening of the Application Period for Membership on the U.S. Travel and Tourism Advisory Board.

SUMMARY: On July 24, 2009, the Department of Commerce's International Trade Administration published a notice in the **Federal Register** (74 FR 36667) soliciting applications for persons to serve on the U.S. Travel and Tourism Advisory Board (Board). The July 24, 2009 notice provided that all applications must be received by the Office of Advisory Committees of the Department of Commerce by close of business on August 20, 2009. This notice reopens the application period in order to provide the public with an additional opportunity to submit applications. The evaluation criteria for selecting members contained in the July 24, 2009 notice shall continue to apply, with the additional requirement that members cannot be a federally-registered lobbyist. The purpose of the Board is to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

ADDRESSES: Please submit application information to J. Marc Chittum, Office of Advisory Committees, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

DATES: All applications must be received by the Office of Advisory Committees by close of business on December 17, 2009.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–4501, *e-mail: Marc.Chittum@trade.gov.*

SUPPLEMENTARY INFORMATION: The Office of Advisory Committees is reopening the application period for the Board's current two-year charter term to expire September 20, 2011. Although the Department has received many applications and is still considering all applications received to date (including any applications received after the prior deadline but before issuance of this notice), the Department is seeking a broader applicant pool more representative of the U.S. travel and tourism industry as a whole. By reopening and extending the application period, the Department also hopes to have a broader applicant pool to reflect the full diversity of the travel and tourism industry in terms of ownership demographics, geographic locations, and company size of the entities to be represented. The criteria and procedures for selecting members contained in the July 24, 2009 notice continue to apply and are republished herein for convenience. Additionally, the applicant is required to provide an affirmative statement that the applicant is not a federally-registered lobbyist, and that the applicant understands that the applicant, if appointed, will not be allowed to continue to serve as a Board member if the applicant becomes a federally-registered lobbyist. Pending applicants remain under consideration and do not need to resubmit their applications.

Members will be appointed for a term to expire with the Board's current charter on September 20, 2011. Members will be selected, in accordance with applicable Department of Commerce guidelines, based on their ability to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industries, to act as a liaison among the stakeholders represented by the membership and to provide a forum for those stakeholders on current and emerging issues in the travel and tourism industry. Members of the Board shall be selected in a manner that ensures that the Board is balanced in terms of points of view, industry sector or subsector, range of products and services, demographics, geographic locations, and company size. Additional factors which may be considered in the selection of Board members include candidates' proven experience in promoting, developing, and implementing advertising and marketing programs for travel-related or tourism-related industries; or the candidates' proven abilities to manage tourism-related or other service-related organizations.

Each Board member shall serve as the representative of a U.S. entity or U.S. organization in the travel and tourism sector. For the purposes of eligibility, a U.S. entity shall be defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities. For the purposes of eligibility, a U.S. organization shall be defined as an organization, including a trade association or government unit or body, established under the laws of the United States that is controlled by U.S. citizens or by another U.S. organization or entity, as determined based on board of directors (or comparable governing body), membership, and revenue sources.

Priority may be given to a Chief Executive Officer or President (or comparable level of responsibility) of a U.S. organization or U.S. entity in the travel and tourism sector. Priority may also be given to individuals with international tourism marketing experience.

Officers or employees of state and regional tourism marketing entities are eligible for consideration for Board membership as representatives of U.S. organizations. A state and regional tourism marketing entity may include, but is not limited to, state government tourism offices, state and/or local government supported tourism marketing entities, or multi-state tourism marketing entities. Again, priority may be given to a Chief Executive Officer or President (or comparable level of responsibility) of a state and regional tourism marketing entity.

Members will serve at the discretion of the Secretary of Commerce. Board members shall serve in a representative capacity, representing the views and interests of their particular business sector or subsector. Board members are not special government employees and will receive no compensation for their participation in Board activities. Members participating in Board meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly and not less than twice annually, usually in Washington, DC. Members are required to attend a majority of the Board's meetings. The first Board meeting for the new charter term has not yet been set.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration.

2. A sponsor letter from the applicant on his or her organization/entity letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Board. This sponsor letter should also address the applicant's travel and tourism-related experience.

3. The applicant's personal resume.

4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

5. An affirmative statement by the applicant that he or she is not a federally-registered lobbyist, and that the applicant understands that he or she, if appointed, will not be allowed to continue to serve as a Board member if the applicant becomes a federally-registered lobbyist.

6. If the applicant represents a state or regional tourism marketing entity, the functions and responsibilities of the entity.

7. If the applicant represents an organization, information regarding the control of the organization, including the governing structure, members, and revenue sources as appropriate signifying compliance with the criteria set forth above.

8. If the applicant represents a company, information regarding the control of the company, including the governing structure and stock holdings as appropriate signifying compliance with the criteria set forth above.

9. The entity's or organization's size and ownership, product or service line and major markets in which the entity or organization operates.

Appointments of members to the Board will be made by the Secretary of Commerce.

Dated: December 2, 2009.

J. Marc Chittum,

Executive Secretary, U.S. Travel and Tourism Advisory Board.

[FR Doc. E9–29116 Filed 12–4–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 09–46]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–46 with attached transmittal, policy justification, and Sensitivity of Technology.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 3 0 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-46, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Hashemite Kingdom of Jordan for defense articles and services estimated to cost $388 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to: Committee on Foreign Relations

Transmittal No. 09-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
Of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Jordan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 365 million
Other	$ 23 million
TOTAL	$ 388 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 1808 JAVELIN Anti-Tank Guided Missiles, 18 Fly-to-Buy Missiles, 162 JAVELIN Command Launch Units (CLUs) with Integrated Day/Thermal Sight, containers, missile simulation rounds, enhanced basic skills trainer (EPBST), rechargeable and non-rechargeable batteries, battery dischargers and chargers, and coolant units, support equipment, spare and repair parts, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: US Army (WCN and WYD)

(v) Prior Related Cases: FMS Case VXG-$16M–10Jan02

(vi) Sales Commission, Fee, etc., Paid, offered, or Agreed to be Paid:
None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: NOV 3 0 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – JAVELIN Guided Missile Systems

The Hashemite Kingdom of Jordan has requested a possible sale of 1808 JAVELIN Anti-Tank Guided Missiles, 18 Fly-to-Buy Missiles, 162 JAVELIN Command Launch Units (CLUs) with Integrated Day/Thermal Sight, containers, missile simulation rounds, enhanced basic skills trainer (EPBST), rechargeable and non-rechargeable batteries, battery dischargers and chargers, and coolant units, support equipment, spare and repair parts, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $388 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Jordan's capability to meet current and future threats. Jordan will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Jordan, which already has Javelin Anti-Tank missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be a Javelin Joint Venture of Raytheon of Tucson, Arizona and Lockheed Martin of Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Jordan.

There will be no adverse impact on the U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
Of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Javelin Weapon System hardware and the documentation provided with the sale thereof are unclassified. However, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures.

2. The JAVELIN Anti-Tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components: a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU provides the interface between the operator and the missile. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU's thermal sight is a second-generation Forward Looking Infrared (FLIR) sensor, operating in the 8 to 10 microns wavelength, and is a 240x2 scanning array integral with Dewar/Cooler unit. To facilitate initial loading and subsequent updating of software, all on-broad missile software is uploaded via the CLU after mating and prior to launch. JAVELIN is Unclassified; however, information associated with the system is classified up to Secret.

3. The software programs contained in the JAVELIN Weapon System are in the form of microprocessors equipped with available Read Out Memory maps. However, the system does not allow access to the actual software program. The overall hardware is considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure developments.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Dated: December 1, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29022 Filed 12–4–09; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions Program (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI), Native American Serving Nontribal Institutions (NASNTI), Developing Hispanic-Serving Institutions (HSI), Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA), and Predominantly Black Institutions (PBI) Programs for Fiscal Year (FY) 2010

Purpose of Programs: The SIP, TCCU, ANNH, AANAPISI, NASNTI and PBI Programs are authorized under Title III, Part A, of the Higher Education Act of 1965, as amended (HEA). Under these programs, institutions of higher education (IHEs or institutions) are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, IHEs are eligible to apply for grants under Title V of the HEA if they meet specific statutory and regulatory requirements. The HSI and PPOHA Programs are authorized under Title V, Parts A and B of the HEA. In addition, under Title III of the HEA, institutions applying for grants under the AANAPISI and NASNTI Programs must be eligible institutions as defined in section 312(b) of the HEA. Institutions applying for grants under the PBI Program must be eligible institutions as defined in section 318(b)(1).

An IHE that is designated as an eligible institution may also receive a

waiver of certain non-Federal cost-share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS), and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS, and SSS Programs are authorized under Title IV of the HEA. The UISFL Program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III or Title V Programs.

Special Note: To qualify as an eligible institution under the Title III or Title V Programs, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average educational and general (E&G) expenditures for a specified base year. The most recent data available for E&G expenditures are for base year 2007–2008. In order to award FY 2010 grants in a timely manner, we will use the most recent data available. Therefore, we use E&G expenditure threshold data from the base year 2007–2008. In completing your eligibility application, please use E&G expenditure data from the base year 2007–2008.

If you are designated as an eligible institution and you do not receive a new award under the Title III or Title V Programs in FY 2010, your eligibility for the non-Federal cost-share waiver under the FSEOG, the FWS, the SSS, and the UISFL Programs is valid for five consecutive years. You will not need to reapply for eligibility until 2015, unless you wish to apply for a new Title III or Title V grant. All institutions interested in applying for a new FY 2010 Title III or Title V grant or requesting a waiver of the non-Federal cost share, must apply for eligibility designation in FY 2010. Under the HEA, any institution interested in applying for a grant under any of these programs must first be designated as an eligible institution.

Eligible Applicants: To qualify as an eligible institution under the Title III or Title V Programs, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction.

The eligibility requirements for the Title III Programs are found in 34 CFR 607.2 through 607.5. The regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html.*

The eligibility requirements for the Title V, HSI Program are found in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2007–2008 must be more than the median for its category of comparable institutions provided in the 2007–2008 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice.

For the PBI Program, see section 318(b)(2) of the HEA for the definition of ''Enrollment of Needy Students.''

Educational and General Expenditures Per FTE Student: An institution should compare its 2007–2008 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the 2007–2008 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice. The institution meets this eligibility requirement if its average E&G expenditures for the 2007–2008 base year are less than the average for its category of comparable institutions.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2007–2008 and the relevant average E&G expenditures per FTE student for the base year 2007–2008 for the four categories of comparable institutions:

Type of institution	2007–2008 Median Pell Grant percentage	2007–2008 Average E&G expenditures per FTE student
2-year Public Institutions	24.4	$11,023
2-year Non-profit Private Institutions	35.7	23,870
4-year Public Institutions	24.7	26,849
4-year Non-profit Private Institutions	25.4	43,037

Waiver Information: IHEs that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to ''low-income'' students or families. The regulations at 34 CFR 606.3(c) and 607.3(c) define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Bureau of the Census.

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2007 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, D.C., and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$15,315	$19,155	$17,625
2	20,535	25,680	23,625
3	25,755	32,205	29,625
4	30,975	38,730	35,625
5	36,195	45,255	41,625
6	41,415	51,780	47,625
7	46,635	58,305	53,625
8	51,855	64,830	59,625

Note: The 2007 annual low-income levels are being used because those are the amounts that apply to the family income reported by students enrolled for the fall 2007 semester. For family units with more than eight members, add the following amount for each additional family member: $5,220 for the contiguous 48 States, the District of Columbia and outlying jurisdictions; $6,525 for Alaska; and $6,000 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on January 24, 2007 (72 FR 3147–3148).

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999 Publication, Order Number PB99–501538, from the National Technical Information Service, Document Sales, 5301 Shawnee Road, Alexandria, VA 22312, telephone number: 1–800–553–6847. There is a charge for this publication.

Applications Available: December 7, 2009.

Deadline for Transmittal Of Applications: January 6, 2010 for an applicant institution that wishes to be designated as eligible to apply for a FY 2010 new grant under the Title III or Title V Programs and February 22, 2010 for an applicant institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS, or UISFL Programs.

Electronic Submission of Applications:

Applications for designation of eligibility must be submitted electronically using the following Web site: *https://opeweb.ed.gov/title3and5*.

To enter the Web site, you must use your institution's unique 8-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID Number). Your business office or student financial aid office should have the OPE ID Number. If not, contact the Department using the e-mail addresses of the contact persons listed in this notice under *For Applications and Further Information Contact.*

You will find detailed instructions for completing the application form electronically under the ''eligibility 2010'' link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a/index.html* or *http://www.ed.gov/hsi*.

If your institution is unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wishes to request a waiver of one or both of these requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *https://opeweb.ed.gov/title3and5*.

Exception to Electronic Submission Requirement: You may qualify for an exception to the electronic submission requirement and may submit your application in paper format if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site; and
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513. *Fax:* (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the application, on or before the application deadline date, to the Department at the following address: *By mail through the U.S. Postal Service or commercial carrier:*

Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address:

Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6020, Washington, DC 20006–8513.

Hand delivered applications will be accepted daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for the Title III Programs in 34 CFR part 607, and for the HSI Program in 34 CFR part 606.

Note: There are no program-specific regulations for the AANAPISI, NASNTI, PBI, and the PPHOA Programs. Accordingly, we encourage each potential applicant to read the HEA, the authorizing statute for these programs.

For Applications and Further Information Contact: Kelley Harris or Carnisia Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., Room 6033, Request for Eligibility Designation, Washington, DC 20006–8513.

You may contact these individuals at the following e-mail addresses or phone numbers: *Kelley.Harris@ed.gov,* 202–219–7083. *Carnisia.Proctor@ed.gov,* 202–502–7606.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audio tape, or computer diskette) on request to the contact persons listed in this section.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g, and amendments to Titles III and V of the HEA by Pub. L. 110–315, (20 U.S.C. 1059e (PBI), 20 U.S.C. 1069f (NASNTI), and 20 U.S.C. 1059g (AANAPISI).

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: December 1, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–28996 Filed 12–4–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–23–000; CP10–24–000]

UGI Storage Company, UGI Central Penn Gas, Inc.; Notice of Application

November 30, 2009.

Take notice that on November 19, 2009, UGI Storage Company (UGI Storage), 460 North Gulph Road, King of Prussia, Pennsylvania, 19406, filed in Docket Number CP10–23–000, pursuant to section 7(c) of the Natural Gas Act (NGA), an application for a certificate of public convenience and necessity to acquire, own, and operate in interstate commerce certain existing natural gas storage facilities located in Tioga, Potter, and Cameron counties, Pennsylvania. Additionally, UGI Storage requests a blanket certificate authorizing it to engage in certain self-implementing activities under part 157, subpart F, and a blanket certificate under part 284, subpart G, authorizing UGI Storage to provide open access, non-discriminatory firm and interruptible natural gas storage services. UGI Storage also requests authorization to charge market-based rates for its proposed storage services and approval of its *Pro Forma* Gas Tariff.

Concurrently, on November 19, 2009, UGI Central Penn Gas, Inc. (CPG), 2525 N. 12th Street, Suite 360, P.O. Box 12677, Reading, Pennsylvania 19612–2677, filed in Docket Number CP10–24–000, an application under section 7 of the NGS to obtain authorization to partially abandon the blanket certificate issued to its predecessor North Penn Gas Company, pursuant to section 284.224 of the Commission's regulations. Specifically, CPG requests permission to abandon the portion of the blanket certificate applicable to storage service.

These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding these applications should be directed to Frank H. Markle, Senior Counsel, UGI Corporation, Box 858, Valley Forge, PA 19482; phone (610) 768–3625; fax (610) 992–3258; or via e-mail *marklef@ugicorp.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the

Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29034 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–21–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

November 30, 2009.

Take notice that on November 16, 2009, Transcontinental Gas Pipe Line Company LLC (Transco) filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing Transco's Mobile Bay South II Expansion Project (Project), an expansion of the capacity on Transco's existing Mobile Bay Lateral under which Transco will provide 380,000 dekatherms per day (''Dt/d'') of incremental southbound firm transportation service. The Project involves the installation of one additional 8,180 horsepower compression unit and related auxiliary equipment at Transco's mainline in Choctaw County, Alabama. Also, the Project involves the installation of gas coolers, at the existing Compression Station 83 in Mobile County, Alabama, and a new tap, valve, and associated piping interconnect with an additional meter station to be constructed, owned, and operated by Florida Gas Transmission Company, LLC adjacent to its existing Citronelle meter station in Mobile County, Alabama. Transco estimates that the Project facilities will cost approximately $36.3 million. Transco has executed binding precedent agreements for one hundred percent of the capacity created by the Project facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to counsel for Transco Scott Turkington, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251–1396 or via telephone at (713) 215–3391, or e-mail *David.hayden@cardinalgs.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: December 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29036 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 20, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–22–000.

Applicants: Cleco Power LLC, Acadia Power Partners, LLC.

Description: Cleco Power LLC and Acadia Power Partners, LLC submits joint application for Order Authorizing Acquisition and Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act.

Filed Date: 11/16/2009.

Accession Number: 20091120–0201.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–024; ER03–1383–013; ER01–1633–010; ER00–3240–013.

Applicants: DeSoto County Generating Company, LLC, Oleander Power Project, L.P., Southern Company—Florida LLC, Southern Power Company, Southern Company Services, Inc.

Description: Request for Confirmation of Southern Power Company, *et al.*

Filed Date: 10/20/2009.

Accession Number: 20091020–5095.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10–92–001.

Applicants: EDF Trading North America, LLC.

Description: Notice of Change of Status of EDF Trading North America, LLC.

Filed Date: 11/19/2009.

Accession Number: 20091119–5124.

Comment Date: 5 p.m. Eastern Time on Thursday, December 10, 2009.

Docket Numbers: ER10–287–000.

Applicants: PacifiCorp.

Description: PacifiCorp Energy submits notice of termination of Rate Schedule FERC No 392.

Filed Date: 11/18/2009.

Accession Number: 20091119–0062.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 9, 2009.

Docket Numbers: ER10–288–000.

Applicants: Carolina Power & Light Company & Florida.

Description: Progress Energy Service Co, LLC submit proposed modifications to the Joint Open Access Transmission Tariff.

Filed Date: 11/18/2009.

Accession Number: 20091119–0061.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 9, 2009.

Docket Numbers: ER10–289–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits Seventh Revised Service Agreement No 162.

Filed Date: 11/18/2009.

Accession Number: 20091119–0057.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 9, 2009.

Docket Numbers: ER10–290–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits revisions to its Open Access Transmission Tariff with respect to the NYISO's interconnection queue study processes.

Filed Date: 11/18/2009.

Accession Number: 20091119–0056.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 9, 2009.

Docket Numbers: ER10–291–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits First Revised Service Agreement 80 and First Revised Sheets 9, 39, and 40 to First Revised Rate Schedule 110 and requests waiver of the Commission's 60 days notice requirement etc.

Filed Date: 11/18/2009.

Accession Number: 20091119–0048.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 9, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–3–000.

Applicants: North American Electric Reliability Corp.

Description: Petition of the North American Electric Reliability Corporation for Approval of an Interpretation to Reliability Standard CIP–007–2, Requirement R2.

Filed Date: 11/17/2009.

Accession Number: 20091117–5085.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 08, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29084 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 30, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–174–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Eleventh Revised Sheet 230 et al. to FERC Gas Tariff, First Revised Volume 1, to be effective 1/1/10.

Filed Date: 11/23/2009.

Accession Number: 20091125–0040.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–175–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits two negotiated rate firm transportation arrangements with Macquarie Cook Energy, LLC.

Filed Date: 11/23/2009.

Accession Number: 20091125–0039.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–176–000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits letter re Derivation of Surcharge Adjustment pursuant to Section 14.2 of the General Terms and Conditions of FERC Gas Tariff—Schedule 1.

Filed Date: 11/23/2009.

Accession Number: 20091125–0037.

Comment Date: 5 pm Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–177–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Twenty First Revised Sheet 24 et al. to FERC Gas Tariff, Third Revised Volume 1A, to be effective 11/21/09.

Filed Date: 11/23/2009.

Accession Number: 20091125–0038.

Comment Date: 5 pm Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–178–000.

Applicants: Steuben Gas Storage Company.

Description: Steuben Gas Storage Company submits Sixth Revised Sheet 13 et al. of its FERC Gas Tariff, Original Volume 1, to be effective 12/1/09.

Filed Date: 11/24/2009.

Accession Number: 20091125–0071.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–180–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Co, LLC submits First Revised Sheet No. 500 et al. to FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 11/25/2009.

Accession Number: 20091125–0137.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–181–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits Original Sheet No 35C.06 to FERC Gas Tariff, Seventh Revised Volume No 1.

Filed Date: 11/25/2009.

Accession Number: 20091125–0133.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–182–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits amendment to an existing discount rate Transportation Rate Schedule FTS Agreement between Natural and MidAmerican Energy Company.

Filed Date: 11/25/2009.

Accession Number: 20091125–0135.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–183–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits amendment to the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit between Natural and Wisconsin Electric Power Company.

Filed Date: 11/25/2009.

Accession Number: 20091125–0134.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–184–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits permanent Capacity Release Negotiated Rate Letter Agreement.

Filed Date: 11/25/2009.

Accession Number: 20091125–0136.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29086 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 24, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–162–000.

Applicants: Tennessee Gas Pipeline Company.

Description: 2009 Cash-out Report of Tennessee Gas Pipeline Company.

Filed Date: 11/20/2009.

Accession Number: 20091120–5077.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 02, 2009.

Docket Numbers: RP10–163–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Company, LLC submits Twelfth Revised Sheet No 1 to FERC Gas Tariff, Original Volume No 1, to be effective 12/21/09.

Filed Date: 11/20/2009.

Accession Number: 20091123–0165.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 02, 2009.

Docket Numbers: RP10–164–000.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Company submits Twenty-Eighth Revised Sheet No 11 *et al.* FERC Gas Tariff, Second Revised Volume No 1.

Filed Date: 11/20/2009.

Accession Number: 20091123–0166.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 02, 2009.

Docket Numbers: RP10–165–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits Forty-Ninth Revised Sheet 5 to First Revised Volume 1 of its FERC Gas Tariff.

Filed Date: 11/19/2009.

Accession Number: 20091123–0080.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: RP10–166–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Fourth Revised Sheet No 380J to FERC Gas Tariff, First Revised Volume No 1, to be effective 11/17/09.

Filed Date: 11/19/2009.

Accession Number: 20091123–0167.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: RP10–167–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits Fifth Revised Sheet No 24 to FERC Gas Tariff, Fourth Revised Volume No 1, to be effective 12/1/09.

Filed Date: 11/20/2009.

Accession Number: 20091123–0170.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 02, 2009.

Docket Numbers: RP10–168–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Third Revised Sheet No 66B.35 to FERC Gas Tariff, Fifth Revised Volume No 1, to be effective 11/19/09.

Filed Date: 11/20/2009.

Accession Number: 20091123–0169.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 02, 2009.

Docket Numbers: RP10–169–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits Attachment 1 *et al.* with regards to the penalty sharing report.

Filed Date: 11/19/2009.

Accession Number: 20091123–0163.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: RP10–170–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission Inc submits Fourth Revised Sheet No 17 *et al.* to FERC Gas Tariff, Second Revised Volume No 1A, to be effective 12/21/09.

Filed Date: 11/20/2009.

Accession Number: 20091123–0164.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 02, 2009.

Docket Numbers: RP10–171–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. Annual Cash-Out Refund Report.

Filed Date: 11/23/2009.

Accession Number: 20091123–5077.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–172–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits Fuel and Line Loss Allowance Calculation to support the continuation of its current Fuel and Line Loss Allowance.

Filed Date: 11/23/2009.

Accession Number: 20091124–0091.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–173–000.

Applicants: Southern LNG Inc.

Description: Southern LNG Inc. submits Petition for Declaratory Order.

Filed Date: 11/23/2009.

Accession Number: 20091124–0108.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: CP10–15–000.

Applicants: Heartland Gas Pipeline LLC.

Description: Application for pipeline certificate of Heartland Gas Pipeline LLC.

Filed: 11/4/2009.

Accession Number: 20091105–5014.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29088 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

December 1, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–179–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits Service Agreements with deviations identified as immaterial in its 10/13/09 filing.

Filed Date: 11/24/2009.

Accession Number: 20091127–0215.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–185–000.

Applicants: Quest Pipelines (KPC).

Description: Quest Pipeline (KPC) submits Interruptible Revenue Crediting Report.

Filed Date: 11/30/2009.

Accession Number: 20091130–0041.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–186–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Fifty-Sixth Revised Sheet No 66A *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1.

Filed Date: 11/30/2009.

Accession Number: 20091130–0042.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–187–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits Third Revised Sheet No 6F to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 11/30/2009.

Accession Number: 20091130–0043.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–188–000.

Applicants: Arlington Storage Company, LLC.

Description: Arlington Storage Company, LLC submits First Revised Sheet No 1 *et al.* to FERC Gas Tariff, First Revised Volume No 1.

Filed Date: 11/25/2009.

Accession Number: 20091130–0049.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: RP10–189–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc submits the Annual Fuel Filing, Tenth Revised Sheet No. 12 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 11/30/2009

Accession Number: 20091130–0050.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–190–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits Thirteenth Revised Sheet No 43 to FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 11/30/2009.

Accession Number: 20091130–0044.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–191–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits Annual Transportation and Storage Cost Adjustment.

Filed Date: 11/30/2009.

Accession Number: 20091130–0045.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–192–000.

Applicants: T.W. Phillips Pipeline Corporation.

Description: T.W. Phillips Pipeline Corp submits a negotiated transportation rate agreement with Bionol Clearfield, LLC.

Filed Date: 11/30/2009.

Accession Number: 20091130–0046.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–193–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits Twenty-Second Revised Sheet No. 17 *et al.* to FERC Gas Tariff, Sixth Revised Volume No. 1.

Filed Date: 11/30/2009.

Accession Number: 20091130–0047.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–194–000.

Applicants: Equitrans, L.P.

Description: Equitrans, LP submits Original Tariff Sheet No. 318 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 11/30/2009.

Accession Number: 20091130–0048.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–195–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Report of Gas Transmission Northwest Corporation.

Filed Date: 11/30/2009.

Accession Number: 20091130–5129.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: RP10–196–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company Lost Unaccounted-For and other Fuel Gas Reimbursement Percentage Filing.

Filed Date: 11/30/2009.

Accession Number: 20091130–5150.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29087 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

December 1, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP91–203–076.

Applicants: Tennessee Gas Pipeline Company.

Description: Amended PCB Settlement of Tennessee Gas Pipeline Company.

Filed Date: 11/20/2009.

Accession Number: 20091120–5131.

Comment Date: 5 p.m. Eastern Time on Thursday, December 03, 2009.

Docket Numbers: RP09–558–002.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company submits First Revised Sheet 180 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 12/15/09.

Filed Date: 11/20/2009.

Accession Number: 20091123–0168.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: RP10–17–001.

Applicants: Millennium Pipeline Company, L.L.C.

Description: Millennium Pipeline Company, LLC submits Second Revised Sheet No 40 *et al.* to FERC Gas Tariff, Original Volume No 1.

Filed Date: 11/30/2009.

Accession Number: 20091130–0040.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29085 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 23, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–48–015.

Applicants: Powerex Corp.

Description: Powerex Corp. Notice of Non-Material Change in Status.

Filed Date: 11/20/2009.

Accession Number: 20091120–5149.

Comment Date: 5 p.m. Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER10–204–001.

Applicants: FSE Blythe 1, LLC.

Description: Supplement to the application of FSE Blythe 1, LLC for order accepting initial market based rate tariff, and certain waivers and blanket approvals.

Filed Date: 11/17/2009.

Accession Number: 20091118–0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 08, 2009.

Docket Numbers: ER10–275–000.

Applicants: Ohio Power Company.

Description: Ohio Power Company submits Amended and Restated Interconnection Agreement between OPCo and Wheeling Power Company.

Filed Date: 11/16/2009.

Accession Number: 20091117–0054.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: ER10–286–000.

Applicants: Cleco Power LLC, Acadia Power Partners, LLC.

Description: Cleco Power LLC *et al.* submits notification that the Joint Ownership Agreement and the Operation and Maintenance Agreement are filed on a public, nonconfidential basis.

Filed Date: 11/16/2009.

Accession Number: 20091120–0205.

Comment Date: 5 p.m. Eastern Time on Monday, December 07, 2009.

Docket Numbers: ER10–300–000.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corporation submits for Commission approval the ISO-Convergence Bidding Design Policy.

Filed Date: 11/20/2009.

Accession Number: 20091120–5147.

Comment Date: 5 p.m. Eastern Time on Friday, December 11, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–10–000.

Applicants: Southwestern Electric Power Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Southwestern Electric Power Company.

Filed Date: 11/20/2009.

Accession Number: 20091120–5144.

Comment Date: 5 p.m. Eastern Time on Friday, December 11, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29083 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 24, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–23–000.
Applicants: Edison Sault Electric Company, Wisconsin Energy. Corporation
Description: Application of Wisconsin Energy Corporation, *et al.*
Filed Date: 11/23/2009.
Accession Number: 20091123–5244.
Comment Date: 5 *p.m.* Eastern Time on Monday, December 14, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–10–000.
Applicants: FSE Blythe 1, LLC.
Description: Self Certification Notice of FSE Blythe 1, LLC.
Filed Date: 11/23/2009.
Accession Number: 20091123–5240.
Comment Date: 5 *p.m.* Eastern Time on Monday, December 14, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–889–012; ER01–3013–004.
Applicants: California Independent System Operator Corporation.
Description: Status Report of the California Independent System Operator Corporation.
Filed Date: 11/23/2009.
Accession Number: 20091123–5270.
Comment Date: 5 *p.m.* Eastern Time on Monday, December 14, 2009.

Docket Numbers: ER01–462–002
Applicants: DPL Energy Resources, Inc.
Description: DPL Energy Resources, Inc submits amended application to modify market based rate tariffs, to request waivers of requirements for transactions among affiliates and for other approvals in conformance with Order No 697.
Filed Date: 11/20/2009.
Accession Number: 20091123–0194.
Comment Date: 5 *p.m.* Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER08–1343–003; ER08–1353–003.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits refunds to reflect the Settlement rates and Transmission Revenue Requirement in compliance with the Commission's 9/11/09 Order.
Filed Date: 11/20/2009.
Accession Number: 20091123–0219.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER09–621–004.
Applicants: TAQA Gen X LLC.
Description: TAQA Gen X LLC Notice of Non-Material Change in Status.
Filed Date: 11/24/2009.
Accession Number: 20091124–5038.
Comment Date: 5 *p.m.* Eastern Time on Tuesday, December 15, 2009.

Docket Numbers: ER09–655–002.
Applicants: Duke Energy Retail Sales, LLC.
Description: Duke Energy Retail Sales, LLC Compliance Filing.
Filed Date: 11/24/2009.
Accession Number: 20091124–5047.
Comment Date: 5 *p.m.* Eastern Time on Tuesday, December 15, 2009.

Docket Numbers: ER09–701–003.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection submits Sixth Revised Sheet 66 *et al.* to Third Revised Rate Schedule FERC 24.
Filed Date: 11/20/2009.
Accession Number: 20091123–0223.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER09–1253–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Attachment P of their Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff etc.
Filed Date: 11/19/2009.
Accession Number: 20091123–0216.
Comment Date: 5 *p.m.* Eastern Time on Thursday, December 10, 2009.

Docket Numbers: ER09–1307–001.
Applicants: EnergyConnect, Inc.
Description: Additional Information Regarding EnergyConnect, Inc.'s Application for Market-Based Rate Authority.
Filed Date: 11/20/2009.
Accession Number: 20091120–5046.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER09–1431–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits revisions to the Open Access Transmission, Energy and Operating Reserve Market Tariff in compliance with the Commission's 10/23/09 Order.
Filed Date: 11/20/2009.
Accession Number: 20091123–0221.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER09–1765–001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company *et al.* submits a revised Sheet 2758Z to the Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 11/20/2009.
Accession Number: 20091123–0222.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER10–293–000.
Applicants: First Point Power, LLC.
Description: First Point Power, LLC submits petition for acceptance of initial tariff, waivers and blanket authority.
Filed Date: 11/23/2009.
Accession Number: 20091123–0079.
Comment Date: 5 *p.m.* Eastern Time on Monday, December 14, 2009.

Docket Numbers: ER10–294–000.
Applicants: Xcel Energy Services Inc.
Description: Northern States Power Co-MN submits their Operation and Maintenance Agreement with Minnesota Municipal Power Agency.
Filed Date: 11/19/2009.
Accession Number: 20091123–0215.
Comment Date: 5 *p.m.* Eastern Time on Thursday, December 10, 2009.

Docket Numbers: ER10–295–000.
Applicants: E.ON U.S. LLC.
Description: E. ON. U.S. LLC submits First Revised Sheet No. 139 to Fourth Revised Volume 1, Schedule 11, Loss Compensation Service etc.
Filed Date: 11/20/2009.
Accession Number: 20091123–0226.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER10–298–000.
Applicants: E.ON U.S. LLC.
Description: E. ON. U.S. LLC et al. submits an unexecuted Network Integration Transmission Service Agreement and an unexecuted Network Operating Agreement with Owensboro Municipal Utilities *et al.*
Filed Date: 11/20/2009.
Accession Number: 20091123–0225.
Comment Date: 5 *p.m.* Eastern Time on Friday, December 11, 2009.

Docket Numbers: ER10–299–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement with Hardin Wind Energy, LLC *et al.*
Filed Date: 11/19/2009.
Accession Number: 20091123–0217.
Comment Date: 5 *p.m.* Eastern Time on Thursday, December 10, 2009.

Docket Numbers: ER10–301–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc *et al.* submits a Generation Dispatch and Energy Management Agreement, effective 11/19/09.
Filed Date: 11/19/2009.
Accession Number: 20091123–0218.
Comment Date: 5 *p.m.* Eastern Time on Thursday, December 10, 2009.

Docket Numbers: ER10–304–000.
Applicants: New York State Reliability Council, L.L.C.
Description: New York State Reliability Council, L.L.C.'s Petition to Amend the New York State Reliability Council Agreement.
Filed Date: 11/23/2009.
Accession Number: 20091123–5243.
Comment Date: 5 *p.m.* Eastern Time on Monday, December 14, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–4–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of North American Electric Reliability Corporation for Approval of Amendments to its Rules of Procedure—Amendments to the Reliability Standards Development Procedure.
Filed Date: 11/23/2009.
Accession Number: 20091123–5245.
Comment Date: 5 *p.m.* Eastern Time on Monday, December 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29082 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–88–003]

Southern Company Services, Inc.; Notice of FERC Staff Attendance

November 25, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff will participate in a conference call initiated by Southern Company Services, Inc. (Southern Company) to discuss implementation of Phase II of Southern Company's Energy Auction, the registration process, the Mock Auction sign-up process, and interaction with the new Independent Auction Administrator and other related issues. The conference call will take place on Wednesday, December 2, 2009, from 10 a.m. until 11 a.m. EST. Call participants will have an opportunity to ask questions.

Information on the conference call is available on Southern Company's Energy Auction Web site at: *http://www.southerncompany.com/energyauction/announcements_nov2009.aspx.*

Sponsored by Southern Company, the conference call is open to all interested auction participants, and staff's participation is part of the Commission's ongoing outreach efforts. The conference call will include

discussions relating to matters at issue in the above captioned proceeding.

For further information, contact Connie Caldwell at *connie.caldwell@ferc.gov;* (202) 502–6489 or Jeffrey Honeycutt at *jeffrey.honeycutt@ferc.gov;* (202) 502–6505.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29089 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–16–000]

Cadeville Gas Storage LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cadeville Gas Storage Project and Request for Comments on Environmental Issues

November 30, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cadeville Gas Storage Project (Cadeville Gas Storage) involving construction and operation of facilities by Cadeville Gas Storage LLC (Cadeville Gas) in Ouachita Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on December 30, 2009.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Cadeville Storgae representative about survey permission and/or the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Cadeville Storage proposes to convert a depleted natural gas reservoir to storage with an approximate 16.4 billion cubic feet (bcf) of working gas capacity and 5.4 bcf of base gas capacity. Cadeville Storage proposed to construct the following facilities associated with the Project:

- Install eight new natural gas injection/withdrawal wells;
- convert three existing wells to observation wells;
- construct approximately 0.2 miles of 20-inch diameter injection/withdrawal pipeline referred to as the South Injection/Withdrawal Pipeline, and 1.4 miles of 16-inch diameter injection/withdrawal pipeline referred to as the North Injection/Withdrawal Pipeline;
- construct an integrated compressor station/control facility, comprised of five 4,735 brake horsepower (bhp) natural gas fueled engines, reciprocating compressors equipped with air intake filters/silencers, critical grade exhaust silencer/catalyst, a triethylene glycol dehydration system, control and safety systems, and associated facilities;
- construct approximately 2.6 miles of 16-inch diameter header pipeline referred to as the Tennessee Header;
- construct approximately 0.9 miles of 16-inch diameter header pipeline referred to as the Gulf South Header;
- construct approximately 6.4 miles of 24-inch diameter header pipeline referred to as the CenterPoint Header; and
- construct three metering and regulation stations, one at each interconnect point with the Tennessee, Gulf South, and CenterPoint pipelines. These stations are referred to as the Tennessee Meter Station, Gulf South Meter Station, and CenterPoint Meter Station.

The general location of the project facilities is shown in Appendix 1.[2]

If approved, Cadeville Storage proposes to commence construction of the proposed facilities on or about June 2010.

Land Requirements for Construction

Construction and modifications of the storage field and associated facilities would temporarily impact about 141.3 acres of land for use as construction workspace, access roads and pipe/contractor yards areas. A total of 80.2 acres would be permanent impact.

Cadeville Storage is proposing to construct as well as utilize existing access roads along with the Project. Approximately 2.5 acres would be used as permanent easements for new access roads.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use

[2] The appendices referenced in this notice are not being printed in the *Federal Register.* Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Cadeville Storage. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts may occur to wetlands and waterbodies. Approximately 4.08 acres of wetlands would be affected by crossing of pipeline facilities.
- Construction and operation impacts would affect approximately 132.0 acres of forested and mixed woods lands.
- Potential impacts may occur to the federally-listed red-cockaded woodpecker.

Public Participation

You can make a difference by providing us with your specific comments or concerns about Cadeville Gas Storage Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 30, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP10–16–000 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up''* or *''eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList. aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29033 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10–30–000]

Texas Eastern Transmission, LP; Notice of Change to Technical Conference

November 30, 2009.

On November 9, 2009, the Commission issued a notice indicating that a technical conference will be held in the above-captioned proceeding on Tuesday, December 8, 2009, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Due to the large number of participants that have expressed an interest in making a presentation at the referenced technical conference, the starting time is changed to 9 a.m. on December 8, 2009. Moreover, presentations by participants will be limited to 15 minutes, including questions. Texas Eastern will be permitted 30 minutes for its presentation, including questions.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons and staff are permitted to attend. For further information please contact David Maranville at (202) 502–6351 or e-mail *David.Maranville@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29035 Filed 12–4–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0386; FRL–9088–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Perchloroethylene Dry Cleaning Facilities (Renewal); EPA ICR Number 1415.09, OMB Control Number 2060–0234

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 6, 2010.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OECA–2009–0386, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Enforcement and Compliance Assurance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0386, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Perchloroethylene Dry Cleaning Facilities (Renewal).

ICR Numbers: EPA ICR Number 1415.09, OMB Control Number 2060–0234.

ICR Status: This ICR is scheduled to expire on December 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Entities potentially affected by this action are the owners or

operators of perchloroethylene dry cleaning facilities. The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart M. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operator of perchloroethylene dry cleaning facilities.

Estimated Number of Respondents: 30,459.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,531,851.

Estimated Total Annual Cost: $150,708,638, which includes $149,772,225 in labor costs, annualized capital/startup costs of $582,500, and O&M costs of $353,913.

Changes in the Estimates: In this ICR, the burden has increased somewhat due to a revision to the standard. However, this increase is more than offset by a decrease in burden associated with a reduction in the number of respondents. Therefore, the overall burden has decreased for this renewal. There is also a reduction the capital/startup and O&M costs. In the previous ICR which addressed a revision to the standard, a large number of respondents were required to purchase monitoring equipment. For this renewal, only new respondents must purchase monitors. Therefore, the capital/startup and O&M costs are reduced.

Dated: November 24, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–28862 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9088–5]

Notice of Availability of Final Modification of National Pollutant Discharge Elimination System (NPDES) General Permit for Offshore Oil and Gas Exploration, Development and Production Operations Off Southern California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final NPDES general permit modification.

SUMMARY: EPA Region 9 is today issuing certain final modifications of its general NPDES permit (permit No. CAG280000) for discharges from offshore oil and gas exploration, development and production facilities located in Federal waters off the coast of Southern California. Region 9 proposed the permit modifications on April 3, 2009 (74 FR 15267), and the public comment period for the proposal concluded on May 4, 2009.

During the public comment period, Region 9 received written comments from four parties concerning the proposed modifications. Region 9 has prepared a separate document (''Response to Public Comments'') that discusses the comments in more detail and Region 9's responses to the comments. The final permit modifications differ only slightly from the proposed modifications. The changes from the proposal are discussed in more detail in the Addendum to Fact Sheet and in the Response to Public Comments.

The final modified general permit establishes effluent limitations, prohibitions, and other conditions on discharges from facilities authorized by this general permit. These conditions are based on the administrative record.

DATES: The effective date of the permit modification is November 30, 2009. The permit modification is being issued pursuant to 40 CFR 124.15.

ADDRESSES: The final modified general permit and other related documents in the administrative record are on file and may be inspected any time between 8:30 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. EPA, Region 9, NPDES Permits Office (WTR–5), 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, EPA, Region 9, NPDES Permits Office (WTR–5), 75 Hawthorne Street, San Francisco, California 94105–3901, or telephone (415) 972–3510. Copies of the final general permit modification, the Addendum to Fact Sheet and the Response to Public Comments will be provided upon request, and are also available on EPA, Region 9's Web site at: *http://www.epa.gov/region09/water/.*

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: November 24, 2009.

Alexis Strauss,

Director, Water Division, EPA Region 9.

[FR Doc. E9–29078 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8984–5]

Notice of Availability of Final NPDES General Permits for Discharges at Hydroelectric Generating Facilities in the States of Massachusetts and New Hampshire and Tribal Lands in the State of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final NPDES general permits MAG360000 and NHG360000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1, is today providing notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for specific discharges at Hydroelectric Generating Facilities in the States of Massachusetts and New Hampshire and Tribal Lands located in the State of Massachusetts. These discharges include equipment related cooling water, equipment and floor drain water, backwash strainer water, certain maintenance related waters, and combinations of the preceding discharges. The general permits establish notification requirements, permit eligibility requirements, effluent

limitations, standards, prohibitions and best management practice plans.

Owners and/or operators of hydroelectric generating facilities with these discharges, including those facilities currently authorized to discharge under individual NPDES permits, are eligible to apply for coverage. Facilities will receive a written notification from EPA whether permit coverage and authorization to discharge under one of the general permits is approved. These general permits do not cover new sources as defined under 40 CFR 122.2.

DATES: These general permits shall be effective on December 7, 2009 and will expire five years from the effective date.

ADDRESSES: The required notification information to obtain permit coverage is provided for each general permit. This information shall be submitted to EPA–Region 1, Office of Ecosystem Protection (CMP), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023 and to the appropriate State Agency.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permits may be obtained between the hours of 8 a.m. and 4 p.m. Monday through Friday excluding holidays from: William Wandle, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100 (CMP), Boston, MA 02114–2023, *telephone:* 617–918–1605, *e-mail: wandle.bill@epa.gov*.

SUPPLEMENTARY INFORMATION: This general permit and the response to comments may be viewed over the Internet via the EPA-Region 1 Web site for dischargers in Massachusetts at *http://www.epa.gov/ne/npdes/mass.html* and for dischargers in New Hampshire at *http://www.epa.gov/ne/npdes/newhampshire.html*. The general permits include the requirements for the notice of intent information and best management practices plan, and the standard permit conditions. To obtain a paper copy of the documents, please contact William Wandle using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: November 10, 2009.

Ira W. Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. E9–29074 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9088–3]

Notice of Final Residual Desigination of Certain Storm Water Discharges in the State of Maine Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of the Environmental Protection Agency's (EPA) New England Regional Office is providing notice of a final residual designation determination made on October 28, 2009 in accordance with Section 402(p) of the Clean Water Act, and implementing regulations in 40 CFR 122.26(a)(9)(i)(D). The final determination requires that storm water discharges from impervious areas equal to or greater than one acre in the Long Creek watershed (South Portland, Westbrook, Scarborough, and Portland, Maine) be authorized by a permit under the federal Clean Water Act because those discharges contribute to a violation of water quality standards in Long Creek. Copies of the final residual designation and other materials are available for inspection online as described elsewhere in this notice document.

FOR FURTHER INFORMATION CONTACT: Jennie Bridge, EPA New England Region, One Congress Street, Suite 1100, Mail Code CWQ, (617) 918–1685, *bridge.jennie@epa.gov*.

SUPPLEMENTARY INFORMATION: A copy of the final determination, the Record of Decision for the preliminary residual determination, and EPA's response to public comments may be viewed at the following Web sites: *http://www.regulations.gov*: Type in the key words ''residual designation'' and then search for docket ID No. EPA–R01–OW–2008–0910; *http://www.epa.gov/region01/npdes/stormwater/assets/pdfs/LongCreekRD.pdf*; *http://www.epa.gov/region01/npdes/stormwater/index.html* (scroll to ''Residual Designations''/''Long Creek'').

Dated: November 23, 2009.

Ira Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. E9–29076 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2008–0682; FRL–9087–6]

Adequacy Status of the Washington County, OH and the Ohio Portion of the Huntington/Ashland KY/WV/OH Area Submitted Annual Fine Particulate Matter Attainment Demonstration for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have made insignificance findings through the transportation conformity adequacy process for directly emitted fine particulate matter ($PM_{2.5}$) and oxides of nitrogen (NO_X) in Washington County, Ohio (part of the Parkersburg/Marietta annual $PM_{2.5}$ nonattainment area) and the Ohio portion of the Huntington/Ashland annual $PM_{2.5}$ nonattainment area. Ohio submitted the attainment demonstration State Implementation Plan (SIP) for annual $PM_{2.5}$ initially on July 16, 2008, and subsequently submitted the public hearing results on December 5, 2008. As a result of our finding, Washington County, Ohio and the Ohio portion of the Huntington/Ashland area are no longer required to perform a regional emissions analysis for either directly emitted $PM_{2.5}$ or NO_X as part of future $PM_{2.5}$ conformity determinations for the 1997 annual $PM_{2.5}$ air quality standard.

DATES: This finding is effective December 22, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean EPA.

Background

Today's notice is simply an announcement of a finding that we have already made. On October 23, 2009, EPA Region 5 sent a letter to the Ohio Environmental Protection Agency stating that we have made insignificance findings for $PM_{2.5}$ and NO_X as the state requested in its $PM_{2.5}$ attainment demonstration submittal, a finding we made through the transportation conformity adequacy process. Receipt of

the submittal was announced on EPA's transportation conformity Web site, and no comments were submitted. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). The Transportation Conformity Rule in 40 CFR 93.109(k) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants and precursors and does not change the requirement for hot spot analysis. We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: November 17, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–29075 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL_9089–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the Northern District of California: *WildEarth Guardians* v. *Jackson,* No. 4:09–CV–02453–CW (N.D. CA). On June 3, 2009, Plaintiff filed a complaint alleging that EPA failed to perform a non-discretionary duty to either approve a State Implementation Plan (''SIP'') or promulgate a Federal Implementation Plan (''FIP'') for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C. 7410(a)(2)(D)(i), with regard to the 1997 National Ambient Air Quality Standards (''NAAQS'') for 8-hour ozone and fine particulate matter (''$PM_{2.5}$''). Under the terms of the proposed consent decree, deadlines are established for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by *December 7, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0849, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; e-mail address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would settle the complaint filed by Plaintiff for EPA's alleged failure either to approve a State Implementation Plan (''SIP'') or promulgate a Federal Implementation Plan (''FIP'') for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C. 7410(a)(2)(D)(i) with regard to the 1997 National Ambient Air Quality Standards (''NAAQS'') for 8-hour ozone and fine particulate matter (''$PM_{2.5}$''). Under the terms of the proposed consent decree, after the date of lodging of the proposed consent decree, the Administrator shall sign a notice or notices either approving a State Implementation Plan (''SIP''), promulgating a Federal Implementation Plan (''FIP'') or approving a SIP in part with promulgation of a partial FIP, for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the four separate requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C. 7410(a)(2)(D)(i), with regard to the 1997 National Ambient Air Quality Standards (''NAAQS'') for 8-hour ozone and fine particulate matter (''$PM_{2.5}$'') as identified by the deadlines specified for each requirement in the consent decree. These dates fall 6 months, 12 months, or 18 months from the date of lodging of the proposed consent decree, depending upon the specific requirements of section 110(a)(2)(D)(i) and the specific state in question. In addition, under the proposed consent decree, if any of the States has not submitted an administratively complete proposed SIP to address the visibility requirement of 42 U.S.C. 7410(a)(2)(D)(i)(II) by 6 months after lodging of the proposed consent decree, then by 12 months after lodging of the proposed consent decree, the Administrator shall sign a notice or notices proposing for each such State either promulgation of a FIP, approval of a SIP (if one has been submitted in the interim), or partial promulgation of a FIP and partial approval of a SIP, to address the visibility requirement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to

the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Proposed Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0849) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 26, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–29080 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9089–6]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the District of Colorado: *WildEarth Guardians* v. *Jackson,* No. 09–cv–02109–MSK–KLM (D. CO.). On September 3, 2009, Plaintiff filed a complaint alleging: (a) That EPA failed to perform a mandatory duty under section 110(k)(5) of the CAA, 42 U.S.C. 7410(k)(5), to require the State of Utah to revise the State Implementation Plan regarding Utah Regulation 307–107–1 through 307–107–5 (''the Utah breakdown provision''), relating to excess emissions resulting from the breakdown of pollution control equipment, and (b) that EPA failed to timely respond to a petition from WildEarth Guardians requesting EPA to require Utah to revise the Utah breakdown provision consistent with CAA section 110(k)(5). The proposed consent decree establishes a deadline for EPA to take final action either issuing a rule under section 110(k)(5) requiring Utah to revise the Utah breakdown provision or determining that a revision is unnecessary.

DATES: Written comments on the proposed consent decree must be received by *January 6, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0896, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption,

and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5598; fax number (202) 564–5603; *e-mail address: tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k) of the CAA on the Utah SIP Breakdown provision. The proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than February 28, 2011 a notice of the Agency's final action determining whether the Utah Breakdown provision (Utah Regulations 307–107–1 through 307–107–5) renders the Utah SIP ''substantially inadequate'' within the meaning of section 110(k)(5) of the CAA, 42 U.S.C. 7410(k)(5), and if EPA determines that the SIP is substantially inadequate, requiring the State to revise the SIP as it relates to the Utah breakdown provision. If EPA fulfills its obligations, Plaintiff has agreed to dismiss this suit with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0896) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 25, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–29079 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9087–1]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the

Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at:

http://www.epa.gov/compliance/monitoring/programs/caa/adi.html. The document may be located by control number, date, author, subpart, or subject search. For questions about the ADI or this notice, contact Rebecca Kane at EPA by phone at: (202) 564–5960, or by e-mail at: *kane.rebecca@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the General Provisions to the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are commonly referred to as applicability determinations. *See* 40 CFR 60.5 and 61.06. Although the part 63 NESHAP [which includes Maximum Achievable Control Technology (MACT) standards] and section 111(d) of the Clean Air Act (CAA) regulations contain no specific regulatory provision providing that sources may request applicability determinations, EPA also responds to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that is different from the promulgated requirements. *See* 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping, or reporting requirements contained in the regulation. EPA's written responses to these inquiries are commonly referred to as regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the ADI on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS, NESHAP, and stratospheric ozone regulations. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number, or by string word searches.

Today's notice comprises a summary of 39 such documents added to the ADI on November 20, 2009. The subject and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *www.epa.gov/compliance/monitoring/programs/caa/adi.html.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on November 20, 2009; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter.

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of section 307(b)(1) of the Clean Air Act. For example, this notice does not make an applicability determination for a particular source into a nationwide rule. Neither does it purport to make any document that was previously non-binding into a binding document.

ADI DETERMINATIONS UPLOADED ON NOVEMBER 20, 2009

Control No.	Category	Subparts	Title
0900038	NSPS	Dc	Boiler Derate Request.
0900039	NSPS	VV	Alternative Monitoring for Equipment in Acetic Acid Service.
0900040	NSPS	G	Alternative Monitoring for Certifying NO_X CEMS.
0900041	NSPS	WWW	Alternative Monitoring for Gas Collection and Control System.
0900042	NSPS	Dc	Boiler Derate Request.
0900043	NSPS	Db	Alternative Opacity Monitoring.
0900044	NSPS	Db	Alternative Monitoring Using NO_X PEMS.
0900045	NSPS	WWW	Alternative Temperature Limits for Gas Collection Wells.
0900046	NSPS	D	Alternative Monitoring Using PM CEMS.
0900047	NSPS	OOO	Delay of Initial PM Performance Test.
0900048	NSPS	PPP	Alternative Monitoring for Wet Electrostatic Precipitator.
0900049	NSPS	WWW	Extension of Deadline to Correct Positive Pressure Exceedances.
0900050	NSPS	J	Alternative Monitoring of Fuel Gas Stream.
0900052	NSPS	WWW	Gas Collection Well Reconfiguration.
0900053	NSPS	VV	Alternative Monitoring for Equipment in Diketene Service.
0900054	NSPS	Db	Alternative Monitoring Using NO_X PEMS.
0900056	NSPS	OOO	Crusher Derate.
0900057	NSPS	A, RR	Replacement of Regenerative Thermal Oxidizer.
0900058	NSPS	WWW	Gas Treatment System.
0900059	NSPS	WWW	Alternative Compliance and Monitoring Timelines.
0900060	NSPS	WWW	Gas Treatment System.
0900061	NSPS	WWW	Gas Treatment System.

ADI DETERMINATIONS UPLOADED ON NOVEMBER 20, 2009—Continued

Control No.	Category	Subparts	Title
0900062	NSPS	WWW	Extension to Correct Positive Pressure Exceedance.
0900063	NSPS	WWW	Gas Treatment System.
0900064	NSPS	WWW	Adjusted Oxygen and Pressure Standards/Alternative Compliance Timeline.
0900067	NSPS	GG, KKKK	Gas Turbine Refurbishment and Commence Construction.
0900068	NSPS	A, CC	COMS Data Collection and Reporting.
M090001	MACT	R	Gasoline Distribution Terminals, MTBE (methyl tertiary butyl ether) Ban, Reduction of Potential to Emit.
M090005	MACT	R	Gasoline Distribution Terminals, MTBE Ban, Reduction of Potential to Emit.
M090033	MACT	YYYY	Existing Stationary Combustion Turbines.
M090034	MACT	HHHHH	Process Vessels.
M090036	MACT	RRR	Alternative Monitoring, Recordkeeping, and Reporting for Aluminum Scrap Shredder and Delacquering Kiln.
M090038	MACT	IIII, ZZZZ	Reciprocating Internal Combustion Engines.
M090039	MACT	PPPPPP	Performance Test Waiver Request.
M090040	MACT	PPPPP	Performance Test Waiver Request.
M090041	MACT	SS, WWWW	Closed Vent System Inspection.
M090042	MACT	RRR	Testing Waiver for Ring Crusher.
M090043	MACT	GGGGG	Ownership and Permitting Responsibility.
Z090003	NESHAP	H	Alternative Monitoring for Insulated Valves.

Abstracts

Abstract for [0900038]

Q: Does EPA approve a request by the Hospital of Saint Raphael in New Haven, Connecticut, to derate its boiler from 31 MMBtu to below 30 MMBtu under 40 CFR part 60, subpart Dc?

A: Yes. EPA approves the request of the Hospital of Saint Raphael to derate its boiler to below 30 MMBtu under NSPS subpart Dc, provided that the hospital (1) replaces the oil burner in the boiler to reduce its capacity while operating on residual oil; and (2) modifies the natural gas fuel system by replacing the jets/nozzles to reduce its capacity while operating on natural gas.

Abstract for [0900039]

Q: Does EPA approve the request of DuPont Engineering Polymers (DuPont) to use sensory methods (sight, sound, and smell), under 40 CFR part 60, subpart VV, to detect leaks from equipment in acetic acid service at its facility in Chattanooga, Tennessee?

A: Yes. EPA approves DuPont's request based upon previous approvals under NSPS subpart VV for similar monitoring alternatives in Region 4 and the physical properties of acetic acid that allow leaks to be detected readily using sensory methods.

Abstract for [0900040]

Q: Does EPA approve the request of Solutia, Inc. to use an alternative method under 40 CFR part 60, subpart G, for certifying the nitrogen oxides monitoring system installed on its nitric acid plant in Gonzalez, Florida?

A: Yes. EPA approves Solutia's request for an alternative method based upon a previous approval under NSPS subpart G for a similar E.I. du Pont de Nemours nitric acid plant in Orange County, Texas.

Abstract for [0900041]

Q1: Does EPA approve the request to exempt certain areas at the J.E.D. Solid Waste Management Facility in St. Cloud, Florida, from the monthly gas collection well monitoring requirements in 40 CFR part 60, subpart WWW? Specific areas where a monitoring exemption is requested are haul roads, truck traffic areas, active areas, areas under construction, and slopes with a horizontal to vertical ratio of 3:1 or greater.

A1: EPA finds that the proposed exclusions, with the exception of the one for roads, are unacceptable. This determination is consistent with a previous Region 4 determination for the Three Rivers Landfill in Aiken County, South Carolina.

Q2: Does EPA approve a request to exclude monitoring of gas collection and control system components that have been raised between ten and twenty feet in the air at the active face of the landfill in order to accommodate a vertical expansion under 40 CFR part 60, subpart WWW?

A2: Yes. EPA finds that the company has legitimate safety concerns about monitoring these components under NSPS subpart WWW. Given the number of wells at the site, the majority of the wells will still be monitored on a monthly basis. In addition, based upon the operating life of the landfill, the duration of the proposed exemption will be relatively short.

Abstract for [0900042]

Q: Does EPA approve the request of Robert Bosch, LLC, to derate the capacity of a boiler at its Charleston, South Carolina facility so that it will no longer be subject to 40 CFR part 60, subpart Dc? The proposal includes the replacement of the boiler's existing burner with a new lower-rated burner to reduce the heat input capacity to less than 10 million Btu/hour.

A: Yes. EPA approves the request as it complies with the policy on derates under NSPS subpart Dc.

Abstract for [0900043]

Q: Does EPA approve a request for an alternative opacity monitoring procedure for a boiler under 40 CFR part 60, subpart Db, at Unilin Flooring's thin high-density fiberboard plant in Mt. Gilead, North Carolina?

A: Based upon the operation of the Mt. Gilead plant, EPA approves the request to use a combination of EPA Methods 9 and 22 under NSPS subpart Db to monitor opacity from the heating plant's startup/shutdown/idle stack when the facility's regenerative thermal oxidizer is shut down for maintenance. However, EPA does not approve the request to delay the collection of EPA Method 9 data for up to 24 hours when the presence of visible emissions is detected using Method 22.

Abstract for [0900044]

Q: Does EPA approve the request of the Oak Ridge National Laboratory to use a predictive emission monitoring system (PEMS), under 40 CFR part 60, subpart Db, for measuring nitrogen oxides during oil combustion in Boiler No. 6 at its Oak Ridge, Tennessee facility?

A: Yes. EPA approves the request for a PEMS under NSPS subpart Db based upon the results of a relative accuracy

test audit conducted at the plant on September 25, 2008.

Abstract for [0900045]

Q: Does EPA agree that the owner/operator of the Trail Ridge Landfill in Baldwin, Florida, may unilaterally establish alternative temperature limits for gas collection wells under 40 CFR part 60, subpart WWW?

A: No. Based upon the language in NSPS subpart WWW and guidance issued by EPA, the State of Florida must approve alternative temperature limits for gas collection wells.

Abstract for [0900046]

Q: Does EPA approve Kentucky Utility's request under 40 CFR part 60, subpart D, to install a particulate matter continuous emission monitoring system (PM CEMS) as an alternative to a continuous opacity monitoring system (COMS) on Unit 4 of its facility in Ghent, Kentucky?

A: Yes. NSPS subpart D contains provisions allowing owners/operators to petition to use a PM CEMS as an alternative to COMS. Under the delegation of authority for subpart D, the Kentucky Department of Environmental Protection is authorized to approve such proposals. Because the use of PM CEMS is relatively new, this determination includes suggestions for conditions that should be imposed as part of the approval process.

Abstract for [0900047]

Q: Does EPA approve a request by Georgia Power Company (GPC) to delay the initial particulate matter (PM) performance test for a limestone unloading operation under 40 CFR part 60, subpart OOO, at its Plant Bowen in Cartersville, Georgia?

A: Conditional. Because it will be difficult to complete a three-run PM performance test in a reasonable period of time until at least three of the four scrubbers at Plant Bowen are operating, a temporary delay of the initial test would be acceptable, under NSPS subpart OOO, provided that GPC supplies other data that provide reasonable assurance of compliance with the applicable limit. As the terms GPC proposes in justifying the waiver will not provide adequate assurance of compliance, the letter outlines a series of conditions under which a temporary waiver of the PM performance test would be acceptable under subpart OOO.

Abstract for [0900048]

Q: Does EPA approve a request by Johns Manville for an alternative monitoring approach under 40 CFR part 60, subpart PPP, for a wet electrostatic precipitator (ESP) that controls particulate emissions from a process line at its wool fiberglass manufacturing plant in Winder, Georgia?

A: Yes. Because the liquid used in the ESP on this process line is not recycled, the solids content of the water is inherently low. Given this and given the substantial margin of compliance during the three most recent performance tests conducted on the process line, verifying that only once-through municipal water is used in the ESP is an acceptable alternative, under NSPS subpart PPP, to monitoring the solids content of the water.

Abstract for [0900049]

Q: Does EPA approve a request by Waste Management Company to extend the deadline for correcting pressure exceedances, under 40 CFR part 60, subpart WWW, for six gas collection wells at its Outer Loop Landfill in Louisville, Kentucky?

A: Yes. Given the suspected cause of the pressure exceedances (water buildup in the header line for the wells), the NSPS subpart WWW requirement to install additional collection wells if the exceedances cannot be corrected within 15 days is unlikely to correct the exceedances. The proposal to use a camera to pinpoint the location of water buildup in the line and to either regrade the line or run a jumper line to a vacuum source with enough capacity to clear the line is more likely to correct the exceedances. Therefore, EPA approves extending the subpart WWW deadline for correcting exceedances.

Abstract for [0900050]

Q: Does EPA approve the request of the Ergon Refining facility in Vicksburg, Mississippi, for alternative hydrogen sulfide monitoring for a fuel gas stream generated in the pressure swing absorber (PSA) under 40 CFR part 60, subpart J?

A: Yes. EPA approves the request. Because both of the feed streams for the PSA unit are treated to remove sulfur, the likelihood that hydrogen sulfide will be present in the vent stream from the unit is extremely low. Thus, it is acceptable under NSPS subpart J to install a continuous monitor on the vent stream from the PSA unit.

Abstract for [0900052]

Q: Does EPA approve a request from Waste Management Company (WMC) to reconfigure, under 40 CFR part 60, subpart WWW, six gas collection wells at its Iris Glen Landfill in Johnson City, Tennessee, by replacing the six existing vertical extraction wells with a horizontal collector?

A: Yes. EPA approves the request because WMC proposes to replace one landfill gas collection device (vertical wells) with a gas collection device (a horizontal collector), which is acceptable under NSPS subpart WWW. In the event that exceedances of the 500 parts per million methane surface concentration limit are identified during future monitoring at the site, WMC will need to either adjust the system to meet the limit or install additional wells to improve the performance of the collection system.

Abstract for [0900053]

Q: Does EPA approve the request of Eastman Chemical Company for alternative monitoring under 40 CFR part 60, subpart VV, of equipment in diketene service at its Kingsport, Tennessee facility?

A: Yes. EPA approves this request because a review of this proposal and similar previous proposals for the Kingsport plant show that leaks will be detected and repaired more quickly under the proposed alternative monitoring approach than they would be under the monitoring procedures specified in NSPS subpart VV.

Abstract for [0900054]

Q: Is the nitrogen oxides predictive emission monitoring system (PEMS) proposed for Boiler No. 6 at the Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee, an acceptable alternative to a continuous emission monitoring system (CEMS) under 40 CFR part 60, subpart Db?

A: Conditional. Based upon a review of relative accuracy test audit (RATA) results provided by ORNL, the PEMS will be an acceptable alternative, under NSPS subpart Db, to a CEMS when the primary fuel (natural gas) for the boiler is used. In order for the PEMS to be approved as an alternative to a CEMS when the backup fuel (No. 2 fuel oil) for the boiler is used, ORNL will need to supply RATA results for the backup fuel.

Abstract for [0900056]

Q: Neill Grading & Construction Company (Neill Grading) in Hickory, North Carolina, proposes to derate the capacity of a portable jaw crusher to avoid applicability of 40 CFR part 60, subpart OOO. Neill Grading proposes to use shims to restrict the size of the crusher discharge opening and reduce the capacity. Does EPA approve this proposed means of derating?

A: No. EPA does not approve this proposed means for derating because it

does not constitute a permanent physical reduction in the capacity of the crusher. Jaw crushers are designed with adjustable shims to enable operation at various throughput settings, and each particular discharge setting or adjustment in the shims does not constitute a permanent physical restriction in the maximum capacity. The design capacity of the crusher is used to determine applicability of NSPS subpart OOO, rather than the intended throughput capacity an owner or operator proposes to utilize.

Abstract for [0900057]

Q: Would the replacement of three regenerative thermal oxidizers (RTO) with a single RTO system on three pressure sensitive vinyl/paper roll coating lines trigger the performance test requirements of 40 CFR part 60, subparts A and RR, at Avery Dennison's facility in Lowell, Indiana?

A: No. NSPS subpart RR applies to any affected facility that begins construction, modification, or reconstruction after December 30, 1980. Because no construction, modification, or reconstruction appears to have occurred, NSPS requirements have not been triggered. A modification could occur if the new RTO system proves to be less efficient than the old RTO system at controlling volatile organic compounds.

Abstract for [0900058]

Q: Is the methane gas to electrical energy gas processing facility that Industrial Power Generating Company (INGENCO) proposes to construct at the CDT landfill located in Joliet, Illinois, considered a treatment system under 40 CFR part 60, subpart WWW?

A. Yes. EPA considers filtering of the gas through a 10 micron screen to reduce particulate matter, de-watering of the gas using chillers or other dehydration equipment to reduce moisture content, and compression using gas blowers or similar devices to further reduce moisture content and raise gas pressure as ''treatment'' when the gas is used in an energy recovery project. INGENCO's CDT facility appears to meet these requirements under current NSPS subpart WWW. Once the gas has been treated and sent to the internal combustion (IC) engines, it is no longer subject to the NSPS requirements. However, once proposed amendments to NSPS subpart WWW regarding treatment systems are finalized, INGENCO may have to comply with new or additional requirements regarding landfill gas treatment systems.

Abstract for [0900059]

Q: Does EPA approve the request of the Roxana Landfill (Roxana) in Roxana, Illinois, for several alternative timelines to bring certain specified wells that were unable to perform the required monitoring for May 2008 into compliance under 40 CFR part 60, subpart WWW?

A: Yes. Roxana was unable to perform the required monitoring for May 2008 for landfill gas extraction wells 9, 36, 41, 44, and 47 due to unsafe conditions in the area of these wells. EPA approves the request to exempt these wells under NSPS subpart WWW for one month of monitoring only because of the safety issues and because the request covers a small percentage of the total wells at the site for a relatively short time period. EPA will grant Roxana alternative compliance timelines of various lengths to correct operating parameter exceedances at several other wells.

Abstract for [0900060]

Q: Will processes prior to combustion at the proposed methane gas to electrical energy processing facility at Waste Management's Settler's Hill Recycling and Disposal Facility (Settler's Hill) in Batavia, Illinois, be considered a treatment facility under 40 CFR part 60, subpart WWW?

A. Yes. EPA considers filtering of the gas through a 10-micron screen to reduce particulate matter, de-watering of the gas using chillers or other dehydration equipment to reduce moisture content, and compression using gas blowers or similar devices to further reduce moisture content and raise gas pressure as ''treatment'' when the gas is used in an energy recovery project. Waste Management's proposed facility at Settler's Hill appears to meet these requirements under current NSPS subpart WWW. Once the gas has been treated and sent to the IC engines, it is no longer subject to the NSPS requirements. However, once proposed amendments to NSPS subpart WWW regarding treatment systems are finalized, Settler's Hill may have to comply with new or additional requirements regarding landfill gas treatment systems.

Abstract for [0900061]

Q: Is Upper Rock Island County Landfill (Upper Rock) in East Moline, Illinois, required under 40 CFR part 60, subpart WWW, to install a landfill gas collection and control system at this time?

A. No. A June 2006 Tier 2 five-year re-test at Upper Rock showed that emissions were 59.49 Mg/year. The facility submitted a Gas Collection and Control Design Plan to Illinois in July 2007. In August 2007, EPA approved Upper Rock to conduct additional Tier 2 testing to update the June 2006 values because the site had met all the other NSPS reporting obligations in a timely manner. The testing was conducted February 13, 2008, and the facility emissions were 11.24 Mg/year, which is less than the 50 Mg/year NMOC emission threshold for installing controls under NSPS subpart WWW.

Abstract for [0900062]

Q: Does EPA approve the request of the Winnebago Reclamation Service Landfill (Winnebago) for an alternative timeline under 40 CFR part 60, subpart WWW, to correct a positive pressure exceedance exhibited on June 2, 2008, at Well GW191 of its Rockford, Illinois facility?

A: Yes. EPA approves Winnebago's request, but only until July 17, 2008. Winnebago originally requested an alternative timeline until September 30, 2008, due to plugging of the lateral. However, on July 17, 2008, the facility informed EPA that the well came back into compliance on July 8, 2008.

Abstract for [0900063]

Q: Will the processes prior to combustion at the methane gas to electrical energy processing facility proposed at Waste Management's Woodland Recycling and Disposal Facility (Woodland) in South Elgin, Illinois, be considered a treatment facility under 40 CFR part 60, subpart WWW?

A. Yes. EPA considers filtering of the gas through a 10-micron screen to reduce particulate matter, de-watering of the gas using chillers or other dehydration equipment to reduce moisture content, and compression using gas blowers or similar devices to further reduce moisture content and raise gas pressure as ''treatment'' when the gas is used in an energy recovery project. Waste Management's proposed facility in South Elgin appears to meet these requirements under current NSPS subpart WWW. Once the gas has been treated and sent to the IC engines, it is no longer subject to the NSPS requirements. However, once proposed amendments to NSPS subpart WWW regarding treatment systems are finalized, Woodland may have to comply with new or additional requirements regarding landfill gas treatment systems.

Abstract for [0900064]

Q1: Does EPA approve adjusted standards under 40 CFR part 60, subpart

WWW, for oxygen and pressure at five gas extraction locations at Veolia Environmental Services Zion Landfill in Zion, Illinois?

A1: For the three vertical gas extraction wells, the pressure and oxygen exceedances are due to declining gas quality and gas production in an area of older waste. EPA will approve adjusted standards for these wells under NSPS subpart WWW. These locations may remain shut off, under positive pressure, with monthly monitoring and periodic adjustment to vacuum to remove accumulated landfill gas. However, EPA will not approve alternative standards for the two horizontal trenches in question because these points appear to not be meeting the standards because of operational problems and not because of low gas production or low gas quality inherent in the waste.

Q2: Does EPA approve an alternative timeline under 40 CFR part 60, subpart WWW, to correct oxygen exceedances at a sixth well at Veolia Environmental Services Zion Landfill in Zion, Illinois?

A2: Yes. EPA approves an alternative timeline of 90 days only under NSPS subpart WWW to correct the oxygen exceedance.

Abstract for [0900067]

Q1. Does work performed on a stationary gas turbine owned by CenterPoint Energy Gas Transmission at a compressor station in Morrilton, Arkansas, that is subject to 40 CFR part 60, subpart KKKK, and that included moving the turbine to a new site, qualify the turbine as a new source?

A1. No. Relocation in and of itself does not trigger applicability. Further, because only portions of the affected facility as defined in NSPS subpart KKKK were replaced, it does not appear that a new affected facility was constructed.

Q2. Is the turbine modified?

A2. It is not clear whether the turbine has been modified, as the submission does not include sufficient information to evaluate whether emissions at the affected facility increased.

Q3. Does overhauling and uprating the turbine with old and new parts constitute reconstruction?

A3. The request letter does not contain sufficient information to make a determination about whether this is reconstruction. The cost of the new and old components that were added to the affected facility is included in the reconstruction analysis. Equipment that is outside of the affected facility is not included in the reconstruction calculation. Reconstruction involves consideration of whether it is technically and economically feasible to meet the applicable standards.

Q4. Does the Letter of Authorization (LOA) with the manufacturer to purchase the turbine constitute commencement of construction? The letter predates the applicability date for 40 CFR part 60, subpart KKKK.

A4. No. The LOA does not require the type of activities that commence construction. Planning work does not commence construction, and contracts for services such as site preparation, planning, engineering, or architectural drawings do not constitute a contractual obligation for construction within the meaning of NSPS subpart KKKK.

Abstract for [0900068]

This letter addresses the following questions from Saint-Gobain Containers, relative to COMS requirements in NSPS subparts A and CC.

Q1: Are glass furnaces under the NSPS required to base their six-minute opacity averages on 36 or 24 data points?

A1: The opacity value determined under 40 CFR 60.263(c)(4) is based on 24 data points, as specified at 40 CFR 60.293(c)(3). The ongoing COMS opacity monitoring averages are based on 36 data points, consistent with 60.13(h)(1).

Q2: Does proposed Method 203 for Part 51 or state guidance, both of which require 83-percent minimum data availability, apply to NSPS subpart CC?

A2: No. However, states may impose minimum data availability requirements that are more stringent than the NSPS.

Q3: Is a minimum of 24 valid data points always required for 40 CFR 60.293(c)(3), even if more are sought?

A3: Yes. However, all valid data should be used in calculating the six-minute averages.

Q4: Can the first and final readings of a six-minute COMS reading be missed and still satisfy the requirement that COMS data points be equally spaced over each six-minute period?

A4: Under 40 CFR 60.13(h)(1) for COMS, a valid reading is required every 10 seconds, at a minimum, for each six-minute period.

Q5: Does CMS downtime include periods when COMS data is interrupted for daily calibration or zero/span adjustment?

A5: The term ''CMS downtime'' as used in the summary reports at 40 CFR 60.7(d) includes downtime due to calibration. The reporting requirements of 40 CFR 60.7(c) exclude zero and span checks from reported periods of CMS inoperation.

Q6: Does CMS downtime include periods when the COMS is offline due to furnace shutdown?

A6: No. CMS downtime does not include periods when the COMS is offline due to furnace shutdown.

Abstract for [M090001]

Q: Are Motiva Enterprises LLC's gasoline distribution terminals in Bridgeport and New Haven, Connecticut, still subject to 40 CFR Part 63, subpart R, if Connecticut banned the sale of gasoline containing methyl tertiary butyl ether (MTBE) and the facility is no longer a major hazardous air pollutants (HAP) source?

A: Yes. EPA concludes that the Motiva Enterprises' Bridgeport and New Haven Terminals remain subject to NESHAP subpart R, because they were a major source of HAP on the first substantive compliance date of the NESHAP regardless of the level of their potential to emit after that date.

Abstract for [M090005]

Q. Is Motiva Enterprises LLC's gasoline distribution terminal in Providence, Rhode Island, still subject to 40 CFR Part 63, subpart R, if Rhode Island banned the sale of gasoline containing MTBE and the facility is no longer a major HAP source?

A. Yes. EPA concludes that Motiva Enterprises' Providence Terminal remains subject to NESHAP subpart R, because it was a major source of HAP on the first substantive compliance date of the NESHAP regardless of the level of its potential to emit after that date.

Abstract for [M090033]

Q1. Does 40 CFR part 63, subpart YYYY, apply to the existing stationary combustion turbines at Lake Road Generating Company, in Killingly, Connecticut (Lake Road)?

A1. Yes. EPA finds that MACT subpart YYYY applies to the existing stationary combustion turbines at Lake Road but that it does not at this time impose any requirements on these units.

Q2. Does EPA find that Lake Road is a major source of HAP emissions under MACT subpart YYYY?

A2. Yes. EPA has determined that Lake Road does not have a federally enforceable limit on its potential to emit or a state-enforceable, practically enforceable limit on its potential to emit. Therefore, Lake Road is currently considered a ''major source'' of HAP emissions that is subject to MACT subpart YYYY.

Abstract for [M090034]

Q. Is a portable 125 gallon mixer at the ITW Devcon/Plexus facility in Danvers, Massachusetts, part of an affected source under 40 CFR part 63, subpart HHHHH?

A. No. EPA has determined that because the portable mixer has a capacity of less than 250 gallons, the portable mixer does not meet the definition of ''process vessel,'' which is considered equipment that is part of an affected source under MACT subpart HHHHH. Additionally, as the portable mixer does not meet any other criteria for inclusion in the affected source, it is not part of the affected source under subpart HHHHH.

Abstract for [M090036]

Q: Does Aleris International's proposal for alternative methodologies to conduct stack testing, monitoring, recordkeeping, and reporting for the aluminum scrap shredder and delacquering kiln at its facility in Uhrichsville, Ohio, comply with the requirements of 40 CFR part 63, subpart RRR?

A: Yes. Aleris International's proposal for alternative methodologies to conduct stack testing, monitoring, recordkeeping, and reporting for the aluminum scrap shredder and delacquering kiln complies with MACT subpart RRR. EPA approves the proposed method for determining the delacquering kiln feed/charge weight during testing for the aluminum scrap shredder and delacquering kiln. EPA also approves using twelve-hour shifts for the shredder feed/charge weight during normal operations and keeping the delacquering kiln feed/charge rate in twelve-hour shifts.

Abstract for [M090038]

Q1: Does 40 CFR part 63, subpart ZZZZ, apply to non-road, non-stationary reciprocating internal combustion engines located at a major source of hazardous air pollutants?

A1: No. MACT subpart ZZZZ does not apply to non-road, non-stationary reciprocating internal combustion engines located at a major source of hazardous air pollutants.

Q2: Does 40 CFR part 60, subpart IIII, apply to non-road, non-stationary reciprocating internal combustion engines?

A2: No. NSPS subpart IIII does not apply to non-road, non-stationary reciprocating internal combustion engines.

Abstract for [M090039]

Q1: Does EPA approve a request to waive the performance testing requirements of 40 CFR part 63, subpart PPPPPP, for two Hardinage ball mills at the Johnson Controls Battery Group (Johnson Controls) facility in Holland, Ohio, based upon the performance test results from similar affected sources at Johnson Controls facility in Tampa, Florida?

A1: No. EPA does not approve the request under MACT subpart PPPPPP. The affected sources are located at different facilities in different states, and maximum production capacities differ by 400-pounds per hour. Also, Johnson Controls has not conducted a performance test at the Tampa affected facilities since November 2002.

Q2: Does EPA approve a request from Johnson Controls to use the performance test results from two cast-on-strap (COS) lines to demonstrate compliance under 40 CFR part 63, subpart PPPPPP, for the four other COS lines at its facility in Holland, Ohio?

A2: No. EPA does not approve this request under MACT subpart PPPPPP. Johnson Controls did not submit a copy of any test reports for any of the COS lines and did not submit any information to demonstrate that the six COS lines were produced by the same manufacturer, have the same model number or other manufacturer's designation in common, and have the same rated capacity and operating specifications.

Abstract for [M090040]

Q: Will EPA reconsider its September 25, 2008, disapproval of a request to waive the stack testing requirements for six cast-on-strap lines at Johnson Controls Battery Group's lead acid battery facility in Holland, Ohio?

A: No. Johnson Controls Battery Group has not demonstrated that the performance tests are impractical or technically or economically infeasible. EPA affirms its previous decision.

Abstract for [M090041]

Q: Does EPA waive the closed vent system inspection procedures using Method 21 of 40 CFR part 60 for add-on air pollution control equipment subject to 40 CFR part 63, subparts WWWW and SS, given that EPA has made such a determination with respect to 40 CFR part 261, subpart CC?

A: No. EPA has previously determined that when waste management units are required to use air emissions control under both RCRA and CAA NESHAP, it is unnecessary for owners and operators of those waste management units subject to air standards under both sets of rules to perform duplicative testing and monitoring, keep duplicative sets of records, or perform other duplicative actions. Given no applicable RCRA air regulations, EPA finds that the facts here do not justify waiving the closed vent inspection procedures using Method 21.

Abstract for [M090042]

Q: Does EPA approve the request of Aleris International for a waiver of the performance testing required for scrap shredders under 40 CFR part 63, subpart RRR, for the ring crusher at its Wabash Alloys facility in Wabash, Indiana?

A: Yes. EPA approves the request under MACT subpart RRR, as the facility has demonstrated that it is technically infeasible to use Method 5 to measure emissions. Because Method 9 visible emissions readings showed uncontrolled opacity far below the limit for a controlled source, this provides assurance that the ring crusher is in continuous compliance with the PM standard.

Abstract for [M090043]

Q: Is Spirit Aerosystems (Spirit) responsible under 40 CFR part 63, subpart GGGGG, for remediation activities conducted and controlled by Boeing on Spirit Aerosystems' property?

A: No. This is a unique situation in which Boeing is legally responsible for compliance with MACT subpart GGGGG. Although Spirit purchased the existing site from Boeing, Boeing retained ownership of the remediation unit ''facilities'' located on the site, along with the environmental liability. Prior to Spirit's purchase of the property, a Kansas Department of Health and Environment Consent Order was signed requiring Boeing to conduct remediation activities at the site.

Abstract for [Z090003]

Q: Does EPA approve the request of Dow Chemical Company (Dow) to use insulation plugs to access the insulated valve stem interface for valves subject to 40 CFR part 63, subpart H, at its Midland, Michigan facility?

A: Yes. EPA approves Dow's request. Using insulation plugs is a feasible and adequate way under MACT subpart H of monitoring the insulated valves at Dow's Midland plant site while still maintaining the integrity and functionality of the insulation.

Dated: November 5, 2009.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. E9–29067 Filed 12–4–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit

System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 10, 2009, from 10:30 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 10, 2009.

B. Business Reports

- September 30, 2009 Financial Reports;
- Report on Insured and Other Obligations;
- Quarterly Report on Annual Performance Plan.

C. New Business

- Board Meeting Schedule for 2010;
- Review of FCSIC's Allowance for Loss Procedures.

Closed Session

- Confidential Report on System Performance;
- Audit Plan for the Year Ended December 31, 2009.

Dated: December 2, 2009.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E9–29113 Filed 12–4–09; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Granvalor Holding LTD., Tortola, British Virgin Islands; to acquire up to an additional 10.94 percent, for a total of 60 percent, of the voting shares of International Bancorp of Miami, Inc., and thereby indirectly acquire additional voting shares of Bank of Miami, N.A., both of Coral Gables, Florida.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. United Bancorp, Inc., Chatham, Illinois; to acquire 100 percent of the voting shares of Marine Bank & Trust, Carthage, Illinois, and Brown County Bank, Mount Sterling, Illinois.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Golden Pacific Bancorp, Inc., Sacramento, California; to become a bank holding company by acquiring 100 percent of the voting shares of Gold Country Financial Services, Inc., and thereby indirectly acquire voting shares of Gold Country Bank, National Association, both of Marysville, California.

Board of Governors of the Federal Reserve System, December 2, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–29091 Filed 12–4–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068]

Federal Acquisition Regulation; Submission for OMB Review; Economic Price Adjustment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for reinstatement of an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning economic price adjustment. A request for public comments was published in the **Federal Register** at 74 FR 27025, on June 5, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 6, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information,

including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Branch, GSA, at (202) 501–1900 or e-mail *warren.blankenship@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 16.203, Fixed-price contracts with economic price adjustment, and associated clauses at 52.216–2, 52.216–3 and 52.216–4 provide for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Respondents: 5,346.
Responses per Respondent: 1.
Annual Responses: 5,346.
Hours per Response: .25.
Total Burden Hours: 1,337.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: November 19, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–29071 Filed 12–4–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the National Coordinator for Health Information Technology; Delegation of Authority

Notice is hereby given that I have delegated to the National Coordinator for Health Information Technology (National Coordinator), or his or her successor, the authorities vested in the Secretary under Subtitle A of Title XXX of the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended, as specified under Section 3002 (with the exception of Section 3002(c)(2)(A)), Section 3003 (with the exception of Section 3003(c)(6)), and Sections 3004 and 3007, and under Sections 13111 and 13113, only with respect to the authority to administer studies related to the adoption of a nationwide system for the electronic use and exchange of health information and to the extent that it does not conflict with any other existing delegation, of the Health Information Technology for Economic and Clinical Health (HITECH) Act (42 U.S.C. 17901 and 17903), as amended, for the Promotion of Health Information Technology.

These authorities may be redelegated. I hereby affirm and ratify any actions taken by the National Coordinator or by any other officials of the Office of the National Coordinator for Health Information Technology, which, in effect, involved the exercise of these authorities delegated herein prior to the effective date of this delegation. This delegation is effective upon date of signature.

Dated: November 25, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–29032 Filed 12–4–09; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board: Notification of Cancellation of Public Teleconference

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Biodefense Science Board (NBSB) public teleconference meeting scheduled for December 9, 2009 from 12 p.m. to 2 p.m. EST is cancelled. This meeting was announced in the **Federal Register** of November 17, 2009 (74 FR 59186) and was intended to discuss issues related to Novel Influenza A H1N1.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (*42 U.S.C. 247d–7f*) and section 222 of the Public Health Service Act (*42 U.S.C. 217a*), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response. As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the NBSB public teleconference meeting scheduled for December 9, 2009 from 12 p.m. to 2 p.m. EST is cancelled. This meeting was announced in the **Federal Register** of November 17, 2009 (74 FRN 59186) and was intended to discuss issues related to Novel Influenza A H1N1.

FOR FURTHER INFORMATION CONTACT: *E-mail: NBSB@HHS.GOV.*

Dated: November 30, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. E9–29031 Filed 12–4–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–08BN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Voluntary Product Satisfaction and Usability Assessment—New—National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Executive Order 12862 directs Federal agencies that provide services directly to the public to survey customers to determine the kind and quality of services they need and their level of satisfaction with existing services.

CDC releases a number of new products each year to its customers, a diverse group that includes health care providers, researchers, public health practitioners, policy makers, and the general public. The term product is broadly defined to include publications, Web pages, podcasts, e-cards, CD–ROMs, and videos. At present, there is no mechanism for evaluating whether these products are meeting customer needs.

CDC is requesting a 3-year generic clearance in order to better evaluate its products. Obtaining feedback from customers on a regular, on-going basis will help ensure that customers find CDC products to be useful. This type of evaluation will allow CDC to maximize the impact of its products which will ultimately benefit the public's health. The estimate of annual burden was based on approximately 20 new products being released by CDC/NCIPC each year. This number is consistent with the number of products released annually over the last 5 years. Approximately 2500 hard copies of each product are distributed to customers annually. Each product is disseminated electronically (via e-mail) to 3000 customers each year. Finally, product Web sites receive approximately 1800 hits a month or 21,600 hits a year.

There is no cost to the respondents other than their time. The total estimated burden hours are 90,333.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of respondents	Types of form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public	Response cards	50,000	1	10/60
	E-mail Assessments	60,000	1	10/60
	Web-Based Assessments	432,000	1	10/60

Dated: December 1, 2009.

Maryam Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–29106 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-10–10AK)

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality*, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Notifiable Condition Messaging Support Strategy Questionnaire—New—National Center for Public Health Informatics (NCPHI), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. CDC's *Morbidity and Morality Weekly Report* publishes incidence and prevalence tables for nationally notifiable conditions reported through the National Electronic Disease Surveillance System (NEDSS) and other surveillance data sources to the National Notifiable Diseases Surveillance System (NNDSS).

NEDSS (OMB 0920–0728) is an internet-based infrastructure for public health surveillance data exchange that uses specific Public Health Information Network (PHIN) and NEDSS electronic data and information standards to advance the development of efficient, integrated, and interoperable surveillance systems at federal, state and local levels. CDC's NCPHI is responsible for establishing and managing the national reporting system of epidemiologic data for notifiable conditions (diseases) via NEDSS.

Case notification messaging for most of the nationally notifiable conditions (77 infectious conditions as of August 2009) will eventually be supported by the standard Health Level 7 (HL7) message format. The HL7 message format requires a Message Mapping Guide (MMG)—developed by the NEDSS and NNDSS programs, in collaboration with state and federal subject matter experts—to implement case notification to CDC via NEDSS. By the close of 2009, MMGs are expected to be published for seven nationally notifiable conditions. Current NEDSS resources support the development of three new MMGs per year. A jurisdiction's implementation of a MMG requires an average of three months per MMG and largely requires NCPHI's programmatic and technical expertise during this process.

The National Notifiable Condition Messaging Support Strategy Questionnaire has been developed by the NEDSS program to gather information needed for formulating a technical and project management support strategy for 57 reporting jurisdictions (i.e., 50 states, 5 territories, New York City, and Washington, DC) as they implement NEDSS messaging using Message Mapping Guides (MMG). A jurisdiction's response to the questionnaire will be used by the NEDSS implementation and

management teams to assess the jurisdiction's IT system environment and capacity and help determine the project schedule and level of human and technical support needed to complete the jurisdiction's implementation of a nationally notifiable condition message. NEDSS infrastructure implementation support includes, but is not limited to: Implementing NEDSS Message Subscription Service (MSS) and NEDSS Messaging Solution (NMS) software in requesting jurisdictions; providing MSS and NMS software training and ongoing technical support; and distributing funding via the CDC Epidemiology and Laboratory Capacity cooperative agreement.

Questionnaires will be distributed to jurisdictions who initiate MMG implementation for a condition; therefore, the maximum annual frequency of responses per jurisdiction is three. The NEDSS team will request the jurisdiction to voluntarily complete the questionnaire, but a response is not a pre-requisite for support.

There is no cost to respondents other than their time to participate in the survey.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
States	50	3	40/60	100
Territories	5	3	40/60	10
Cities	2	3	40/60	4
Total				114

Dated: December 1, 2009.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–29107 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10AP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Healthcare Workers' Health and Safety Practices—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970), NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH will conduct a survey of healthcare workers.

Healthcare workers represent over 8% of the U.S. workforce with many occupations projected to substantially grow in the next ten years. Healthcare workers experience higher rates of illness and injury as compared to workers in other industries and are at increased risk for many of the types of adverse health effects potentially caused by exposure to hazardous chemical agents. The proposed hazard surveillance survey will provide important information on work practices associated with the use of important classes of hazardous chemical agents including aerosolized medications, antineoplastic agents, chemical sterilants, high level disinfectants, surgical smoke, and anesthetic gases. This survey is the first of its kind by the Federal government or others. The data collected will describe the prevalence and distribution of health and safety practices and the use of exposure controls and barriers to their use for each of these chemical agents, by occupation and by type and by size of work setting. The study population for this survey includes members of professional organizations who represent healthcare workers in many occupations which use or are exposed to these chemical agents. NIOSH will use the data to guide interventions and future research. The participating professional organizations indicated that the data will be useful for benchmarking, identifying areas for expanding guidelines and for health and safety promotion.

The proposed survey is modular in design and will be available only on-line. The survey includes separate chemical hazard modules addressing the previously mentioned hazardous chemical agents, and a core module which gathers information on a broad range of health and safety issues affecting healthcare workers, in addition to demographic information. Members of the participating professional organizations will be recruited by email which will be sent by each professional organization to their members. All respondents will complete a brief screening questionnaire. If one or more of the chemical agents under study was

used in the past week, the respondent would complete the appropriate hazard module (*e.g.*, oncology nurse would complete hazard module on administration of antineoplastic agents) and the core module. A second hazard module may also be completed depending on whether additional chemical agents were used in the past week.

Depending on the size of the participating professional organization, all members or a random sample of members will be sent an e-mail by their organization which will contain a hyperlink to the survey. The survey will reside on a secure Web site maintained by our survey contractor. The major objectives of the survey will be to: (1) Describe the prevalence and distribution of health and safety practices by chemical hazard, occupation and type and size of work setting; (2) describe the frequency and duration of use of hazardous chemicals by occupation and type and size of work setting; and (3) describe the use of exposure controls including the use of personal protective equipment as well as the barriers to their use, by occupation and type and size of work setting. The survey will provide important hazard and exposure surveillance data that is currently unavailable for healthcare workers. NIOSH will use the results to identify gaps relative to the use of best practices, to guide interventions and to stimulate future research. The participating professional organizations plan to use the data to benchmark current practices, to identify areas for expanding guidelines and to promote occupational health and safety.

The target population of healthcare workers for this survey will be limited to members of the participating professional organizations who have used or been exposed to one or more of the hazardous chemical agents within the past week. Respondents will not be asked to report names or any other identifying information.

The project supports the NIOSH surveillance strategic goal to advance the usefulness of surveillance information for the prevention of occupational illnesses, injuries and hazards, and actively promoting the dissemination and use of NIOSH surveillance data and information. This survey will allow NIOSH to characterize health and safety practices of healthcare workers and their work environment; describe the frequency and duration of use of the targeted hazardous chemical agents by occupation and by type and size of work setting; and describe the use of exposure controls including the use of personal protective equipment as well as the barriers to their use, by occupation and type and size of work setting.

Once the study is completed, results will be made available via various means including the NIOSH internet site. NIOSH expects to complete data collection no later than spring of 2011. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
Healthcare Workers	Screening Module	25,650	1	1/60	428
	Primary Hazard Module	20,520	1	10/60	3,420
	Core Module	20,520	1	17/60	5,814
	Secondary Hazard Module.	1,952	1	10/60	325
Total					9,987

Dated: December 1, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–29109 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Health Promotion: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Coordinating Center for Health Promotion, Department of Health and Human Services, has been renewed for a 2-year period through November 5, 2011.

For information, contact Karen Steinberg, Ph.D., Designated Federal Officer, Board of Scientific Counselors, Coordinating Center for Health Promotion, Department of Health and Human Services, 1600 Clifton Road, NE., M/S E70, Atlanta, Georgia, 30333, Telephone 404 498–6757.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 27, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–29050 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Injury Prevention and Control, Department of Health and Human Services, has been renewed for a 2-year period through November 5, 2011.

For information, contact Gwen Cattledge, PhD, Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, Department of Health and Human Services, 1600 Clifton Road, NE., M/S F63, Atlanta, Georgia 30333, Telephone 770/488–4655.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 27, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–29048 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Marketing: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Health Marketing, CDC, Department of Health and Human Services, has been renewed for a 2-year period through November 5, 2011.

For information, contact Dogan Eroglu, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Health Marketing, CDC, Department of Health and Human Services, 1600 Clifton Road, M/S E21, Atlanta, Georgia 30341, telephone (404) 498–6119, or fax (404) 498–2221.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 27, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–29103 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Infectious Diseases: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Coordinating Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through October 31, 2011.

For information, contact Janet Nicholson, Ph.D., Designated Federal Officer, Board of Scientific Counselors, Coordinating Center for Infectious Diseases, CDC, HHS, 1600 Clifton Road, NE., Mailstop D10, Atlanta, Georgia 30333, telephone 404/639–2100 or fax 404/639–2170.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 25, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–29102 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response, Department of Health and Human Services, has been renewed for a 2-year period through November 2, 2011.

For information, contact Barbara Ellis, PhD, Executive Secretary, Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response, Department of Health and Human Services, 1600 Clifton Road, M/S D44, Atlanta, Georgia 30341, telephone (404) 639–0637, or fax (404) 639–7977.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 25, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–29096 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Office of Rural Health Policy; Statement of Delegation of Authority

On September 8, 2009, the Secretary delegated to the Administrator, Health Resources and Services Administration (HRSA), with authority to redelegate, authorities vested in the Secretary under Title III, Part B, Section 313 of the Public Health Service Act (42 U.S.C. 245), as amended, excluding the authority to issue regulations, to establish advisory councils and committees, and appoint their members, and to submit reports to Congress.

Notice is hereby given that I have delegated to the Associate Administrator and Deputy Associate Administrator, and their successors, Office of Rural Health Policy (ORHP), Health Resources and Services Administration (HRSA), authorities vested in the Administrator under Title III, Part B, Section 313 of the Public Health Service Act (42 U.S.C. 245), as amended, as they pertain to the functions assigned to ORHP.

These authorities may not be redelegated.

This delegation excludes the authority to make awards, to make and issue reports to the President and Congress, to approve and issue regulations, to establish advisory councils and committees and appoint their members, and shall be exercised in accordance with the Department's and HRSA's applicable policies, procedures, and guidelines.

I hereby affirm and ratify any actions taken by the Associate Administrator

and Deputy Associate Administrator, Office of Rural Health Policy, or other HRSA officials, which involved the exercise of these authorities prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: November 30, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–29093 Filed 12–4–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–F–0525]

Kemira Oyj; Filing of Food Additive Petition (Animal Use); Formic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kemira Oyj has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formic acid as a pH control agent in swine feed.

DATES: Submit written or electronic comments on the petitioner's environmental assessment January 6, 2010.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240 453–6853, email: *isabel.pocurull@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2262) has been filed by Kristi O. Smedley, Center for Regulatory Services, Inc., 5200 Wolf Run Shoals Rd., Woodbridge, VA 22192–5755, U.S. agent for Kemira Oyj, Porkkalantatu 3, P.O. Box 330, 001000 Helsinki, Finland. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of formic acid as a pH control agent in swine feed when used at levels up to 1.2 percent of the feed.

The potential environmental impact of this petition is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required, and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: December 1, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–29049 Filed 12–4–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Studies of Autonomic Disorders.

Date: December 17, 2009.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ernest W. Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC, 529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29095 Filed 12–4–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, December 10, 2009, 2 p.m. to December 10, 2009, 5:00 PM, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 20, 2009, 74 FR 60278–60279.

The meeting is cancelled due to the reassignment of the applications.

Dated: December 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29094 Filed 12–4–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention (CDC)

Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response (BSC, COTPER)

Notice of Cancellation: This notice was published in the **Federal Register** on November 6, 2009, Volume 74, Number 214, page 57507. The meeting previously scheduled to convene on December 8, 2009, has been cancelled. A notice will be published once the meeting is rescheduled.

Contact person for more information: Matthew Jennings, BSC Coordinator, COTPER, CDC, 1600 Clifton Rd., NE., Mailstop D–44, Atlanta, GA 30333, *Telephone:* (404) 639–7357; *Facsimile:* (404) 639–7977; *E-mail: COTPER.BSC.Questions@cdc.gov*.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 1, 2009.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. E9–29104 Filed 12–4–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Arrival and Departure Record

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing information collection: 1651–0111.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Form I–94 (Arrival/Departure Record), the Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 5, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver; Arrival/Departure, Electronic System for Travel Authorization (ESTA).

OMB Number: 1651–0111.

Form Numbers: I–94 and I–94W.

Abstract: Form I–94 (Arrival/Departure Record) and Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms include date of arrival, visa classification and the date the authorized stay expires. The forms are also used by business employers and other organizations to confirm legal status in the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals.

I–94 (Arrival and Departure Record):

Estimated Number of Respondents: 13,924,380.

Estimated Number of Total Annual Responses: 13,924,380.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 1,851,943.

Estimated Total Annualized Cost on the Public: $83,546,280.

I–94W (Nonimmigrant Visa Waiver Arrival/Departure):

Estimated Number of Respondents: 18,000,000.

Estimated Number of Total Annual Responses: 18,000,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 2,394,000.

Estimated Total Annualized Cost on the Public: $108,000,000.

Electronic System for Travel Authorization (ESTA):

Estimated Number of Respondents: 18,000,000.

Estimated Number of Total Annual Responses: 18,000,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 4,500,000.

Dated: December 2, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–29110 Filed 12–4–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Delivery Ticket

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0081.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Delivery Ticket (Form 6043). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 51163) on October 5, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Delivery Ticket.

OMB Number: 1651–0081.

Form Number: Form 6043.

Abstract: This collection of information requires warehouse proprietors, carriers, Foreign Trade Zone operators and others to prepare a CBP Form 6043 (Delivery Ticket) to cover the receipt of the merchandise and its transport from the custody of the arriving carrier. The information is to be used by CBP officers to document transfers of imported merchandise between parties.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,000.

Estimated Number of Annual Responses per Respondent: 200.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 66,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: December 2, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–29059 Filed 12–4–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Guarantee of Payment

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0127.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Guarantee of Payment (Form I–510). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 50982) on October 2, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Guarantee of Payment.

OMB Number: 1651–00127.

Form Number: Form I–510.

Abstract: The Form I–510 is executed upon the arrival of an alien crewman within the purview of Section 253 of the Immigration and Nationality Act. The information is used by CBP to help ensure that expenses of caring for an alien crewman are reimbursed by the carrier.

Current Actions: CBP is proposing to extend this collection of information with no change to the burden hours.

Type of Review: Extension (without change).

Estimated Number of Respondents: 100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 100.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: December 2, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–29058 Filed 12–4–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Multifunctional Machines

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain multifunctional machines which may be offered to the United States Government under a government procurement contract. Based upon the facts presented, in the final determination CBP concluded that Japan is the country of origin of the multifunctional machines for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 30, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0041).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain multifunctional machines which may be offered to the United States Government under a government procurement contract. This final determination, in HQ H039955, was issued at the request of Sharp Electronics Corporation under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, certain articles will be substantially transformed in Japan. Therefore, CBP found that Japan is the country of origin of the finished articles for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: December 2, 2009.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

Attachment

HQ H039955

November 30, 2009

OT:RR:CTF:VS H039955 KSG

Mr. Edmund Baumgartner, Esq.
Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, NY 10036

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979; Country of Origin of Multifunctional Printer Machines; substantial transformation

Dear Mr. Baumgartner:

This is in response to your letter, dated November 26, 2007, requesting a final determination on behalf of Sharp Electronics Corporation (''Sharp'') pursuant to subpart B of 19 CFR Part 177. We apologize for the delay in our response.

Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.)(''TAA''), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain multifunctional printer machines that Sharp may sell to the U.S. Government. We note that Sharp is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A conference was held on this matter at Headquarters on August 25, 2008.

FACTS:

This case involves the Sharp Dragon II J-models (Sharp model # MX–M550N/UJ, MX–M620N/UJ, and MX–M700N/UJ). These models have monochrome copying, printing, faxing and duplex scanning functions.

Sharp Corporation, Sharp's parent company (''Sharp Japan'') developed the Dragon II J-models in Japan, including the engineering, development, design and art work processes. The production of the Dragon II J–Models begins with the preparation of the key subassemblies and units. According to your submission, there are 11 main subassemblies that compose the Dragon II J-models. Of the eleven subassemblies that compose the Dragon II J–Models, only the drum unit subassembly is assembled in Japan. The remaining 10 subassemblies are assembled in China with parts from Japan and China. The final assembly of the merchandise is performed in Japan.

The Subassemblies Assembled in China

According to your submission, the subassemblies which are themselves assembled in China are essentially as follows:

The laser scanning unit (''LSU'') creates text or images on the photoconductor drum. It consists of a housing, synchronous lens, two cylindrical lenses, and asynchronous lower lens.

The transfer belt unit transfers the image created on the drum onto the surface of the paper for printing.

The multifunctional printer cabinet subassembly is comprised of the mechanical frame for the printer engine along with exterior panels, paper transport and exit components, paper driver motors, cooling fans and filters, sensors and switches for detecting paper and whether doors are open or closed, the paper manual feed unit, the toner supply motors and sensors, paper transport motors and sensors, the duplex section, the toner image transfer section, the image scanner section and the operation panel.

The main charger unit subassembly charges the surface of the drum evenly by application of high voltage so that it can form electrostatic images when irradiated by laser beams.

The process unit subassembly houses the drum used for creating images. The drum is produced and installed in China.

The developer unit is used to transfer toner evenly over the latent image created on the

drum unit. It is composed of a developing roller, a developer doctor, a mixing roller, humidity sensor, developer and toner.

The multifunctional printer control unit is the combination of a printed circuit board with a number of sophisticated integrated circuits. It controls the electrical and mechanical units. The control printed wiring board (''PWB'') and mother PWB are stuffed in China.

The Duplex Single Pass Feeder unit transports original documents fed into the multifunctional printer to the scanner. It contains a contact image sensor (''CIS'').

The fusing unit is used to fix the transferred image onto paper.

The toner hopper unit subassembly transports toner from the hopper to the developing unit and transports waste toner to the waste toner section.

Japanese Parts and Subassembly

The drum unit, which is assembled in Japan, contains the drum, a core component for creating images.

The parts that are made in Japan that are claimed to be critical components include: the LSU housing, the LSU fixing base, the LSU synchronous lower lens, LSU two cylinder lenses, the transfer belt, cleaning brushes, drum separator pawls, the cleaning brush roller, the toner waste pipe, the drum, the mixing roller, the humidity sensor, the diodes and resistors, condensors, the flash ROM, the boot ROM, the firmware, the SDRAM, the application-specific integrated circuit (''ASIC''), the multifunctional printer input/output ASIC, the system control ASIC, the LCD panel control ASIC, the USB controller, the CIS, the fusing gear, the separator pawl, the web roller, the cleaning sub roller, the cleaning roller bearing, the lower cleaning roller and the thermostats.

The firmware and ASICS are developed and produced in Japan. Further, the developer (iron powder beads) and toner are produced in Japan.

Final Assembly and Testing In Japan

The final assembly of the machines takes place in Japan. Sharp Japan starts with a MFP cabinet unit subassembly and attaches the various subassemblies by screws.

The printer control unit (MFP control unit) together with the flash ROM (which includes the firmware) is installed in a slot on the back side of the MFP cabinet. The flash ROM is installed into the slot on the rear of the MFP cabinet unit. A network interface card is installed. An additional flash ROM and a network interface card are installed.

Testing, final inspection and packaging of the units for shipment to the U.S. occurs in Japan.

ISSUE:

What is the country of origin of the subject multifunctional printer machines for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. United States, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (''GSP''), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

CBP has held in a number of cases involving similar merchandise that complex and meaningful assembly operations involving a large number of components result in a substantial transformation. In Headquarters Ruling Letter (''HRL'') 563491 (February 8, 2007), CBP addressed the country of origin of certain digital color multifunctional systems manufactured by Sharp and assembled in Japan of various Japanese—and Chinese—origin parts. In that ruling, CBP determined that color multifunctional systems were a product of Japan based on the fact that ''although several subassemblies are assembled in China, enough of the Japanese subassemblies and individual components serve major functions and are high in value, in particular, the transfer belt, control box unit, application-specific integrated circuits, charged couple device, and laser diodes.'' Further CBP found that the testing and adjustments performed in Japan were technical and complex and the assembly operations that occurred in Japan were sufficiently complex and meaningful. See also HRL 562936, dated March 17, 2004.

The processing operations presented in this case are most similar to that presented in HRL 563491. The composition and assembly process of a number of key subassemblies such as the laser scanning unit, the transfer belt unit and the controller unit are not meaningfully different from the assembly operations performed on the merchandise in our previous ruling. Taking all of the facts and circumstances into account, and in light of our previous decision, we find that the operations performed in Japan including the final assembly, testing and related operations to be sufficiently complex and meaningful to result in a new and distinct article of commerce in Japan. Therefore, we find that the Dragon II–J multifunctional printer machines are products of Japan for the purposes of U.S. Government procurement. We note however, that with so many of the subassemblies performed in China, the transfer of additional parts or processing from Japan to China might well require a different result.

HOLDING:

Based on the facts of this case, the country of origin of the Dragon II J-model multifunctional printer machines is Japan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days after publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings Office of International Trade.

[FR Doc. E9–29056 Filed 12–4–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–38]

Notice of Proposed Information Collection: Comment Request; Single Family Premium Collection Subsystem—Upfront (SFPCS–U)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Sonja Y. Sharpe, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–3391 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem—Upfront (SFPCS–U).

OMB Control Number, if applicable: 2502–0423.

The Single Family Premium Collection Subsystem—Upfront (SFPCS–U) allows the lenders to remit the Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement.

The SFPCS–U strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders transmit UPMIP payment case detail directly to HUD and this information is remitted by HUD to the Department of the Treasury's Pay.gov Automated Clearing House (ACH) applications. The case-level payment information sent to HUD is updated on the Single Family Premium Collection Subsystem—Upfront (SFPCS). The authority for this collection of information is specified in 24 CFR 203.280 and 24 CFR 203.281. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, the lenders use the ACH applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

Agency form numbers, if applicable:

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Hourly rate is based on an estimate of the annual salary of lender clerical staff at $33,280. The number of annual burden hours is 7,229. The number of respondents is 4,016, the number of responses is 48,192, the frequency of response is monthly, and the estimated burden time response is approximated 15 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 1, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E9–29092 Filed 12–4–09; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Act Meeting Notice

TIME AND DATE: December 14, 2009. 9 a.m.–1:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open session except for the portion specified as closed session as provided in 22 CFR Part 1004.4 (f).

Matters To Be Considered

- Approval of the Minutes of the September 28, 2009, Meeting of the Board of Directors.
- President's Report.
- Congressional Affairs.
- IAF Program Activities.
- Operations.
- RedEAmerica.
- IAF Advisory Council Update.
- Schedule of Upcoming Events.
- Executive Session—Personnel Issues.

Portions To Be Open to the Public

- Approval of the Minutes of the September 28, 2009, Meeting of the Board of Directors.
- President's Report.
- Congressional Affairs.
- IAF Program Activities.
- Operations.
- RedEAmerica.
- IAF Advisory Council Update.
- Schedule of Upcoming Events.

Portions To Be Closed to the Public

- Executive Session—Personnel issues. Closed session as provided in 22 CFR Part 1004.4 (f).

CONTACT PERSON FOR MORE INFORMATION: Jennifer Hodges Reynolds, General Counsel, (703) 306–4301.

Dated: December 2, 2009.

Jennifer Hodges Reynolds,

General Counsel.

[FR Doc. E9–29238 Filed 12–3–09; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID100000–L10200000–PH0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho on January 19–20, 2010 for a two-day meeting. The first day will be new member orientation in the afternoon starting at 2 p.m. at the Idaho Falls BLM Office, 1405 Hollipark Drive, Idaho Falls, Idaho. The second day will be at the same location starting at 8 a.m. with electing a new chairman, vice chairman and secretary. Other meeting topics include BLM Recovery Act Funding Projects, litigation, update on travel plan management, Recreation Enhancement Act (REA) and Recreation RAC items. Other topics will be scheduled as appropriate. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Joanna Wilson, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. *Telephone:* (208) 524–7550. *E-mail: Joanna_Wilson@blm.gov.*

Dated: November 30, 2009.

Joanna Wilson,

RAC Coordinator, Public Affairs Specialist.

[FR Doc. E9–29052 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of public meeting, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will attend a tour as indicated below.

DATES: January 21, 2010. The Twin Falls District RAC meeting will begin at 9 a.m. (MST) and end no later than 4:30 p.m. at the Best Western Sawtooth Inn, Jerome, Idaho, located at 2653 S. Lincoln Ave. The public comment period for the RAC meeting will take place 9:30 a.m. to 10 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho, 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During this meeting, there will be an orientation presentation, overview of wilderness training, Jarbidge Resource Management Plan Draft discussion, and renewable energy projects discussion. Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html.* RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the Twin Falls District, BLM at (208) 736–2352

Dated: November 30, 2009.

Bill Baker,

District Manager.

[FR Doc. E9–29051 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–10–L13100000–FI0000–P; NDM 97716]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 97716

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d) and (e), Murex Petroleum Corporation timely filed a petition for reinstatement of competitive oil and gas lease NDM 97716, Mountrail County, North Dakota. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of the lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. E9–29101 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW172435]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, WYW172435, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Chesapeake Exploration, LLC, North Finn, LLC, American Oil & Gas Inc., and Khody Land & Minerals Company for competitive oil and gas lease WYW172435 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the BLM for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease WYW172435 effective April 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–29098 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW172436]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, WYW172436, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Chesapeake Exploration, LLC, North Finn, LLC, American Oil & Gas Inc., and Khody Land & Minerals Company for competitive oil and gas lease WYW172436 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the BLM for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease WYW172436 effective April 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–29100 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW172440]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, WYW172440, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Chesapeake Exploration, LLC, North Finn, LLC, American Oil & Gas Inc., and Khody Land & Minerals Company for competitive oil and gas lease WYW172440 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year, and 16–2/3 percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the BLM for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease WYW172440 effective April 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–29099 Filed 12–4–09; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–511]

ASEAN: Regional Trends in Economic Integration, Export Competitiveness, and Inbound Investment for Selected Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on November 9, 2009, of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–511, *ASEAN: Regional Trends in Economic Integration, Export Competitiveness, and Inbound Investment for Selected Industries.*

DATES:

December 30, 2009: Deadline for filing requests to appear at the public hearing.

January 5, 2010: Deadline for filing pre-hearing briefs and statements.

February 3, 2010: Public hearing.

February 10, 2010: Deadline for filing post-hearing briefs and statements.

March 10, 2010: Deadline for filing all other written submissions.

August 2, 2010: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project leader John Fry (202–708–4157 or *john.fry@usitc.gov*) or deputy project leader Vincent Honnold (202–205–3314 or *vincent.honnold@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by the USTR, the Commission will conduct an investigation and prepare a report that provides a brief overview of regional trends in economic integration, export competitiveness, and inbound investment in six industry sectors in Southeast Asia. The sectors are electronics, automotives, agro-based products, healthcare, textiles and apparel, and wood-based products. In addition, the Commission will identify ASEAN industries within these sectors that have experienced significant changes in regional economic integration, export competitiveness, and inbound investment in recent years and provide profiles of these industries in its report. To the extent possible, the report will include illustrative country information and be based on the most recent five year period for which data are available. As requested, each industry profile, to the extent possible, will include the following information:

1. A description of the selected industry(ies) within ASEAN, including the industry's position relative to global competitors, as it relates to export competitiveness and inbound investment flows;

2. Identification of the leading ASEAN exporting countries and their key markets;

3. Identification of the leading ASEAN country recipients of inbound investment and source countries of that investment;

4. Identification of pairs or groups of countries within ASEAN that have experienced significant integration related to industry production and/or marketing; and

5. An analysis of leading competitive factors that have contributed to changes in industry regional integration, export competitiveness, and inbound investment, with a focus on how regional improvements in trade facilitation, logistics services, and e-commerce have contributed to these changes.

The USTR requested that the Commission deliver its report no later than August 2, 2010.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on Wednesday, February 3, 2010. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., December 30, 2009, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., January 5, 2010; and all post-hearing briefs and statements responding to matters raised at the hearing should be filed no later than 5:15 p.m., February 10, 2010. In the event that, as of the close of business on December 30, 2009, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Office of the Secretary (202–205–2000) after December 30, 2009, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and all such submissions (other than pre- and post-hearing briefs and statements) should be received no later than 5:15 p.m., March 10, 2010. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Office of the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly

marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the USTR stated that it intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information in the report it sends to the USTR. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: December 1, 2009.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–29025 Filed 12–4–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–657]

In the Matter of Certain Automotive Multimedia Display and Navigation Systems, Components Thereof, and Products Containing Same; Notice of Commission Determination To Extend Briefing Schedule

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend certain deadlines in the Notice of Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding, 74 FR 62589 (Nov. 30, 2009).

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–657 on September 22, 2008, based on a complaint filed by Honeywell International Inc. of Morristown, New Jersey (''Honeywell''). 73 FR 54617 (Sept. 22, 2008). The complainant named eight respondents, including Pioneer Corporation of Japan and Pioneer Electronics (USA) Inc. of Long Beach, California (collectively ''Pioneer''). The investigation has been terminated against all respondents other than Pioneer.

On September 22, 2009, the Administrative Law Judge issued his final Initial Determination (ID), finding no violation of section 337 by Pioneer. On November 23, 2009, the Commission determined to review in part the ID. The Commission's notice requested that the parties submit briefs on remedy, public interest and bonding, as well as on specific patent-related questions. 74 FR 62589 (Nov. 30, 2009). The notice also solicited written submissions from interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding. *Id.* at 62591. Opening briefing is presently due on December 7, 2009, and reply briefing is due on December 14, 2009. *Id.* On November 30, 2009, Honeywell and Pioneer filed a Joint Motion to Extend Briefing Schedule, requesting that the Commission extend the opening and reply briefing deadlines to December 30, 2009 and January 7, 2010, respectively. The Office of Unfair Import Investigations has consented to the motion.

Upon consideration of this matter, the Commission has determined that the December 7, 2009 and December 14, 2009 deadlines for written submissions in the Notice of Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding, 74 FR 62589 (Nov. 30, 2009), are hereby extended to December 30, 2009 and January 7, 2010, respectively.

By order of the Commission.

Issued: December 2, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–29077 Filed 12–4–09; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Search Committee for Interim LSC President—Telephonic

TIME AND DATE: The *Search Committee for Interim LSC President* of the Legal Services Corporation's Board of Directors will meet on December 9, 2009 via conference call. The meeting will begin at 2:30 p.m. Eastern Time, and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW.—3rd Flr Conference Center, Washington, DC.

PUBLIC OBSERVATION: For those portions of the meeting open to public observation, members of the public who are unable to attend but wish to listen to the meeting may do so by following the telephone call-in directions provided below. Please keep your telephone muted while listening in order to eliminate background noises. Comments from the public may be solicited from time-to-time by the Committee's Chairperson.

CALL-IN DIRECTIONS:

- Call toll-free number 1–866–451–4981.
- When prompted, enter the following numeric code number: 3899506694, followed by # sign.
- When connected to the call, please ''*mute*'' your telephone immediately.

Status of Meeting: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public may observe the meeting by joining participating staff at the location indicated above. A portion of the meeting may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to consider and act on a recommendation to make to the board as to an Interim President for LSC. During the executive session, the Committee will consider candidates for the position of interim LSC President and may take action to fill the position on a temporary basis.

A *verbatim* written transcript will be made of the closed session of the

Committee meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Agenda

Open Session

1. Approval of agenda

Closed Session

2. Consider and act on a recommendation to make to Board as to an Interim President for LSC

Open Session

3. Consider and act on other business
4. Public Comment
5. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: December 2, 2009.

Mattie Cohen,

Senior Assistant General Counsel.

[FR Doc. E9–29117 Filed 12–3–09; 11:15 am]

BILLING CODE 7050–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–25; OMB Control No. 3235–0540; SEC File No. 270–482.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17a–25 (17 CFR 240.17a–25) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Paragraph (a)(1) of Rule 17a–25 requires registered broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format when requested by the Commission staff. In addition, Paragraph (a)(3)(c) of Rule 17a–25 requires broker-dealers to submit, and keep current, contact person information for electronic blue sheets (''EBS'') requests. The Commission uses the information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

The Commission estimates that it sends approximately 5168 electronic blue sheet requests per year to clearing broker-dealers, who in turn submit an average 79,992 responses.[1] It is estimated that each broker-dealer who responds electronically will take 8 minutes, and each broker-dealer who responds manually will take 1½ hours to prepare and submit the securities trading data requested by the Commission. The annual aggregate hour burden for electronic and manual response firms is estimated to be 10,786 (79,992 x 8 ÷ 60 = 10,666 hours) + (80 x 1.5 = 120 hours), respectively.[2] In addition, the Commission estimates that it will request 500 broker-dealers to supply the contact information identified in Rule 17a–25(c) and estimates the total aggregate burden hours to be 125. Thus, the annual aggregate burden for all respondents to the collection of information requirements of Rule 17a–25 is estimated at 10,911 hours (10,786 + 125).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

November 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29044 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[1] A single EBS request has a unique number assigned to each request (*e.g.* ''0900001''). However, the number of broker-dealer responses generated from one EBS request can range from one to several hundred. EBS requests are sent directly to clearing firms, as the clearing firm is the repository for trading data for securities transactions information provided by itself and correspondent firms. Clearing brokers respond for themselves and other firms they clear for.

[2] Few respondents submit manual EBS responses. The small percentage of respondents that submit manual responses do so by hand, via e-mail, spreadsheet, disk, or other electronic media. Thus, the number of manual submissions (80) has minimal effect on the total annual burden hours.

SECURITIES AND EXCHANGE COMMISSION

[Rule 17a–5; SEC File No. 270–155; OMB Control No. 3235–0123]

Proposed Extension of Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summary of a collection of information for public comment.

Rule 17a–5 (17 CFR 240.17a–5) (the Rule) is the basic financial reporting rule for brokers and dealers.[1] The Rule requires the filing of Form X–17A–5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the

[1] Rule 17a–5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The Rule also requires the filing of an annual audited report of financial statements.

The FOCUS Report consists of: (1) Part I, which is a monthly report that must be filed by brokers or dealers that clear transactions or carry customer securities; (2) one of three alternative quarterly reports: Part II, which must be filed by brokers or dealers that clear transactions or carry customer securities; Part IIA, which must be filed by brokers or dealers that do not clear transactions or carry customer securities; and Part IIB, which must be filed by specialized broker-dealers registered with the Commission as OTC derivatives dealers; [2] (3) supplemental schedules, which must be filed annually; and (4) a facing page, which must be filed with the annual audited report of financial statements. Under the Rule, a broker or dealer that computes certain of its capital charges in accordance with Appendix E to Exchange Act Rule 15c3–1(17 CFR 240.15c3–1) must file additional monthly, quarterly, and annual reports with the Commission.

The variation in the size and complexity of brokers and dealers subject to Rule 17a-5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate that, on average, each report will require approximately 12 hours. At year-end 2008, the Commission estimates that there were approximately 5,190 brokers or dealers, and that of those firms there were approximately 530 brokers or dealers that clear transactions or carry customer securities. In addition, approximately 220 firms filed annual reports. The Commission therefore estimates that approximately 530 firms filed monthly reports, approximately 4,400 firms filed quarterly reports, and approximately 220 firms filed annual reports. In addition, approximately 5,190 firms filed annual audited reports. As a result, there were approximately 29,530 total annual responses ((530 × 12) + (4,400 × 4) + 220 + 5,190 = 29,370. This results in an estimated annual burden of 354,360 hours (29,530 annual responses × 12 hours = 354,360).

In addition, we estimate that approximately 11 brokers or dealers will elect to use Appendix E to Rule 15c3–1 to compute certain of their capital charges (as of October 2009, seven brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 11 brokers or dealers is approximately 1,320 hours ((48 + 32 + 40) × 11 = 1,320).

The Commission therefore estimates that the total annual burden under Rule 17a-5 is approximately 353,800 hours (352,440 + 1,320 = 353,760, rounded to 353,800).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29045 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[2] Part IIB of Form X–17A–5 must be filed by OTC derivatives dealers under Exchange Act Rule 17a–12 and is subject to a separate PRA filing (OMB Control Number 3235–0498).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 14D–9F, OMB Control No. 3235–0382, SEC File No. 270–339.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14D–9F (17 CFR 240.14d-103) is used by any foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by approximately 6 respondents annually for a total reporting burden of 12 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312;

or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: December 1, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29046 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, December 9, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, December 9, 2009 will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings;

adjudicatory matters;

a collection matter;

post argument discussion; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 2, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–29135 Filed 12–3–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61072; File No. SR–NYSE–2009–106]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Rule 70 in Order To Update d-Quote Functionality and Provide for e-Quotes To Peg to the National Best Bid or Offer

November 30, 2009.

I. Introduction

On October 26, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 70 in order to update d-Quote functionality and provide for e-Quotes to peg to the National best bid or offer. The proposed rule change was published for comment in the **Federal Register** on November 3, 2009.[3] NYSE filed Amendment No. 1 to the proposed rule change on November 19, 2009.[4] The Commission received no comment letters on the proposed rule change. This notice and order provides notice of filing of Amendment No. 1 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

Description of the Proposed Rule, as Modified by Amendment No. 1

Background[5]

Rule 70.25 governs the entry, validation, and execution of bids and offers represented electronically by a Floor broker on the Floor of the Exchange that include discretionary instructions as to size and/or price.[6] The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price range within which the e-Quote may trade and the number of shares to which the discretionary price instruction applies. D-Quote functionality is available for both displayed and reserve interest.

In particular, Rule 70.25(a) provides that d-Quotes are eligible for execution only when they are at or join the existing Exchange BBO, would establish a new Exchange BBO, or at the opening and closing transactions. Under current rules, d-Quotes at or joining the Exchange BBO may be displayed or undisplayed interest. In addition, Rule 70.25(d)(ii) currently provides that, once it has been activated, a d-Quote will automatically execute against a contra-side order if the contra-side order's price is within the discretionary pricing instructions and the contra-side order's size meets any minimum or maximum size requirements that have been set for the d-Quote.

Rule 70.26 provides for the entry, validation, and execution of an e-Quote that remains available for execution at the Exchange BBO as the Exchange BBO moves. Floor brokers are able to designate a range of prices within which their e-Quotes and d-Quotes will peg and, as long as the Exchange BBO is within that range, the e-Quote and d-Quote will be included in the quote.

Proposed Amendments[7]

D-Quotes Active When Their Filed Price is Not at the Exchange BBO

The Exchange proposes to amend Rule 70.25(a)(ii) to provide that d-Quotes would be active and available to execute whenever incoming interest satisfies the discretionary instructions, without regard to whether the d-Quote's filed price is or becomes the Exchange BBO.

The Exchange also proposes to add clarifying language to Rule 70.25(a)(i) to provide that d-Quotes that exercise discretion would be considered non-displayable interest for purposes of Rule 72, and to amend Rule 70.25(d)(i) (as proposed Rule 70.25(e)(i)) to provide that a d-Quote with discretionary pricing instructions above the best bid if a buy order or below the best offer if a sell order would seek to secure the largest execution for the d-Quote using the least amount of price discretion to exercise at or above the bid if a buy order or at or below the offer if a sell order. The Exchange proposes to further clarify that a d-Quote with discretionary pricing instructions equal to or less than

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60888 (October 27, 2009), 74 FR 56902 (''Notice'').

[4] The text of Amendment No. 1 is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange, and at the Commission's Public Reference Room.

[5] The Notice contains additional discussion and examples regarding the current operation of d-Quotes and e-Quotes. *See supra* note 3.

[6] For purposes of these rules, floor broker agency interest files (that is, electronic bids or offers from the Floor) are referred to as ''e-Quotes.'' E-quotes that include discretionary instructions are referred to a ''d-Quotes.''

[7] The Notice contains additional discussion and examples regarding the proposed operation of d-Quotes and e-Quotes. *See supra* note 3.

the best bid if a buy order or equal to or greater than the best offer if a sell order would extend to its maximum discretion.

The Exchange states that the proposed d-Quote functionality would provide Floor brokers with functionality that is similar to functionality that was previously available to Floor brokers, via CAP–DI orders, when the Exchange operated in a manual auction.[8] In addition, the Exchange notes that the proposed functionality would allow d-Quotes to interact with interest (such as fully dark reserve interest) that did not exist when d-Quotes were first introduced, and which would otherwise be unable to easily interact with under the current rules. The Exchange believes that the d-Quote functionality proposed in this rule filing therefore would enable d-Quotes to trade with all willing contra-side liquidity, including reserve interest. In this way, the Exchange believes that the proposed changes will allow the brokers' tools to keep pace with the ways in which trading on the Exchange has evolved.

Minimum Trade Size (''MTS'') Instruction for d-Quotes

The Exchange also proposes to add a new subsection to Rule 70.25 to provide that a Floor broker may include additional discretionary instructions with a d-Quote such that the d-Quote would only execute if the designated MTS is met. Currently, d-Quotes may include instructions of a minimum size requirement that would trigger discretionary pricing, but such requirement would not guarantee a minimum execution size (*e.g.,* if there is other interest on the same side as the d-Quote that can trade with a contra-side order that meets the d-Quote's minimum size requirement). As proposed, if the amount of an execution that would be allocated to a d-Quote is less than the MTS quantity, the d-Quote would not be eligible to participate in the execution and will not compete with other same-side interest from other Floor brokers. Additionally, MTS instructions would not be active at the open or close.

Rule 70.25(a)(vi) provides that same-side d-Quotes from the same Floor broker do not compete with each other for executions allocated to that Floor broker, as they would if from different Floor brokers, when the d-Quote with the most aggressive price range executes first. The Exchange proposes to add new paragraph (d)(ii) to Rule 70.25 such that when a Floor broker designates an MTS for a d-Quote, such d-Quote may compete with other same-side d-Quotes from the same Floor broker by improving the price if necessary to satisfy its MTS.

Pegging to the NBBO

Currently, a pegging e-Quote or d-Quote is activated at the Exchange BBO and, subject to its price range, moves when the Exchange BBO moves. Under current rules, pegging e-Quotes and d-Quotes cannot be the sole interest at the Exchange BBO, but must peg to other non-pegging interest at the Exchange BBO. Accordingly, under current rules and functionality, pegging e-Quotes are unable to set the Exchange BBO.

The Exchange proposes that pegging e-Quotes and d-Quotes would peg to the NBBO rather than the Exchange BBO. As a result, a pegging e-Quote or d-Quote may set the Exchange BBO, even if there is no other displayed bid or offer at the Exchange at that price. Accordingly, the Exchange proposes to amend Rule 70.26(vi) to provide that pegging e-Quotes or d-Quotes may be entitled to priority pursuant to Rule 72 if such e-Quote or d-Quote sets the Exchange BBO. Under the Exchange's proposal and similar to its current rule, if the NBBO moves, the pegging e-Quote or d-Quote would move to follow the NBBO, provided that the NBBO is in the price range of the pegging e-Quote or d-Quote. In addition, a pegging e-Quote or d-Quote would never set the NBBO.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, as amended, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that exchange rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange stated in its filing that it believes that the updates to Floor broker functionality meet such goals because they should ensure that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide Floor brokers with functionality to replace the now defunct CAP–DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore should promote larger-sized executions. In addition, the Exchange stated in its filing that it believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO should ensure that investors' orders will be executed in the best market because more liquidity will be available at the NBBO.

The Commission notes that the proposal to allow d-Quotes to be active when their filed price is inferior to the BBO should contribute to market depth by making the Floor brokers' d-Quote liquidity available for execution in a greater number of situations. The proposal to permit minimum trade size instructions for d-Quotes should allow Floor brokers additional flexibility in the handling of their orders without adversely affecting the executions of other market participants, since Floor brokers would remain subject to the existing parity allocation rules.[11] Finally, the proposal to peg d-Quotes to the NBBO rather than the BBO should contribute to market quality by providing additional liquidity at the NBBO, thus encouraging the tightening of spreads to the NBBO on the Exchange. For the foregoing reasons, the Commission finds the proposed rule change is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2009–106 on the subject line.

[8] The Notice contains a discussion regarding CAP–DI orders. *See supra* note 3.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* NYSE Rule 72.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[12] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–106 and should be submitted on or before December 28, 2009.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication in the **Federal Register.** The Commission notes that no comments were received during the 21-day comment period allotted for the initial proposal. The Commission notes that the Exchange's representation that the proposal seeks to replace functionality that was previously eliminated. In addition, in this case, accelerated approval of the proposed rule change will permit the Exchange to implement systems changes related to the proposed rule change in a timely fashion.

In addition, the changes proposed in Amendment No. 1, discussed in Part III above, seek to clarify the proposed handling of d-Quotes with a filed price outside the BBO. The proposal as modified by Amendment No. 1 does not differ materially from the proposal as described in the Notice and the Commission believes the revision helps clarify the proposed operation of d-Quotes.

In light of the foregoing, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[13] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2009–106), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28998 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61081; File No. SR–NYSEAmex–2009–76]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending NYSE Amex Equities Rule 70 in Order To Update d-Quote Functionality and Provide for e-Quotes To Peg to the National Best Bid or Offer

December 1, 2009.

I. Introduction

On October 26, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Amex Equities Rule 70 in order to update d-Quote functionality and provide for e-Quotes to peg to the National best bid or offer. The proposed rule change was published for comment in the **Federal Register** on November 3, 2009.[3] NYSE Amex filed Amendment No. 1 to the proposed rule change on November 19, 2009.[4] The Commission received no comment letters on the proposed rule change. This notice and order provides notice of filing of Amendment No. 1 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule, as Modified by Amendment No. 1

Background [5]

NYSE Amex Equities Rule 70.25 governs the entry, validation, and execution of bids and offers represented electronically by a Floor broker on the Floor of the Exchange that include discretionary instructions as to size and/or price.[6] The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price range within which the e-Quote may trade and the number of shares to which the discretionary price instruction applies. D–Quote functionality is available for both displayed and reserve interest.

In particular, NYSE Amex Equities Rule 70.25(a) provides that d-Quotes are eligible for execution only when they are at or join the existing Exchange BBO, would establish a new Exchange BBO, or at the opening and closing transactions. Under current rules, d-Quotes at or joining the Exchange BBO may be displayed or undisplayed interest. In addition, NYSE Amex Equities Rule 70.25(d)(ii) currently provides that, once it has been activated, a d-Quote will automatically execute against a contra-side order if the contra-side order's price is within the discretionary pricing instructions and the contra-side order's size meets any minimum or maximum size requirements that have been set for the d-Quote.

NYSE Amex Equities Rule 70.26 provides for the entry, validation, and execution of an e-Quote that remains available for execution at the Exchange

[12] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60887 (October 27, 2009), 74 FR 56899 (''Notice'').

[4] The text of Amendment No. 1 is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange, and at the Commission's Public Reference Room.

[5] The Notice contains additional discussion and examples regarding the current operation of d-Quotes and e-Quotes. *See supra* note 3.

[6] For purposes of these rules, floor broker agency interest files (that is, electronic bids or offers from the Floor) are referred to as ''e-Quotes.'' E-quotes that include discretionary instructions are referred to a ''d-Quotes.''

BBO as the Exchange BBO moves. Floor brokers are able to designate a range of prices within which their e-Quotes and d-Quotes will peg and, as long as the Exchange BBO is within that range, the e-Quote and d-Quote will be included in the quote.

Proposed Amendments [7]

D–Quotes Active When Their Filed Price Is Not at the Exchange BBO

The Exchange proposes to amend NYSE Amex Equities Rule 70.25(a)(ii) to provide that d-Quotes would be active and available to execute whenever incoming interest satisfies the discretionary instructions, without regard to whether the d-Quote's filed price is or becomes the Exchange BBO.

The Exchange also proposes to add clarifying language to NYSE Amex Equities Rule 70.25(a)(i) to provide that d-Quotes that exercise discretion would be considered non-displayable interest for purposes of NYSE Amex Equities Rule 72, and to amend NYSE Amex Equities Rule 70.25(d)(i) (as proposed NYSE Amex Equities Rule 70.25(e)(i)) to provide that a d-Quote with discretionary pricing instructions above the best bid if a buy order or below the best offer if a sell order would seek to secure the largest execution for the d-Quote using the least amount of price discretion to exercise at or above the bid if a buy order or at or below the offer if a sell order. The Exchange proposes to further clarify that a d-Quote with discretionary pricing instructions equal to or less than the best bid if a buy order or equal to or greater than the best offer if a sell order would extend to its maximum discretion.

The Exchange states that the proposed d-Quote functionality would provide Floor brokers with functionality that is similar to functionality that was previously available to Floor brokers on the New York Stock Exchange, via CAP–DI orders, when the New York Stock Exchange operated in a manual auction.[8] In addition, the Exchange notes that the proposed functionality would allow d-Quotes to interact with interest (such as fully dark reserve interest) that did not exist when d-Quotes were first introduced, and which would otherwise be unable to easily interact with under the current rules. The Exchange believes that the d-Quote functionality proposed in this rule filing therefore would enable d-Quotes to trade with all willing contra-side liquidity, including reserve interest. In this way, the Exchange believes that the proposed changes will allow the brokers' tools to keep pace with the ways in which trading on the Exchange has evolved.

Minimum Trade Size (''MTS'') Instruction for d-Quotes

The Exchange also proposes to add a new subsection to NYSE Amex Equities Rule 70.25 to provide that a Floor broker may include additional discretionary instructions with a d-Quote such that the d-Quote would only execute if the designated MTS is met. Currently, d-Quotes may include instructions of a minimum size requirement that would trigger discretionary pricing, but such requirement would not guarantee a minimum execution size (*e.g.,* if there is other interest on the same side as the d-Quote that can trade with a contra-side order that meets the d-Quote's minimum size requirement). As proposed, if the amount of an execution that would be allocated to a d-Quote is less than the MTS quantity, the d-Quote would not be eligible to participate in the execution and will not compete with other same-side interest from other Floor brokers. Additionally, MTS instructions would not be active at the open or close.

NYSE Amex Equities Rule 70.25(a)(vi) provides that same-side d-Quotes from the same Floor broker do not compete with each other for executions allocated to that Floor broker, as they would if from different Floor brokers, when the d-Quote with the most aggressive price range executes first. The Exchange proposes to add new paragraph (d)(ii) to NYSE Amex Equities Rule 70.25 such that when a Floor broker designates an MTS for a d-Quote, such d-Quote may compete with other same-side d-Quotes from the same Floor broker by improving the price if necessary to satisfy its MTS.

Pegging to the NBBO

Currently, a pegging e-Quote or d-Quote is activated at the Exchange BBO and, subject to its price range, moves when the Exchange BBO moves. Under current rules, pegging e-Quotes and d-Quotes cannot be the sole interest at the Exchange BBO, but must peg to other non-pegging interest at the Exchange BBO. Accordingly, under current rules and functionality, pegging e-Quotes are unable to set the Exchange BBO.

The Exchange proposes that pegging e-Quotes and d-Quotes would peg to the NBBO rather than the Exchange BBO. As a result, a pegging e-Quote or d-Quote may set the Exchange BBO, even if there is no other displayed bid or offer at the Exchange at that price. Accordingly, the Exchange proposes to amend NYSE Amex Equities Rule 70.26(vi) to provide that pegging e-Quotes or d-Quotes may be entitled to priority pursuant to NYSE Amex Equities Rule 72 if such e-Quote or d-Quote sets the Exchange BBO. Under the Exchange's proposal and similar to its current rule, if the NBBO moves, the pegging e-Quote or d-Quote would move to follow the NBBO, provided that the NBBO is in the price range of the pegging e-Quote or d-Quote. In addition, a pegging e-Quote or d-Quote would never set the NBBO.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, as amended, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that exchange rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange stated in its filing that it believes that the updates to Floor broker functionality meet such goals because they should ensure that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide Floor brokers with functionality to replace the now defunct CAP–DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore should promote larger-sized executions. In addition, the Exchange stated in its filing that it believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO should ensure that investors' orders will be executed in the best market because

[7] The Notice contains additional discussion and examples regarding the proposed operation of d-Quotes and e-Quotes. *See supra* note 3.

[8] The Notice contains a discussion regarding CAP–DI orders. *See supra* note 3.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

more liquidity will be available at the NBBO.

The Commission notes that the proposal to allow d-Quotes to be active when their filed price is inferior to the BBO should contribute to market depth by making the Floor brokers' d-Quote liquidity available for execution in a greater number of situations. The proposal to permit minimum trade size instructions for d-Quotes should allow Floor brokers additional flexibility in the handling of their orders without adversely affecting the executions of other market participants, since Floor brokers would remain subject to the existing parity allocation rules.[11] Finally, the proposal to peg d-Quotes to the NBBO rather than the BBO should contribute to market quality by providing additional liquidity at the NBBO, thus encouraging the tightening of spreads to the NBBO on the Exchange. For the foregoing reasons, the Commission finds the proposed rule change is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEAmex–2009–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[12] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–76 and should be submitted on or before December 28, 2009.

V. Accelerated Approval of Proposed Rule Change, as modified by Amendment No. 1

The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No.1, prior to the thirtieth day after publication in the **Federal Register.** The Commission notes that no comments were received during the 21-day comment period allotted for the initial proposal. The Commission notes that the Exchange's representation that the proposal seeks to replace functionality that was previously eliminated. In addition, in this case, accelerated approval of the proposed rule change will permit the Exchange to implement systems changes related to the proposed rule change in a timely fashion.

In addition, the changes proposed in Amendment No. 1, discussed in Part III above, seek to clarify the proposed handling of d-Quotes with a filed price outside the BBO. The proposal as modified by Amendment No. 1 does not differ materially from the proposal as described in the Notice and the Commission believes the revision helps clarify the proposed operation of d-Quotes.

In light of the foregoing, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[13] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEAmex–2009–76), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28999 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61070; File No. SR–NASDAQ–2009–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASDAQ's Portal Reference Database

November 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2009, The NASDAQ Stock Market LLC (the ''NASDAQ Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASDAQ Exchange is proposing to modify and simplify pricing for NASDAQ's Portal Reference Database. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

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[11] *See* NYSE Amex Equities Rule 72.

[12] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.19b-4(f)(6).

7045. PORTAL Reference Database

The Following Charges shall Apply To Access to the PORTAL Reference Database

[(1) For PORTAL data for 2008 and future years, the annual fee is:

1–20 Users $20,000

21 to 100 Users $50,000

101+ Users $100,000]

[(2)] *(1)* [For PORTAL data for 1990 to 2007,] [the] *The* fee for *each year* of reference data shall be:

1–20 Users $20,000 (not to exceed $200,000 for access to all PORTAL historical data files*)* [from 1990 to 2007)]

21 [to 100] ± Users $50,000 (not to exceed $500,000 for access to all PORTAL historical data files*)* [from 1990 to 2007)]

[101+ Users] [$100,000 (not to exceed $1,000,000 for access to all PORTAL historical data files from 1990 to 2007)]

PORTAL securities are restricted securities, as defined in SEC Rule 144(a)(3) under the Securities Act; or securities that, pursuant to contract or through terms of the security, upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering that were designated for inclusion in the PORTAL Market by Nasdaq. PORTAL equity securities are PORTAL securities that represent an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable). PORTAL debt securities are PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations.

PORTAL reference data consists of, in addition to other information, a PORTAL debt or equity issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDAQ Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDAQ Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

As part of NASDAQ's continuing efforts to enhance the transparency and efficiency of trading in Rule 144A issues, NASDAQ created and makes publicly available, for a fee, a consolidated electronic reference database of information culled from offering documents and applications for securities seeking designation as a PORTAL security submitted to NASDAQ since 1990.[4] The database is fully electronic and allows users to determine, in addition to other information, a PORTAL issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation. As new issues sought PORTAL designation, they too were added to the database. Access to the database is open to all market participants. There is no pro-rating of these fees. The total cost of access to the full database is capped based on the number of users at a particular firm. In this filing, NASDAQ is proposing to the [sic] modify and simplify fees for users of this database. Under the proposal, NASDAQ will: (1) Eliminate the separate pricing schedule for more recent PORTAL data; and (2) only use two tiers, 1–20 users, and 21+ users, for pricing all PORTAL data. For example, under the old fee structure a firm seeking PORTAL data for 125 users for the years 2008 and 1996 would have been charged $100,000 for the 2008 data, and $100,000 for the 1996 data, for a total of $200,000. Under the new structure, that same firm will now pay $50,000 for the 2008 data, and $50,000 for the 1996 data, for a total of $100,000.

NASDAQ believes that the above price modifications with respect to the PORTAL Reference Database will encourage the use of historical information about issuances of restricted equity and debt and provide a more reliable background upon which market participants can make investment decisions regarding such securities.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. In connection with the fees, NASDAQ notes that creation of the PORTAL reference database required the retrieval, organization, and review of hundreds of thousands of pages of hard-copy documents as well as the conversion of retrieved information into electronic form, and its subsequent importation into the database itself. On an ongoing basis, NASDAQ will also incur hardware and software costs for the maintenance and storage of PORTAL reference data.

[4] For more information related to the background of The PORTAL Market, *see* Securities Exchange Act Release No. 55669 (April 25, 2007); 72 FR 23874 (May 1, 2007). NASDAQ no longer designates securities as PORTAL securities, and has filed with the Commission a rule proposal to eliminate its PORTAL Market rules. *See* Securities Exchange Act Release No. 60991 (November 12, 2009); 74 FR 60006 (November 19, 2009).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

Finally, NASDAQ notes that the Commission has previously approved the PORTAL Reference Database and that this filing simplifies and modifies fees for the database.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NASDAQ Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–100 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29037 Filed 12–4–09; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61071; File No. SR–FINRA–2009–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Appoving Proposed Rule Change To Adopt FINRA Rules 2060 (Use of Information Obtained in Fiduciary Capacity) and 5290 (Order Entry and Execution Practices) in the Consolidated FINRA Rulebook

November 30, 2009.

On October 6, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rules 3120 (Use of Information Obtained in Fiduciary Capacity) and 3380 (Order Entry and Execution Practices) as FINRA rules in the consolidated FINRA rulebook without material change. The proposed rule change would renumber NASD Rule 3120 as FINRA Rule 2060 and NASD Rule 3380 as FINRA Rule 5290 in the consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on October 28, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to continue to prohibit members who, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60850 (October 21, 2009), 74 FR 55598.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

the capacity of a paying agent, transfer agent, trustee, or in any other similar capacity, have received information as to the ownership of securities, from using such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer. The Commission also believes that the proposed rule change is appropriate to continue to prohibit conduct that has the intent or effect of splitting orders into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. In approving the proposed rule change, the Commission notes that FINRA is adopting NASD Rules 3120 and 3380 as FINRA rules in the consolidated FINRA rulebook without material changes.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–FINRA–2009–067) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29038 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61073; File No. SR–BX–2009–075]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Definition of Material Changes in Business Operations Found in the Membership Rules and To Make a Technical Correction

November 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2009, NASDAQ OMX BX, Inc. (''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by BX. BX has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to amend Rule 1011(g)(2) to clarify the definition of what BX considers a ''material change in business operations,'' and to delete a superfluous ''and'' from the rule text.

The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.

1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0120.

(a)–(f) No change.

(g) ''material change in business operations''

The term ''material change in business operations'' includes, but is not limited to:

(1) removing or modifying a membership agreement restriction;

(2)*(A)* [market making, underwriting, or] acting as a dealer for the first time*; or*

(B) market making for the first time on NASDAQ OMX BX; provided, however, that market making for the first time on NASADQ OMX BX will not be considered a material change in business operations if the member's market making has previously been approved by FINRA under NASD Rule 1017 or NASDAQ under NASDAQ Rule 1017; [and]

(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3–1; and

(4) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in this rule.

(h)–(o) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to amend Rule 1011(g)(2) to clarify its applicability. Rule 1011(g) defines what BX considers a ''material change in business operations.'' Pursuant to Rule 1017(a)(5), a member must file an application for approval of any material change in its business operations with BX. Rule 1011(g)(2) includes ''market making, underwriting, or acting as a dealer for the first time'' within the definition of ''material change in business operations.'' Rule 1011(g)(2) is intended to require BX members to undergo an assessment and obtain approval pursuant to Rule 1017 if they intend to expand their business operations to include market making, underwriting, or acting as a dealer. The definition found in Rule 1011(g)(2) could, however, also be interpreted to include engaging in market making for the first time on a market other than BX, notwithstanding that BX has no regulatory responsibility with respect to that business activity.

BX's Rule 1011(g)(2) is based on NASD Rule 1011(k)(2), and as such, was drafted by NASD[4] (now known as ''FINRA'') to be broad in application given its broad, cross-market regulatory responsibilities.[5] In adopting Rule 1011(g)(2), however, BX did not contemplate that the rule would extend to business operations engaged in on other markets. Under such an interpretation of the rule, BX would be required to approve a member's planned change in business operations that would be conducted solely on another market. For example, a BX member that is not a market maker, yet determines to make markets on a market other than BX would, under this interpretation,

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] In late July 2007, NASD changed its name to the Financial Industry Regulatory Authority (''FINRA''). Accordingly, we use the term NASD in this filing only (i) when referring to period of time before the name change, and (ii) with respect to rules that are still officially designated by FINRA as ''NASD rules.''

[5] BX's membership rules mirror, in most respects, those of Nasdaq, which were derived from NASD's rules. BX notes that Nasdaq is seeking to amend its Rule 1011(g)(2) consistent with the changes to the BX rules proposed herein.

technically be required to file an application for approval of the market making pursuant to BX Rule 1017, in addition to satisfying the other market's market making application and approval process. Under this scenario, even though the business activity is not associated with BX, and BX has no responsibility to oversee the business activity, BX would be required to duplicate the efforts of another market and make an independent determination whether the member could conduct such business operations on that market. BX believes that this would be an erroneous outcome, and would represent unnecessary duplication of regulatory efforts among self-regulatory organizations.

BX is proposing to separate market making from the other business activities currently found under Rule 1011(g)(2) by creating two new subparts to the rule. Proposed new Rule 1011(g)(2)(B) will address market making and adds new language to make clear that the rule applies only to engaging in market making for the first time on BX, and as a consequence, a BX member seeking to be designated as a market maker for the first time on another market would not be required to follow the Rule 1017 process. BX believes that the proposed rule change would not lessen the regulatory oversight of members, since market making on another market would fall within the jurisdiction and oversight of that market together with the member's designated examining authority.[6]

In making it clear that market making under Rule 1011(g)(2)(B) applies only to such activity ''on BX,'' BX is concerned that common members of BX and FINRA, or of BX and The NASDAQ Stock Market LLC (''Nasdaq''), may misinterpret Rule 1011(g)(2)(B) to require approval pursuant to BX Rule 1017 of market making on BX for the first time when the same business operation had been previously approved by FINRA or Nasdaq pursuant to their respective Rules 1017. BX based much of its membership rules on those of Nasdaq, which had based much of its membership rules on those of NASD, with minor modifications in some instances resulting from Nasdaq's exchange status. As noted above, BX Rule 1011(g) is virtually identical to NASD Rule 1011(k), except for the addition of a fourth material change to business operations to reflect a change that results in a loss of proprietary trading firm status. BX Rule 1017 is also substantially similar to NASD Rule 1017. In a similar regard, the membership rules of BX mirror those of Nasdaq in most respects. BX notes that the underlying review pursuant to either BX Rule 1017 or Nasdaq Rule 1017, upon which BX or Nasdaq would reference in making a determination, is conducted by FINRA.[7] As such, the process leading to a prior approval of market making by either FINRA or Nasdaq pursuant to their Rules 1017 would follow the same process as if the BX Rule 1017 review were conducted.

BX is proposing to add language to Rule 1011(g)(2)(B) that will make it clear that BX does not consider market making under the rule for the first time on BX to be a material change, if the market making has already been approved by either FINRA pursuant to NASD Rule 1017, or alternatively by Nasdaq pursuant to Nasdaq Rule 1017. BX believes that the proposed clarifying language under BX Rule 1011(g)(2)(B) recognizing prior approvals of market making under the rules of FINRA and Nasdaq will serve to avoid confusion over the application of the rule in regards to common members. BX believes the proposed changes are consistent BX's current practice and will avoid unnecessary regulatory duplication.

BX is also proposing to delete references to underwriting from Rule 1011(g)(2). Underwriting is not conducted on BX and there is no circumstance in which a BX member could act as an underwriter unless that member was also a member of FINRA, and hence subject to FINRA's rules and oversight. BX believes that the keeping the term in Rule 1011(g)(2) serves no purpose and could be misleading. Accordingly, BX is proposing to delete the term from the rule.

BX is also proposing to make a minor technical correction to the rule by deleting a superfluous ''and'' from the rule text.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the Act,[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to clarify the application of BX Rule 1011(g)(2) to ensure its consistent interpretation, and to avoid extending the Rule 1017 approval process to non-BX business operations conducted on other exchanges of which the BX member is also a member. Further, the proposed rule change makes clear that BX recognizes FINRA and Nasdaq approvals of material changes in business operations, which is based upon the similarity of their rules and processes to those of BX. Such recognition will serve to avoid unnecessary regulatory duplication among self-regulatory organizations. The proposed rule change also makes a minor technical correction to the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq [sic] does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[6] 17 CFR 240.17d–1. Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission and SRO rules.

[7] When conducting a review on behalf of BX or Nasdaq pursuant to their respective Rules 1017, FINRA provides a recommendation on whether to approve the change in business operations or not.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

or otherwise in furtherance of the purposes of the Act.

BX believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely clarifies the application of an existing rule to avoid erroneous interpretation of its applicability, prevents unnecessary regulatory duplication among self-regulatory organizations, and makes a minor technical correction to the rule.

BX has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[12] BX requests this waiver so that these corrections can be immediately operative, eliminating any potential confusion caused by the currently unclear rule.

The Commission notes the proposal presents no novel issues and is designed to provide clarity regarding the application of an existing rule. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–075 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29039 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61075; File No. SR–NYSE–2009–119]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operation of its Supplemental Liquidity Providers Pilot, Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or March 30, 2010

November 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 25, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot (''SLP Pilot'' or ''Pilot'') (see Rule 107B), until the earlier of the Securities and Exchange Commission's approval to make such pilot permanent or March 30, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot[4] approved by the Securities and Exchange Commission (''SEC'' or ''Commission'') to operate until November 30, 2009, until the earlier of the SEC's approval to make such pilot permanent or March 30, 2010.

Background[5]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market

[4] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009). *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009).

[5] The information contained herein is a summary of the NMM Pilot and the SLP Pilot, for a fuller description of those pilots *see supra* notes 1 and 2 [sic].

participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the ''New Market Model'' (''NMM Pilot'').[6] The SLP Pilot was launched in coordination with the NMM Pilot (see Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[8]

The SLP Pilot is scheduled to end operation on November 30, 2009 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before November 30, 2009.[9]

Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until March 30, 2010, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rule to a permanent rule.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on November 30, 2009, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[6] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rules 107B.

[9] The NMM Pilot was scheduled to expire on November 30, 2009 as well. On November 16, 2009 the Exchange filed to extend the NMM Pilot until March 30, 2010 (*see* Securities Exchange Act Release No. 61031 (November 19, 2009) (SR–NYSE–2009–113) (extending the operation of the New Market Model Pilot to March 30, 2010).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b-4(f)(6).

[13] 17 CFR 240.19b-4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–119 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29040 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61074; File No. SR–NASDAQ–2009–102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Definition of Material Changes in Business Operations Found in the Membership Rules and to Make a Technical Correction

November 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 1011(g)(2) to clarify the definition of what Nasdaq considers a ''material change in business operations,'' and to delete a superfluous ''and'' from the rule text.

The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in brackets.[4]

1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0120.

(a)–(f) No change.

(g) ''material change in business operations''

The term ''material change in business operations'' includes, but is not limited to:

(1) removing or modifying a membership agreement restriction;

(2)*(A)* [market making, underwriting, or]acting as a dealer for the first time*; or*

(B) market making for the first time on Nasdaq; provided, however, that market making for the first time on Nasdaq will not be considered a material change in business operations if the member's market making has previously been approved by FINRA under NASD Rule 1017 or NASDAQ OMX BX under NASDAQ OMX BX Equity Rule 1017; [and]

(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3–1; and

(4) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in this rule.

(h)–(o) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend Rule 1011(g)(2) to clarify its applicability. Rule 1011(g) defines what Nasdaq considers a ''material change in business operations.'' Pursuant to Rule 1017(a)(5), a member must file an application for approval of any material change in its business operations with Nasdaq. Rule 1011(g)(2) includes ''market making, underwriting, or acting as a dealer for the first time'' within the definition of ''material change in business operations.'' Rule 1011(g)(2) is intended to require Nasdaq members to undergo an assessment and obtain approval pursuant to Rule 1017 if they intend to expand their business operations to include market making, underwriting, or acting as a dealer. The definition found in Rule 1011(g)(2) could, however, also be interpreted to include engaging in market making for the first time on a market other than Nasdaq, notwithstanding that Nasdaq has no regulatory responsibility with respect to that business activity.

Nasdaq's Rule 1011(g)(2) is based on NASD Rule 1011(k)(2), and as such, was drafted by NASD[5] (now known as ''FINRA'') to be broad in application given its broad, cross-market regulatory responsibilities. In adopting Rule 1011(g)(2), however, Nasdaq did not contemplate that the rule would extend to business operations engaged in on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

[5] In late July 2007, NASD changed its name to the Financial Industry Regulatory Authority (''FINRA''). Accordingly, we use the term NASD in this filing only (i) when referring to period of time before the name change, and (ii) with respect to rules that are still officially designated by FINRA as ''NASD rules.''

other markets. Under such an interpretation of the rule, Nasdaq would be required to approve a member's planned change in business operations that would be conducted solely on another market. For example, a Nasdaq member that is not a market maker, yet determines to make markets on a market other than Nasdaq would, under this interpretation, technically be required to file an application for approval of the market making pursuant to Nasdaq Rule 1017, in addition to satisfying the other market's market making application and approval process. Under this scenario, even though the business activity is not associated with Nasdaq, and Nasdaq has no responsibility to oversee the business activity, Nasdaq would be required to duplicate the efforts of another market and make an independent determination whether the member could conduct such business operations on that market. Nasdaq believes that this would be an erroneous outcome, and would represent unnecessary duplication of regulatory efforts among self-regulatory organizations.

Nasdaq is proposing to separate market making from the other business activities currently found under Rule 1011(g)(2) by creating two new subparts to the rule. Proposed new Rule 1011(g)(2)(B) will address market making and adds new language to make clear that the rule applies only to engaging in market making for the first time on Nasdaq, and as a consequence, a Nasdaq member seeking to be designated as a market maker for the first time on another market would not be required to follow the Rule 1017 process. Nasdaq believes that the proposed rule change would not lessen the regulatory oversight of members, since market making on another market would fall within the jurisdiction and oversight of that market together with the member's designated examining authority.[6]

In making it clear that market making under Rule 1011(g)(2)(B) applies only to such activity ''on Nasdaq,'' Nasdaq is concerned that common members of Nasdaq and FINRA, or of Nasdaq and NASDAQ OMX BX (''BX''), may misinterpret Rule 1011(g)(2)(B) to require approval pursuant to Nasdaq Rule 1017 of market making on Nasdaq for the first time when the same business operation had been previously approved by FINRA or BX pursuant to their respective Rules 1017. Nasdaq based much of its membership rules on those of NASD, with minor modifications in some instances resulting from Nasdaq's exchange status. As noted above, Nasdaq Rule 1011(g) is virtually identical to NASD Rule 1011(k), except for the addition of a fourth material change to business operations to reflect a change that results in a loss of proprietary trading firm status. Nasdaq Rule 1017 is also substantially similar to NASD Rule 1017. In a similar regard, the membership rules of BX were based upon the membership rules of Nasdaq, and as a consequence, the membership rules of BX mirror those of Nasdaq in most respects. Nasdaq notes that the underlying review pursuant to either Nasdaq Rule 1017 or BX Rule 1017, upon which Nasdaq or BX would reference in making a determination, is conducted by FINRA.[7] As such, the process leading to a prior approval of market making by either FINRA or BX pursuant to their Rules 1017 would follow the same process as if the Nasdaq Rule 1017 review were conducted.

Nasdaq is proposing to add new language to Rule 1011(g)(2)(B) that will make it clear that Nasdaq does not consider market making under the rule for the first time on Nasdaq to be a material change, if the market making has already been approved by either FINRA pursuant to NASD Rule 1017, or alternatively by BX pursuant to BX Rule 1017. Nasdaq believes that the proposed clarifying language under Nasdaq Rule 1011(g)(2)(B) recognizing prior approvals of market making under the rules of FINRA and BX will serve to avoid confusion over the application of the rule in regards to common members. Nasdaq believes the proposed changes are consistent Nasdaq's [sic] current practice and will avoid unnecessary regulatory duplication.

Nasdaq is also proposing to delete references to underwriting from Rule 1011(g)(2). Underwriting is not conducted on Nasdaq and there is no circumstance in which a Nasdaq member could act as an underwriter unless that member was also a member of FINRA, and hence subject to FINRA's rules and oversight. Nasdaq believes that the [sic] keeping the term in Rule 1011(g)(2) serves no purpose and could be misleading. Accordingly, Nasdaq is proposing to delete the term from the rule.

Nasdaq is also proposing to make a minor technical correction to the rule by deleting a superfluous ''and'' from the rule text.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the Act,[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to clarify the application of Nasdaq Rule 1011(g)(2) to ensure its consistent interpretation, and to avoid extending the Rule 1017 approval process to non-Nasdaq business operations conducted on other exchanges of which the Nasdaq member is also a member. Further, the proposed rule change makes clear that Nasdaq recognizes FINRA and BX approvals of material changes in business operations, which is based upon the similarity of their rules and processes to those of Nasdaq. Such recognition will serve to avoid unnecessary regulatory duplication among self-regulatory organizations. The proposed rule change also makes a minor technical correction to the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

[6] 17 CFR 240.17d–1. Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission and SRO rules.

[7] When conducting a review on behalf of Nasdaq or BX pursuant to their respective Rules 1017, FINRA provides a recommendation on whether to approve the change in business operations or not.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely clarifies the application of an existing rule to avoid erroneous interpretation of its applicability, prevents unnecessary regulatory duplication among self-regulatory organizations, and makes a minor technical correction to the rule.

Nasdaq requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[12] Nasdaq requests this waiver so that these corrections can be immediately operative, eliminating any potential confusion caused by the currently unclear rule.

NASDAQ has requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6). The Commission notes the proposal presents no novel issues and is designed to provide clarity regarding the application of an existing rule. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–102 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29041 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61078; File No. SR–OCC–2009–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Allow Members To Deposit Customer Fully Paid or Excess Margin Securities to the Extent Permitted by No-Action Relief or Interpretive Guidance From the Commission or Interpretive Guidance From a Self-Regulatory Organization

November 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 23, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3–3[3] of the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from a Self-Regulatory Organization (''SRO'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–3.

[4] The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC rules currently prohibit members from depositing with OCC fully paid or excess margin securities that are carried for the account of a customer. This prohibition is intended to conform OCC's treatment of customer fully paid and excess margin securities to the requirements of Rule 15c3–3. The purpose of this proposed rule change is to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3–3 and is permitted pursuant to no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

Currently, a Commission no-action letter and related interpretive guidance from the New York Stock Exchange permits fully paid or excess margin securities carried in a customer account to be deposited with OCC in two circumstances. First, if a customer makes a specific deposit of fully paid or excess margin securities with a member to secure its obligations as an option writer [5] then the member may in turn deposit the customer's securities with OCC.[6] Second, any fully paid or excess margin securities held by a member to secure a customer's obligations may be posted as margin with OCC to the extent of 140% of the difference between

the daily marking price deposits action: [7] and the original proceeds of the customer's transaction.[8] This proposed rule change would permit members to deposit customer fully paid or excess margin securities in these two circumstances as well as in any future circumstances identified by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder because the proposed change will safeguard securities and funds related to the clearance and settlement of securities transactions for the protection of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2009–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2009–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_09_18.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2009–18 and should be submitted on or before December 28, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29042 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[5] OCC Rule 610(e)–(f).

[6] New York Stock Exchange, *New York Stock Exchange Rule Interpretations Handbook* 505 (2004)(Interpretation 01 of Securities Exchange Act Rule 15c3–3(c) citing Chicago Board Options Exchange, Inc., SEC No-Action Letter (Feb. 19, 1975)).

[7] As required by OCC of its member.

[8] New York Stock Exchange, *New York Stock Exchange Rule Interpretations Handbook* 505 (2004)(Interpretation 020 of Securities Exchange Act Rule 15c3–3(c).

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61080; File No. SR–FINRA–2009–068]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to FINRA's Rules Governing Clearly Erroneous Executions

December 1, 2009.

I. Introduction

On October 19, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 11890, IM–11890–1, and IM–11890–2 into a new consolidated rulebook (''Consolidated FINRA Rulebook'') as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions. The proposed rule change was published for comment in the **Federal Register** on October 28, 2009.[3] The Commission received no comment letters on the proposal. This order grants approval to the proposed rule change.

II. Description of the Proposal

As part of the process of developing the Consolidated FINRA Rulebook, FINRA proposes that NASD Rule 11890, IM–11890–1, and IM–11890–2 be moved into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions. FINRA also proposes amending these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.[4] This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors, and protecting the public interest. Unlike the rules of the U.S. equities exchanges, FINRA's rules also address clearly erroneous executions in OTC Equity Securities.[5]

FINRA's new clearly erroneous rule series includes: (1) A general provision (Rule 11891) with accompanying Supplementary Material; (2) a rule governing clearly erroneous determinations for transactions in exchange-listed securities (Rule 11892) with accompanying Supplementary Material; (3) a rule governing clearly erroneous determinations for transactions in OTC Equity Securities (Rule 11893) with accompanying Supplementary Material; and (4) a rule governing review of FINRA staff determinations by the UPC Committee (Rule 11894).

Definition and General Guidelines

The proposed rule defines the term ''clearly erroneous'' and specifies that ''the terms of a transaction are 'clearly erroneous' when there is an obvious error in any term, such as price, number of shares, or other unit of trading, or identification of the security.'' [6]

Review of Transactions in Exchange-Listed Securities

Proposed Rule 11892 and its Supplementary Material set forth the standards FINRA uses to determine whether a transaction in an exchange-listed security is clearly erroneous. Specifically, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA Trade Reporting Facility (''TRF'') or Alternative Display Facility (''ADF''), FINRA will generally follow the determination of a national securities exchange to break a trade (or multiple trades) when that national securities exchange has broken one or more trades at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection. When multiple national securities exchanges have related trades, FINRA will leave a trade(s) unbroken when any of those national securities exchanges has left a trade(s) unbroken at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be inconsistent with market integrity and investor protection.

For OTC transactions in exchange-listed securities that are reported to a FINRA system, but for which there is no corresponding or related on-exchange trading activity, FINRA will generally make its own clearly erroneous determination.[7] However, to ensure that transactions in exchange-listed securities are treated consistently regardless of where the trade is executed (on an exchange or OTC), proposed Rule 11892 replicates the numerical thresholds adopted by the exchanges to determine whether a transaction is eligible for consideration as clearly erroneous. The proposed rule also establishes alternative reference prices to be used in unusual circumstances, additional factors that FINRA may consider when making a clearly erroneous determination, and numerical guidelines applicable to volatile market opens.[8]

Review of Transactions in OTC Equity Securities

Proposed Rule 11893, which governs transactions in OTC Equity Securities, is structured similarly to the provisions for transactions in exchange-listed securities under proposed Rule 11892, including numerical guidelines, the use of alternative reference prices in unusual circumstances, and additional factors FINRA officers may consider when making a clearly erroneous determination. However, as is the case under the existing rule, the proposed numerical guidelines for transactions in OTC Equity Securities are not the same as the guidelines used for exchange-listed securities.[9] The provisions in proposed Rule 11893 regarding alternative reference prices and additional factors are substantially similar to those set forth in Rule 11892 for exchange-listed securities. FINRA is also proposing to adopt Supplementary Material to Rule 11893 to emphasize FINRA's historical use of its clearly erroneous authority in very limited circumstances, in particular with respect to OTC Equity Securities.

Review Procedures

FINRA proposes removing language that currently allows a FINRA officer to modify one or more of the terms of a transaction under review. Under the proposed rules, the FINRA officer will only have the authority to break the trades. This proposed change is intended to conform with the rules of other exchanges and attempts to remove the subjectivity from the rule that is necessitated by an adjustment. An Executive Vice President of FINRA's Market Regulation Department or Transparency Services Department, or any officer designated by such Executive Vice President, may, on his or her own motion, review any transaction arising out of or reported through any FINRA facility.

With respect to determinations involving transactions in exchange-listed securities, absent extraordinary circumstances, the officer shall take action generally within 30 minutes after becoming aware of the transaction. When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading on the day following the date of execution(s) under review. With respect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60851 (October 21, 2009), 74 FR 55606 (the ''Notice'').

[4] *See* Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR–NYSEArca-2009–36) (the ''Arca Order'').

[5] For purposes of the proposed rule change, the term ''OTC Equity Security'' has the same meaning as defined in FINRA Rule 6420, except that the term does not include any equity security that is traded on any national securities exchange.

[6] *See* proposed Rule 11891. The language in the rule is based on the definition in the recently approved Arca Order.

[7] The FINRA rules do not allow members to initiate reviews of transactions. All reviews conducted by FINRA are conducted on FINRA's own motion.

[8] Each of these provisions is modeled on similar provisions in the recently approved amendments to NYSE Arca Rule 7.10.

[9] *See* proposed Rule 11893(b)(1).

to determinations involving transactions in OTC Equity Securities, a FINRA officer must make a determination as soon as possible after becoming aware of the transaction, but in all cases by 3 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

If a FINRA officer declares any transaction null and void, FINRA will notify each party involved in the transaction as soon as practicable, and any party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

FINRA is also proposing to codify in Rule 11894 the provisions governing the appeal to the UPC Committee of a FINRA officer's determination to declare an execution clearly erroneous.[10] IM–11890–2, which concerns review by panels of the UPC Committee, will be incorporated into the text of the new rule. Under the rule, an appeal must be made in writing and must be received by FINRA within thirty minutes after the person making the appeal is given the notification of the determination being appealed. With respect to appeals regarding exchange-listed securities, determinations by the UPC Committee will be rendered as soon as practicable, but generally, on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m., Eastern Time, a determination will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution(s) under review. With respect to appeals regarding OTC Equity Securities, determinations by the UPC Committee will be rendered as soon as practicable, but in no case later than two trading days following the date of the execution(s) under review.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[12] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission considers that, under ordinary circumstances, trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates that an obvious error may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction and therefore that a clearly erroneous transaction may have taken place. In the Commission's view, the determination of whether a clearly erroneous trade has occurred should be based on specific and objective criteria and subject to specific and objective procedures.

The Commission believes that the proposed rule change sets forth a specific methodology for reviewing potentially erroneous trades in exchange-listed securities and should increase transparency and certainty for participants with respect to such trades. The Commission also believes that the proposed rule change is designed to increase the likelihood that that clearly erroneous execution rules will be consistently applied across markets, while also helping to facilitate the fair and orderly operation of the markets and protection of investors and the public interest. Specifically, with respect to OTC transactions in exchange-listed securities that are reported to a FINRA system, FINRA will generally follow the determination of a national securities exchange to break a trade (or multiple trades) when that national securities exchange has broken one or more trades at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection.[13] With respect to OTC transactions in exchange-listed securities for which there is no corresponding or related on-exchange trading activity, Rule 11892 replicates the numerical thresholds used by the exchanges to determine whether a transaction is eligible for consideration as clearly erroneous. In addition, similar to the rules of the exchanges, the proposed rule also provides for the use of alternative reference prices in unusual circumstances, additional factors that FINRA may consider when making a clearly erroneous determination and numerical guidelines applicable to volatile market opens.

With respect to OTC Equity Securities, proposed Rule 11893 sets forth a specific methodology for reviewing potentially erroneous trades in OTC Equity Securities and should increase transparency and certainty for participants with respect to such trades. Proposed Rule 11893 is structured similarly to the provisions for transactions in exchange-listed securities under proposed Rule 11892, including numerical guidelines, the use of alternative reference prices in unusual circumstances, and additional factors FINRA officers may consider when making a clearly erroneous determination. However, the proposed numerical guidelines for transactions in OTC Equity Securities and the proposed timeframes for review and appeal of transactions involving OTC Equity Securities vary from the guidelines used for exchange-listed securities. The Commission believes that it is reasonable for FINRA to adopt different numerical guidelines and timeframes for these securities due to the differences in the OTC equity and exchange-listed markets, including the lack of compulsory information flows in the OTC equity market that are a result of the listing process and the fact that aberrant trading in the OTC market may be due to issues other than systems problems or extraordinary events.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–FINRA–2009–068), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29043 Filed 12–4–09; 8:45 am]

BILLING CODE 8011–01–P

[10] A FINRA officer's determination not to break a trade is not appealable.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(6).

[13] *See* proposed Rule 11892, Supplementary Material .01.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1031X]

East Tennessee Railway, L.P.—Abandonment Exemption—in Washington and Carter Counties, TN

East Tennessee Railway, L.P. (ETRY), has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a segment of its line of railroad between milepost 1.2, in Johnson City, and milepost 11.2 at the end of the line, in Elizabethton, in Washington and Carter Counties, TN. The line traverses United States Postal Service Zip Codes 37605 and 37643.

ETRY has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 6, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 17, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 28, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to ETRY's representative: Eric M. Hocky, Esquire, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

ETRY has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 11, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), ETRY shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by ETRY's filing of a notice of consummation by December 7, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 30, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–28932 Filed 12–4–09; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0343]

Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Medical Review Board (MRB) public meeting.

SUMMARY: FMCSA announces a public meeting of the Agency's MRB. The MRB public meeting will provide the public an opportunity to observe MRB deliberations about FMCSA's medical standards and provide comments to the MRB in accordance with the Federal Advisory Committee Act (FACA).

DATES: The MRB meeting will be held from 9 a.m. to 5:40 p.m. on Wednesday, January 6, 2010. Please refer to the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

ADDRESSES: The meeting will take place at the United States Department of Transportation, West Building Ground Floor, Oklahoma Room, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0343 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between

9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.).

You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Information On Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jennifer Musick at 703–998–0189 ext. 237.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the meeting includes:

0900–0910 Call to Order, Introduction and Agenda Review
0910–0915 Medical Review Board (MRB) vote on Minutes of the July 1, 2009 Meeting
0915–0945 Parkinson's Disease, Multiple Sclerosis and Commercial Motor Vehicle (CMV) safety: Evidence Report Findings
0945–1015 Parkinson's Disease, Multiple Sclerosis and CMV safety: Medical Expert Panel (MEP) Opinion
1015–1045 Ad hoc Committee Report on Parkinson's disease, Multiple Sclerosis and CMV safety
1045–1100 Public Comment on Parkinson's disease, Multiple Sclerosis and CMV safety
1100–1115 Break**
1115–1145 MRB Deliberations on Parkinson's disease, Multiple Sclerosis and CMV safety
1145–1215 Narcolepsy (with and without Cataplexy) and CMV Driver Safety: Evidence Report Findings
1215–1315 Lunch (on your own)
1315–1345 Ad hoc Committee Report on Narcolepsy and CMV Driver Safety
1345–1400 Public Comment on Narcolepsy (with and without Cataplexy) and CMV Driver Safety
1400–1430 MRB Deliberation on Narcolepsy (with and without Cataplexy) and CMV Driver Safety
1430–1500 Traumatic Brain Injury and CMV Driver Safety: Evidence Report Findings
1500–1515 Break **
1515–1545 Traumatic Brain Injury and CMV Driver Safety: MEP Opinion
1545–1600 Public Comment on Traumatic Brain Injury and CMV Driver Safety
1600–1630 MRB Deliberation on Traumatic Brain Injury and CMV Driver Safety
1630–1700 Ad hoc Committee Report on Psychiatric Disorders and CMV Driver Safety
1700–1730 MRB Deliberation on Psychiatric Disorders and CMV Driver Safety
1730–1740 MRB Further Business
1740 Call to Adjourn

** Breaks will be announced on meeting day and may be adjusted according to schedule changes, other meeting requirements.

Background

The U.S. Secretary of Transportation announced on March 7, 2006, the five medical experts who serve on the MRB. Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) requires the Secretary of Transportation with the advice of the MRB to ''establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them operate the vehicles safely.'' FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with FACA as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as making recommendations for new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

Meeting Participation

Attendance is open to the interested public, including medical examiners, motor carriers, drivers, and representatives of medical and scientific associations. Written comments for this MRB meeting will also be accepted beginning on December 7, 2009 and continuing until January 20, 2010, and should include the docket ID that is listed in the **ADDRESSES** section.

During the MRB meeting, oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: *http://mrb.fmcsa.dot.gov*.

Issued on: December 2, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–29112 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2009, there were three applications approved. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Pierre, South Dakota.

Application Number: 09–02–C–00–PIR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $422,107.

Earliest Charge Effective Date: September 1, 2009.

Estimated Charge Expiration Date: September 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use

Develop PFC application number 2.

Reconstruct and narrow runway 13/31 and blast pads for runway ends 13 and 31.

Construct high intensity runway lighting systems for runway 13/31.

Airport master plan study to identify passenger terminal needs.

Snow removal equipment storage and aircraft rescue and firefighting vehicle maintenance building.

Acquire aircraft rescue and firefighting vehicle.

Decision Date: July 9, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, Bismarck Airports District Office, (847) 294–7674.

Public Agency: County of San Joaquin, Stockton, California.

Application Number: 09–02–C–00–SCK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $187,241.

Earliest Charge Effective Date: September 1, 2009.

Estimated Charge Expiration Date: September 1, 2010.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Stockton Metropolitan Airport.

Brief Description of Projects Approved for Collection and Use

Extend runway 11L/29R: relocate medium intensity approach lighting system with runway alignment indicator lights building.

Security access control.

Acquire aircraft rescue and firefighting vehicle.

Runway electrical regulator.

Terminal holdroom modifications.

Decision Date: July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Gretchen Kelly, San Francisco Airports District Office, (650) 876–2778, extension 623.

Public Agency: City of Syracuse Department of Aviation, Syracuse, New York.

Application Number: 09–08–U–00–SYR.

Application Type: Use PFC revenue. *PFC Level:* $4.50.

Total PFC Revenue Approved for Use in this Decision: $96,700,685.

Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: August 1, 2026.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Passenger terminal security and access improvements.

Decision Date: July 22, 2009.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District Office, (516) 227–3816.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
08–11–C–02–DSM Des Moines, IA.	06/23/09	$4,681,798	$4,692,786	01/01/18	01/01/18
94–03–C–02–HSV Huntsville, AL.	06/26/09	17,870,695	17,863,228	02/01/03	02/01/03
04–09–C–05–CRW Charleston, WV.	07/10/09	9,719,526	14,859,526	03/01/13	04/01/17
09–07–C–01–RDM Redmond, OR.	07/15/09	25,000,000	25,000,000	07/01/40	07/01/40
04–07–C–01–EYW Key West, FL.	07/16/09	1,420,700	221,279	02/01/06	02/01/06
04–08–C–02–EYW Key West, FL.	07/16/09	360,250	267,034	07/01/05	07/01/05
*93.01–I–03–ALB Albany, NY.	07/22/09	104,851,491	104,851,491	03/01/20	02/01/18
96–03–C–01–ALB Albany, NY.	07/22/09	11,888,847	11,888,847	12/01/20	02/01/20
00–04–C–02–SRQ Sarasota, FL.	07/23/09	38,495,063	60,689,947	02/01/14	02/01/14
02–06–C–01–MSP Minneapolis, MN.	07/23/09	1,161,478,610	793,254,352	01/01/17	12/01/15
05–07–U–01–MSP Minneapolis, MN.	07/23/09	NA	NA	01/01/17	12/01/15
05–06–C–02–SYR Syracuse, NY.	07/23/09	6,719,197	4,248,943	02/01/07	02/01/07

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Albany, NY, this change is effective on September 1, 2009.

Issued in Washington, DC, on November 30, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–29016 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0349]

Pipeline Safety: Operator Qualification (OQ) Program Modifications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is issuing this Advisory Bulletin to inform pipeline operators about the standardized notification process for operator qualification (OQ) plan transmittal from the operator to PHMSA. This Advisory Bulletin also informs operators about the addition to PHMSA's glossary of definitions of the terms ''Observation of on-the-job performance'' as applicable to determining employee qualification and ''Significant'' as applicable to OQ program modifications requiring notification. Finally, it makes other miscellaneous clarifications to assist operators in complying with OQ program requirements.

FOR FURTHER INFORMATION CONTACT: Warren Miller by phone at 816–329–3815 or by e-mail at *warren.miller@dot.gov* regarding the subject matter of this Advisory Bulletin, or the Dockets Unit, (202) 366–4453, for copies of this Advisory Bulletin or other material in the docket. All materials in this docket may be accessed electronically at *http://dma.dot.gov*. General information about the PHMSA Office of Pipeline Safety (OPS) can be obtained by accessing OPS's Internet home page at *http://www.phmsa.dot.gov/pipeline*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 2005, PHMSA issued a Direct Final Rule (70 FR 10332) on qualification of pipeline personnel which amended the requirements for pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. In response to implementation issues and questions that arose after the rule was published, PHMSA has previously published Advisory Bulletins regarding OQ programs. These bulletins remain relevant:

- ADB–04–05, Operator Qualification Requirements, published November 26, 2004.
- ADB–06–01, Notice to Operators of Natural Gas and Hazardous Liquid Pipelines to Integrate Operator Qualification Regulations into Excavation Activities, published January 17, 2006.

Based on input from State pipeline safety program managers and the PHMSA Federal and State OQ Team, PHMSA has developed a standardized process for OQ plan transmittal from the operator to PHMSA. The team also developed definitions of the terms ''Observation of on-the-job performance'' as applicable to determining employee qualification and ''Significant'' as applicable to OQ program modifications requiring notification. PHMSA has added these definitions to its glossary of terms. Finally, the team identified other miscellaneous clarifications to assist operators in complying with OQ program requirements.

II. Advisory Bulletin ADB–09–03

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipeline Systems.

Subject: Operator Qualification Programs.

Advisory: This Advisory Bulletin informs pipeline operators about the standardized notification process for operator qualification (OQ) plan transmittal from the operator to PHMSA. This Advisory Bulletin also informs operators about the addition to PHMSA's glossary of definitions of the terms ''Observation of on-the-job performance'' as applicable to determining employee qualification and ''Significant'' as applicable to OQ program modifications requiring notification. Finally, it makes other miscellaneous clarifications regarding OQ programs.

Standardized Plan Transmittal Process

Operators should send notifications of significant modification of an OQ Program to the OPS Information Resource Manager by e-mail at *InformationResources Manager@phmsa.dot.gov* or mail to U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety, Information Resources Manager, 1200 New Jersey Avenue, SE., East Building, 2nd Floor (PHP–10), Room E22–321, Washington, DC 20590.

Note: Operators subject to regulation by State agencies are required to send OQ notifications directly to each State agency.

Regardless of the delivery method, each notification to PHMSA should include:

1. OPID(s), operator name(s), HQ address. Name of individual submitting notification, Data/email/phone number, Commodity (gas/liquid/both), PHMSA Region(s) where pipeline(s) operate, and names of respective facilities or pipeline systems where changes apply.

2. Complete Plan accompanied by revision/change log and effective date of change(s). The plan should be notated such that changed areas of the plan can be readily identified. Employee-specific information (*i.e.,* social security numbers) and testing material are not needed.

Definitions

With respect to the use of ''Observation of on-the-job performance'' as a means of determining employee qualification, PHMSA has added a definition of this term to its glossary of terms on the PHMSA Primis OQ Web site at *http://primis.phmsa.dot.gov/oq/glossary.htm.* PHMSA also added a definition of the word ''significant'' to the glossary as it applies to modifications to an operator's OQ program. The definitions read as follows:

Observation of On-The-Job Performance

1. Observation without interaction during on-the-job performance does not provide an adequate measurement of the knowledge and skills of the individual;

2. PHMSA has determined that there are no covered tasks to date where observation of on-the-job performance is an adequate, sole method for examining or testing qualification; and

3. Observation of on-the-job performance does not measure the individual's ability to recognize and react to abnormal operation conditions (AOCs).

Significant

As applicable to OQ program modifications, *significant* includes but is not limited to: increasing evaluation intervals, increasing span of control ratios, eliminating covered tasks, mergers and/or acquisition changes,

evaluation method changes such as written vs. observation, and wholesale changes made to OQ plan.

Miscellaneous Clarifications

Finally, in order to clarify the requirements of 49 CFR 192.605(a) and 195.402(a) as they apply to OQ and written OQ program reviews, the following information is provided:

1. The OQ process and procedures are an important part of an operator's manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies (Operations and Maintenance (O&M) Plan).

a. Operators' review of their OQ Plan in accordance with §§ 192.605(a) and 195.402(a) should be conducted in connection with their reviews of their O&M Plans every 15 months, but at least once each calendar year.

b. Operators' ''periodic review of work'' being done in accordance with §§ 192.605(b)(8) and 195.402(c)(13), should include evaluation of OQ procedure effectiveness to identify where corrective actions are needed to address deficiencies. Examples of issues that need to be reviewed to determine the effectiveness of an OQ Program:

- Adequacy of training for specific covered task(s),
- Adequacy of evaluation(s) to determine if individual has required knowledge, skills, and abilities,
- Adequacy of individual to recognize AOC(s), and
- Adequacy of individual to take appropriate action after AOC.

2. Operators should ensure the record it maintains of its annual O&M review, as required by §§ 192.605(a) and 195.402(a), specifically notes that the OQ Plan was included in the review. The record should include the name of reviewer and date(s) of review. Alternatively, the operator's review procedures may clearly indicate which procedures are to be evaluated during the annual review.

3. PHMSA will inspect annual review records to assure OQ Plans are being evaluated and may take compliance action where non-compliance is found.

Issued in Washington, DC on November 25, 2009.

Byron Coy,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. E9–29073 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 27, 2009. Comments must be received on or before January 6, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 27 individuals who have requested a renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 27 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Grady L. Black, Jr.,
Anthony Brandano,
Stanley E. Elliott,
Elmer E. Gockley,
Glenn T. Hehner,
Wayne H. Holt,
Edward E. Hooker,
Vladimir M. Kats,
Alfred Keehn,
Martin D. Keough,
Randall B. Laminack,
Norman R. Lamy,
Robert W. Lantis,
James A. Lenhart,
Jerry J. Lord,
Raymond P. Madron,
Ronald S. Mallory,
Eldon Miles,
Jack E. Potts, Jr.,
Neal A. Richard,
John E. Rogstad,
Robert E. Sanders,
Steven R. Smith,
Robert L. Thies,
Rene R. Trachsel,
Kendle F. Waggle, Jr.,
DeWayne Washington.

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 27 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 54775; 70 FR 53412; 72 FR 222; 66 FR 63289; 68 FR 64944; 70 FR 71993; 64 FR 68195; 65 FR 20251; 67 FR 10471; 67 FR 19798; 69 FR 19611; 66 FR 53826; 66 FR 66966; 68 FR 69434; 70 FR 74102; 67 FR 68719; 68 FR 2629; 70 FR 7545; 68 FR 37197; 68 FR 48989; 70 FR 42615; 72 FR 64273; 68 FR 52811; 68 FR 61860; 70 FR 61165; 72 FR 58359; 70 FR 48797; 70 FR 61493; 70 FR 57353; 70 FR 72689; 72 FR 39885; 72 FR 52419). Each of these 27 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 6, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 27 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 25, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–29114 Filed 12–4–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Department Clearance Officer, Department of the Treasury, Room 11010, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 6, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1440.

Type of Review: Extension.

Title: INTL–64–93 (Final) Conduit Arrangements Regulations.

Description: This document contains regulations relating to when the area director may recharacterize a financing arrangement as a conduit arrangement. Such recharacterization will affect the amount of withholding tax due on financing transactions that are part of the financing arrangement. These

regulations will affect withholding agents and foreign investors.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–0393.

Type of Review: Extension.

Title: Return Requesting Refund Unlocatable or Not Filed.

Description: The code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If a taxpayer inquires about their non-receipt of refund and no return is found, this letter is sent requesting the taxpayer to file another return.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,513 hours.

OMB Number: 1545–1560.

Type of Review: Extension.

Title: REG–246250–96 (Final) Public Disclosure of Material Relating to Tax-Exempt Organizations.

Description: The collections of information in section 301.6104(d)–3, 301.6104(d)–4 and 301.6104(d)–5 are necessary so that tax-exempt organizations can make copies of their applications for tax exemption and annual information returns available to the public.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 551,500 hours.

OMB Number: 1545–1695.

Type of Review: Extension.

Title: Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

Description: This revenue ruling specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Respondents: State, Local, and Tribal governments.

Estimated Total Burden Hours: 500 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina M. Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–29028 Filed 12–4–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 6, 2010 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0009.

Type of Review: Extension.

Title: Request to Reissue U.S. Savings Bonds to a Personal Trust.

Form: PD F 1851 E.

Description: Used to request reissue of savings bonds in the name of a trustee of a personal trust estate.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 12,500 hours.

OMB Number: 1535–0104.

Type of Review: Extension.

Title: Application by survivors for payment of bond or check issued under Armed Forces Leave Act of 1946.

Form: PD F 2066 E.

Description: Used by survivors for payment of bonds issued under Armed Forces Leave Act of 1946.

Respondents: Individuals or Households .

Estimated Total Burden Hours: 75 hours.

OMB Number: 1535–0105.

Type of Review: Extension.

Title: App. for recognition as natural guardian of minor not under legal guardianship & disposition of securities.

Form: PD–F–2481.

Description: Used by natural guardian of minor to request disposition of securities.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 5 hours.

Clearance Officer: Judi Owens, (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia, 26106.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–29029 Filed 12–4–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Department Clearance Officer, Department of the Treasury, Room 11010, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 6, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0390.

Type of Review: Extension.

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

Form: 5306.

Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 7,878 hours.

OMB Number: 1545–0118.

Type of Review: Extension.

Title: Taxable Distributions Received From Cooperatives.

Form: 1099–PATR.

Description: Form 1099–PATR is used to report patronage dividends paid by cooperatives (IRC sec. 6044). The information is used by IRS to verify reporting compliance on the part of the recipient.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 509,895 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina M. Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–29030 Filed 12–4–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Order Extending Temporary Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps

AGENCY: Department of the Treasury, Office of the Under Secretary for Domestic Finance.

ACTION: Notice of extension of temporary exemptions.

SUMMARY: The Department of the Treasury (Treasury) is extending its March 6, 2009 order providing temporary exemptions from certain Government Securities Act of 1986 (GSA) provisions and regulations in connection with a request from ICE Trust U.S. LLC (ICE Trust, formerly ICE US Trust LLC) related to the central clearing of credit default swaps (CDS) that reference government securities. This extension of temporary exemptions is consistent with an extension of temporary exemptions the Securities and Exchange Commission (SEC) recently granted to ICE Trust related to the central clearing of CDS.[1]

DATES: *Effective Date:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Lee Grandy, or Kevin Hawkins; Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: The following is Treasury's order extending the temporary exemptions:

I. Introduction

On March 6, 2009, the SEC issued to ICE Trust, certain participants in ICE Trust, and others exemptions from certain provisions of the Securities Exchange Act of 1934 (Exchange Act).[2] The SEC's exemptions did not cover the Exchange Act provisions applicable to government securities.[3] Also, on March 6, 2009, Treasury issued an order that granted temporary exemptions that were consistent with certain of the temporary exemptions granted by the SEC.[4] Specifically, the March 6, 2009 order granted to (1) ICE Trust, (2) certain participants in ICE Trust (ICE Trust Participants) [5] that are not registered or noticed government securities brokers and government securities dealers [6] under section 15C(a)(1) of the Exchange Act, and (3) certain eligible contract participants (ECPs) [7] temporary exemptions until December 6, 2009, from certain GSA provisions and regulations.[8] The exemption applied to these entities' transactions in ''cleared CDS,'' which generally are CDS submitted to ICE Trust where the CDS reference a government security. In addition, with respect to registered or noticed government securities brokers and government securities dealers that are not financial institutions, the order granted a temporary exemption from certain GSA regulatory requirements consistent with the SEC's treatment of registered brokers and dealers in its exemptive order. That temporary exemption similarly applied to those entities' transactions in cleared CDS.[9] Together with its order, Treasury solicited public comment on all aspects of the temporary exemptions and received no comments.

ICE Trust has requested that Treasury extend the temporary exemptions in the March 6, 2009 order.[10] ICE Trust also requested that Treasury grant certain supplemental exemptive relief to accommodate customer clearing.[11]

ICE Trust has stated that the existing order has allowed the financial industry to advance the goal of centralized clearing of CDS, and that allowing the order to expire could jeopardize this progress. It also states that the order should be extended because allowing it to expire would create uncertainty as to the regulatory status of cleared trades and clearing participants and that it would be premature to allow the order to expire at this stage in the

[1] *See* the SEC's Web site at *http://www.sec.gov* for the recent Securities Exchange Act Release. Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments. *See http://www.sec.gov.* The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

[2] Securities Exchange Act Release No. 34–59527 (March 6, 2009). Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments. *See http://www.sec.gov.* The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

[3] The term *government securities* is defined at 15 U.S.C. 78c(a)(42). As with the March 6, 2009 order, Treasury is not making a determination in this order as to whether particular CDS are ''government securities.''

[4] 74 FR 10647, March 11, 2009, Order Granting Temporary Exemptions from Certain Provisions of the Government Securities Act and Treasury's Government Securities Act Regulations in Connection with a Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments (March 6, 2009 order).

[5] For purposes of this Order, *ICE Trust Participant* means any participant in ICE Trust that submits CDS that reference a government security to ICE Trust for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the participant in ICE Trust.

[6] As used in this order, *registered or noticed government securities brokers and government securities dealers* encompass all brokers, dealers, and entities required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. The GSA regulations apply to all classes of government securities brokers and government securities dealers required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. This encompasses registered brokers and dealers (including OTC derivatives dealers), registered government securities brokers and registered government securities dealers (those specialized government securities brokers and government securities dealers that conduct a business in only government or other exempted securities (other than municipal securities)), and financial institutions that are required to file notice as government securities brokers and government securities dealers. The GSA regulations also address futures commission merchants that are government securities brokers or government securities dealers, but these entities are not covered in this order.

[7] ECPs are defined in Section 1a(12) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* The use of the term ECPs in this order refers to the definition of ECPs in effect on the date of this order, and excludes persons that are ECPs under Section 1a(12)(C). The temporary exemptions provided to ECPs in this order also apply to interdealer brokers that are ECPs.

[8] 17 CFR Chapter IV parts 400–405, and 449 were issued under Section 15C(a), (b), and (d) of the Exchange Act.

[9] For purposes of this order, *cleared CDS* means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to ECPs (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this order (other than a person that is an ECP under paragraph (C) of that section)), and that references a government security.

[10] *See* Letter from Kevin McClear, ICE Trust U.S. LLC, to the Commissioner of the Public Debt, Van Zeck, December 3, 2009, available at *http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

[11] *Id.* ICE Trust's request includes a discussion of and request for supplemental exemptive relief to include Client Member Transactions and the Non-Member Framework, as well as a request for an exemption to Clearing Members in connection with the receiving or holding of funds or securities from other persons.

development of ICE and ICE Trust, given the goal to expand the availability of CDS clearing.

ICE Trust's request described how ICE Trust currently clears CDS and how the proposed arrangements for central clearing of customers' CDS transactions would operate. The request also made representations about the safeguards associated with those arrangements. Since it began operation, ICE Trust has been subject to examination by the New York State Banking Department, the Federal Reserve Bank of New York, and the SEC. ICE Trust states that these examinations have addressed numerous aspects of ICE Trust's activities, including compliance with safety and soundness requirements.

ICE Trust has cleared through acceptance and novation the proprietary CDS transactions of its clearing members since March 9, 2009. As of October 30, 2009, ICE Trust represents that it had cleared approximately $2.6 trillion notional amount of CDS contracts based on indices of securities. ICE Trust also intends to clear single-name CDS contracts based on individual reference entities or securities.

Treasury finds that the circumstances upon which it issued the March 6, 2009 order, including the need for increasing transparency and mitigation of potential systemic risk, still exist. Therefore, Treasury believes that continuing the temporary exemptions given in that order is warranted and appropriate. Treasury believes that applying the GSA requirements to certain CDS market participants that are not registered or noticed government securities brokers or government securities dealers could deter some of them from using ICE Trust to clear CDS transactions where the CDS references a government security, and thereby reduce the potential systemic risk mitigation and other benefits of central clearing.

Treasury continues to balance the need to avoid creating disincentives to the prompt use of CCPs against the critical importance of certain government securities broker and government securities dealer requirements in promoting market integrity and protecting customers. Moreover, Treasury agrees that it would be premature to allow the exemptions to expire given ICE Trust's stage of development. For similar reasons, Treasury believes that the full range of GSA requirements generally should not be applied immediately to government securities brokers and government securities dealers that engage in transactions involving CDS that reference a government security.

Treasury bases this extension of the order on the facts and circumstances presented and representations made by ICE Trust in the request. Treasury relies on these facts and representations in granting this temporary exemption.

Accordingly, pursuant to Section 15C(a)(5) of the Exchange Act, the Secretary finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to extend the temporary exemptions granted in the March 6, 2009 order until March 7, 2010. Consistent with the original order, the extension of the temporary exemptions does not apply to financial institution government securities brokers and government securities dealers. They should continue to comply with existing rules. In issuing this extension, Treasury has consulted with and considered the views of the staffs of the SEC, the Commodity Futures Trading Commission, and the appropriate regulatory agencies for financial institutions.[12]

Since Treasury is in the process of finalizing action with regard to ICE Trust's request that Treasury grant supplemental relief to permit an expansion of its clearing services to include the clearance of the CDS transactions of its clearing members' customers, this order only extends the exemptions granted in the March 6, 2009 order.

Conclusion

It is hereby ordered, pursuant to Section 15C(a)(5) of the Exchange Act, that the order Treasury issued effective March 6, 2009 (74 FR 10647, March 11, 2009) is amended by replacing the expiration date of December 6, 2009, with a new expiration date of March 7, 2010, and in all other respects that order remains in effect.

The temporary exemptions contained in this order are based on the facts and circumstances presented in the request. These temporary exemptions could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate. If the SEC were to withdraw its order or modify the terms of its order, Treasury may revoke or modify this order accordingly. The status of cleared CDS submitted to ICE Trust prior to such change would be unaffected.

Michael S. Barr,

Acting Under Secretary for Domestic Finance.

[FR Doc. E9–29210 Filed 12–3–09; 4:15 pm]

BILLING CODE 4810–39–P

[12] The definition of *appropriate regulatory agency* with respect to a government securities broker or a government securities dealer is set out at 15 U.S.C. 78c(a)(34)(G). The definition includes the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of Thrift Supervision, and, in limited circumstances, the SEC.

Federal Register

Monday,
December 7, 2009

Part II

Regulatory Information Service Center

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

REGULATORY INFORMATION SERVICE CENTER

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

AGENCY: Regulatory Information Service Center.

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

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

Editions of the Unified Agenda prior to fall 2007 were printed in their entirety in the **Federal Register**. Beginning with the fall 2007 edition, the Internet is the basic means for conveying Regulatory Agenda information to the maximum extent legally permissible. The complete Unified Agenda for fall 2009, including **The Regulatory Plan**, is available to the public at **http://reginfo.gov**.

The fall 2009 Unified Agenda publication appearing in the **Federal Register** consists of **The Regulatory Plan** and agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules which are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

The complete fall 2009 Unified Agenda contains the plans of 27 Federal agencies and the regulatory agendas for these and 32 other Federal agencies.

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

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

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

risc@gsa.gov

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

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

The Regulatory Plan serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. The Plan is part of the fall edition of the Unified Agenda. Each participating agency's regulatory plan contains: (1) A narrative statement of the agency's regulatory priorities and, for most agencies, (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 27 agencies.

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

The fall 2009 Unified Agenda publication appearing in the **Federal Register** consists of **The Regulatory Plan** and agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules which are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at **http://reginfo.gov**.

These publication formats meet the publication mandates of the Regulatory Flexibility Act and Executive Order 12866, as well as move the Agenda process toward the goal of e-Government, at a substantially reduced printing cost compared with prior editions. The current format does not reduce the amount of information available to the public, but it does limit most of the content of the Agenda to online access. The complete online edition of the Unified Agenda includes regulatory agendas from 59 Federal agencies. Agencies of the United States Congress are not included.

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

Department of Defense *

Department of Education *

Department of Housing and Urban Development *

Department of State

Department of Veterans Affairs *

Agency for International Development

Architectural and Transportation Barriers Compliance Board

Commission on Civil Rights

Commodity Futures Trading Commission

Committee for Purchase From People Who Are Blind or Severely Disabled

Consumer Product Safety Commission

Corporation for National and Community Service

Court Services and Offender Supervision Agency for the District of Columbia

Equal Employment Opportunity Commission *

Farm Credit Administration

Farm Credit System Insurance Corporation

Federal Deposit Insurance Corporation

Federal Energy Regulatory Commission

Federal Housing Finance Agency

Federal Maritime Commission *

Federal Mediation and Conciliation Service

Federal Trade Commission *

Institute of Museum and Library Services

National Aeronautics and Space Administration *

National Archives and Records Administration *

National Endowment for the Arts

National Endowment for the Humanities

National Indian Gaming Commission *

National Science Foundation

Office of Government Ethics

Office of Management and Budget

Office of Personnel Management *

Peace Corps

Pension Benefit Guaranty Corporation *

Postal Regulatory Commission *

Railroad Retirement Board

Recovery Accountability and Transparency Board

Selective Service System

Social Security Administration *

Surface Transportation Board

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

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

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

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

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

Regulatory Flexibility Act

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

Executive Order 12866

Executive Order 12866 entitled ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735) requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their ''most important significant regulatory actions,'' which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

Executive Order 13132

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13211

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

Small Business Regulatory Enforcement Fairness Act

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

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

The Regulatory Plan appears in part II of a daily edition of the **Federal Register**. The Plan is a single document beginning with an introduction, followed by a table of contents, followed by each agency's section of the Plan. Following the Plan in the **Federal Register**, as separate parts, are the regulatory flexibility agendas for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are

organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority (Agenda only); and independent regulatory agencies. Agencies may in turn be divided into subagencies. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

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

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

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

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

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

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

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

IV. What Information Appears for Each Entry?

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

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

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

(1) Economically Significant

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

(2) Other Significant

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

(3) Substantive, Nonsignificant

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

(4) Routine and Frequent

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

(5) Informational/Administrative/Other

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

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

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

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

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

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

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

Timetable — the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date printed in the form 08/00/10 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is ''To Be Determined.'' ''Next Action Undetermined'' indicates the agency does not know what action it will take next.

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

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

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

International Impacts — whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation's international trading partners.

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

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

Some agencies have provided the following optional information:

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Abbreviations

The following abbreviations appear throughout this publication:

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

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

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

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

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

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

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

PL (or Pub. L.) — A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 111-5 is the fifth public law of the 111th Congress.

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

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

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

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

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

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

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

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since fall 1995 are available in electronic form at **http://reginfo.gov**. This site currently offers flexible search tools for recent editions. By early 2010, searchable access to the entire historic Unified Agenda database back to 1983 will be added to the site.

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

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

Dated: November 18, 2009.

John C. Thomas,

Executive Director.

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

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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

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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

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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.

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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.

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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.

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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

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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

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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

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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.

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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.

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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BILLING CODE 4000–01–S

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory and Deregulatory Priorities

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

- Promote dependable, affordable and environmentally sound production and distribution of energy;
- 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

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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/

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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.

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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

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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

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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

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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.

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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

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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

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Related RIN: Related to 1210–AB30, Related to 1545–BI70

RIN: 0938–AP65

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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RIN: 1652–AA61

DHS—TSA

FINAL RULE STAGE

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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

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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

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Related RIN: Related to 1653–AA42

RIN: 1653–AA44

DHS—USICE

FINAL RULE STAGE

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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

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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

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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/

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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

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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.

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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

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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

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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

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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

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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.

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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).

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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.

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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.

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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.

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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

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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

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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:

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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:

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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/

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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/

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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

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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

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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

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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

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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

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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

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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

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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/

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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

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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

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BILLING CODE 6570–01–S

GENERAL SERVICES ADMINISTRATION (GSA)

Statement of Regulatory and Deregulatory Priorities

The General Services Administration (GSA) establishes agency acquisition rules and guidance through the General Services Acquisition Regulation (GSAR), which contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

GSA's fiscal year 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

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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

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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

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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

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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

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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

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BILLING CODE 8025–01–S

SOCIAL SECURITY ADMINISTRATION (SSA)

Statement of Regulatory Priorities

The Social Security Administration (SSA) administers the Retirement, Survivors, and Disability Insurance programs under title II of the Social Security Act (the Act), the Supplemental Security Income (SSI) program under title XVI of the Act and the Special Veterans Benefits 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

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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

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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

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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

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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:

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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:

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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:

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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

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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

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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

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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

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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:

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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

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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.

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[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

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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

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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:

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RIN: 3211–AA05

BILLING CODE 7710–FW–S

Federal Register

Monday,
December 7, 2009

Part III

Department of Agriculture

Semiannual Regulatory Agenda

DEPARTMENT OF AGRICULTURE (USDA)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A, Chs. I-VII, IX-XII, XIV-XVIII, XXI, XXIV-XXIX

9 CFR Chs. I-IV

36 CFR Ch. II

41 CFR Ch. 4

Semiannual Regulatory Agenda, Fall 2009

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Order 12866 ''Regulatory Planning and Review.'' The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96-354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA's complete regulatory agenda is available online at www.reginfo.gov. Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA's printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

For this edition of the USDA regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online regulatory agenda and in part II of the **Federal Register** that includes the abbreviated regulatory agenda**.**

For this fall 2009 edition, regulations previously developed by the former Cooperative State Research, Education, and Extension Service (CSREES) will now appear under the new National Institute of Food and Agriculture (NIFA).

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-1272.

Dated: September 18, 2009.

Michael Poe,

Chief, Legislative and Regulatory Staff.

Agricultural Marketing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
179	National Organic Program: Dairy Replacement Animals (Livestock)	0581–AC69
180	National Organic Program, Sunset (2011) (Crops and Processing) (TM-07-14)	0581–AC77

Agricultural Marketing Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
181	National Organic Program: Access to Pasture **(Reg Plan Seq No. 1)**	0581–AC57
182	National Dairy Promotion and Research Program; Final Rule on Amendments to the Order **(Reg Plan Seq No. 2)**	0581–AC87
183	National Organic Program—Amendments to the National List (Crops, Livestock, and Processing) TM-08-06	0581–AC91

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Agricultural Marketing Service—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
184	National Organic Program: Add Standards for the Organic Certification of Wild Captured Aquatic Animals, TM-01-08	0581–AB97

USDA

Agricultural Marketing Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
185	Mushroom Promotion, Research and Consumer Information Order (FV-08-702)	0581–AC82

Farm Service Agency—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
186	Emergency Forest Restoration Program	0560–AH89
187	Biomass Crop Assistance Program	0560–AH92
188	Farm Loan Programs Loan Making Activities	0560–AI03
189	Conservation Loan Guarantee Program	0560–AI04

Farm Service Agency—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
190	Loan Servicing; Farm Loan Programs	0560–AI05

Animal and Plant Health Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
191	Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs **(Rulemaking Resulting From a Section 610 Review)**	0579–AB24
192	Animal Welfare; Regulations and Standards for Birds **(Reg Plan Seq No. 3)**	0579–AC02
193	Tuberculosis in Cattle; Import Requirements for Roping Steers	0579–AC50
194	Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products **(Reg Plan Seq No. 4)**	0579–AC68
195	Importation of Grapes From Chile Under a Systems Approach	0579–AC82
196	Scrapie in Sheep and Goats	0579–AC92
197	Plant Pest Regulations; Update of General Provisions	0579–AC98

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Animal and Plant Health Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
198	Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Unsealing of Means of Conveyance and Transloading of Products	0579–AB97
199	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) (Reg Plan Seq No. 5)**	0579–AC03
200	National Veterinary Accreditation Program **(Rulemaking Resulting From a Section 610 Review)**	0579–AC04
201	Citrus Canker; Compensation for Certified Citrus Nursery Stock	0579–AC05
202	Agricultural Inspection and AQI User Fees Along the U.S./Canada Border	0579–AC06
203	Citrus Canker; Quarantine of the State of Florida	0579–AC07
204	Importation of Poultry and Poultry Products From Regions Affected With Highly Pathogenic Avian Influenza	0579–AC36
205	Light Brown Apple Moth Quarantine	0579–AC71
206	Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish	0579–AC74
207	Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations	0579–AC85
208	Sirex Woodwasp; Quarantine and Regulations	0579–AC86

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

USDA

Animal and Plant Health Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
209	Phytosanitary Certificates for Imported Fruits and Vegetables	0579–AB18
210	Foot-and-Mouth Disease; Payment of Indemnity	0579–AB34
211	Tuberculosis in Cattle; Import Requirements **(Section 610 Review)**	0579–AB44
212	Phytophthora Ramorum; Quarantine and Regulations	0579–AB82
213	Boll Weevil; Quarantine and Regulations	0579–AB91
214	Minimum Age Requirements for the Transport of Animals	0579–AC14
215	Introduction of Organisms and Products Altered or Produced Through Genetic Engineering	0579–AC31
216	Animal Welfare; Climatic and Environmental Conditions for Transportation of Warm-Blooded Animals Other Than Marine Mammals	0579–AC41
217	Importation of Cattle From Mexico; Addition of Port at San Luis, Arizona	0579–AC63
218	Handling of Animals; Contingency Plans	0579–AC69

Animal and Plant Health Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
219	Plant Pest Regulations; Update of Current Provisions **(Completion of a Section 610 Review)**	0579–AA80
220	Standards for Permanent, Privately Owned Horse Quarantine Facilities **(Completion of a Section 610 Review)**	0579–AC00
221	User Fees; Export Certification for Plants and Plant Products	0579–AC22
222	Pale Cyst Nematode; Quarantine and Regulations	0579–AC54
223	Bovine Tuberculosis	0579–AC73
224	Citrus Canker; Movement of Fruit From Quarantined Areas	0579–AC96
225	User Fees for Agricultural Quarantine and Inspection Services	0579–AC99

Rural Housing Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
226	Guaranteed Single-Family Housing	0575–AC18

Food Safety and Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
227	Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Products **(Reg Plan Seq No. 23)**	0583–AC46
228	Federal-State Interstate Shipment Cooperative Inspection Program **(Reg Plan Seq No. 24)**	0583–AD37

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Forest Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
229	Special Areas; State-Specific Inventoried Roadless Area Management: Colorado	0596–AC74

USDA

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
230	Voluntary Labeling Program for Designated Biobased Products	0503–AA35
231	Designation of Biobased Items for Federal Procurement, Round 7	0503–AA36

Rural Business-Cooperative Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
232	Renewable Energy—Clarify Requirements for Construction/Development of Energy Program Projects **(Rulemaking Resulting From a Section 610 Review)**	0570–AA69

BILLING CODE 3410–90–S

Department of Agriculture (USDA)

Proposed Rule Stage

Agricultural Marketing Service (AMS)

179. NATIONAL ORGANIC PROGRAM: DAIRY REPLACEMENT ANIMALS (LIVESTOCK)

Legal Authority: 7 USC 6501

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 products. Since implementation of the NOP, some members of the public have advocated for amending the regulations for sourcing dairy replacement animals. They have asserted that the current regulatory language on sourcing dairy replacement animals lacks clarity, has established an inequitable two track system, and has harmed organic dairy producers by creating an environment that has prevented the development of a market for organic dairy replacement animals. They seek amendment to the regulations to require that once a dairy operation has converted to organic production all future animals be organic from the last third of gestation.

Timetable:

Action	Date	FR Cite
NPRM	06/00/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AC69

180. NATIONAL ORGANIC PROGRAM, SUNSET (2011) (CROPS AND PROCESSING) (TM–07–14)

Legal Authority: 7 USC 6501

Abstract: The Agricultural Marketing Service (AMS) is amending regulations pertaining to the National List of Allowed and Prohibited Substances. As required by the National Organic Foods Production Act of 1990, the allowed use of the 12 synthetic and non-synthetic substances in organic production and handling will expire on September 12, 2011. The AMS published an advance notice of proposed rulemaking to make the public aware of this requirement. AMS believes that public comment is essential in the review process to determine whether these substances should continue to be allowed or prohibited in the production and handling of organic agricultural products.

Timetable:

Action	Date	FR Cite
ANPRM	03/14/08	73 FR 13795
ANPRM Comment Period End	05/13/08	
NPRM	10/00/10	
Final Action	08/00/11	

Regulatory Flexibility Analysis Required: Yes

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
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Email: richard.mathews@usda.gov

RIN: 0581–AC77

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)

Final Rule Stage

181. NATIONAL ORGANIC PROGRAM: ACCESS TO PASTURE

Regulatory Plan: This entry is Seq. No. 1 in part II of this issue of the **Federal Register**.

RIN: 0581–AC57

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

Regulatory Plan: This entry is Seq. No. 2 in part II of this issue of the **Federal Register**.

RIN: 0581–AC87

183. • NATIONAL ORGANIC PROGRAM—AMENDMENTS TO THE NATIONAL LIST (CROPS, LIVESTOCK, AND PROCESSING) TM–08–06

Legal Authority: 7 USC 6517 and 6518

Abstract: The Agricultural Marketing Service is amending the National List of Allowed and Prohibited Substances contained in the National Organic Program regulations. This rule would add six new substances and remove one from the list.

Timetable:

Action	Date	FR Cite
NPRM	06/03/09	74 FR 26591
NPRM Comment Period End	08/03/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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
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Email: richard.mathews@usda.gov

RIN: 0581–AC91

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)

Long-Term Actions

184. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR THE ORGANIC CERTIFICATION OF WILD CAPTURED AQUATIC ANIMALS, TM–01–08

Legal Authority: 7 USC 6501 to 6522

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

Timetable:

Action	Date	FR Cite
ANPRM	12/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Richard H. Mathews
Phone: 202 720–3252
Fax: 202 205–7808
Email: richard.mathews@usda.gov

RIN: 0581–AB97

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)

Completed Actions

185. MUSHROOM PROMOTION, RESEARCH AND CONSUMER INFORMATION ORDER (FV–08–702)

Legal Authority: 7 USC 6101 to 6112

Abstract: The Farm Bill of 2008 amended the Mushroom Promotion, Research and Consumer Information Act of 1990 by changing the number of regions for nominations purposes from four to three; adjusting the number of pounds required to appoint members to the Mushroom Council; and to allow for the development of good agricultural and good handling practices.

Completed:

Reason	Date	FR Cite
NPRM	04/07/09	74 FR 15677
Second NPRM	06/05/09	74 FR 26984
Second NPRM Comment Period End	07/17/09	
Final Action	10/02/09	74 FR 50915
Final Action Effective	10/05/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Sonia Jimenez
Phone: 202 720–9915
Fax: 202 205–2800
Email: sonia.jimenez@usda.gov

RIN: 0581–AC82

BILLING CODE 3410–02–S

Department of Agriculture (USDA)
Farm Service Agency (FSA)

Proposed Rule Stage

186. EMERGENCY FOREST RESTORATION PROGRAM

Legal Authority: PL 110–246

Abstract: We are adding a new subpart to the regulations in 7 CFR part 701 to implement the Emergency Forest Restoration Program (EFRP), which was authorized by the 2008 Farm Bill. EFRP will provide cost-share funding to owners of nonindustrial private forest land to restore the land after the land is damaged by a natural disaster. The damaged land must have had a tree cover immediately before the natural disaster. The 2008 Farm Bill authorized such funds as may be necessary to be appropriated to carry out this program; the appropriated amounts are to remain available until expended.

Timetable:

Action	Date	FR Cite
NPRM	10/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

RIN: 0560–AH89

187. BIOMASS CROP ASSISTANCE PROGRAM

Legal Authority: PL 110–246

Abstract: We are adding a new regulation to implement the Biomass Crop Assistance Program (BCAP) as required by the 2008 Farm Bill. We will collaborate with USDA/Rural Development (RD), private industry, agricultural and forest land owners to support the evaluation and selection of BCAP project areas. BCAP project areas must include a commitment to use local production; evidence of sufficient equity (if the facility is not operational at the time of proposal); anticipated economic impacts; opportunities for local ownership; the participation rate by beginning and socially disadvantaged farmers and ranchers; the impact on soil, water, and related resources; and the variety in biomass production approaches. FSA will partner with RD, which has capability and responsibility, including the potential for providing funding for proposed biomass conversion facility, regarding BCAP project area evaluation and selection. After BCAP project area selection, FSA, acting on behalf of the Commodity Credit Corporation (CCC), may enter into contracts with BCAP project area producers for a term of up to 5 years for annual and perennial crops and up to 15 years for woody biomass.

Timetable:

Action	Date	FR Cite
Notice	10/01/08	73 FR 57047
Notice–EIS	05/13/09	
Notice Comment Period End	06/12/09	
Notice–NOFA	06/11/09	74 FR 27767
Notice Comment Period End	08/10/09	
Notice–EIS	08/10/09	74 FR 39915
Notice Comment Period End	09/24/09	
NPRM	12/00/09	
Final Rule	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

RIN: 0560–AH92

188. FARM LOAN PROGRAMS LOAN MAKING ACTIVITIES

Legal Authority: PL 110–246

Abstract: The rule will implement the provisions of the 2008 Farm Bill that affect Farm Loan Programs (FLP) Loan Making Division (LMD); there is discretion involved in the implementation. The sections being implemented are: 5001, Direct Loans; 5005, Beginning Farmer or Rancher and Socially Disadvantaged Farmer or Rancher Contract Land Sales Program Down Payment Loan Program; 5101, Farming Experience as an Eligibility Requirement; 5201, Eligibility of Equine Farmers and Ranchers for Emergency Loans; 5301, Beginning Farmer and Rancher Individual Development Accounts Pilot Program; and 5501, Loans to Purchase Highly Fractionated Land. A Beginning Farmer and Rancher Individual Development Accounts five-year pilot program will be established in at least 15 States. The program entails FSA making grants to qualified nonprofit organizations who then deliver the program to eligible participants. Grantees must match 50 percent of the grant received. Under the program, qualified, low-income beginning farmers or prospective beginning farmers would establish saving accounts with a monthly deposit plan administered by the grantees. The program funds must match the participants' deposits at a minimum of 100 percent and a maximum of 200 percent. Participants must use the savings account funds toward the purchase of farmland, livestock, or similar farm start-up/operating expenses. The program must be operated by and in conjunction with FSA farm loan programs. The initial applications for the program must be approved no more than one year after the law is enacted. The program is not mandatory; an appropriation of up to $5 million annually is authorized to fund the program.

Individual tribal members will be allowed to qualify for Indian Land Acquisition loans.

Timetable:

Action	Date	FR Cite
NPRM	11/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

RIN: 0560–AI03

189. CONSERVATION LOAN GUARANTEE PROGRAM

Legal Authority: PL 110–246

Abstract: The rule will implement the provisions of the 2008 Farm Bill that affect Farm Loan Programs (FLP) Loan Making Division (LMD); there is discretion in how several of the provisions are implemented. The section being implemented is 5002, Conservation Loan and Loan Guarantee. Implementation of this provision will

USDA—FSA **Proposed Rule Stage**

create a new direct and guaranteed loan program directed at assisting farmers in implementing conservation practices.

The rule establishes a new loan and loan guarantee program to finance qualifying conservation projects. All guarantees will be at 75 percent of the loan amount. The applicant must have an acceptable conservation plan that includes the project(s) to be financed. Preference is given to beginning farmer and socially disadvantaged applicants, conversion to sustainable or organic production practices, and compliance with highly erodible land conservation requirements. Eligibility for the program is not restricted to those who cannot get credit elsewhere. The program is not mandatory; appropriations are authorized.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
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Email: deirdre.holder@wdc.usda.gov

RIN: 0560–AI04

Department of Agriculture (USDA)
Farm Service Agency (FSA)

Final Rule Stage

190. LOAN SERVICING; FARM LOAN PROGRAMS

Legal Authority: PL 110–246

Abstract: The 2008 Farm Bill requires several changes to the Farm Service Agency (FSA) Farm Loan Program (FLP) loan servicing regulations. An overall plan will be established to insure that borrowers can be transitioned to private credit in the shortest timeframe practicable. At present, FSA monitors the status of all borrowers to determine if graduation is possible. The 2008 Farm Bill emphasizes this responsibility and insures that FSA uses all the tools available to graduate borrowers to commercial credit as soon as they can financially do so. In 2007, over 2,500 direct borrowers (about 3.7 percent of the portfolio) graduated to commercial credit. FSA believes graduation will continue in the 3 to 5 percent range and is dependant on the overall farm economy.

The right of an FSA borrower-owner to purchase leased property under Homestead Protection will be extended beyond the borrower-owner to the immediate family. Currently, FSA only has 38 properties in Homestead Protection.

Acceleration and foreclosure will be suspended on borrowers who file a claim of program discrimination against the Department or have a claim pending. Interest accrual and offset will also be suspended during the time of the moratorium. If the borrower does not prevail in the claim, the interest, which would have accrued during the moratorium will be due and offset on the account will be reestablished.

Timetable:

Action	Date	FR Cite
NPRM	08/07/09	74 FR 39565
NPRM Comment Period End	10/06/09	
Final Rule	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

RIN: 0560–AI05

BILLING CODE 3410–05–S

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Proposed Rule Stage

191. ANIMAL WELFARE: MARINE MAMMALS; NONCONSENSUS LANGUAGE AND INTERACTIVE PROGRAMS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Legal Authority: 7 USC 2131 to 2159

Abstract: The U.S. Department of Agriculture regulates the humane handling, care, treatment, and transportation of certain marine mammals under the Animal Welfare Act. The present standards for these animals have been in effect since 1979 and amended in 1984. During this time, advances have been made and new information has been developed with regard to the housing and care of marine mammals. This rulemaking addresses marine mammal standards on which consensus was not reached during negotiated rulemaking conducted between September 1995 and July 1996. These include standards affecting variances, indoor facilities, outdoor facilities, space requirements, and water quality, as well as swim-with-the-dolphin programs. These actions appear necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

Timetable:

Action	Date	FR Cite
ANPRM	05/30/02	67 FR 37731
ANPRM Comment Period End	07/29/02	
NPRM	12/00/09	
NPRM Comment Period End	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700

River Road, Unit 84, Riverdale, MD 20737–1234
Phone: 301 734–7833

RIN: 0579–AB24

192. ANIMAL WELFARE; REGULATIONS AND STANDARDS FOR BIRDS

Regulatory Plan: This entry is Seq. No. 3 in part II of this issue of the **Federal Register**.

RIN: 0579–AC02

193. TUBERCULOSIS IN CATTLE; IMPORT REQUIREMENTS FOR ROPING STEERS

Legal Authority: 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

Abstract: This document will withdraw a proposed rule that we published on August 24, 2004 (69 FR 51960 to 51962, APHIS Docket No. 03-081-3). In our August 2004 proposed rule, we proposed to require that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States. Instead of proposing provisions specific to cattle imported for use at rodeos, as our August 2004 proposal did, APHIS is considering broader changes to the tuberculosis regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/20/04	69 FR 43283
Interim Final Rule Effective	08/19/04	
Interim Final Rule Comment Period End	09/20/04	
Interim Rule; Withdrawal	08/12/04	69 FR 49783
Interim Rule; Withdrawal Effective	08/12/04	
NPRM	08/24/04	69 FR 51960
NPRM Comment Period End	10/25/04	
NPRM; Withdrawal	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Francisco Collazo–Mattei, Assistant Director, Ruminant Health Programs, National Center for Animal Health Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 43, Riverdale, MD 20737
Phone: 301 734–6954

RIN: 0579–AC50

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

Regulatory Plan: This entry is Seq. No. 4 in part II of this issue of the **Federal Register**.

RIN: 0579–AC68

195. IMPORTATION OF GRAPES FROM CHILE UNDER A SYSTEMS APPROACH

Legal Authority: 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a

Abstract: We are proposing two changes related to our proposed rule published in the Federal Register on August 27, 2008, that would amend the fruit and vegetable regulations to allow fresh table grapes from Chile to be imported into the continental United States under a systems approach. Currently as a condition of entry, all table grapes from Chile have to be fumigated with methyl bromide as a risk-mitigation measure for Brevipalpus chilensis. On August 27, 2008, we proposed to allow a combination of risk-mitigation measures, or systems approach, to be employed in lieu of methyl bromide fumigation for B. chilensis. However, there is a new quarantine pest of table grapes, Lobesia botrana, in Chile, and the proposed systems approach does not address and was not intended to mitigate the risk for this pest. Therefore, this supplemental proposed rule modifies the proposed systems approach so that it is effective for L. botrana. Alternatively, it would require Chilean grapes that do not meet the conditions of the systems approach for L. botrana to be fumigated with methyl bromide as a condition of their importation into the continental United States.

Timetable:

Action	Date	FR Cite
NPRM	08/27/08	73 FR 50577
NPRM Comment Period End	10/27/08	
Supplemental NPRM	12/00/09	
Supplemental NPRM Comment Period End	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Charisse Cleare, Regulatory Coordination Specialist, Regulations, Permits & Manuals, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 156, Riverdale, MD 20737
Phone: 301 734–0773

RIN: 0579–AC82

196. SCRAPIE IN SHEEP AND GOATS

Legal Authority: 7 USC 8301 to 8317

Abstract: This rulemaking would amend the scrapie regulations by changing the risk groups and categories established for individual animals and for flocks, increasing the use of genetic testing as a means of assigning risk levels to animals, reducing movement restrictions for animals found to be genetically less susceptible or resistant to scrapie, and simplifying, reducing, or removing certain recordkeeping requirements. This action would provide designated scrapie epidemiologists with more alternatives and flexibility when testing animals in order to determine flock designations under the regulations. It would change the definition of high-risk animal, which will change the types of animals eligible for indemnity, and to pay higher indemnity for certain pregnant ewes and early maturing ewes. It would also make the identification and recordkeeping requirements for goat owners consistent with those for sheep owners. These changes would affect sheep and goat producers and State governments.

Timetable:

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

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Diane Sutton, National Scrapie Program Coordinator, Ruminant Health Programs, NCAHP, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 43, Riverdale, MD 20737–1235

USDA—APHIS **Proposed Rule Stage**

Phone: 301 734–6954

RIN: 0579–AC92

197. ● PLANT PEST REGULATIONS; UPDATE OF GENERAL PROVISIONS

Legal Authority: 7 USC 450; 7 USC 2260; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 19 USC 136; 21 USC 111; 21 USC 114a; 21 USC 136 and 136a; 31 USC 9701; 42 USC 4331 to 4332

Abstract: We are proposing to revise our regulations regarding the movement of plant pests. We are proposing to regulate not only plant pests, but also biological control organisms and noxious weeds. We are proposing risk-based criteria for determining the plant pest status of biological control organisms, providing for the environmental release of organisms for the biological control of weeds, providing for exemption from permit requirements for certain plant pests, and adding relevant definitions. We are also proposing to revise our regulations regarding the movement of soil. These proposed changes would clarify the factors that would be considered when assessing the risks associated with certain organisms, facilitate the importation and interstate movement of regulated organisms, provide transparency of the assessment process, and address gaps in the current regulations.

Timetable:

Action	Date	FR Cite
Notice of Intent to Prepare an Environmental Impact Statement	10/20/09	74 FR 53673
Notice Comment Period End	11/19/09	
NPRM	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Robert Flanders, Senior Technical Advisor, Plant Health Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 131, Riverdale, MD 20737–1236
Phone: 301 734–0858

RIN: 0579–AC98

Department of Agriculture (USDA) — Final Rule Stage
Animal and Plant Health Inspection Service (APHIS)

198. BOVINE SPONGIFORM ENCEPHALOPATHY; MINIMAL–RISK REGIONS AND IMPORTATION OF COMMODITIES; UNSEALING OF MEANS OF CONVEYANCE AND TRANSLOADING OF PRODUCTS

Legal Authority: 7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701; 42 USC 4331 and 4332

Abstract: In a final rule published in the Federal Register on January 4, 2005, we amended the regulations regarding the importation of animals and animal products to establish a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States via live ruminants and ruminant products and byproducts, and added Canada to this category. We also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions. This rule will amend the regulations to broaden who is authorized to break seals on means of conveyances carrying certain ruminants of Canadian origin. Additionally, it will amend the regulations regarding the transiting through the United States of certain ruminant products from Canada to allow for direct transloading of the products from one means of conveyance to another in the United States under Federal supervision. These actions will contribute to the humane treatment of ruminants shipped to the United States from Canada and remove an impediment to international trade, without increasing the risk of the BSE disease agent entering the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/28/05	70 FR 71213
Interim Final Rule Comment Period End	01/27/06	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Karen A. James–Preston, Director, Technical Trade Services, Animal Products, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, MD 20737–1231
Phone: 301 734–4356

RIN: 0579–AB97

199. 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)

Regulatory Plan: This entry is Seq. No. 5 in part II of this issue of the **Federal Register**.

RIN: 0579–AC03

200. NATIONAL VETERINARY ACCREDITATION PROGRAM (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Legal Authority: 7 USC 8301 to 8317; 15 USC 1828

Abstract: This rulemaking will amend the regulations regarding the National Veterinary Accreditation Program to establish two accreditation categories in place of the current single category, to add requirements for supplemental training and renewal of accreditation, and to offer accreditation specializations. These changes are intended to support the Agency's animal health safeguarding initiatives, to involve accredited veterinarians in integrated surveillance activities, and to make the provisions governing our National Veterinary Accreditation Program more uniform and consistent.

Timetable:

Action	Date	FR Cite
NPRM	06/01/06	71 FR 31109
NPRM Comment Period End	07/31/06	
Supplemental NPRM	02/27/07	72 FR 8634
Supplemental NPRM Comment Period End	04/30/07	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: No

Agency Contact: Todd Behre, Program Manager, National Veterinary Accreditation Program, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 46, Riverdale, MD 20737
Phone: 301 734–6188

RIN: 0579–AC04

201. CITRUS CANKER; COMPENSATION FOR CERTIFIED CITRUS NURSERY STOCK

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786

Abstract: This rulemaking will establish provisions under which eligible commercial citrus nurseries may, subject to the availability of appropriated funds, receive payments for certified citrus nursery stock destroyed to eradicate or control citrus canker. The payment of these funds is necessary in order to reduce the economic effects on affected commercial citrus nurseries that have had certified citrus nursery stock destroyed to control citrus canker.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/08/06	71 FR 33168
Interim Final Rule Effective	06/08/06	
Interim Final Rule Comment Period End	08/07/06	
Affirmation of Interim Final Rule	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 137, Riverdale, MD 20737–1231
Phone: 301 734–4387

RIN: 0579–AC05

202. AGRICULTURAL INSPECTION AND AQI USER FEES ALONG THE U.S./CANADA BORDER

Legal Authority: 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 49 USC 80503

Abstract: This action amended the foreign quarantine and user fee regulations by removing the exemptions from inspection for fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. As a result of this action, all agricultural products imported from Canada are subject to inspection, and commercial conveyances, as well as airline passengers arriving on flights from Canada, will be subject to inspection and user fees. We took this action in part because we were not recovering the costs of our inspection activities at the U.S./Canada border. In addition, our data showed an increasing number of interceptions on the U.S./Canada border of prohibited material that originated in regions other than Canada that presents a high risk of introducing plant pests or animal diseases into the United States. These findings, combined with additional Canadian airport preclearance data on interceptions of ineligible agricultural products approaching the U.S. border from Canada, strongly indicated that we needed to expand and strengthen our pest exclusion and smuggling interdiction efforts at that border. In order to do this and to recover the costs of our existing inspection activity, we need to collect user fees from commercial conveyances and international air passengers entering the United States from Canada.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/25/06	71 FR 50320
Interim Final Rule Comment Period End	11/24/06	
Interim Final Rule Effective	11/24/06	
Delay of Effective Date	11/22/06	71 FR 67436
Delay of Effective Date	02/26/07	72 FR 8261
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Cynthia Stahl, Senior Staff Officer, Quarantine Policy, Analysis, and Support, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 60, Riverdale, MD 20737
Phone: 301 734–8415

RIN: 0579–AC06

203. CITRUS CANKER; QUARANTINE OF THE STATE OF FLORIDA

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786

Abstract: This action amended the citrus canker regulations to list the entire State of Florida as a quarantined area for citrus canker and amended the requirements for the movement of regulated articles from Florida now that the eradication of citrus canker in Florida is no longer being carried out as an objective. It also amended the regulations to allow regulated articles that would not otherwise be eligible for interstate movement to be moved to a port for immediate export. These changes were necessary in light of the Department's determination that the established eradication program was no longer a scientifically feasible option to address citrus canker.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/01/06	71 FR 43345
Interim Final Rule Effective	08/01/06	
Interim Final Rule Comment Period End	10/02/06	
Technical Amendment	01/12/07	72 FR 1415
Final Action	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 137, Riverdale, MD 20737–1231
Phone: 301 734–4387

RIN: 0579–AC07

204. IMPORTATION OF POULTRY AND POULTRY PRODUCTS FROM REGIONS AFFECTED WITH HIGHLY PATHOGENIC AVIAN INFLUENZA

Legal Authority: 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a

USDA—APHIS **Final Rule Stage**

Abstract: This rulemaking will amend the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and bird and poultry products from regions that have reported the presence in commercial birds or poultry of highly pathogenic avian influenza other than subtype H5N1. This action will supplement existing prohibitions and restrictions on articles from regions that have reported the presence of exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1. The new restrictions will be almost identical to those imposed on articles from regions with exotic Newcastle disease.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/09	
Interim Final Rule Comment Period End	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Julia Punderson, Senior Staff Veterinarian, NCIE, Animal Health Policy and Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, MD 20737
Phone: 301 734–4356

RIN: 0579–AC36

205. LIGHT BROWN APPLE MOTH QUARANTINE

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786

Abstract: We are quarantining 10 counties in California and the entire State of Hawaii because of the light brown apple moth and restricting the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the light brown apple moth into noninfested areas of the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/09	
Interim Final Rule Comment Period End	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Deborah McPartlan, Staff Officer, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 134, Riverdale, MD 20737–1236
Phone: 301 734–5356

RIN: 0579–AC71

206. VIRAL HEMORRHAGIC SEPTICEMIA; INTERSTATE MOVEMENT AND IMPORT RESTRICTIONS ON CERTAIN LIVE FISH

Legal Authority: 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

Abstract: This rulemaking will establish regulations to restrict the interstate movement and importation into the United States of live fish that are susceptible to viral hemorrhagic septicemia, a highly contagious disease of certain fresh and saltwater fish. In 2005 and 2006, viral hemorrhagic septicemia was detected in freshwater fish in several of the Great Lakes and related tributaries. The disease has been responsible for several large-scale die-offs of wild fish in the Great Lakes region. This action is necessary to prevent further introductions into, and dissemination within, the United States of viral hemorrhagic septicemia.

Timetable:

Action	Date	FR Cite
Interim Final Rule (IFR)	09/09/08	73 FR 52173
Interim Final Rule Comment Period End	11/10/08	
IFR; Delay of Effective Date	10/28/08	73 FR 63867
Interim Final Rule Effective	01/09/09	
IFR; Delay of Effective Date	01/02/09	74 FR 1
Amended Interim Final Rule	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: P. Gary Egrie, Senior Staff Veterinary Medical Officer, National Center for Animal Health Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 46, Riverdale, MD 20737–1231
Phone: 301 734–6188

Peter Merrill, Senior Staff Veterinarian, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231
Phone: 301 734–8364

RIN: 0579–AC74

207. CITRUS GREENING AND ASIAN CITRUS PSYLLID; QUARANTINE AND INTERSTATE MOVEMENT REGULATIONS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

Abstract: This rulemaking will establish regulations that designate the State of Florida and one parish in Louisiana as quarantined areas for citrus greening, and Alabama, Florida, Guam, Hawaii, Puerto Rico, Louisiana, Mississippi, Texas, three counties in South Carolina, and portions of two counties in California as quarantined areas for Asian citrus psyllid, a vector of a bacterium that causes citrus greening. It would also establish restrictions on the interstate movement of regulated articles from the quarantined areas, as well as treatments under which Asian citrus psyllid host material may be moved interstate from a quarantined area. These actions follow the discovery of citrus greening and/or Asian citrus psyllid in the quarantined areas, and are necessary in order to prevent the spread of the disease and its vector to noninfested areas of the United States.

Timetable:

Action	Date	FR Cite
Availability of an Environmental Assessment	09/09/09	74 FR 46409
Environmental Assessment Comment Period End	11/09/09	
Interim Final Rule	01/00/10	
Interim Final Rule Comment Period End	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Patrick J. Gomes, National Project Coordinator, Citrus Health Response Program, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5213

USDA—APHIS **Final Rule Stage**

Phone: 919 855–7313

RIN: 0579–AC85

208. SIREX WOODWASP; QUARANTINE AND REGULATIONS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 to 136a

Abstract: This rulemaking will quarantine counties in Michigan, New Jersey, New York, Ohio, Pennsylvania, and Vermont because of the Sirex woodwasp and establish restrictions on the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest to noninfested areas of the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/09	
Interim Final Rule Comment Period End	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Lynn Evans–Goldner, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 137, Riverdale, MD 20737–1231
Phone: 301 734–7228

RIN: 0579–AC86

Department of Agriculture (USDA) — Long-Term Actions
Animal and Plant Health Inspection Service (APHIS)

209. PHYTOSANITARY CERTIFICATES FOR IMPORTED FRUITS AND VEGETABLES

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

Abstract: Currently APHIS does not require a phytosanitary certificate to accompany fruits and vegetables imported into the United States except for certain fruits and vegetables grown in designated foreign regions. This rule will require that a phytosanitary certificate accompany noncommercial consignments of fresh fruits and vegetables imported into the United States by air passengers.

Timetable:

Action	Date	FR Cite
NPRM	08/29/01	66 FR 45637
NPRM Comment Period End	10/29/01	
NPRM; Availability of Risk Assessment	05/24/06	71 FR 29846
NPRM; Availability of Risk Assessment Comment Period End	07/24/06	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Evelia Sosa
Phone: 301 734–8295

RIN: 0579–AB18

210. FOOT–AND–MOUTH DISEASE; PAYMENT OF INDEMNITY

Legal Authority: 7 USC 8301 to 8317

Abstract: This rule would amend the regulations for the cooperative control and eradication of foot-and-mouth disease (FMD) and other serious diseases, including both cooperative programs and extraordinary emergencies. The purpose of this rule is to remove possible sources of delay in eradicating foot-and-mouth disease, should an occurrence of that disease occur in this country, so that eligible claimants will be fully compensated while at the same time protecting the U.S. livestock population from the further spread of this highly contagious disease.

Timetable:

Action	Date	FR Cite
NPRM	05/01/02	67 FR 21934
NPRM Comment Period Extended	06/28/02	67 FR 43566
NPRM Comment Period End	07/01/02	
NPRM Comment Period End	07/31/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Mark Teachman
Phone: 301 734–8073

RIN: 0579–AB34

211. TUBERCULOSIS IN CATTLE; IMPORT REQUIREMENTS (SECTION 610 REVIEW)

Legal Authority: 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

Abstract: This rulemaking would amend the regulations regarding the importation of animals into the United States to establish several levels of risk classifications to be applied to foreign regions with regard to tuberculosis and to establish requirements governing the importation of cattle and captive bison based on each risk classification. These changes are necessary to help ensure that cattle and captive bison infected with tuberculosis are not imported into the United States.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kelly Rhodes
Phone: 301 734–4356

RIN: 0579–AB44

212. PHYTOPHTHORA RAMORUM; QUARANTINE AND REGULATIONS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786

Abstract: This action will amend the Phytophthora ramorum regulations to make the regulations consistent with a Federal Order issued by APHIS in December 2004 that established restrictions on the interstate movement of nursery stock from nurseries in nonquarantined counties in California, Oregon, and Washington. This action will also update conditions for the movement of regulated articles of nursery stock from quarantined areas, as well as restrict the interstate movement of all other nursery stock from nurseries in quarantined areas. We are also updating the list of plants regulated because of P. ramorum and the list of areas that are quarantined for P. ramorum and making other miscellaneous revisions to the regulations. These actions are necessary to prevent the spread of P. ramorum

to noninfested areas of the United States. We will continue to update the regulations through additional rulemakings as new scientific information on this pathogen becomes available.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/27/07	72 FR 8585
Interim Final Rule Effective	02/27/07	
Interim Final Rule Comment Period End	04/30/07	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Jonathan Jones
Phone: 301 734–8247

RIN: 0579–AB82

213. BOLL WEEVIL; QUARANTINE AND REGULATIONS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786

Abstract: This action would establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton producing States. The regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated.

Timetable:

Action	Date	FR Cite
NPRM	10/31/06	71 FR 63707
NPRM Comment Period End	01/02/07	
NPRM Comment Period Extended	12/20/06	71 FR 76224
NPRM Comment Period End	02/01/07	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: William Grefenstette
Phone: 301 734–8676

RIN: 0579–AB91

214. MINIMUM AGE REQUIREMENTS FOR THE TRANSPORT OF ANIMALS

Legal Authority: 7 USC 2131 to 2159

Abstract: This rulemaking would amend the Animal Welfare Act regulations by adding minimum age and weaning requirements for the transport in commerce of animals. The regulations currently contain such requirements for dogs and cats, but no corresponding ones for other regulated animals, despite the risks associated with the early transport of these species. The rule would also provide an exemption to allow animals to be transported without their mothers for medical treatment and for scientific research before reaching the minimum age and weaning requirement, provided certain conditions are met. Establishing minimum age requirements for the transport of animals and providing for the transport of animals that have not met the minimum age requirements are necessary to help ensure the humane treatment of these animals.

Timetable:

Action	Date	FR Cite
NPRM	05/09/08	73 FR 26344
NPRM Comment Period End	07/08/08	
NPRM Comment Period Reopened	07/31/08	73 FR 44671
NPRM Comment Period Extended	09/02/08	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Barbara Kohn
Phone: 301 734–7833

RIN: 0579–AC14

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

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786; 31 USC 9701

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

Timetable:

Action	Date	FR Cite
Notice of Intent to Prepare an Environmental Impact Statement	01/23/04	69 FR 3271
Comment Period End	03/23/04	
Notice of Availability of Draft Environmental Impact Statement	07/17/07	72 FR 39021
Comment Period End	09/11/07	
NPRM	10/09/08	73 FR 60007
NPRM Comment Period End	11/24/08	
Correction	11/10/08	73 FR 66563
NPRM Comment Period Reopened	01/16/09	74 FR 2907
NPRM Comment Period End	03/17/09	
NPRM; Notice of Public Scoping Session	03/11/09	74 FR 10517
NPRM Comment Period Reopened	04/13/09	74 FR 16797
NPRM Comment Period End	06/29/09	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: John Turner
Phone: 301 734–5720

RIN: 0579–AC31

216. ANIMAL WELFARE; CLIMATIC AND ENVIRONMENTAL CONDITIONS FOR TRANSPORTATION OF WARM–BLOODED ANIMALS OTHER THAN MARINE MAMMALS

Legal Authority: 7 USC 2131 to 2159

Abstract: This rulemaking would amend the Animal Welfare Act regulations regarding transportation of live animals other than marine mammals by removing the current ambient temperature requirements for various stages in the transportation of those animals. The action would replace those requirements with a single performance standard under which the animals would be transported under climatic and environmental conditions that are appropriate for their welfare. The regulations currently require that ambient temperatures be maintained within certain ranges during

transportation, but animals may be transported at ambient temperatures below the minimum temperatures if their consignor provides a certificate signed by a veterinarian certifying that the animals are acclimated to temperatures lower than the minimum temperature. This proposal would make acclimation certificates for live animals other than marine mammals unnecessary. This rule would replace a previously published proposed rule, which we are withdrawing as part of this document, that would have required that the acclimation certificate for a dog or cat be signed by the owner of the dog or cat being transported rather than by a veterinarian. This rulemaking does not address marine mammals due to their unique requirements for care and handling. We believe that establishing a single performance standard would ensure that warm-blooded animals other than marine mammals are transported in climatic and environmental conditions that are not detrimental to their welfare while allowing for variations in climatic and environmental conditions that are suitable for individual animals.

Timetable:

Action	Date	FR Cite
NPRM	01/03/08	73 FR 413
NPRM Comment Period End	03/03/08	
NPRM Comment Period Reopened	03/18/08	73 FR 14403
NPRM Comment Period End	04/17/08	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gerald Rushin
Phone: 301 734–0954

RIN: 0579–AC41

217. IMPORTATION OF CATTLE FROM MEXICO; ADDITION OF PORT AT SAN LUIS, ARIZONA

Legal Authority: 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

Abstract: This rulemaking will amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. A new facility for the handling of animals is to be constructed on the Mexican side of the border at the port of San Luis, AZ, that will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required for such cattle under the regulations. The rule will also amend the regulations to remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas. The statutory requirement that limited the admission of those cattle to the State of Texas has been repealed. These changes make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/29/08	73 FR 5132
NPRM Comment Period End	03/31/08	
Final Rule	01/02/09	74 FR 1
Final Rule Effective; But the Amendment to 93.427(b)(2) Effective Date Is Delayed Indefinitely	01/02/09	
Final Rule; Correction	05/12/09	74 FR 22090
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Betzaida Lopez
Phone: 301 734–8364

RIN: 0579–AC63

218. HANDLING OF ANIMALS; CONTINGENCY PLANS

Legal Authority: 7 USC 2131 to 2159

Abstract: This rulemaking will amend the Animal Welfare Act regulations to add requirements for contingency planning and training of personnel by research facilities and by dealers, exhibitors, intermediate handlers, and carriers. These requirements are necessary because we believe all licensees and registrants should develop a contingency plan for all animals regulated under the Animal Welfare Act in an effort to better prepare for potential disasters. This action will heighten the awareness of licensees and registrants regarding their responsibilities and help ensure a timely and appropriate response should an emergency or disaster occur.

Timetable:

Action	Date	FR Cite
NPRM	10/23/08	73 FR 63085
NPRM Comment Period End	12/22/08	
NPRM Comment Period Extended	12/19/08	73 FR 77554
NPRM Comment Period End	02/20/09	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Jeanie Lin
Phone: 301 734–7833

RIN: 0579–AC69

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Completed Actions

219. PLANT PEST REGULATIONS; UPDATE OF CURRENT PROVISIONS (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 7 USC 450; 7 USC 7711 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

Abstract: APHIS plans to amend its plant pest regulations to align them more closely with the Plant Protection Act and to update them in response to advances in science and technology and our accumulated experiences in implementing the regulations.

Timetable:

Action	Date	FR Cite
ANPRM	09/27/96	61 FR 50767
ANPRM Comment Period End	12/26/96	
NPRM	10/09/01	66 FR 51340
NPRM Comment Period End	02/06/02	
Rulemaking Proceeding Under RIN 0579–AC98	07/16/09	

Regulatory Flexibility Analysis Required: No

Agency Contact: Robert Flanders, Senior Technical Advisor, Plant Health Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 131, Riverdale, MD 20737–1236
Phone: 301 734–0858

RIN: 0579–AA80

220. STANDARDS FOR PERMANENT, PRIVATELY OWNED HORSE QUARANTINE FACILITIES (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

Abstract: This rulemaking will establish standards for the approval of permanent, privately owned quarantine facilities for horses. We are taking this action because regional and seasonal demand for quarantine services for horses often exceeds the space available at existing facilities. Allowing imported horses to be quarantined in permanent, privately owned quarantine facilities that meet these newly proposed criteria facilitates the importation of horses while continuing to protect against the introduction of communicable diseases of horses.

Timetable:

Action	Date	FR Cite
NPRM	12/13/06	71 FR 74827
NPRM Comment Period End	02/12/07	
Final Rule	07/02/09	74 FR 31582
Final Rule Effective	08/03/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Ellen Buck, Veterinary Medical Officer, Import/Export Animals, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231
Phone: 301 734–8364

RIN: 0579–AC00

221. USER FEES; EXPORT CERTIFICATION FOR PLANTS AND PLANT PRODUCTS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 49 USC 80503

Abstract: This rulemaking amends the user fee regulations by adjusting the fees charged for export certification of plants and plant products. We are increasing these user fees for fiscal years 2009 through 2012 to reflect the anticipated costs associated with providing these services during each year. This action adds a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service. Finally, the action makes several nonsubstantive changes to the regulations for clarity. These changes will enable us to properly recover the costs of providing export certification services for plants and plant products.

Completed:

Reason	Date	FR Cite
Final Rule	07/08/09	74 FR 32391
Final Rule Effective	10/01/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Marcus McElvaine
Phone: 301 734–4382

Kris Caraher
Phone: 301 734–0882

RIN: 0579–AC22

222. ● PALE CYST NEMATODE; QUARANTINE AND REGULATIONS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

Abstract: This action will quarantine parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode there and establish restrictions on the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the potato cyst nematode to noninfested areas of the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/12/07	72 FR 51975
Interim Final Rule Effective	11/01/07	
Interim Final Rule Comment Period End	11/13/07	
Final Rule	04/29/09	74 FR 19374
Final Rule Effective	04/29/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Eileen Smith, National Program Manager, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 134, Riverdale, MD 20737–1236
Phone: 301 734–5235

RIN: 0579–AC54

223. BOVINE TUBERCULOSIS

Legal Authority: 7 USC 8301 to 8317

Abstract: This rulemaking would amend the bovine tuberculosis regulations by removing from incorporation by reference the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, and including in 9 CFR part 77 all Federal requirements. We are also proposing a number of substantive changes to the requirements in order to enhance our bovine tuberculosis eradication efforts. The proposed changes include, but are not limited to, tightening certain tuberculosis surveillance and reporting requirements; strengthening the quarantine and quarantine-release requirements; setting minimum testing ages, depending upon the status of the State or zone of origin and/or the purpose of movement, when testing is required for interstate movement of cattle and bison; adding new requirements to prevent the spread of tuberculosis from wildlife to cattle and bison; adding new requirements for interstate movement of dairy cattle; strengthening the requirements for individual cattle and bison that are to be added to accredited herds; and providing for the interstate movement of commuter herds. Finally, we would reorganize 9 CFR part 77 to make the regulations clearer and easier to use.

Completed:

Reason	Date	FR Cite
Agency Is Reevaluating the Domestic Tuberculosis Program	07/30/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Charles W. Hench

USDA—APHIS

Completed Actions

Phone: 970 494–7378

RIN: 0579–AC73

224. ● CITRUS CANKER; MOVEMENT OF FRUIT FROM QUARANTINED AREAS

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786

Abstract: This action will amend the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. We will eliminate the requirement that each lot of finished fruit be inspected at the packinghouse and found to be free of visible symptoms of citrus canker, and we will remove the current prohibition on the movement of fruit from a quarantined area to commercial citrus-producing States. We will continue to require fruit moved interstate from a quarantined area be treated with an approved disinfectant and packed in a commercial packinghouse that operates under a compliance agreement. These changes will relieve some restrictions on the interstate movement of fresh citrus fruit from quarantined areas while maintaining conditions that will prevent the artificial spread of citrus canker.

Timetable:

Action	Date	FR Cite
NPRM	06/30/09	74 FR 31201
NPRM Comment Period End	08/31/09	
Final Action	10/22/09	74 FR 54431

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 137, Riverdale, MD 20737–1231
Phone: 301 734–4387

RIN: 0579–AC96

225. ● USER FEES FOR AGRICULTURAL QUARANTINE AND INSPECTION SERVICES

Legal Authority: 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 49 USC 80503

Abstract: This action will amend the user fee regulations by adjusting the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The recent downturn in the U.S. economy has negatively impacted travel volumes, and, as a result, our user fee collections, which fund these services, have diminished. Because there has been no corresponding decrease in the risk of plant and animal pest and disease introduction into the United States, we have continued to provide inspection and related support services at the same level as we did before the downturn; however, our user fee collections have not been sufficient to enable us to recover fully the costs of providing those services and maintain a reasonable reserve balance. We are therefore increasing our AQI user fees in order to provide adequate funds for these purposes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/28/09	74 FR 49311
Interim Final Rule Effective	10/01/09	
Interim Final Rule Effective Date Delayed	10/02/09	74 FR 50915
Notice of Public Meeting	10/23/09	74 FR 54758
Interim Final Rule Withdrawal Effective	10/30/09	
Delayed Interim Final Rule Effective	11/01/09	
Interim Final Rule Withdrawn	11/04/09	74 FR 57057
Interim Final Rule Comment Period End	11/27/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: William E. Thomas, Director, Quarantine Policy, Analysis, and Support Staff, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 131, Riverdale, MD 20737
Phone: 301 734–5214

Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 55, Riverdale, MD 20737–1232
Phone: 301 734–0882

RIN: 0579–AC99

BILLING CODE 3410–34–S

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Final Rule Stage

226. GUARANTEED SINGLE–FAMILY HOUSING

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

Abstract: The Guaranteed Single-Family Housing program will provide better clarity and consistency within the program. The action is taken to update the regulations to current mortgage industry standards and provide more guidance on program oversight and monitoring.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 70124
NPRM Comment Period End	02/14/00	
Final Action	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Joaquin Tremols, Acting Director, Single–Family Housing Guaranteed Loan Division, Department of Agriculture, Rural Housing Service, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–1465
Fax: 202 205–2476
Email: joaquin.tremols@wdc.usda.gov

RIN: 0575–AC18

BILLING CODE 3410–XV–S

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS)

Final Rule Stage

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

Regulatory Plan: This entry is Seq. No. 23 in part II of this issue of the **Federal Register**.

RIN: 0583–AC46

228. FEDERAL–STATE INTERSTATE SHIPMENT COOPERATIVE INSPECTION PROGRAM

Regulatory Plan: This entry is Seq. No. 24 in part II of this issue of the **Federal Register**.

RIN: 0583–AD37

BILLING CODE 3410–DM–S

Department of Agriculture (USDA)
Forest Service (FS)

Final Rule Stage

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

Legal Authority: Not Yet Determined

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

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

Timetable:

Action	Date	FR Cite
NPRM	07/25/08	73 FR 43544
NPRM Comment Period End	10/23/08	
Final Action	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Lorrie Parker, Regulatory Analyst, Department of Agriculture, Forest Service, ATTN: ORMS, D&R Branch, 1400 Independence Avenue SW, Washington, DC 20250–0003
Phone: 202 205–6560
Fax: 202 205–6539
Email: lsparker@fs.fed.us

RIN: 0596–AC74

BILLING CODE 3410–11–S

Department of Agriculture (USDA)
Office of the Secretary (AgSEC)

Proposed Rule Stage

230. VOLUNTARY LABELING PROGRAM FOR DESIGNATED BIOBASED PRODUCTS

Legal Authority: PL 110–246

Abstract: The purpose of the program is to provide a ''USDA Certified Biobased Product'' label for use on biobased products meeting certain criteria to be established in the proposed rule, to specify those criteria for gaining use of the label, establish a system to make the label available to manufacturers and vendors of biobased products, and to establish the labeling program.

Timetable:

Action	Date	FR Cite
NPRM	07/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Ron Buckhalt, Manager, Biopreferred Program, Departmental Administration, Department of Agriculture, 342 Reporters Building, 300 7th Street SW, Washington, DC 20250
Phone: 202 205–4008
Fax: 202 720–8972
Email: ronb.buckhalt@da.usda.gov

RIN: 0503–AA35

231. DESIGNATION OF BIOBASED ITEMS FOR FEDERAL PROCUREMENT, ROUND 7

Legal Authority: PL 110–246

Abstract: Designates bath products; concrete and asphalt cleaners, including microbial and non-microbial concrete and asphalt cleaners as subcategories; corrosion removers; dishwashing detergents; floor cleaners and protectors; hair cleaning products, including shampoos and conditioners as subcategories; microbial cleaners; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-

USDA—AgSEC **Proposed Rule Stage**

durable thermal shipping containers as subcategories.

Timetable:

Action	Date	FR Cite
NPRM	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Ron Buckhalt, Manager, Biopreferred Program, Departmental Administration, Department of Agriculture, 342 Reporters Building, 300 7th Street SW, Washington, DC 20250
Phone: 202 205–4008
Fax: 202 720–8972
Email: ronb.buckhalt@da.usda.gov

RIN: 0503–AA36

BILLING CODE 3410–90–S

Department of Agriculture (USDA) **Proposed Rule Stage**
Rural Business—Cooperative Service (RBS)

232. RENEWABLE ENERGY—CLARIFY REQUIREMENTS FOR CONSTRUCTION/DEVELOPMENT OF ENERGY PROGRAM PROJECTS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

Abstract: This regulation provides financial assistance to agricultural producers and rural small businesses for the purpose of purchasing and installing renewable energy systems and energy efficiency improvements in rural areas. Financial assistance to any single entity may be provided as a guaranteed loan or grant, or a combination of a loan and grant. Since the programs inception, it has become evident that some of the language in the existing regulation was misinterpreted by field offices and applicants. The changes are as follows:

- Clarify that surety requirements for projects under $100,000, no surety is required. For projects between $100,000 and $200,000, no surety would be required if the contractor will accept payment as a ''lump sum'' at the end of the work. For projects more than $200,000, surety is required.

- The requirements for a review of plans and specifications by the Agency will refer to either the State Architect or State Engineer to perform the review rather than just an Agency employee.

- Clarify contract administration requirements for a design/build contract of more than $200,000.

- Compliance with Executive Order 11246 is necessary for all construction contracts issued by non-profit applicants (not just those in excess of $10,000).

- Non-profits must meet the requirements of 7 CFR 3019.40-48(e). Additional changes for non-for-profit entities are required as well. (The vast majority of Renewable Energy applicants are ''for profit'' entities. However, some non-profits are acceptable applicants.) The regulation does not adequately cover the additional requirements for a non-profit entity.

- Revise procurement, construction contract and construction administration requirements. The present language needs to incorporate ''lessons learned'' with the experience gained in the five years since the inception of this new program.

- Include minor revisions to the application, application processing, and grant/loan-making requirements to clarify intentions not fully explained in the existing 7 CFR 4280 language.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	
NPRM Comment Period End	06/00/10	

Regulatory Flexibility Analysis Required: No

Agency Contact: Larry Fleming, Senior Architect, Department of Agriculture, STOP 0761, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–8547
Fax: 202 690–4335
Email: larry.fleming@wdc.usda.gov

RIN: 0570–AA69

[FR Doc. E9–28563 Filed 12–04–09; 8:45 am]

BILLING CODE 3410–XY–S

Federal Register

Monday,
December 7, 2009

Part IV

Department of Commerce

Semiannual Regulatory Agenda

DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

Fall 2009 Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Semiannual regulatory agenda.

SUMMARY: In compliance with Executive Order 12866, entitled ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act, as amended, the Department of Commerce (Department), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2009 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's fall 2009 regulatory agenda includes regulatory activities that are expected to be conducted during the period October 1, 2009, through September 30, 2010.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Jennifer K. Nist, Chief Counsel for Regulations, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230; telephone: 202-482-3151.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of August 6, 2009, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the fall 2009 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities. The agenda also identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

For this edition of the Department of Commerce's regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda**.**

In addition, beginning with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5U.S.C. 602), the Department of Commerce's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including the Department of Commerce's Regulatory Plan.

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units, such as the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, an ''Explanation of Information Contained in NMFS Regulatory Entries'' is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries that require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing may be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the

DOC

significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The Department's fall 2009 regulatory agenda follows.

Cameron F. Kerry,
General Counsel.

International Trade Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
233	Commercial Availability of Fabric and Yarn	0625–AA59

National Oceanic and Atmospheric Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
234	Maximize Retention and Monitoring Program in the Shore-Based Pacific Whiting Fishery	0648–AR63
235	American Lobster Fishery; Effort Control Measures	0648–AT31
236	South Atlantic Fishery Ecosystem Plan Comprehensive Amendment	0648–AV31
237	Collection and Use of Tax Identification Numbers From Holders of and Applicants for National Marine Fisheries Service Permits	0648–AV76
238	Amendment 17 to the South Atlantic Fishery Management Council Snapper Grouper Fishery Management Plan	0648–AW11
239	Amendment 2 to the Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands	0648–AW15
240	Marine Mammal Protection Act Stranding Regulation Revisions	0648–AW22
241	Amendment 3 to the Northeast Skate Complex Fishery Management Plan	0648–AW30
242	Amendment 4 to the Atlantic Herring Fishery Management Plan	0648–AW75
243	Allowable Modifications to the Turtle Excluder Device (TED) Requirements	0648–AW93
244	Regulatory Amendment (ι3) To Correct and Clarify Amendment 13 and Subsequent Frameworks of the Northeast Multispecies Fishery Management Plan	0648–AW95
245	Amendment 11 to the Atlantic Mackerel, Squid, Butterfish Fishery Management Plan	0648–AX05
246	Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs Arbitration Regulations	0648–AX47
247	Amendment 31 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648–AX67
248	Salmon Bycatch Reduction Management Measures for the Fishery Management Plan (FMP) 91 in the Bering Sea Aleutian Islands	0648–AX89
249	2010 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures	0648–AY04
250	Maximized Retention Monitoring Program for Catcher Vessels in the Pacific Whiting Mothership Fishery in the Pacific Coast Groundfish Fishery	0648–AY17
251	Generic Amendment for Annual Catch Limits	0648–AY22
252	Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act	0648–AV15
253	Marine Mammal Protection Act Permit Regulation Revisions	0648–AV82
254	Rulemaking To Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon	0648–AV94
255	Rule to Revise Leatherback Critical Habitat	0648–AX06

National Oceanic and Atmospheric Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
256	Fisheries in the Western Pacific; Pelagic Fisheries; Squid Jig Fisheries	0648–AS71
257	Modifying Maximum Retainable Amounts (MRAs) for Selected Groundfish Species Caught by the Non-American Fishing Act Trawl Catcher Processor Sector	0648–AV32
258	Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported or Unregulated Fishing or Bycatch of Protected Living Marine Resources **(Reg Plan Seq No. 34)**	0648–AV51
259	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) Environmental Review Procedure	0648–AV53
260	Initial Implementation of the Western and Central Pacific Fisheries Convention Implementation Act	0648–AV63

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National Oceanic and Atmospheric Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
261	Amendment 15B to the South Atlantic Fishery Management Council Snapper Grouper Fishery Management Plan	0648–AW12
262	Revise Regulations Governing the North Pacific Groundfish Observer Program	0648–AW24
263	Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; Amendment 18 to the Pelagics Fishery Management Plan; Shallow-set Longline Swordfish Fishery	0648–AW49
264	Atlantic Highly Migratory Species; Atlantic Shark Management Measures	0648–AW65
265	Halibut Charter Vessel Moratorium	0648–AW92
266	Atlantic Highly Migratory Species; 2009 North and South Atlantic Commercial Quotas	0648–AX07
267	Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico	0648–AX39
268	Western and Central Pacific Fisheries for Highly Migratory Species; Implementation of the Longline Catch Limits Adopted at the Fifth Session of the Western and Central Pacific Fisheries Commission	0648–AX59
269	Snapper-Grouper Fishery Management Plan of the South Atlantic	0648–AX75
270	Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan	0648–AY00
271	Provide Regulations for Permits for Capture, Transport, Import, and Export of Protected Species for Public Display, and for Maintaining a Captive Marine Mammal Inventory	0648–AH26
272	Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Training Operations Conducted Within the Gulf of Mexico Range Complex	0648–AX86

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Oceanic and Atmospheric Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
273	Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico	0648–AS65

National Oceanic and Atmospheric Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
274	Amendment 1 to the Fishery Management Plan for the Tilefish Fishery	0648–AS25
275	Atlantic Highly Migratory Species (HMS); Reducing Sea Turtle Takes	0648–AS49
276	Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan	0648–AT58
277	American Lobster Data Collection and Broodstock Protection Measures	0648–AV77
278	Amendment 7 to the South Atlantic Shrimp Fishery Management Plan	0648–AW19
279	Fisheries Off West Coast States; Highly Migratory Species Fisheries	0648–AW50
280	Fisheries in the Western Pacific; Compensation to Northwestern Hawaiian Islands Bottomfish and Lobster Fishermen Due to Fishery Closure in the Papahanaumokuakea Marine National Monument	0648–AW52
281	Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region	0648–AW64
282	Amendment 27 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs	0648–AW73
283	Amendment 28 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab	0648–AW97
284	Atlantic Highly Migratory Species (HMS); 2009 Atlantic Bluefin Tuna Quota Specifications and Management Measures	0648–AX12
285	Amendment 92 to the Fishery Management Plan for Bering Sea/Aleutian Islands Groundfish and Amendment 82 to the Fishery Management Plan for Gulf of Alaska Groundfish	0648–AX14
286	One-Fish Daily Bag Limit for the Guided Sport Charter Vessel Fishery for Halibut in Regulatory Area 2C	0648–AX17
287	Amendment 90 to the Fishery Management Plan for Bering Sea/Aleutian Islands Groundfish and Amendment 78 to the Fishery Management Plan for Gulf of Alaska Groundfish	0648–AX25
288	Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska	0648–AX42
289	2009 Atlantic Bluefish Specifications	0648–AX49
290	Definition of U.S. Citizen	0648–AX52
291	2009 Specifications and Management Measures for the Spiny Dogfish Fishery Management Plan	0648–AX57
292	Western and Central Pacific Fisheries for Highly Migratory Species; Implementation of Decisions of the Fifth Session of the Western and Central Pacific Fisheries Commission for Purse Seine Fisheries	0648–AX60
293	2009 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures	0648–AX69
294	Reef Fish Amendment 30B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Measure To Establish the Edges Seasonal-Area Closure	0648–AX73

DOC

National Oceanic and Atmospheric Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
295	Establish 2009 Fishery Specifications for Pacific Whiting; Pacific Groundfish Fishery; Biennial Specifications and Management Measures	0648–AX77
296	Pacific Coast Groundfish Inseason Action for May 1, 2009	0648–AX84
297	Establish a Control Date for the Reef Fish, Queen Conch, and Spiny Lobster Fisheries of Puerto Rico and the U.S. Virgin Islands	0648–AX92
298	Atlantic Pelagic Longline Take Reduction Plan	0648–AV65
299	Designation of Critical Habitat for the Endangered U.S. Distinct Population Segment (DPS) of Guided Smalltooth Sawfish	0648–AV74
300	Harbor Porpoise Take Reduction Plan Regulations	0648–AW51
301	Rulemaking to Designate Critical Habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon	0648–AW77
302	Rulemaking To Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon	0648–AX04

Patent and Trademark Office—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
303	Examination of Patent Applications That Include Claims Containing Alternative Language	0651–AC00
304	Fiscal Year 2009 Revision of Request for Continued Examination, 18-Month Publication, and Other Miscellaneous Cost-Recovery Patent Fees	0651–AC29

Department of Commerce (DOC) — Long-Term Actions

International Trade Administration (ITA)

233. COMMERCIAL AVAILABILITY OF FABRIC AND YARN

Legal Authority: PL 106–200, sec 112(b)(5)(B); PL 106–200, sec 211; EO 13191; PL 107–210, sec 3103

Abstract: This rule implements certain provisions of the Trade and Development Act of 2000 (the Act). Title I of the Act (the African Growth and Opportunity Act or AGOA), title II of the Act (the United States-Caribbean Basin Trade Partnership Act or CBTPA), and title XXXI of the Trade Act of 2002 (the Andean Trade Promotion and Drug Eradication Act or ATPDEA) provide for quota- and duty-free treatment for qualifying apparel products from designated beneficiary countries. AGOA and CBTPA authorize quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more designated beneficiary countries from yarn or fabric that is not formed in the United States or a beneficiary country, provided it has been determined that such yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The President has delegated to the Committee for the Implementation of Textile Agreements (the Committee), which is chaired by Commerce, the authority to determine whether yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA, and has authorized the Committee to extend quota- and duty-free treatment to apparel of such yarn or fabric. The rule provides the procedure for interested parties to submit a request alleging that a yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner, the procedure for public comments, and relevant factors that will be considered in the Committee's determination. The rule also outlines the factors to be considered by the Committee in extending quota- and duty-free treatment.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Janet Heinzen
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RIN: 0625–AA59

Department of Commerce (DOC) **Proposed Rule Stage**

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

234. MAXIMIZE RETENTION AND MONITORING PROGRAM IN THE SHORE–BASED PACIFIC WHITING FISHERY

Legal Authority: 16 USC 1801 et seq

Abstract: The Pacific Fishery Management Council (Pacific Council) at their October 21-25, 1996, meeting in San Francisco, California addressed the treatment and disposition of salmon in the groundfish trawl fisheries, specifically the shore-based whiting fishery. At that meeting, the Pacific Council discussed the retention of salmon in the shore-based whiting fishery and took action to maintain a viable shore-based whiting fishery by using exempted fishing permits (EFPs). These EFPs allowed the shore-based whiting fleet to temporarily deliver unsorted catch to processing plants and provided for the monitoring of incidentally taken salmon until a permanent monitoring program could be implemented. In keeping with the Pacific Council's recommendation, NMFS is proceeding with implementing a monitoring program for the shore-based whiting fishery. This action will aid in the sustainable management of Pacific Coast salmon and groundfish fisheries while providing an important economic opportunity to those associated with the harvest, processing, and selling of whiting taken by the shore-based whiting fleet. The need for implementing a permanent monitoring program in the shore-based Pacific whiting fishery is to provide for a full retention fishery by enabling the shore-based whiting fleet, comprised exclusively of catcher vessels, to deliver unsorted catch to processing plants. This practice is necessary to ensure that whiting landings are of market quality, while abiding by Federal groundfish regulations and those implementing the Pacific Coast salmon and groundfish fishery management plans (FMPs).

Timetable:

Action	Date	FR Cite
NPRM	05/00/10	
NPRM Comment Period End	07/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Barry Thom, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Building 1, Seattle, WA 48115–0070
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RIN: 0648–AR63

235. AMERICAN LOBSTER FISHERY; EFFORT CONTROL MEASURES

Legal Authority: 16 USC 5101 et seq

Abstract: The National Marine Fisheries Service announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone (EEZ) associated with effort control measures as recommended for Federal implementation by the Atlantic States Marine Fisheries Commission (ASFMC) as outlined in the Interstate Fishery Management Plan (ISFMP) for American Lobster. This action will evaluate effort control measures in certain Lobster Conservation Management Areas including: Limits on future access based on historic participation criteria; procedures to allow trap transfers among qualifiers and impose a trap reduction or conservation tax on any trap transfers; and a trap reduction schedule to meet the goals of the ISFMP.

Timetable:

Action	Date	FR Cite
ANPRM	05/10/05	70 FR 24495
ANPRM Comment Period End	06/09/05	
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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
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RIN: 0648–AT31

236. SOUTH ATLANTIC FISHERY ECOSYSTEM PLAN COMPREHENSIVE AMENDMENT

Legal Authority: 16 USC 1801 et seq

Abstract: The purpose of this action is to develop an ecosystem-based approach to resource management. The South Atlantic Council plans to develop a Fishery Ecosystem Plan (FEP) Comprehensive Amendment, which would modify all its Fishery Management Plans (FMPs). The initial amendment would include the following actions: (1) Various actions to comply with new essential fish habitat requirements; (2) establishment of deep water coral Habitat Areas of Particular Concern, with possible gear limitations, such as the establishment of allowable trawl areas; and (3) other possible actions necessary to implement ecosystem-based fishery management.

Timetable:

Action	Date	FR Cite
NPRM	05/00/10	
NPRM Comment Period End	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
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RIN: 0648–AV31

237. COLLECTION AND USE OF TAX IDENTIFICATION NUMBERS FROM HOLDERS OF AND APPLICANTS FOR NATIONAL MARINE FISHERIES SERVICE PERMITS

Legal Authority: 16 USC 1361 et seq; 16 USC 1531 et seq; 31 USC 7701; 31 USC 1801 et seq

Abstract: In conformance with the Debt Collection Improvement Act of 1996 (Debt Collection Act), the National Marine Fisheries Service (NMFS) will issue a rule to require that each existing holder of and future applicant for a permit, license, endorsement, authorization, transfer or like instrument issued by the agency provide a Taxpayer Identification Number (TIN) (business' employer identification number or individual's

social security number) and Date of Incorporation or Date of Birth, as appropriate. Under the Debt Collection Act, NMFS is required to collect the TIN to report on and collect any delinquent non-tax debt owed to the Federal Government. NMFS plans to use Date of Incorporation or Date of Birth information for administrative aspects of permitting procedures with appropriate confidentiality safeguards pursuant to the Privacy Act. The rule will specify (a) the particular uses that may be made of the reported TIN, (b) the effects, if any, of not providing the required information, (c) how the information will be used to ascertain if the permit holder or applicant owes delinquent non-tax debt to the Government pursuant to the Debt Collection Act, (d) the effects on the permit holder or applicant when such delinquent debts are owed, and (e) the agency's intended communications with the permit holder or applicant regarding the relationship of such delinquent debts to its permitting process and the need to resolve such debts as a basis for completing permit issuance or renewal. The rule will amend existing agency permit regulations and contain all appropriate modified and new collections-of-information pursuant to the Paperwork Reduction Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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
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RIN: 0648–AV76

238. AMENDMENT 17 TO THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL SNAPPER GROUPER FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801

Abstract: Amendment 17 is intended to: establish management reference points (MSY, OY) for red snapper; establish a rebuilding plan (rebuilding timeframe and rebuilding strategy) for red snapper; specify Annual Catch Limits (ACL), Annual Catch Targets (ACT), and Accountability Measures (AM) for 10 species undergoing overfishing; and modify management measures to ensure future catch is equal to or below the ACL.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
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RIN: 0648–AW11

239. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE QUEEN CONCH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Legal Authority: 16 USC 1801

Abstract: St. Croix queen conch landings by commercial fishermen alone have exceeded sustainable harvest levels since the 2000-2001 fishing season. In 2005-2006 the commercial harvest was over four times sustainable levels. Additionally, there is an unknown but significant recreational harvest. Overfishing of queen conch has led to resource collapse in other regions and in some cases, long-term resource loss. According to the NMFS Report on the Status of the U.S. Fisheries for 2006, queen conch is overfished and undergoing overfishing. Under current fishing practices, reductions in mortality are not expected to be sufficient in the queen conch fishery. Without a reduction in mortality, queen conch are not expected to achieve the rebuilding goals established in the Sustainable Fisheries Amendment of 2005. Therefore, a change in fishing practices is needed to help achieve the necessary reductions in queen conch fishing mortality.

Timetable:

Action	Date	FR Cite
Notice of Intent	10/11/07	72 FR 58057
NPRM	12/00/09	
NPRM Comment Period End	01/00/10	
Final Action	01/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW15

240. MARINE MAMMAL PROTECTION ACT STRANDING REGULATION REVISIONS

Legal Authority: 16 USC 1379; 16 USC 1382; 16 USC 1421

Abstract: The National Marine Fisheries Service (NMFS) is considering proposing changes to its implementing regulations (50 CFR 216) governing the taking of stranded marine mammals under section 109(h), section 112(c), and title IV of the Marine Mammal Protection Act and is soliciting public comment to better inform the process. NMFS intends clarify the requirements and procedures for responding to stranded marine mammals and for determining the disposition of rehabilitated marine mammals, which includes the procedures for the placement of non-releasable animals and for authorizing the retention of releasable rehabilitated marine mammals for scientific research, enhancement, or public display. This action will be analyzed under the National Environmental Policy Act with an Environmental Assessment.

Timetable:

Action	Date	FR Cite
ANPRM	01/31/08	73 FR 5786
ANPRM Comment Period End	03/31/08	
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: David Cottingham, Department of Commerce, National Oceanic and Atmospheric

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RIN: 0648–AW22

241. AMENDMENT 3 TO THE NORTHEAST SKATE COMPLEX FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801

Abstract: NMFS proposes regulations to implement measures in Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Skate FMP). Amendment 3 was developed by the New England Fishery Management Council (Council) to rebuild overfished skate stocks (thorny and smooth skates) and implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act. Amendment 3 would establish an ACL and annual catch target (ACT) for the skate complex, total allowable landings (TAL) for the skate wing and bait fisheries, seasonal quotas for the bait fishery, reduced possession limits, in-season possession limit triggers, and other measures to improve management of the skate fisheries. This rule also includes skate fishery specifications for fishing years (FY) 2010 through 2011.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	01/00/10	

Regulatory Flexibility Analysis Required: Yes

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
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RIN: 0648–AW30

242. AMENDMENT 4 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

Abstract: The goal of Amendment 4 is to improve catch monitoring and ensure compliance with the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSRA). The management measures developed in this amendment may address one or more of the following objectives: (1) To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery; (2) to implement annual catch limits and accountability measures consistent with the MSRA; (3) to implement other management measures as necessary to ensure compliance with the new provisions of the MSRA; (4) to develop a sector allocation process or other limited access privilege program for the herring fishery; and (5) in the context of objectives 1-4 (above), to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range.
The New England Fishery Management Council will develop conservation and management measures to address the issues identified above and meet the goals/objectives of the amendment. Any conservation and management measures developed in this amendment also must comply with all applicable laws.

Timetable:

Action	Date	FR Cite
NOI To Prepare An EIS	05/08/08	73 FR 26082
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW75

243. ALLOWABLE MODIFICATIONS TO THE TURTLE EXCLUDER DEVICE (TED) REQUIREMENTS

Legal Authority: 16 USC 1531 et seq

Abstract: NMFS proposes to revise the TED requirements to allow new materials and modifications to existing approved TED designs. Specifically, proposed allowable modifications include the use of flat bar, box pipe, and oval pipe for use in currently-approved TED grids; an increase in mesh size on escape flaps from 1-5/8 inches to 2 inches; the use of the Boone single straight cut and triangular escape openings; specifications on the use of TED grid brace bars; and the use of the Chauvin Shrimp Kicker to improve shrimp retention.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Michael Barnette, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 551–5794

RIN: 0648–AW93

244. REGULATORY AMENDMENT (●3) TO CORRECT AND CLARIFY AMENDMENT 13 AND SUBSEQUENT FRAMEWORKS OF THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

Abstract: This action would make corrections and clarifications to the final rule implementing Amendment 13 to the Northeast Multispecies Fishery Management Plan, as well as subsequent groundfish actions. These corrections are administrative in nature and are intended to correct inaccurate references and other inadvertent errors and to clarify specific regulations to maintain consistency with the intent of Amendment 13 and subsequent actions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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
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RIN: 0648–AW95

245. AMENDMENT 11 TO THE ATLANTIC MACKEREL, SQUID, BUTTERFISH FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

Abstract: Amendment 11 may consider: (1) Limited access in the Atlantic mackerel (mackerel) fishery; (2) implementation of annual catch limits (ACLs) and accountability measures (AMs) for mackerel and butterfish required under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA); (3) updating of the description and identification of essential fish habitat (EFH) for all life stages of mackerel, Loligo squid, Illex squid, and butterfish (including gear impacts on Loligo squid egg EFH); and (4) possible limitations on at-sea processing of mackerel.

Timetable:

Action	Date	FR Cite
Notice of Intent	08/11/08	73 FR 46590
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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
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RIN: 0648–AX05

246. AMENDMENT 30 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS ARBITRATION REGULATIONS

Legal Authority: 16 USC 1862; PL 109–241; PL 109–479

Abstract: The proposed action would implement Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs to make minor modifications to the arbitration system used to settle price and other disputes among harvesters and processors in the Bering Sea/Aleutian Islands crab rationalization program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
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RIN: 0648–AX47

247. AMENDMENT 31 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801

Abstract: In September 2008, NOAA's National Marine Fisheries (NMFS) released a report based on observer data that indicated the total number of loggerhead sea turtle takes by the eastern Gulf of Mexico reef fish bottom longline fishery was much greater than that authorized in the most recent biological opinion. In response, the Gulf of Mexico Fishery Management Council (Council) requested NMFS take emergency action to reduce the number of takes by the fishery during the short term while the Council develops long-term measures in Amendment 31. Measures being considered include: (1) Modifying baits; (2) area, season, and depth restrictions; (3) reducing effort through a longline endorsement program; and (4) using observers or electronic monitoring to close the fishery once a sea turtle take threshold has been met.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
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RIN: 0648–AX67

248. • SALMON BYCATCH REDUCTION MANAGEMENT MEASURES FOR THE FISHERY MANAGEMENT PLAN (FMP) 91 IN THE BERING SEA ALEUTIAN ISLANDS

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq; PL 108–447

Abstract: This fishery management plan amendment and rulemaking will implement the North Pacific Fishery Management Council's recommendations for management measures to minimize to the extent practicable Chinook salmon bycatch in the Bering Sea pollock fishery. These management measures provide two options for the pollock sectors (e.g., inshore catcher vessels, offshore catcher-processors, catcher vessels delivering to motherships, or CDQ entities): fish under a lower Chinook salmon cap or participate in an incentive program and fish under a higher cap. Under the first option, the fleet as a whole may choose to fish under a transferable cap of 47,591 Chinook salmon, which would be allocated by season and sector. Once each sector reaches its specific cap, it would be prohibited from continuing to fish for pollock for the remainder of the season. Alternatively, vessels or CDQ entities may choose to participate in private contracts called incentive plan agreements (IPA) which would describe how participants would maintain low bycatch even when their bycatch levels are well below the hard cap approved. Those vessels or CDQ entities participating in an IPA would be allocated a transferable share of up to 60,000 Chinook salmon. This cap would be reduced for any vessels or CDQ entities not participating in an IPA and those vessels and CDQ entities would fish under a lower, non-transferable cap. In addition to the annual cap levels, if any sector operating under an IPA exceeds its proportion of 47,591 Chinook salmon three times in any seven-year period, the sector's maximum bycatch limit will be permanently reduced to its proportional share of the 47,591 cap. If the FMP amendments and proposed rule are approved, fishing under the new Chinook salmon bycatch management measures would start in 2011.

Timetable:

Action	Date	FR Cite
FMP	12/00/09	
Final Rule FMP	08/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
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RIN: 0648–AX89

249. ● 2010 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Legal Authority: 16 USC 1801

Abstract: This action will propose and implement the 2010 recreational management measures (minimum fish size, fishing seasons, and possession limits) for the summer flounder, scup, and black sea bass fisheries.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis Required: Yes

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
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RIN: 0648–AY04

250. ● MAXIMIZED RETENTION MONITORING PROGRAM FOR CATCHER VESSELS IN THE PACIFIC WHITING MOTHERSHIP FISHERY IN THE PACIFIC COAST GROUNDFISH FISHERY

Legal Authority: 16 USC 1801

Abstract: The action would implement a monitoring program for catcher vessels in the mothership sector of the Pacific whiting fishery off the coast of Washington, Oregon, and California. The monitoring program would consist of a camera and other sensors to monitor fishing activity in order to maintain the integrity of the maximized retention requirements found at 50 CFR 660.306 (f)(7). Maximized retention encourages full retention of all catch while allowing minor discard events to occur. This ensures that unsorted catch is available for observers to monitor on board the mothership processors and thereby maintain the integrity of data collected under the observer program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	01/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AY17

251. ● GENERIC AMENDMENT FOR ANNUAL CATCH LIMITS

Legal Authority: 16 USC 1801

Abstract: The generic amendment is intended to modify five of the Council's FMPs. These include FMPs for: Reef Fish Resources, Shrimp, Stone Crab, Coral and Coral Reef Resources, and Red Drum. NMFS and the Council will develop these ACLs in co-operation with the Scientific and Statistical Committee and the Southeast Fisheries Science Center.

Timetable:

Action	Date	FR Cite
NPRM	11/00/10	
NPRM Comment Period End	12/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AY22

252. PROTECTIVE REGULATIONS FOR KILLER WHALES IN THE NORTHWEST REGION UNDER THE ENDANGERED SPECIES ACT AND MARINE MAMMAL PROTECTION ACT

Legal Authority: 16 USC 1361 et seq; 16 USC 1531 to 1543

Abstract: The National Marine Fisheries Service (NMFS) is considering whether to propose regulations to protect killer whales (Orcinus orca) in the Pacific Northwest. The Southern Resident killer whale distinct population segment (DPS) was listed as endangered under the Endangered Species Act (ESA) on November 18, 2005 (70 FR 69903). In the final rule announcing the listing, NMFS identified vessel effects, including direct interference and sound, as a potential contributing factor in the recent decline of this population. Both the Marine Mammal Protection Act (MMPA) and the ESA prohibit take, including harassment, of killer whales, but these statutes do not prohibit specified acts. NMFS is now considering whether to propose regulations that would prohibit certain acts, under our general authorities under the ESA and MMPA and their implementing regulations. The Proposed Recovery Plan for Southern Resident killer whales (71 FR 69101; November 29, 2006) includes as a management action the evaluation of current guidelines and the need for regulations and/or protected areas. The scope of this ANPR encompasses the activities of any person or conveyance that may result in the unauthorized taking of killer whales and/or that may cause detrimental individual-level and population-level impacts. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect killer whales from the effects of these activities.

Timetable:

Action	Date	FR Cite
ANPRM	03/22/07	72 FR 13464
ANPRM Comment Period End	04/23/07	
NPRM	07/29/09	74 FR 37674
NPRM Comment Period Extended	10/19/09	74 FR 53454

Action	Date	FR Cite
NPRM Comment Period End	10/27/09	
NPRM Extended Comment Period End	12/01/09	
Final Action	05/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AV15

253. MARINE MAMMAL PROTECTION ACT PERMIT REGULATION REVISIONS

Legal Authority: 16 USC 1374

Abstract: The National Marine Fisheries Service (NMFS) is considering changes to its implementing regulations (50 CFR 216) governing the issuance of permits for scientific research and enhancement activities under Section 104 of the Marine Mammal Protection Act and is soliciting public comment to better inform the process. NMFS intends to streamline and clarify general permitting requirements and requirements for scientific research and enhancement permits, simplify procedures for transferring marine mammal parts, possibly apply the General Authorization (GA) to research activities involving Level A harassment of non-endangered marine mammals, and implement a ''permit application cycle'' for application submission and processing of all marine mammal permits. NMFS intends to write regulations for marine mammal photography permits and is considering whether this activity should be covered by the GA.

Timetable:

Action	Date	FR Cite
ANPRM	09/13/07	72 FR 52339
ANPRM Comment Period Extended	10/15/07	72 FR 58279
ANPRM Comment Period End	11/13/07	
ANPRM Comment Period Extended	12/13/07	72 FR 58279
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
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RIN: 0648–AV82

254. RULEMAKING TO ESTABLISH TAKE PROHIBITIONS FOR THE THREATENED SOUTHERN DISTINCT POPULATION SEGMENT OF NORTH AMERICAN GREEN STURGEON

Legal Authority: 16 USC 1531 to 1543

Abstract: Under section 4(d) of the Federal Endangered Species Act (ESA), the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This rulemaking would establish an ESA section 4(d) rule representing regulations that NMFS believes necessary and advisable to conserve the threatened Southern Distinct Population Segment of North American green sturgeon (Southern DPS of green sturgeon). The 4(d) rule would apply the prohibitions listed under ESA section 9(a)(1)(A) and 9(a)(1)(D) through 9(a)(1)(G) for the Southern DPS and apply ESA section 9(a)(1)(B) and (a)(1)(C) prohibitions (called the ''take prohibitions'') to specific activities that take Southern DPS fish or alter its habitat in a manner detrimental to the continued existence of the species. The 4(d) rule would include exceptions to the take prohibitions for activities conducted in a way that NMFS deems adequate to protect or conserve the Southern DPS.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	
NPRM Comment Period End	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
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RIN: 0648–AV94

255. RULE TO REVISE LEATHERBACK CRITICAL HABITAT

Legal Authority: 16 USC 1531 et seq

Abstract: The National Marine Fisheries Service, announces a rule to revise leatherback turtle (Dermochelys coriacea) critical habitat under the Endangered Species Act of 1973, as amended. The leatherback is currently listed as endangered throughout its range, and critical habitat consists of Sandy Point Beach and adjacent waters, St. Croix, U.S. Virgin Islands. This rule would revise critical habitat to include waters along the U.S. West Coast.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX06

Department of Commerce (DOC) **Final Rule Stage**

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

256. FISHERIES IN THE WESTERN PACIFIC; PELAGIC FISHERIES; SQUID JIG FISHERIES

Legal Authority: 16 USC 1801 et seq

Abstract: This action would designate pelagic squid as a management unit species under the Western Pacific Pelagics Fishery Management Plan, and establish permitting and reporting requirements.

Timetable:

Action	Date	FR Cite
Notice of Availability	08/11/08	73 FR 46581
NPRM	08/28/08	73 FR 50751
Notice Comment Period End	10/10/08	
NPRM Comment Period End	10/14/08	
Final Action	11/21/08	73 FR 70600
Collection of Information Approval	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
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RIN: 0648–AS71

257. MODIFYING MAXIMUM RETAINABLE AMOUNTS (MRAS) FOR SELECTED GROUNDFISH SPECIES CAUGHT BY THE NON–AMERICAN FISHING ACT TRAWL CATCHER PROCESSOR SECTOR

Legal Authority: 16 USC 1801

Abstract: The National Marine Fisheries Service issues this action to amend regulations specifying the current interval of time allowed for determining the maximum retainable amount (MRA) of selected groundfish species that can be retained by non-American Fishery Act trawl catcher processors. This action would change MRA regulations located at 50 CFR 679.20(e) that establish the calculation of MRAs for groundfish species that are closed to directed fishing by increasing the interval of time each vessel in this sector would have to retain the MRA specified in regulation for several species in the Bering Sea and Aleutian Islands. This action is intended to promote the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area.

Timetable:

Action	Date	FR Cite
NPRM	02/13/09	74 FR 7209
NPRM Comment Period End	03/16/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
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RIN: 0648–AV32

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

Regulatory Plan: This entry is Seq. No. 34 in part II of this issue of the **Federal Register**.

RIN: 0648–AV51

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

Legal Authority: 16 USC 1801

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

Timetable:

Action	Date	FR Cite
NPRM	05/14/08	73 FR 27998
NPRM Comment Period End	06/13/08	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AV53

260. INITIAL IMPLEMENTATION OF THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

Legal Authority: 44 USC 3501 et seq; PL 109–479

Abstract: This action will implement, in part, the Western and Central Pacific Fisheries Convention (WCPFC) Implementation Act, which authorizes the Secretary of Commerce to promulgate regulations needed to carry out the obligations of the United States under the WCPFC. The action will include regulations applicable to owners and operators of U.S. vessels used to fish for highly migratory fish stocks in the western and central Pacific ocean, possibly including requirements to, among others, obtain authorization to fish, carry position-fixing transmitters as part of a vessel

monitoring system, accommodate observers from a regional observer program, report fishing activity, accept boarding and inspection by authorized inspectors of other members of the Commission, and to prohibit transshipping at sea from purse seine vessels.

Timetable:

Action	Date	FR Cite
NPRM	05/22/09	74 FR 23965
NPRM Comment Period End	06/22/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AV63

261. AMENDMENT 15B TO THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL SNAPPER GROUPER FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801

Abstract: Amendment 15B would assess the practicability of prohibiting the sale of recreationally caught fish; assess the practicability of changes to the renewal period on commercial snapper grouper permits; assess the practicability of allowing one-to-one transfers of commercial permits from an individual to a family-held corporation; implement a plan to monitor and assess bycatch; implement measures to minimize the impacts of incidental take on sea turtles and smalltooth sawfish; update management reference points for golden tilefish; and define allocation for snowy grouper and black sea bass.

Timetable:

Action	Date	FR Cite
Notice of Availability	06/04/09	74 FR 26827
NPRM	06/30/09	74 FR 31225
Notice of Availabilty Comment Period End	08/03/09	
NPRM Comment Period End	08/04/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW12

262. REVISE REGULATIONS GOVERNING THE NORTH PACIFIC GROUNDFISH OBSERVER PROGRAM

Legal Authority: 118 Stat 110; 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq; PL 108–199

Abstract: This rulemaking would revise Federal regulations relevant to numerous administrative and procedural requirements applicable to observer providers, observers, and industry participating in the North Pacific Groundfish Observer Program. Specifically, this action would: Modify the current permit issuance process so that observer and observer provider permit issuance is a discretionary National Marine Fisheries Service (NMFS) decision; amend current Federal regulations addressing observer behavior involving drugs, alcohol, and physical sexual conduct to remove NMFS oversight of observer behavior that does not affect job performance; require that observer providers submit policies related to these activities and continue to notify NMFS upon learning of an incident; revise Federal regulations so that observer providers are allowed to provide observers or technical staff for purposes of exempted fishing permits, scientific research permits, or other scientific research activities; revise the definition of ''fishing day'' in Federal regulations; require observer providers to annually submit detailed economic information to NMFS; specify a date by which observers who have collected data in the previous fishing year would be required to be available for debriefing; and implement housekeeping issues related to errors or clarifications in existing regulations at 50 CFR 679.50.

Timetable:

Action	Date	FR Cite
NPRM	09/30/09	74 FR 50155
NPRM Comment Period End	10/30/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW24

263. FISHERIES IN THE WESTERN PACIFIC; WESTERN PACIFIC PELAGIC FISHERIES; AMENDMENT 18 TO THE PELAGICS FISHERY MANAGEMENT PLAN; SHALLOW–SET LONGLINE SWORDFISH FISHERY

Legal Authority: 16 USC 1801

Abstract: Amendment 18 would remove the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic longline fishery. The amendment would also revise the current maximum limit on the number of physical interactions that occur annually between loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting. Other measures currently applicable to the fishery would remain unchanged. Amendment 18 is intended to increase opportunities for the shallow-set fishery to sustainably harvest swordfish and other fish species, without jeopardizing the continued existence of sea turtles and other protected resources.

Timetable:

Action	Date	FR Cite
Notice of Availability	03/18/09	74 FR 11518
Notice of Availability Comment Period End	05/18/09	
NPRM	06/19/09	74 FR 29158
NPRM Comment Period End	08/03/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601

DOC—NOAA **Final Rule Stage**

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RIN: 0648–AW49

264. ATLANTIC HIGHLY MIGRATORY SPECIES; ATLANTIC SHARK MANAGEMENT MEASURES

Legal Authority: 16 USC 1801 et seq

Abstract: This rule would evaluate the management measures for small coastal sharks (SCS) based on the results of the 2007 SCS stock assessment. This rulemaking could consider, among other things, commercial quotas and trip limits, recreational minimum size and bag limits, time/area closures, and the public display quota. In addition, this rule would implement a rebuilding plan for blacknose sharks. To the extent that blacknose sharks are caught in fisheries that are not targeted highly migratory species fisheries, the National Marine Fisheries Service (NMFS) will work with the appropriate Regional Fishery Management Council, Interstate Commission, and States to implement regulations through their processes to rebuild blacknose sharks. This action is necessary in light of recent stock assessments, which have determined that blacknose sharks are overfished with overfishing occurring. As needed, this rule may include others items to clarify existing regulations.

Timetable:

Action	Date	FR Cite
Notice of Intent	05/07/08	73 FR 25665
Notice of Scoping Meetings and Extension of Comment Period	07/02/08	73 FR 37932
Notice of Intent Comment Period End	08/05/08	
Notice of Intent Comment Period Extended—Second Extension	10/29/08	73 FR 64307
Notice of Intent Comment Period Extension End	10/31/08	
Second Extension Comment Period End	11/14/08	
NPRM	07/24/09	74 FR 36892
NPRM Comment Period End	09/22/09	
NPRM Comment Period Extended	08/10/09	74 FR 39914
NPRM Comment Period Extended End	09/25/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW65

265. HALIBUT CHARTER VESSEL MORATORIUM

Legal Authority: 16 USC 773 to 773k

Abstract: This action would implement a moratorium on the entry of additional charter vessels into the guided sport fishery for Pacific halibut in waters of International Pacific Halibut Commission regulatory areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). If approved, this moratorium would limit the number of charter vessels that may participate in the guided sport fishery for halibut in these areas. NMFS would issue a moratorium permit to a licensed charter vessel fishing business owner based on his or her past participation in the charter vessel fishery for halibut and to a Community Quota Entity representing specific rural communities. All moratorium permit holders would be subject to limits on the number of permits they could hold and on the number of charter vessel anglers who could catch and retain halibut on the permitted charter vessel. This action is proposed to achieve the halibut fishery management goals of the North Pacific Fishery Management Council. The intended effect is to curtail growth of fishing capacity in the guided sport fishery for halibut.

Timetable:

Action	Date	FR Cite
NPRM	04/21/09	74 FR 18178
NPRM Comment Period End	06/05/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW92

266. ATLANTIC HIGHLY MIGRATORY SPECIES; 2009 NORTH AND SOUTH ATLANTIC COMMERCIAL QUOTAS

Legal Authority: 16 USC 1801 et seq

Abstract: This rule would establish the 2009 fishing season quotas for North and South Atlantic swordfish based on recent updated landings information and recommendations from the 2008 annual meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). This rule is necessary to ensure that current swordfish quotas account for underharvests and reserve transfer from the 2008 fishing year, consistent with regulations at 50 CFR part 635 and ICCAT recommendations that establish the U.S. North and South Atlantic swordfish allocations. This proposed rule may also include other minor regulatory clarifications.

Timetable:

Action	Date	FR Cite
NPRM	08/05/09	74 FR 39032
NPRM Comment Period End	09/04/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX07

267. AMENDMENT 29 TO THE FISHERY MANAGEMENT PLAN FOR REEF FISH RESOURCES OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801

Abstract: Grouper and tilefish species in the Gulf of Mexico are managed

under the reef fish fishery management plan. Past management practices under the plan have contributed to overcapitalization in these fisheries, which the Council now seeks to address. The amendment creates an individual fishing quota (IFQ) program to further control effort in the commercial grouper and tilefish fisheries in the Gulf of Mexico. The IFQ program was supported by over 80% of all eligible fishermen voting in a referendum for the IFQ program. The proposed rule would implement the IFQ program, establish design elements for the program, and allow consolidation of commercial permit landings history through permit stacking.

Timetable:

Action	Date	FR Cite
NPRM	04/30/09	74 FR 20134
NPRM Comment Period End	06/15/09	
Final Action	08/31/09	74 FR 44732
Final Action Effective	09/30/09	
Final Action—Correction	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX39

268. WESTERN AND CENTRAL PACIFIC FISHERIES FOR HIGHLY MIGRATORY SPECIES; IMPLEMENTATION OF THE LONGLINE CATCH LIMITS ADOPTED AT THE FIFTH SESSION OF THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

Legal Authority: 16 USC 6901 et seq

Abstract: This rule would implement the decisions adopted at the Fifth Session of the Western and Central Pacific Fisheries Commission (Commission) to reduce or otherwise control the fishing mortality rate from longline fishing of bigeye tuna and potentially other highly migratory fish species in the Western and Central Pacific Ocean. Pursuant to the Western and Central Pacific Fisheries Convention Implementation Act, the Secretary of Commerce is authorized to implement regulations to carry out the obligations of the United States under the Western and Central Pacific Fisheries Convention (Convention), including the implementation of Commission decisions. At its Fifth Regular Session, in December 2008, the Commission adopted specific catch limits in longline fisheries for certain highly migratory fish species in the Convention's area of application for 2009, 2010, and 2011. This rule would fulfill the international obligations of the United States regarding these catch limits. Moreover, this rule could establish a framework for implementing future Commission decisions of a similar nature.

Timetable:

Action	Date	FR Cite
NPRM	07/08/09	74 FR 32521
NPRM Comment Period End	08/07/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX59

269. ● SNAPPER–GROUPER FISHERY MANAGEMENT PLAN OF THE SOUTH ATLANTIC

Legal Authority: 16 USC 1801

Abstract: On March 23, 2009, the South Atlantic Fishery Management Council requested NOAA Fisheries Service to implement a prohibition on the harvest of red snapper for 180 days to address overfishing of red snapper, through interim measures.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/06/09	74 FR 31906
Interim Final Rule Comment Period End	08/05/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX75

270. ● AMENDMENT 10 TO THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

Abstract: The purpose of Amendment 10 is to: (1) Develop a rebuilding program that allows the butterfish stock to rebuild in the shortest amount of time possible (but not to exceed ten years) and permanently protects the long-term health and stability of the rebuilt stock; (2) minimize bycatch and the fishing mortality of unavoidable bycatch, to the extent practicable, in MSB fisheries; and (3) minimize the race to fish and promote efficient use of fishing capital in Loligo and Illex fisheries while providing a means for the industry to proactively engage in resource governance and to provide greater flexibility in developing management measures that fit localized needs through the development of sectors in the Loligo and Illex fisheries.

Timetable:

Action	Date	FR Cite
Notice of Availability	07/13/09	74 FR 40812
NPRM	09/03/09	74 FR 45597
NPRM Comment Period End	10/19/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AY00

DOC—NOAA **Final Rule Stage**

271. PROVIDE REGULATIONS FOR PERMITS FOR CAPTURE, TRANSPORT, IMPORT, AND EXPORT OF PROTECTED SPECIES FOR PUBLIC DISPLAY, AND FOR MAINTAINING A CAPTIVE MARINE MAMMAL INVENTORY

Legal Authority: 16 USC 1372(c)

Abstract: This rule will revise and simplify criteria and procedures specific to permits for taking, transporting, importing, and exporting protected species for public display and provide convenient formats for reporting marine mammal captive holdings and transports as required by amendments made in 1994 to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35209
NPRM Comment Period Extended	08/22/01	66 FR 44109
NPRM Comment Period End	09/04/01	
Comment Period Extended	11/02/01	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AH26

272. • TAKING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES; TAKING MARINE MAMMALS INCIDENTAL TO TRAINING OPERATIONS CONDUCTED WITHIN THE GULF OF MEXICO RANGE COMPLEX

Legal Authority: 16 USC 1361 et seq

Abstract: NMFS has received requests from the U.S. Navy (Navy) for authorizations for the take of marine mammals incidental to training and operational activities conducted by the Navy's Atlantic Fleet within Gulf of Mexico (GOMEX) Range Complex for the period beginning December 3, 2009 and ending December 2, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/14/09	74 FR 33960
NPRM Comment Period End	08/13/09	
Final Action	01/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX86

Department of Commerce (DOC) — Long-Term Actions

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

273. FISHERY MANAGEMENT PLAN FOR REGULATING OFFSHORE MARINE AQUACULTURE IN THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq

Abstract: The purpose of the amendment is to develop a regulatory permitting process for regulating and promoting environmentally sound and economically sustainable aquaculture in the Gulf Exclusive Economic Zone. Management actions include: (1) Types of aquaculture permits required; (2) duration aquaculture permits are effective; (3) conditions for permit issuance; (4) species allowed for aquaculture; (5) allowable aquaculture systems; (6) siting requirements and conditions; (7) restricted access zones for aquaculture facilities; (8) recordkeeping and reporting requirements; and (9) biological reference points and status determination criteria; and (10) framework procedures for modifying status determination criteria and regulatory measures.

Timetable:

Action	Date	FR Cite
Notice of Availability	06/04/09	74 FR 26829
Notice of Availability Comment Period End	08/03/09	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AS65

Department of Commerce (DOC) — Completed Actions

National Oceanic and Atmospheric Administration (NOAA)

274. AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR THE TILEFISH FISHERY

Legal Authority: 16 USC 1801 et seq

Abstract: Amendment 1 to the Fishery Management Plan for the Tilefish Fishery would implement Individual Fishing Quotas in the tilefish fishery.

Timetable:

Action	Date	FR Cite
Notice of Availability	05/04/09	74 FR 20448
NPRM	05/18/09	74 FR 23147
NPRM Comment Period End	07/02/09	
Notice of Availability Comment Period End	07/06/09	
Final Action	08/24/09	74 FR 42580

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AS25

275. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); REDUCING SEA TURTLE TAKES

Legal Authority: 16 USC 971; 16 USC 1801 et seq

Abstract: This action would amend the regulations governing the Atlantic pelagic longline fishery based upon a June 1, 2004, Biological Opinion regarding Atlantic sea turtles. This amendment could include framework mechanisms that would allow the Agency to take action, such as partial or rolling closures or gear or effort restrictions, if the number of sea turtle interactions or mortalities exceed anticipated levels during a certain period of time. This action would not change established quotas for target species.

Timetable:

Action	Date	FR Cite
ANPRM	08/12/04	69 FR 49858
ANPRM Comment Period End	10/12/04	
Withdrawn	07/29/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AS49

276. AMENDMENT 10 TO THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY MANAGEMENT PLAN

Timetable:

Action	Date	FR Cite
Duplicate of 0648-AY00	08/13/09	

RIN: 0648–AT58

277. AMERICAN LOBSTER DATA COLLECTION AND BROODSTOCK PROTECTION MEASURES

Legal Authority: 16 USC 5101 et seq

Abstract: NMFS is considering the implementation of management measures in the Federal lobster fishery, consistent with recommendations for Federal action as specified in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster. These proposed management measures include: 100 percent mandatory dealer reporting requirements for Federal lobster dealers; implementation of a maximum size limit (maximum carapace length restriction) in several Lobster Management Areas (LMA); and, revision to the definition of a V-notch for protection of egg-bearing female lobsters in several LMAs in the Federal American lobster fishery.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/07	72 FR 53978
ANPRM Comment Period End	10/22/07	
NPRM	10/06/08	73 FR 58099
NPRM Comment Period End	11/20/08	
Final Rule	07/29/09	74 FR 37530

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AV77

278. AMENDMENT 7 TO THE SOUTH ATLANTIC SHRIMP FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

Abstract: The South Atlantic Fishery Management Council is proposing to take action to maintain a viable rock shrimp fishery in the South Atlantic region. Actions in the amendment would: (1) Remove the 15,000-pound landing requirement; (2) reinstate all endorsements lost due to not meeting the landing requirement in one of four consecutive calendar years; (3) reinstate limited access endorsements for vessel owners who renewed their open access permit in the year in which they failed to renew their limited access endorsement; (4) rename the limited access endorsement and the open access permit of the existing permit system to reduce confusion; and (5) require all South Atlantic shrimp permit holders to provide economic data if selected.

Timetable:

Action	Date	FR Cite
Notice of Availability	06/01/09	74 FR 26170
NPRM	06/24/09	74 FR 30034
NPRM Comment Period End	07/24/09	
Notice of Availability Comment Period End	07/31/09	
Final Action	10/01/09	74 FR 50699

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW19

279. FISHERIES OFF WEST COAST STATES; HIGHLY MIGRATORY SPECIES FISHERIES

Legal Authority: 16 USC 1801

Abstract: This action will establish the authority to collect permit fees under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. This rule will amend the FMP regulations under 50 CFR 660.707 to establish a permit fee collection framework for HMS

commercial and recreational charter vessels operating off the West Coast. The action is consistent with and implements elements of the NMFS Permit Fee National Policy Directive 30-120.

Timetable:

Action	Date	FR Cite
NPRM	12/19/08	73 FR 77589
NPRM Comment Period End	01/20/09	
Final Action	07/28/09	74 FR 37177
Final Action Effective	08/27/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW50

280. FISHERIES IN THE WESTERN PACIFIC; COMPENSATION TO NORTHWESTERN HAWAIIAN ISLANDS BOTTOMFISH AND LOBSTER FISHERMEN DUE TO FISHERY CLOSURE IN THE PAPAHANAUMOKUAKEA MARINE NATIONAL MONUMENT

Legal Authority: PL 110–161

Abstract: The Consolidated Appropriations Act of 2008 authorizes the Secretary of Commerce to provide compensation to bottomfish and lobster fishery participants who will be displaced by the 2011 fishery closure resulting from the establishment by Presidential Proclamation of the Papahanaumokuakea Marine National Monument, Northwestern Hawaiian Islands. The National Marine Fisheries Service (NMFS) (designee of the Secretary) is required to promulgate regulations to implement a voluntary capacity reduction program that: (1) Identifies eligible participants as those individuals holding Federal fishing permits for lobster or bottomfish in the designated waters within the monument; (2) provides a mechanism to compensate eligible participants for no more than the economic value of their permits; and (3) at the option of each eligible permit holder, provides an optional mechanism for additional compensation based on the value of the fishing vessel and gear of eligible participants who decide to receive these additional funds, provided that the vessels of such participants will not be used for fishing. For this purpose, $6,697,500 is authorized to be appropriated to the NMFS.

Timetable:

Action	Date	FR Cite
NPRM	04/07/09	74 FR 15685
NPRM Comment Period End	05/04/09	
Final Action	09/15/09	74 FR 47119

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW52

281. AMENDMENT 16 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER GROUPER FISHERY OF THE SOUTH ATLANTIC REGION

Legal Authority: 16 USC 1801

Abstract: The need for action through Amendment 16 is to end overfishing of gag and vermilion snapper. Species in the fishery management unit are assessed on a routine basis and stock status may change as new information becomes available. In addition, changes in management regulations, fishing techniques, and social/economic structure can result in shifts in the percentage of harvest between user groups over time. These amendments to the regulations for gag and vermilion snapper would: implement measures to end overfishing of gag and vermilion snapper; allow the Regional Administrator to make adjustments to commercial and recreational management measures based on the reduction in harvest needed to achieve yield at Foy pending the outcome of a new benchmark assessment for vermillion snapper; specify the total allowable catch and define interim allocations for gag and vermilion snapper; update management reference points for gag and vermilion snapper; and reduce bycatch of snapper grouper species.

Timetable:

Action	Date	FR Cite
Notice of Availability	12/24/08	73 FR 79037
NPRM	02/06/09	74 FR 6257
Notice of Availability Comment Period End	02/23/09	
NPRM Comment Period End	03/09/09	
Final Action	06/29/09	74 FR 30964
Final Action Effective	07/29/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW64

282. AMENDMENT 27 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS

Legal Authority: 16 USC 1801 et seq

Abstract: Amendment 27 to the Fishery Management Plan (FMP) would amend the FMP to allow processors to modify use caps that limit the amount of individual processor quota (IPQ) shares that may be used by persons processing crab. Specifically, Amendment 27 would allow persons holding IPQ shares to process their crab at processing facilities they do not own through contractual arrangements with the facility owners to have their crab custom processed at that facility. Any crab processed under such a custom processing arrangement would not be applied against the IPQ use cap of the facility owners. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

Timetable:

Action	Date	FR Cite
NPRM	09/19/08	73 FR 54346
NPRM Comment Period End	11/03/08	
Final Rule	05/28/09	74 FR 25449
Final Action Effective	06/29/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW73

283. AMENDMENT 28 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRAB

Legal Authority: 16 USC 1862; PL 109–241; PL 109–479

Abstract: This action would implement Amendment 28 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs to allow unlimited post-delivery transfers of shares to cover overages within the crab fishing year ending June 30. Under the crab rationalization program, harvesters receive annual allocations of individual fishing quota that provide an exclusive privilege to harvest a specific number of pounds of crab from a fishery. Any harvest in excess of an individual fishing quota allocation is a regulatory violation punishable by confiscation of crab or other penalties. Precisely estimating of catch at sea during the fishery is difficult and costly due to variation in size of crab, and sorting and measurement requirements. Overages can result from inadvertent mistakes by participants attempting to accurately estimate catch. A provision allowing for post-delivery transfer of individual fishing quota to cover overages could reduce the number of inadvertent violations, allowing for more complete harvest of allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.

Timetable:

Action	Date	FR Cite
Notice of Availability	11/25/08	73 FR 71598
NPRM	12/12/08	73 FR 75661
Notice of Availability Comment Period End	12/25/08	
NPRM Comment Period End	01/26/09	
Final Action	08/14/09	74 FR 41092
Final Action Effective	09/14/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AW97

284. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); 2009 ATLANTIC BLUEFIN TUNA QUOTA SPECIFICATIONS AND MANAGEMENT MEASURES

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

Abstract: This rule would set Atlantic bluefin tuna (BFT) quota specifications and seasonal management measures for the 2009 fishing year (January 1, 2009-December 31, 2009), and amend the BFT regulations. This action would implement the U.S. annual BFT quota as recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and allocate that quota among the domestic fishing categories. The seasonal management measures would set daily retention limits and their duration for both the General and Angling categories. The annual specification process is set forth in current regulations implemented under the Consolidated Highly Migratory Species Fishery Management Plan. Other BFT regulatory amendments would be made within the framework procedures of the FMP.

Timetable:

Action	Date	FR Cite
NPRM	02/18/09	74 FR 7577
NPRM Comment Period End	03/20/09	
Final Rule	06/01/09	74 FR 26110
Correction	06/17/09	74 FR 28635

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX12

285. AMENDMENT 92 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA/ALEUTIAN ISLANDS GROUNDFISH AND AMENDMENT 82 TO THE FISHERY MANAGEMENT PLAN FOR GULF OF ALASKA GROUNDFISH

Legal Authority: 16 USC 1801 et seq

Abstract: Amendments 92/82 would remove trawl gear endorsements on licenses issued under the license limitation program in specific management areas if those licenses have not been used on vessels that meet minimum recent landing requirements using trawl gear. This action would provide exemptions to this requirement for licenses that are used in trawl fisheries subject to quota-based management. This action would issue new area endorsements for trawl catcher vessels in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable law.

Timetable:

Action	Date	FR Cite
Notice of Availability of Fishery Management Plan	12/12/08	73 FR 75659
NPRM	12/30/08	73 FR 79773
Notice of Availability Comment Period End	02/10/09	
NPRM Comment Period End	02/13/09	
Final Action	08/14/09	74 FR 41080

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX14

286. ONE–FISH DAILY BAG LIMIT FOR THE GUIDED SPORT CHARTER VESSEL FISHERY FOR HALIBUT IN REGULATORY AREA 2C

Legal Authority: 16 USC 773 to 773K

Abstract: The regulatory action would implement a one-fish daily bag limit to reduce the charter halibut fishery harvest in Area 2C to the guideline harvest limit.

Timetable:

Action	Date	FR Cite
NPRM	12/22/08	73 FR 78276
NPRM Comment Period End	01/21/09	
Final Rule	05/06/09	74 FR 21194
Final Rule Effective	06/05/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX17

287. AMENDMENT 90 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA/ALEUTIAN ISLANDS GROUNDFISH AND AMENDMENT 78 TO THE FISHERY MANAGEMENT PLAN FOR GULF OF ALASKA GROUNDFISH

Legal Authority: 16 USC 1801 et seq

Abstract: Amendments 90/78 would allow post-delivery transfers of cooperative quota to cover overages in the Amendment 80 Program and the Central Gulf of Alaska Rockfish Program. This action is necessary to mitigate potential overages, reduce enforcement costs, and provide for more precise total allowable catch management. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable law.

Timetable:

Action	Date	FR Cite
NPRM	01/05/09	74 FR 254
NPRM Comment Period End	02/19/09	
Final Action	08/21/09	74 FR 42178
Final Action Effective	09/21/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX25

288. AMENDMENT 85 TO THE FISHERY MANAGEMENT PLAN FOR GROUNDFISH OF THE GULF OF ALASKA

Legal Authority: 16 USC 1801; 16 USC 3631; 16 USC 773; PL 108–199; PL 109–479

Abstract: Amendment 85 to the FMP would remove a provision that restricts participation of Central Gulf of Alaska Rockfish Program catcher processors (CPs) in Bering Sea and Aleutian Islands (BSAI) groundfish fisheries. The participation restriction was developed to prevent rockfish program CPs from unfairly benefiting from their rockfish harvesting privileges by increasing effort in BSAI fisheries that remained subject to a race for fish. Since the implementation of the rockfish program, most BSAI groundfish target species have been allocated among participating sectors, and most CPs in the rockfish program received exclusive privileges for harvesting these BSAI species. Consequently, the July stand down may no longer be required as a protection measure for other BSAI participants and its removal would enable the rockfish program CPs to more efficiently manage their harvesting activities. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

Timetable:

Action	Date	FR Cite
Notice of Availabilty	03/24/09	74 FR 12300
NPRM	04/06/09	74 FR 15420
Comment Period Extension	05/13/09	74 FR 22507
NPRM Comment Period End	05/21/09	
Notice of Availability Comment Period End	05/26/09	
Final Action	11/03/09	74 FR 56728
Final Rule Effective	12/04/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX42

289. 2009 ATLANTIC BLUEFISH SPECIFICATIONS

Legal Authority: 16 USC 1801

Abstract: The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission manage the Atlantic bluefish fishery jointly through the Atlantic Bluefish Fishery Management Plan (FMP). The FMP includes a specification process that requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and total allowable landings (TAL) that are consistent with the stock rebuilding program. The TAL is composed of a commercial quota (allocated to the states from Maine to Florida in specified shares) and a coastwide recreational harvest limit. The Council may also specify a research set-aside (RSA) quota. The FMP also requires the Council to recommend annual fishing measures, such as possession limits, to assure that the recommended quotas will not be exceeded. The Council has submitted proposed specifications for the 2009 Atlantic bluefish fishery. In summary, the specifications propose: (1) A TAC for bluefish of 34.081 million lb (an increase from 31.887 million lb in 2008); (2) an overall TAL of 29.356 million lb (an increase from 28.156 million lb in 2008); (3) zero transfer from the recreational sector to the commercial sector, to achieve a commercial quota of 4.991 million lb (a reduction from 7.692 million lb in 2008) and a recreational harvest limit of 24.366 million lb (an increase from 20.415 million lb in 2008); (4) an RSA quota of 97,750 lb (would further reduce quota and limit above); and (5) a recreational possession limit of 15 fish.

Timetable:

Action	Date	FR Cite
NPRM	03/02/09	74 FR 9072

Action	Date	FR Cite
NPRM Comment Period End	03/17/09	
Final Action	05/04/09	74 FR 20423
Final Action Effective	06/03/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX49

290. DEFINITION OF U.S. CITIZEN

Legal Authority: 16 USC 1801 et seq

Abstract: The current definition of ''U.S. Citizen'' at 50 CFR 679.2 is critical for permits and licenses, some of which are intended to be issued only to, and held only by, persons who are U.S. citizens. The current definition for general applicability refers only to individual persons and lacks reference to non-individuals, such as corporations, partnerships, or associations. For consistency and to avoid confusion among permit applicants, NMFS proposes to revise the definition of U.S. Citizen.

Timetable:

Action	Date	FR Cite
NPRM– 6–15–09 Withdraw AKR	06/15/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX52

291. 2009 SPECIFICATIONS AND MANAGEMENT MEASURES FOR THE SPINY DOGFISH FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801

Abstract: This action would set the 2009 fishing year annual quota and possession limit for the spiny dogfish fishery on the Atlantic coast of the U.S. consistent with the rebuilding program in the Spiny Dogfish Fishery Management Plan (FMP). The quota is divided semi-annually, with quota period 1 (May 1 through October 31) being allocated 57.9% of the annual quota, and quota period 2 (November 1 through April 30) being allocated 42.1%.

Timetable:

Action	Date	FR Cite
NPRM	03/19/09	74 FR 11706
NPRM Comment Period End	04/03/09	
Final Action	05/01/09	74 FR 20230

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX57

292. WESTERN AND CENTRAL PACIFIC FISHERIES FOR HIGHLY MIGRATORY SPECIES; IMPLEMENTATION OF DECISIONS OF THE FIFTH SESSION OF THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION FOR PURSE SEINE FISHERIES

Legal Authority: 16 USC 6901 et seq

Abstract: This rule would implement the decisions adopted at the Fifth Session of the Western and Central Pacific Fisheries Commission (Commission) to reduce or otherwise control the fishing mortality rate of bigeye tuna and potentially other highly migratory fish species in the Western and Central Pacific Ocean from purse seine and other commercial fishing and to mitigate the impacts of fishing on non-target species such as turtles. Pursuant to the Western and Central Pacific Fisheries Convention Implementation Act, the Secretary of Commerce is authorized to implement regulations to carry out the obligations of the United States under the Western and Central Pacific Fisheries Convention (Convention), including the implementation of Commission decisions. At its Fifth Regular Session, in December 2008, the Commission adopted specific provisions for purse seine and other commercial fisheries that target highly migratory fish species in the Convention's area of application for 2009, 2010, and 2011. The U.S. implementation of these provisions could include (but is not limited to) the following: (1) time-area closures for fishing on fish aggregating devices; (2) requirements regarding observers on vessels; (3) closure of specific areas of high seas; (4) limits on fishing effort and/or catches; and (5) requirements aimed at reducing the capture, injury, and mortality of sea turtles.

Timetable:

Action	Date	FR Cite
NPRM	06/01/09	74 FR 26160
NPRM Comment Period End	06/22/09	
Final Action Effective	08/03/09	
Final Rule	08/04/09	74 FR 38544

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX60

293. 2009 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Legal Authority: 16 USC 1801 et seq

Abstract: This rulemaking will propose and implement recreational management measures for the summer flounder, scup, and black sea bass 2009 recreational fisheries. The final rule will contain implementing regulations that specify the minimum fish size, possession limit, and fishing season for the three species.

Timetable:

Action	Date	FR Cite
NPRM	04/01/09	74 FR 14760
NPRM Comment Period End	05/01/09	
Final Action	06/24/09	74 FR 30002
Final Action Effective	07/24/09	

Regulatory Flexibility Analysis Required: Yes

DOC—NOAA **Completed Actions**

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RIN: 0648–AX69

294. REEF FISH AMENDMENT 30B TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO: MEASURE TO ESTABLISH THE EDGES SEASONAL–AREA CLOSURE

Legal Authority: 16 USC 1801

Abstract: The proposed rule for Amendment 30B published on November 18, 2008 (73 FR 68390) and Amendment 30B was approved on January 23, 2009. Unfortunately, the proposed rule contained an error relative to the ''The Edges'' seasonal-area closure. Rather than just a 4-month closure to all Council managed fishing activity, as supported by Amendment 30B, the codified text would have also established a year-round prohibition on the position of reef fish species in the area. Therefore, this measure was removed from the final rule (RIN 0648-AV80) and a placed in this second rulemaking (RIN 0648-AX73) that would establish ''The Edges'' seasonal-area closure from January 1 through April 30 consistent with the contents of Amendment 30B.

Timetable:

Action	Date	FR Cite
NPRM	04/17/09	74 FR 17812
NPRM Comment Period End	05/04/09	
Final Action	06/24/09	74 FR 30001
Final Action Effective	07/24/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX73

295. • ESTABLISH 2009 FISHERY SPECIFICATIONS FOR PACIFIC WHITING; PACIFIC GROUNDFISH FISHERY; BIENNIAL SPECIFICATIONS AND MANAGEMENT MEASURES

Legal Authority: 16 USC 1801; 16 USC 7001

Abstract: This final rule establishes the 2009 fishery specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), and allocations for the non-tribal commercial sectors.

Timetable:

Action	Date	FR Cite
Final Action	04/30/09	
Final Specifications	05/05/09	74 FR 20620

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX77

296. • PACIFIC COAST GROUNDFISH INSEASON ACTION FOR MAY 1, 2009

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq

Abstract: On March 6, 2009, NMFS published a final rule to implement the 2009-2010 West Coast groundfish harvest specifications and management measures (74 FR 9874). This action takes routine and frequent management action to modify harvest specifications and management measures to meet the mandates outlined by the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Timetable:

Action	Date	FR Cite
Inseason Action	04/27/09	74 FR 19011

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX84

297. • ESTABLISH A CONTROL DATE FOR THE REEF FISH, QUEEN CONCH, AND SPINY LOBSTER FISHERIES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Legal Authority: 16 USC 1801

Abstract: The Caribbean Fishery Management Council (Council) voted to establish a control date of March 24, 2009, for the commercial sector of the reef fish, queen conch, and spiny lobster fisheries of Puerto Rico and the U.S. Virgin Islands. This action announces that anyone entering these fisheries after the control date will not be assured of future access should a management regime that limits the number of participants in the fisheries be prepared and implemented. The Council requested that the control date be published in the Federal Register to provide timely notice to the industry.

This action would inform participants in the U.S. Caribbean reef fish, queen conch, and spiny lobster fisheries of the Council's intentions to consider limiting access within the commercial sector of the U.S. Caribbean reef fish, queen conch, and spiny lobster fisheries. Specifically, the Council may consider requiring a permit to limit fishing in the exclusive economic zone to participants that have catch histories in excess of some minimum landings threshold or who possess a valid Territorial/Commonwealth Permit. Should the Council take future action to restrict participation in the commercial sector of the U.S. Caribbean reef fish, queen conch, or spiny lobster fisheries, it intends to use March 24, 2009, as a possible control date regarding the eligibility of catch histories. This date was announced at the Council?s March 2009 meeting.

Timetable:

Action	Date	FR Cite
Final Action	07/08/09	74 FR 32528
Comment Period End	08/07/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0648–AX92

298. ATLANTIC PELAGIC LONGLINE TAKE REDUCTION PLAN

Legal Authority: 16 USC 1361 et seq

Abstract: With this action, the National Marine Fisheries Service implements the Atlantic Pelagic Longline Take Reduction Plan in order to reduce serious injuries and mortalities of long-finned pilot whales, short-finned pilot whales, and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate, within five years of its implementation. The proposed plan is based on consensus recommendations and the draft plan was by the Atlantic Pelagic Longline Take Reduction Team (Team) and includes both regulatory and non-regulatory measures. Regulatory measures include: (1) Limiting the mainline length to 20 nautical miles or less within the Mid-Atlantic Bight; (2) designating a special research area offshore of Cape Hatteras, NC; and (3) requiring all pelagic longline vessels to post an informational placards on careful handling and release of marine mammals in the wheelhouse and working decks of the vessel. Non-regulatory measures of the plan include: (1) Providing for 12-15 percent observer coverage throughout all Atlantic pelagic longline fisheries that interact with pilot whales or Risso's dolphins; (2) encouraging vessel operators throughout the fishery to maintain daily communications with other local vessel captains; (3) updating guidelines for careful handling and release of entangled or hooked marine mammals; and (4) distributing quarterly reports of bycatch of marine mammals in the pelagic longline fishery to the Team.

Timetable:

Action	Date	FR Cite
NPRM	06/24/08	73 FR 35623
NPRM Comment Period End	09/22/08	
Final Action	05/19/09	74 FR 23349
Final Rule Effective	06/18/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kristy Long, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Room 13738, Silver Spring, MD 20910
Phone: 301 713–2322
Fax: 301 427–2522
Email: kristy.long@noaa.gov

RIN: 0648–AV65

299. DESIGNATION OF CRITICAL HABITAT FOR THE ENDANGERED U.S. DISTINCT POPULATION SEGMENT (DPS) OF GUIDED SMALLTOOTH SAWFISH

Legal Authority: 16 USC 1531 et seq

Abstract: This action would designate critical habitat for the U.S. DPS of smalltooth sawfish, which was listed as endangered on April 1, 2003. The designation would be located in Florida, within the current geographic range of the species. Comments from the public on the proposal, including information on the economic impacts, national security, and other relevant documents, as well as the benefits to the species from the designation will be solicited during a 60-day comment period. A draft economic analysis and section 4(b)(2) report will be conducted in support of this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/20/08	73 FR 70290
Notice	12/09/08	73 FR 74681
NPRM Comment Period End	01/20/09	
Reopen Comment Period	03/13/09	
Final Action	09/02/09	74 FR 45353
Final Action Effective	10/02/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Shelley L. Norton, Smalltooth Sawfish and Johnson's Seagrass Coordinator, Department of Commerce, National Oceanic and Atmospheric Administration, 253 13th Avenue South, St. Petersburg, FL 33701
Phone: 727 551–5781
Fax: 727 524–5309
Email: shelley.norton@noaa.gov

RIN: 0648–AV74

300. HARBOR PORPOISE TAKE REDUCTION PLAN REGULATIONS

Legal Authority: 16 USC 1361 et seq

Abstract: The National Marine Fisheries Service is preparing a proposed rule to reduce the number of harbor porpoise taken in sink gillnet fisheries in the Gulf of Maine and Mid-Atlantic. The Harbor Porpoise Take Reduction Plan of 1999 implemented measures to reduce the incidental capture of harbor porpoises in sink gillnets to below the stock's Potential Biological Removal level (PBR). Measures included: management areas in which deterrent devices (pingers) are required on gillnets; gear modifications; and seasonal closures. Between 2001 and 2005, incidental takes of harbor porpoise showed an increasing trend, and currently takes exceed PBR. The proposed rule will implement measures developed through discussions with the Harbor Porpoise Take Reduction Team, which was reconvened in 2007 when it was clear that existing measures were not sufficient to keep porpoise bycatch to below PBR. For the Gulf of Maine, this action would expand pinger use in Massachusetts Bay to include November; establish Stellwagen Bank Management Area, requiring pingers from November-May; establish Coastal Gulf of Maine Consequence Closure Area and require closure in October and November only if, after the most current two years, the average bycatch rate exceeds the trigger rate of .031, identified from observed compliant boats from the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas; create Southern New England Management Area (includes current Cape Cod South Management Area); require pingers from December-May; establish Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas; and require closure from February-April only if, after the most current two years, the average bycatch rate exceeds the trigger rate of 0.023, identified from observed compliant vessels fishing in the Southern New England Management Area. For the Mid Atlantic, this action would establish Mudhole South Management Area. Close from February 1-March 15; and modify the tie-down requirement.

Timetable:

Action	Date	FR Cite
NPRM	07/21/09	74 FR 36058

DOC—NOAA **Completed Actions**

Action	Date	FR Cite
NPRM Comment Period End	08/20/09	
Correction Final Action	08/10/09	74 FR 39910

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Melissa Andersen, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2322
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RIN: 0648–AW51

301. RULEMAKING TO DESIGNATE CRITICAL HABITAT FOR THE GULF OF MAINE DISTINCT POPULATION SEGMENT OF ATLANTIC SALMON

Legal Authority: 16 USC 1531 et seq

Abstract: Under section 4 of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall designate critical habitat for species listed as threatened or endangered. This rulemaking would designate critical habitat in 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 800 square km of lake habitat within the range of the Gulf of Maine's distinct population segment and on which are found those physical and biological features essential to the conservation of the species.

Timetable:

Action	Date	FR Cite
NPRM	09/05/08	73 FR 51747
NPRM Comment Period End	11/04/08	
Final Action	08/10/09	74 FR 39903

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Fax: 301 427–2523
Email: marta.nammack@noaa.gov

RIN: 0648–AW77

302. RULEMAKING TO DESIGNATE CRITICAL HABITAT FOR THE THREATENED SOUTHERN DISTINCT POPULATION SEGMENT OF NORTH AMERICAN GREEN STURGEON

Legal Authority: 16 USC 1531 et seq

Abstract: Under section 4 of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall designate critical habitat for species listed as threatened or endangered. This rulemaking would designate critical habitat for the threatened Southern Distinct Population Segment of North American green sturgeon (Southern DPS), including: the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco Bays in California; certain coastal bays and estuaries in California, Oregon, and Washington; and coastal marine waters within 110 m depth off California, Oregon, and Washington. A draft economic analysis, biological report, and ESA section 4(b)(2) analysis report in support of the proposed rulemaking will be available for public review and comment.

Timetable:

Action	Date	FR Cite
NPRM	09/08/08	73 FR 52084
Notice	10/07/08	73 FR 58527
NPRM Comment Period End	11/07/08	
Final Rule	10/09/09	74 FR 52300
Final Action Effective	11/09/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
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Email: jim.lecky@noaa.gov

RIN: 0648–AX04

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Long-Term Actions

303. EXAMINATION OF PATENT APPLICATIONS THAT INCLUDE CLAIMS CONTAINING ALTERNATIVE LANGUAGE

Legal Authority: 35 USC 2(b)(2)

Abstract: The U.S. Patent and Trademark Office (Office) is considering revising the rules of practice to address Markush-type and other claims written so as to claim an invention in the alternative. The search and examination of Markush-type and other claims written in the alternative generally consume a disproportionate amount of Office resources as compared to other types of claims, because these claims can encompass multiple independent and distinct inventions and determining the patentability of such a claim may require a separate examination of each of the alternatives within the claim. The Office anticipates that requiring applicants who choose this claim-drafting format to ensure a certain degree of relatedness among the members of a Markush group or the alternatives presented in the claims will allow the Office to do a better, more thorough and reliable examination of Markush-type and other claims written in the alternative.

Timetable:

Action	Date	FR Cite
NPRM	08/10/07	72 FR 44992
NPRM Comment Period End	10/09/07	
IRFA Comment Request	03/10/08	73 FR 12679
NPRM Comment Period End	04/09/08	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Robert W. Bahr
Phone: 571 272–8800
Fax: 571 273–0125
Email: robert.bahr@uspto.gov

RIN: 0651–AC00

304. FISCAL YEAR 2009 REVISION OF REQUEST FOR CONTINUED EXAMINATION, 18–MONTH PUBLICATION, AND OTHER MISCELLANEOUS COST–RECOVERY PATENT FEES

Legal Authority: 35 USC 2(b)(2); 35 USC 41(d); 35 USC 132(b)

Abstract: The USPTO is taking this action to revise the rules of practice to adjust the fee or set a fee for certain processes and services for which the USPTO is required to set a cost-recovery fee. The USPTO is specifically adjusting the fee for a request for continued examination, eighteen-month publication, and a certificate of correction (applicant's mistake) fee, and set a fee for requesting a corrected republication of a patent application publication. The rules of practice currently do not set a fee, or do not set a fee that recovers the USPTO?s costs, for these processes or services. The USPTO is adjusting or setting these fee amounts such that they more accurately reflect the Office costs for these processes or services.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Robert W. Bahr
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RIN: 0651–AC29

[FR Doc. E9–28588 Filed 12–04–09; 8:45 am]
BILLING CODE 3510–12–S

Federal Register

Monday,
December 7, 2009

Part V

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY (DOE)

DEPARTMENT OF ENERGY

Semiannual Regulatory Agenda

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Regulatory Agenda

AGENCY: Department of Energy.

ACTION: Notice of semiannual regulatory agenda.

SUMMARY: The Department of Energy (DOE) has prepared and is making available its portions of the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda) and The Regulatory Plan (Plan), pursuant to Executive Order 12866 ''Regulatory Planning and Review,'' 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

SUPPLEMENTARY INFORMATION: The Agenda is a Governmentwide compilation of upcoming and ongoing regulatory activity taking place over the next 12 months, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy's portion of the Agenda includes regulatory actions called for by the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and programmatic needs of DOE offices.

The Internet is the basic means for disseminating the Agenda and providing users the ability to obtain information from the Agenda database. DOE's entire fall 2009 agenda can be accessed online by going to: www.reginfo.gov. Agenda entries reflect the status of activities as of approximately October 31, 2009.

Publication in the **Federal Register** is mandated by the Regulatory Flexibility Act (5 U.S.C. 602) only for Agenda entries that require either a regulatory flexibility analysis or periodic review under section 610 of that Act. Included in this Agenda is an energy conservation standards rulemaking that required a regulatory flexibility analyses: Energy Efficiency Standards for Refrigerated Bottled or Canned Beverage Vending Machines.

For this edition of DOE's agenda, the most important of the Department's significant regulatory actions and a Statement of Regulatory Priorities are included in the Plan, which appears in both the online Agenda and the **Federal Register**.

Issued in Washington, DC, on September 22, 2009.

Scott Blake Harris,

General Counsel.

Energy Efficiency and Renewable Energy—Completed Actions

Sequence Number	Title	Regulation Identifier Number
305	Energy Efficiency Standards for Refrigerated Bottled or Canned Beverage Vending Machines	1904–AB58

Department of Energy (DOE) — Completed Actions

Energy Efficiency and Renewable Energy (EE)

305. ENERGY EFFICIENCY STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES

Legal Authority: 42 USC 6295(v)

Abstract: The Energy Policy Act of 2005 requires that DOE establish an energy conservation standard for refrigerated bottled or canned beverage vending machines.

Completed:

Reason	Date	FR Cite
NPRM	05/29/09	74 FR 26020
Final Action	08/31/09	74 FR 44914

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Charles Llenza
Phone: 202 586–2192
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RIN: 1904–AB58

[FR Doc. E9–28581 Filed 12–04–09; 8:45 am]
BILLING CODE 6450–01–S

Federal Register

Monday,
December 7, 2009

Part VI

Department of Health and Human Services

Semiannual Regulatory Agenda

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Ch. I

42 CFR Chs. I-V

45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

Regulatory Agenda

AGENCY: Office of the Secretary, HHS.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Regulatory Flexibility Act of 1980 and Executive Order (EO) 12866 requires the semi-annual issuance of an inventory of rulemaking actions under development throughout the Department with a view to offering summarized information about forthcoming regulatory actions for public review.

FOR FURTHER INFORMATION CONTACT: Dawn L. Smalls, Executive Secretary, Department of Health and Human Services, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The information provided in the Agenda presents a forecast of the rulemaking activities that the Department of Health and Human Services (HHS) expects to undertake in the foreseeable future. Rulemakings are grouped according to pre-rulemaking actions, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2009 Agenda was published.

Please note that the rulemaking abstracts included in this issue of the **Federal Register** relate only to those prospective rulemakings that are likely to have a significant economic impact on a substantial number of small entities as required by the Regulatory Flexibility Act of 1980. Also available in this issue of the **Register** is the Department's submission to the fiscal year 2010 Regulatory Plan as required under Executive Order 12866.

The purpose of the Agenda is to encourage more effective public participation in the regulatory process, and HHS invites all interested members of the public to comment on the rulemaking actions included in this issuance of the Agenda. The complete regulatory agenda of the Department is accessible online at www.reginfo.gov in an interactive format that offers users enhanced capabilities to obtain information from the Agenda's database.

Dated: October 9, 2009.

Dawn L. Smalls,

Executive Secretary, Department of Health and Human Services.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
306	Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology **(Rulemaking Resulting From a Section 610 Review) (Reg Plan Seq No. 43)**	0991–AB58

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Substance Abuse and Mental Health Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
307	Opioid Drugs in Maintenance or Detoxification Treatment of Opiate Addition **(Section 610 Review)**	0930–AA14

Substance Abuse and Mental Health Services Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
308	Requirements Governing the Use of Seclusion and Restraint in Certain Nonmedical Community-Based Facilities for Children and Youth	0930–AA10

Centers for Disease Control and Prevention—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
309	Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Animal Importation Regulations	0920–AA14
310	Control of Communicable Diseases: Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Nonhuman Primate Regulations	0920–AA23

HHS

Centers for Disease Control and Prevention—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
311	Control of Communicable Diseases Foreign Quarantine	0920–AA12
312	Control of Communicable Diseases: Interstate Quarantine, Passenger Information	0920–AA27

Centers for Disease Control and Prevention—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
313	Possession, Use and Transfer of Select Agents and Toxins **(Section 610 Review)**	0920–AA32

Food and Drug Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
314	Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution **(Section 610 Review)**	0910–AG06
315	Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures **(Section 610 Review)**	0910–AG14
316	Sterility Requirement for Aqueous-Based Drug Products for Oral Inhalation **(Section 610 Review)**	0910–AG25
317	Over-the-Counter Human Drugs; Labeling Requirements **(Section 610 Review)**	0910–AG34

Food and Drug Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
318	Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics **(Reg Plan Seq No. 44)**	0910–AC52
319	Over-the-Counter (OTC) Drug Review—Cough/Cold (Antihistamine) Products	0910–AF31
320	Over-the-Counter (OTC) Drug Review—Laxative Drug Products	0910–AF38
321	Over-the-Counter (OTC) Drug Review—Sunscreen Products	0910–AF43
322	Over-the-Counter (OTC) Drug Review—Vaginal Contraceptive Products	0910–AF44
323	Over-the-Counter (OTC) Drug Review—Weight Control Products	0910–AF45
324	Over-the-Counter (OTC) Drug Review—Poison Treatment Drug Products	0910–AF68
325	Process Controls for Animal Feed Ingredients and Mixed Animal Feed	0910–AG10
326	Pediatric Dosing for Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph	0910–AG12
327	Produce Safety Regulation **(Reg Plan Seq No. 46)**	0910–AG35
328	Modernization of the Current Food Good Manufacturing Practices Regulation **(Reg Plan Seq No. 47)**	0910–AG36

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Drug Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
329	Postmarketing Safety Reporting Requirements for Human Drug and Biological Products	0910–AA97
330	Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements	0910–AC53
331	Positron Emission Tomography Drugs; Current Good Manufacturing Practices	0910–AC55
332	Content and Format of Labeling for Human Prescription Drugs and Biologics; Requirements for Pregnancy and Lactation Labeling	0910–AF11
333	Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors **(Reg Plan Seq No. 48)**	0910–AF27
334	Over-the-Counter (OTC) Drug Review—Cough/Cold (Bronchodilator) Products	0910–AF32
335	Over-the-Counter (OTC) Drug Review—Cough/Cold (Combination) Products	0910–AF33

HHS

Food and Drug Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
336	Over-the-Counter (OTC) Drug Review—Cough/Cold (Nasal Decongestant) Products	0910–AF34
337	Over-the-Counter (OTC) Drug Review—External Analgesic Products	0910–AF35
338	Over-the-Counter (OTC) Drug Review—Internal Analgesic Products	0910–AF36
339	Over-the-Counter (OTC) Drug Review—Labeling of Drug Products for OTC Human Use	0910–AF37
340	Over-the-Counter (OTC) Drug Review—Skin Protectant Products	0910–AF42
341	Use of Materials Derived From Cattle in Human Food and Cosmetics	0910–AF47
342	Over-the-Counter (OTC) Drug Review—Acne Drug Products Containing Benzoyl Peroxide	0910–AG00
343	Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents **(Reg Plan Seq No. 50)**	0910–AG33

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Drug Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
344	Current Good Manufacturing Practice in Manufacturing, Packing, Labeling, or Holding Operations for Dietary Supplements	0910–AB88
345	Over-the-Counter (OTC) Drug Review—Ophthalmic Products	0910–AF39
346	Over-the-Counter (OTC) Drug Review—Oral Health Care Products	0910–AF40
347	Over-the-Counter (OTC) Drug Review—Overindulgence in Food and Drink Products	0910–AF51
348	Over-the-Counter (OTC) Drug Review—Antacid Products	0910–AF52
349	Over-the-Counter (OTC) Drug Review—Skin Bleaching Products	0910–AF53
350	Over-the-Counter (OTC) Drug Review—Stimulant Drug Products	0910–AF56
351	Label Requirement for Food That Has Been Refused Admission Into the United States	0910–AF61
352	Over-the-Counter Antidiarrheal Drug Products	0910–AF63
353	Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products	0910–AF69
354	Over-the-Counter (OTC) Drug Review—Urinary Analgesic Drug Products	0910–AF70
355	Status of Certain Additional Over-the-Counter Drug Category II Active Ingredients	0910–AF95

Food and Drug Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
356	Prevention of Salmonella Enteritidis in Shell Eggs	0910–AC14
357	Substances Prohibited From Use in Animal Food or Feed to Prevent the Transmission of Bovine Spongiform Encephalopathy	0910–AF46

Centers for Medicare & Medicaid Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
358	Revisions to the Medicare Advantage and Medicare Prescription Drug Benefit Programs for Contract Year 2011 (CMS-4085-F)	0938–AP77
359	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) **(Reg Plan Seq No. 53)**	0938–AP80
360	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2011 (CMS-1504-P) **(Reg Plan Seq No. 54)**	0938–AP82

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

HHS

Centers for Medicare & Medicaid Services—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
361	Revisions to Payment Policies Under the Physician Fee Schedule for CY 2010 (CMS-1413-FC)	0938–AP40
362	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2010 (CMS-1414-FC)	0938–AP41
363	Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Year 2009 CHIP Allotments (CMS-2291-F)	0938–AP53

Centers for Medicare & Medicaid Services—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
364	Home Health Agency (HHA) Conditions of Participation (CoPs) (CMS-3819-P) **(Section 610 Review)**	0938–AG81
365	Electronic Claims Attachments Standards (CMS-0050-IFC)	0938–AK62
366	Home and Community-Based Services (HCBS) State Plan Option (CMS-2249-F) **(Section 610 Review)**	0938–AO53
367	Requirements for Long-Term Care Facilities: Hospice Services (CMS-3140-P) **(Section 610 Review)**	0938–AP32
368	State Flexibility for Medicaid Benefit Packages (CMS-2232-F4)	0938–AP72

Centers for Medicare & Medicaid Services—Completed Actions

Sequence Number	Title	Regulation Identifier Number
369	Medicaid Graduate Medical Education (CMS-2279-F)	0938–AO95
370	Genetic Information Nondiscrimination Act of 2008 (CMS-4137-IFC)	0938–AP37
371	Changes to the Hospital Inpatient and Long-Term Care Prospective Payment System for FY 2010 (CMS-1406-F)	0938–AP39
372	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2010 (CMS-1410-F)	0938–AP46
373	Home Health Prospective Payment System and Rate Update for CY 2010 (CMS-1560-F)	0938–AP55
374	Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2010 (CMS-1538-F)	0938–AP56

Department of Health and Human Services (HHS) — Final Rule Stage

Office of the Secretary (OS)

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

Regulatory Plan: This entry is Seq. No. 43 in part II of this issue of the **Federal Register**.

RIN: 0991–AB58

Department of Health and Human Services (HHS) **Final Rule Stage**

Substance Abuse and Mental Health Services Administration (SAMHSA)

307. OPIOID DRUGS IN MAINTENANCE OR DETOXIFICATION TREATMENT OF OPIATE ADDITION (SECTION 610 REVIEW)

Legal Authority: 21 USC 823 (9); 42 USC 257a; 42 USC 290aa(d); 42 USC 290dd–2; 42 USC 300xx–23; 42 USC 300x–27(a); 42 USC 300y–11

Abstract: This rule will amend the Federal opioid treatment program regulations. It will modify the dispensing requirements for buprenorphine and buprenorphine combination products that are approved by the Food and Drug Administration (FDA) for opioid dependence and used in federally certified and registered opioid treatment programs.

Timetable:

Action	Date	FR Cite
NPRM	06/19/09	74 FR 29153
NPRM Comment Period End	08/18/09	
Final Action	06/00/10	

Regulatory Flexibility Analysis Required: No

Agency Contact: Nicholas Reuter, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, One Choke Cherry Rd, Suite 2–1063, Rockville, MD 20857
Phone: 240 276–2716

RIN: 0930–AA14

Department of Health and Human Services (HHS) **Long-Term Actions**

Substance Abuse and Mental Health Services Administration (SAMHSA)

308. REQUIREMENTS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN CERTAIN NONMEDICAL COMMUNITY–BASED FACILITIES FOR CHILDREN AND YOUTH

Legal Authority: PL 106–310, 42 USC 290jj to 290jj–2

Abstract: The Secretary is required by statute to publish regulations governing States that license nonmedical, community-based residential facilities for children and youth. The regulation requires States to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance; requires States to develop and implement such licensing rules and implementation requirements within one year; and ensures that States require such facilities to have adequate staff, and that the States provide training for professional staff.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Paolo Del Vecchio, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Room 13–103, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443–2619

RIN: 0930–AA10

Department of Health and Human Services (HHS) **Proposed Rule Stage**

Centers for Disease Control and Prevention (CDC)

309. FOREIGN QUARANTINE REGULATIONS, PROPOSED REVISION OF HHS/CDC ANIMAL IMPORTATION REGULATIONS

Legal Authority: 42 USC 264

Abstract: By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. The Secretary has designated the authority to prevent the introduction of diseases from foreign countries to the Director, Centers for Disease Control and Prevention (CDC). CDC also enforces entry requirements for certain animals, etiologic agents and vectors deemed to be of public health significance. Currently the regulations restrict the importation of nonhuman primates, dogs, cats, small turtles, etiologic agents, hosts and vectors, such as bats (42 CFR sections 71.53, 71.51, 71.52, 71.54). In addition, CDC has recently issued a series of emergency orders, restricting the importation of African rodents (42 CFR section 71.56) and civets (67 FR 3364-01). CDC is issuing this Notice of Proposed Rulemaking (NPRM) to revise the regulations for importation of certain animals and vectors into the United States (42 CFR parts 71, Subpart F).

Timetable:

Action	Date	FR Cite
ANPRM	07/31/07	72 FR 41676
ANPRM Comment Period End	10/01/07	
Notice Extending ANPRM Comment Period	10/01/07	72 FR 55729
ANPRM Extended Comment Period End	12/01/07	
NPRM	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, CLFT Building 16, Room 4324, MS E03, Atlanta, GA 30329
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Email: showard@cdc.gov

RIN: 0920–AA14

310. CONTROL OF COMMUNICABLE DISEASES: FOREIGN QUARANTINE REGULATIONS, PROPOSED REVISION OF HHS/CDC NONHUMAN PRIMATE REGULATIONS

Legal Authority: 42 USC 264

Abstract: By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. The Secretary has delegated the authority to prevent the

introduction of diseases from foreign countries to the Director, CDC. CDC also enforces entry requirements for certain animals, etiologic agents, and vectors deemed to be of public health significance. CDC is proposing to amend its regulations related to the importation of live nonhuman primates (NHPs) by extending existing requirements for the importation of cynomolgus, African green, and rhesus monkeys to all NHPs. The agency also is proposing to reduce the frequency at which importers of the three species are required to renew their registrations, (from every 180 days to every two years). CDC proposes to incorporate existing guidelines into the regulations and add new provisions to address NHPs imported as part of a circus or trained animal act, NHPs imported by zoological societies, the transfer of NHPs from approved laboratories, and non-live imported NHP products. CDC is also proposing that all NHPs be imported only through ports of entry where a CDC quarantine station is located.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, CLFT Building 16, Room 4324, MS E03, Atlanta, GA 30329
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RIN: 0920–AA23

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC)

Final Rule Stage

311. CONTROL OF COMMUNICABLE DISEASES FOREIGN QUARANTINE

Legal Authority: 42 USC 243; 42 USC 248 and 249

Abstract: By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. Quarantine regulations are divided into two parts: Part 71 dealing with foreign arrivals and part 70 dealing with interstate matters. This rule (42 CFR part 71) will update and improve CDC's response to both global and domestic disease threats by creating a multi-tiered illness detection and response process thus substantially enhancing the public health system's ability to slow the introduction, transmission, and spread of communicable disease. The rule will also modify current Federal regulations governing the apprehension, quarantine isolation and conditional release of individuals suspected of carrying a quarantinable disease while respecting individual autonomy. CDC maintains quarantine stations at 20 ports of entry staffed with medical and public health officers who respond to reports of diseases from carriers. According to the statutory scheme, the President determines through Executive Order which diseases may subject individuals to quarantine. The current disease list, which was last updated in April 2005, includes cholera, diphtheria, tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, severe acute respiratory syndrome (SARS), and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause a pandemic.

Timetable:

Action	Date	FR Cite
NPRM	11/30/05	70 FR 71892
NPRM Comment Period End	01/20/06	
Final Action	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, CLFT Building 16, Room 4324, MS E03, Atlanta, GA 30329
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RIN: 0920–AA12

312. CONTROL OF COMMUNICABLE DISEASES: INTERSTATE QUARANTINE, PASSENGER INFORMATION

Legal Authority: 25 USC 198.231; 25 USC 1661; 42 USC 243; 42 USC 248; 42 USC 249; 42 USC 264; 42 USC 266 to 268; 42 USC 270 to 272; 42 USC 2001

Abstract: By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from one State or possession into another. Quarantine regulations are divided into two parts: Part 71 dealing with foreign arrivals and part 70 dealing with interstate matters. The CDC Director has been delegated the responsibility for carrying out these regulations. The Director's authority to investigate suspected cases and potential spread of communicable disease among interstate travelers is thus not limited to those known or suspected of having a quarantinable disease, but rather all communicable diseases that may necessitate a public health response.

Among the fundamental components of the public health response to the report of a person with a communicable disease is the identification and evaluation of individuals who may have been exposed. This provision, which was proposed section 70.4, would require any airline operating in interstate traffic to solicit and electronically submit certain passenger information to CDC for use in contact tracing when necessary to protect the vital interests of an individual, or other persons, in regard to significant health risks.

Timetable:

Action	Date	FR Cite
NPRM	11/30/05	70 FR 71892
NPRM Comment Period End	01/30/06	
Final Action	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, CLFT Building 16, Room 4324, MS E03, Atlanta, GA 30329
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RIN: 0920–AA27

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC)

Long-Term Actions

313. POSSESSION, USE AND TRANSFER OF SELECT AGENTS AND TOXINS (SECTION 610 REVIEW)

Legal Authority: PL 107–188

Abstract: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 authorizes the HHS Secretary to regulate the possession, use, and transfer of select agents and toxins that have the potential to pose a severe threat to public health and safety. These regulations are set forth at 42 CFR 73. Criteria used to determine whether a select agent or toxin should be included under the provisions of these regulations are based on: 1) the effect on human health as a reuslt of exposure to the agent or toxin, 2) the degree of contagiousness of the agent or toxin, 3) the methods by which the agent or toxin is transferred to humans, 4) the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent andy illness resulting from infection by the agent or toxin, and 5) any other criteria, including the needs of children and other vulnerable populations that the HHS Secretary considers appropriate. Based on these criteria, we are proposing to amend the list of HHS select agents and toxins by adding Chapare virus to the list. After consulting with subject matter experts from CDC, the National Institutes of Health (NIH), the Food Drug Administration (FDA), the United States Department of Agriculture (USDA) /Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), USDA/CVB (Center for Veterinary Biologics), and the Department of Defense (DOD)/United States Army Medical Research Institute for Infectious Diseases (USAMRIID) and review of relevant published studies, we believe the Chapare virus should be added to the list of HHS select agents and toxins based on our conclusion that the Chapare virus has been phylogenetically identified as a Clade B arenavirus and is closely related to other South American arenaviruses that cause haemorrhagic fever, particularly Sabia virus.

Timetable:

Action	Date	FR Cite
NPRM	08/19/09	74 FR 159
NPRM Comment Period End	10/19/09	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Agency Contact: Robbin Weyant, Department of Health and Human Services, Centers for Disease Control and Prevention, CLFT Building 20, Room 4202, 1600 Clifton Road NE., Atlanta, GA 30333
Phone: 404 718–2000

RIN: 0920–AA32

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Prerule Stage

314. FOOD LABELING: SAFE HANDLING STATEMENTS, LABELING OF SHELL EGGS; REFRIGERATION OF SHELL EGGS HELD FOR RETAIL DISTRIBUTION (SECTION 610 REVIEW)

Legal Authority: 15 USC 1453 to 1455; 21 USC 321; 21 USC 331; 21 USC 342 and 343; 21 USC 348; 21 USC 371; 42 USC 243; 42 USC 264; 42 USC 271

Abstract: Section 101.17(h) (21 CFR 101.17(h)) describes requirements for the labeling of the cartons of shell eggs that have not been treated to destroy Salmonella microorganisms. Section 115. 50 (21 CFR 115.50) describes requirements for refrigeration of shell eggs held for retail distribution. Section 16.5(a)(4) (21 CFR 16.5(a)(4)) provides that part 16 does not apply to a hearing on an order for relabeling, diversion, or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264) and sections 101.17(h) and 115.50. FDA amended 21 CFR 101.17(h) on August 20, 2007 (72 FR 46375) to permit the safe handling statement to appear on the inside lid of egg cartons to provide the industry greater flexibility in the placement of the statement. FDA is undertaking a review of 21 CFR sections 101.17(h), 115.50, and 16.5(a)(4) under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether the regulations in sections 101.17(h), 115.50 and 16.5(a)(4) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Timetable:

Action	Date	FR Cite
Begin Review	12/00/09	
End Review	12/00/10	

Regulatory Flexibility Analysis Required: Undetermined

Agency Contact: Geraldine A. June, Supervisor, Product Evaluation and Labeling Team, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, (HFS–820), 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AG06

315. PRESCRIPTION DRUG MARKETING ACT OF 1987; PRESCRIPTION DRUG AMENDMENTS OF 1992; POLICIES, REQUIREMENTS, AND ADMINISTRATIVE PROCEDURES (SECTION 610 REVIEW)

Legal Authority: 21 USC 331; 21 USC 333; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 381

Abstract: FDA is undertaking a review of 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine

whether the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following: (1) The continued need for the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (2) the nature of complaints or comments received from the public concerning the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (3) the complexity of the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (4) the extent to which the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) overlap, duplicate, or conflict with other Federal rules, and to the extent feasible, with State and local governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763).

Timetable:

Action	Date	FR Cite
Begin Review of Current Regulation	11/24/08	
End Review of Current Regulation	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Howard Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Room 6234, Silver Spring, MD 20993–0002
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RIN: 0910–AG14

316. • STERILITY REQUIREMENT FOR AQUEOUS–BASED DRUG PRODUCTS FOR ORAL INHALATION (SECTION 610 REVIEW)

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360e; 21 USC 371; 21 USC 374; 21 USC 375

Abstract: FDA is undertaking a review of 21 CFR 200.51, under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether this regulation on aqueous-based drug products for oral inhalation should be continued without change, or whether it should be amended or rescinded, consistent with the stated objectives of applicable statues, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on the following: (1) The continued need for 21 CFR 200.51; (2) the nature of complaints or comments received concerning 21 CFR 200.51; (3) the complexity of 21 CFR 200.51; (4) the extent to which the regulation overlaps, duplicates, or conflicts with other Federal, State, or governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by 21 CFR 200.51.

Timetable:

Action	Date	FR Cite
Begin Review	05/01/09	
End Review	05/00/10	

Regulatory Flexibility Analysis Required: No

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 6234, Silver Spring, MD 20993–0002
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RIN: 0910–AG25

317. • OVER–THE–COUNTER HUMAN DRUGS; LABELING REQUIREMENTS (SECTION 610 REVIEW)

Legal Authority: 5 USC 610

Abstract: Part 201.66 (21 CFR section 201.66) established a standardized format for the labeling of OTC drug products that included: (1) Specific headings and subheadings presented in a standardized order, (2) standardized graphical features such as Helvetica type style and the use of ''bullet points'' to introduce key information, and (3) minimum standards for type size and spacing. FDA issued the final rule to improve labeling after considering comments submitted to the agency following the publication of the proposed regulation in 1997. In 1999, FDA published the final rule and stated that a standardized labeling format would significantly improve readability by familiarizing consumers with the types of information in OTC drug product labeling and the location of that information. In addition, a standardized appearance and standardized content, including various ''user-friendly'' visual cues, would help consumers locate and read important health and safety information and allow quick and effective product comparisons, thereby helping consumers to select the most appropriate product.

FDA is initiating a review under section 610 of the Regulatory Flexibility Act for the regulation in part 201.66. The purpose of this review is to determine whether the regulation in part 201.66 should be continued without change, or whether they should be further amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on the following: (1) The continued need for the regulation in part 201.66; (2) the nature of the complaints or comments received concerning the regulation in part 201.66; (3) the complexity of the regulations in part 201.66; (4) the extent to which the regulation in part 201.66 overlap, duplicate, or conflict with other Federal, State, or governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed for the products still subject to the labeling standard regulations in part 201.

The section 610 review will be carried out along with a regulatory review under section 5 of Executive Order 12866, which calls for agencies to periodically review existing regulations to determine whether any should be modified or eliminated so as to make the agency's regulatory program more effective in achieving its goals, less

burdensome, or in greater alignment with the President's priorities and the principles set forth in the Executive order.

Timetable:

Action	Date	FR Cite
Begin Review of Current Regulation	08/03/09	
End Review of Current Regulation	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AG34

Department of Health and Human Services (HHS) Food and Drug Administration (FDA)

Proposed Rule Stage

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

Regulatory Plan: This entry is Seq. No. 44 in part II of this issue of the **Federal Register**.

RIN: 0910–AC52

319. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (ANTIHISTAMINE) PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses antihistamine labeling claims for the common cold.

Timetable:

Action	Date	FR Cite
Reopening of Administrative Record	08/25/00	65 FR 51780
NPRM (Amendment) (Common Cold)	09/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF31

320. OVER–THE–COUNTER (OTC) DRUG REVIEW—LAXATIVE DRUG PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360 to 360a; 21 USC 371 to 371a

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The final action will address laxative drug products. The first NPRM listed will address the professional labeling for sodium phosphate drug products. The second NPRM listed will address all other professional labeling requirements for laxative drug products.

Timetable:

Action	Date	FR Cite
Final Action (Granular Psyllium)	03/29/07	72 FR 14669
NPRM (Professional Labeling—Sodium Phosphate)	06/00/10	
Final Action (Laxative Drug Products)	To Be	Determined
NPRM (Professional Labeling)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF38

321. OVER–THE–COUNTER (OTC) DRUG REVIEW—SUNSCREEN PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses combination products containing sunscreen and insect repellent ingredients. The second action addresses active ingredients reviewed under Time and Extent Applications. The third action addresses other effectiveness issues for OTC sunscreen drug products. The fourth action is the final action that addresses sunscreen formulation, labeling, and testing requirements for both ultraviolet B and ultraviolet A radiation protection.

Timetable:

Action	Date	FR Cite
ANPRM (Sunscreen and Insect Repellent)	02/22/07	72 FR 7941
ANPRM Comment Period End	05/23/07	
NPRM (UVA/UVB)	08/27/07	72 FR 49070
NPRM Comment Period End	12/26/07	
NPRM (Effectiveness)	05/00/10	

Action	Date	FR Cite
Final Action (UVA/UVB)	05/00/10	
NPRM (Sunscreen and Insect Repellent)	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF43

322. OVER–THE–COUNTER (OTC) DRUG REVIEW—VAGINAL CONTRACEPTIVE PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The proposed rule addresses vaginal contraceptive drug products.

Timetable:

Action	Date	FR Cite
Final Action (Warnings)	12/19/07	72 FR 71769
NPRM (Vaginal Contraceptive Drug Products)	09/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF44

323. OVER–THE–COUNTER (OTC) DRUG REVIEW—WEIGHT CONTROL PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The NPRM addresses the use of benzocaine for weight control. The first final action finalizes the 2005 proposed rule for weight control products containing phenylpropanolamine. The second final action will finalize the proposed rule for weight control products containing benzocaine.

Timetable:

Action	Date	FR Cite
NPRM (Phenylpropanol -amine)	12/22/05	70 FR 75988
NPRM (Benzocaine)	05/00/10	
Final Action (Phenylpropanol -amine)	05/00/10	
Final Action (Benzocaine)	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF45

324. OVER–THE–COUNTER (OTC) DRUG REVIEW—POISON TREATMENT DRUG PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the ingredient ipecac syrup.

Timetable:

Action	Date	FR Cite
NPRM (IPECAC)	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF68

325. PROCESS CONTROLS FOR ANIMAL FEED INGREDIENTS AND MIXED ANIMAL FEED

Legal Authority: 21 USC 342; 21 USC 371; PL 110–85, sec 1002(a)(2)

Abstract: The Food and Drug Administration (FDA) is proposing regulations for process controls for animal feed ingredients and mixed animal feed to provide greater assurance that marketed animal feed ingredients and mixed feeds intended for all animals, including pets, are safe. This action is being taken as part of the FDA's Animal Feed Safety System initiative. The proposed process controls will apply to animal feed ingredients and mixed animal feed including pet food. This action is also being taken to carry out the requirements of the Food and Drug Administration Amendments Act of 2007. Section 1002(a) directs FDA to establish by regulation processing standards for pet food. This same provision of the law also directs that, in developing these new regulations, FDA obtain input from its stakeholders, including the Association of American Feed Control Officials, veterinary medical associations, animal health organizations, and pet food manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	10/00/10	

HHS—FDA **Proposed Rule Stage**

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

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kim Young, Deputy Director, Division of Compliance, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Room 106 (MPN–4, HFV–230), 7519 Standish Place, Rockville, MD 20855
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RIN: 0910–AG10

326. PEDIATRIC DOSING FOR COUGH, COLD, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE; PROPOSED AMENDMENT OF FINAL MONOGRAPH

Legal Authority: 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a monograph is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action will propose changes to the final monograph to address safety and efficacy issues associated with pediatric cough and cold products.

Timetable:

Action	Date	FR Cite
NPRM	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AG12

327. ● PRODUCE SAFETY REGULATION

Regulatory Plan: This entry is Seq. No. 46 in part II of this issue of the **Federal Register**.

RIN: 0910–AG35

328. ● MODERNIZATION OF THE CURRENT FOOD GOOD MANUFACTURING PRACTICES REGULATION

Regulatory Plan: This entry is Seq. No. 47 in part II of this issue of the **Federal Register**.

RIN: 0910–AG36

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA) **Final Rule Stage**

329. POSTMARKETING SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 242a; 42 USC 262 and 263; 42 USC 263a to 263n; 42 USC 264; 42 USC 300aa; 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360b to 360j; 21 USC 361a; 21 USC 371; 21 USC 374; 21 USC 375; 21 USC 379e; 21 USC 381

Abstract: The final rule would amend the postmarketing expedited and periodic safety reporting regulations for human drugs and biological products to revise certain definitions and reporting formats as recommended by the International Conference on Harmonisation and to define new terms; to add to or revise current reporting requirements; to revise certain reporting time frames; and to propose other revisions to these regulations to enhance the quality of safety reports received by FDA. These revisions were proposed as part of a single rulemaking (68 FR 12406) to clarify and revise both premarketing and postmarketing safety reporting requirements for human drug and biological products. FDA plans to finalize the premarket and postmarket safety reporting requirements in separate final rules.

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12406
NPRM Comment Period Extended	06/18/03	
NPRM Comment Period End	07/14/03	
NPRM Comment Period Extension End	10/14/03	
Final Action	09/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Meredith S. Francis, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 6238, Silver Spring, MD 20993–0002
Phone: 301 796–3476
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RIN: 0910–AA97

330. MEDICAL GAS CONTAINERS AND CLOSURES; CURRENT GOOD MANUFACTURING PRACTICE REQUIREMENTS

Legal Authority: 21 USC 321; 21 USC 351 to 21 USC 353

Abstract: The Food and Drug Administration is amending its current good manufacturing practice regulations and other regulations to clarify and strengthen requirements for the label, color, dedication, and design of medical gas containers and closures. Despite existing regulatory requirements and industry standards for medical gases, there have been repeated incidents in which cryogenic containers of harmful industrial gases have been connected to medical oxygen supply systems in hospitals and nursing homes, and subsequently administered to patients. These incidents have resulted in death and serious injury. There have also been

several incidents involving high-pressure medical gas cylinders that have resulted in death and injuries to patients. These amendments, together with existing regulations, are intended to ensure that the types of incidents that have occurred in the past, as well as other types of foreseeable and potentially deadly medical gas accidents, do not occur in the future.

Timetable:

Action	Date	FR Cite
NPRM	04/10/06	71 FR 18039
NPRM Comment Period End	07/10/06	
Final Action	06/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AC53

331. POSITRON EMISSION TOMOGRAPHY DRUGS; CURRENT GOOD MANUFACTURING PRACTICES

Legal Authority: PL 105–115, sec 121

Abstract: Section 121 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) directs FDA to establish requirements for current good manufacturing practices (CGMPs) for positron emission tomography (PET) drugs, a type of radiopharmaceutical. The final rule would adopt CGMPs that reflect the unique characteristics of PET drugs.

Timetable:

Action	Date	FR Cite
NPRM	09/20/05	70 FR 55038
NPRM Comment Period End	12/19/05	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Michael D. Bernstein, Supervisory Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Regulatory Policy, 10903 New Hampshire Ave., Bldg. 51, Room 6240, Silver Spring, MD 20993–0002
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RIN: 0910–AC55

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

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

Abstract: To amend the regulations governing the format and content of labeling for human prescription drugs and biological products (21 CFR parts 201.56, 201.57, and 201.80). Under FDA's current regulations, labeling concerning the use of prescription drugs in pregnancy uses letter categories (A, B, C, D, X) to characterize the risk to the fetus of using the drug in pregnancy. Dissatisfaction with the category system has been expressed by health care providers, medical organizations, experts in the study of birth defects, women's health researchers, and women of childbearing age. Stakeholders consulted through a public hearing, several focus groups, and several advisory committees have recommended that FDA replace the category system with a concise narrative summarizing a product's risks to pregnant women and to women of childbearing age. The revised format and the information provided in the labeling would make it easier for health care providers to understand the risks and benefits of drug use during pregnancy and lactation.

Timetable:

Action	Date	FR Cite
NPRM	05/29/08	73 FR 30831
NPRM Comment Period End	08/27/08	
Final Action	04/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF11

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

Regulatory Plan: This entry is Seq. No. 48 in part II of this issue of the **Federal Register**.

RIN: 0910–AF27

334. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (BRONCHODILATOR) PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses labeling for single ingredient bronchodilator products.

Timetable:

Action	Date	FR Cite
NPRM (Amendment—Ephedrine Single Ingredient)	07/13/05	70 FR 40237
Final Action (Technical Amendment)	11/30/07	72 FR 67639
Final Action (Amendment—Ephedrine Single Ingredient)	05/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF32

335. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (COMBINATION) PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action finalizes cough/cold combination products containing oral bronchodilators and expectorants.

Timetable:

Action	Date	FR Cite
NPRM (Amendment)	07/13/05	70 FR 40232
Final Action (Technical Amendment)	03/19/07	72 FR 12730
Final Action	09/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF33

336. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (NASAL DECONGESTANT) PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the ingredient phenylpropanolamine.

Timetable:

Action	Date	FR Cite
NPRM (Amendment) (Sinusitis Claim)	08/02/04	69 FR 46119
NPRM (Phenylephrine Bitartrate)	11/02/04	69 FR 63482
NPRM (Phenylpropanol -amine)	12/22/05	70 FR 75988
Final Action (Amendment) (Sinusitis Claim)	10/31/05	70 FR 58974
Final Action (Phenylephrine Bitartrate)	08/01/06	71 FR 83358
Final Action (Phenylpropanol -amine)	09/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF34

337. OVER–THE–COUNTER (OTC) DRUG REVIEW—EXTERNAL ANALGESIC PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The final action addresses the 2003 proposed rule on patches, plasters, and poultices. The proposed rule will address issues not addressed in previous rulemakings.

Timetable:

Action	Date	FR Cite
Final Action (GRASE dosage forms)	09/00/10	
NPRM (Amendment)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF35

338. OVER–THE–COUNTER (OTC) DRUG REVIEW—INTERNAL ANALGESIC PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses products labeled to relieve upset stomach associated with overindulgence in food and drink and to relieve symptoms associated with a hangover. The second action addresses products marketed for children under 2 years old and weight- and age-based dosing for children's products. The third action addresses combination products containing the analgesic acetaminophen or aspirin and sodium bicarbonate used as an antacid ingredient. The fourth action addresses other miscellaneous issues relating to internal analgesics. The last document finalizes the Internal Analgesic Products monograph.

Timetable:

Action	Date	FR Cite
NPRM (Amendment) (Required Warnings and Other Labeling)	12/26/06	71 FR 77314
NPRM Comment Period End	05/25/07	
NPRM (Amendment) (Overindulgence /Hangover)	To Be	Determined
Final Action (Required Warnings and Other Labeling)	04/29/09	74 FR 19385

Action	Date	FR Cite
Final Action (Correction)	06/30/09	74 FR 31177
Final Action (Technical Amendment)	12/00/09	
NPRM (Amendment) (Miscellaneous Issues)	09/00/10	
NPRM (Amendment) (Pediatric)	To Be	Determined
NPRM (Amendment) (Combinations With Sodium Bicarbonate)	To Be	Determined
Final Action (Internal Analgesics)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF36

339. OVER–THE–COUNTER (OTC) DRUG REVIEW—LABELING OF DRUG PRODUCTS FOR OTC HUMAN USE

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 371; 21 UCS 374; 21 USC 379e

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses labeling for convenience (small) size OTC drug packages.

Timetable:

Action	Date	FR Cite
NPRM (Convenience Sizes)	12/12/06	71 FR 74474
Final Action	05/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF37

340. OVER–THE–COUNTER (OTC) DRUG REVIEW—SKIN PROTECTANT PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses skin protectant products used to treat fever blisters and cold sores. The second action identifies safe and effective skin protectant active ingredients to treat and prevent diaper rash.

Timetable:

Action	Date	FR Cite
Final Action (Technical Amendments)	02/01/08	73 FR 6014
Final Action (Fever Blisters/Cold Sores)	06/00/10	
Final Action (Aluminum Acetate) (Technical Amendment)	03/06/09	74 FR 9759
Final Action (Diaper Rash)	06/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF42

341. USE OF MATERIALS DERIVED FROM CATTLE IN HUMAN FOOD AND COSMETICS

Legal Authority: 21 USC 342; 21 USC 361; 21 USC 371

Abstract: On July 14, 2004, FDA issued an interim final rule (IFR), effective immediately, to prohibit the use of certain cattle material and to address the potential risk of bovine spongiform encephalopathy (BSE) in human food, including dietary supplements, and cosmetics. Prohibited cattle materials under the IFR include specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and mechanically separated (MS) beef. Specified risk materials are the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older; and the tonsils and distal ileum of the small intestine of all cattle. Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives. This action minimizes human exposure to materials that scientific studies have demonstrated are highly likely to contain the BSE agent in cattle infected with the disease. Scientists believe that the human disease variant Creutzfeldt-Jakob disease (vCJD) is likely caused by the consumption of products contaminated with the agent that causes BSE.

On September 7, 2005, FDA amended the IFR to permit the use of small intestine in human food and cosmetics if it is effectively removed from the distal ileum. The amendment also clarified that milk and milk products, hides, and tallow derivatives are not prohibited for use in human food and cosmetics.

On April 17, 2008, FDA amended the IFR so that FDA may designate a country as not subject to certain BSE-related restrictions relating to prohibited cattle materials applicable to human food and cosmetics.

Comments submitted in response to the July 14, 2004 IFR that were not addressed in the September 7, 2005 and April 17, 2008 amendments will be addressed in the final rule. The final

rule also will respond to comments submitted following the September 7, 2005 and April 17, 2008 amendments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/14/04	69 FR 42256
Interim Final Rule Effective	07/14/04	
Interim Final Rule Comment Period End	10/12/04	
Interim Final Rule (Amendments)	09/07/05	70 FR 53063
Interim Final Rule (Amendments) Effective	10/07/05	
Interim Final Rule (Amendments) Comment Period End	11/07/05	
Interim Final Rule (Amendments)	04/17/08	73 FR 20785
Interim Final Rule (Amendments) Comment Period End	07/16/08	
Interim Final Rule (Amendments) Effective	07/16/08	
Final Action	10/00/10	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF47

342. OVER–THE–COUNTER (OTC) DRUG REVIEW—ACNE DRUG PRODUCTS CONTAINING BENZOYL PEROXIDE

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360 to 360a; 21 USC 371 to 371a

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action will address acne drug products containing benzoyl peroxide.

Timetable:

Action	Date	FR Cite
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AG00

343. • REGULATIONS RESTRICTING THE SALE AND DISTRIBUTION OF CIGARETTES AND SMOKELESS TOBACCO TO PROTECT CHILDREN AND ADOLESCENTS

Regulatory Plan: This entry is Seq. No. 50 in part II of this issue of the **Federal Register**.

RIN: 0910–AG33

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Long-Term Actions

344. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, LABELING, OR HOLDING OPERATIONS FOR DIETARY SUPPLEMENTS

Legal Authority: 21 USC 321; 21 USC 342 and 343; 21 USC 348; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 393; 42 USC 264

Abstract: The Food and Drug Administration published a final rule in the Federal Register of June 25, 2007 (72 FR 34752), on current good manufacturing practice (CGMP) regulations for dietary supplements. FDA also published an Interim Final Rule in the same Federal Register (72 FR 34959) that provided a procedure for requesting an exemption from the final rule requirement that the manufacturer conduct at least one appropriate test or examination to verify the identity of any component that is a dietary ingredient. This IFR allows for submission to, and review by, FDA of an alternative to the required 100 percent identity testing of components that are dietary ingredients, provided certain conditions are met. This IFR also establishes a requirement for retention of records relating to the FDA's response to an exemption request.

Timetable:

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

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AB88

345. OVER–THE–COUNTER (OTC) DRUG REVIEW—OPHTHALMIC PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC

drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action finalizes the monograph for emergency first aid eyewash drug products.

Timetable:

Action	Date	FR Cite
NPRM (Amendment) (Emergency First Aid Eyewashes)	02/19/03	68 FR 7917
Final Action (Amendment) (Emergency First Aid Eyewashes)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF39

346. OVER–THE–COUNTER (OTC) DRUG REVIEW—ORAL HEALTH CARE PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360 to 360a; 21 USC 371 to 371a

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The NPRM and final action will address oral health care products used to reduce or prevent dental plaque and gingivitis.

Timetable:

Action	Date	FR Cite
ANPRM (Plaque Gingivitis)	05/29/03	68 FR 32232
ANPRM Comment Period End	08/27/03	
NPRM (Plaque Gingivitis)	To Be	Determined
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF40

347. OVER–THE–COUNTER (OTC) DRUG REVIEW—OVERINDULGENCE IN FOOD AND DRINK PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses products containing bismuth subsalicylate for relief of symptoms of upset stomach due to overindulgence resulting from food and drink.

Timetable:

Action	Date	FR Cite
NPRM (Amendment)	01/05/05	70 FR 741
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF51

348. OVER–THE–COUNTER (OTC) DRUG REVIEW—ANTACID PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. One action addresses the labeling of products containing sodium bicarbonate as an active ingredient. The other action addresses the use of antacids to relieve upset stomach associated with overindulgence in food and drink.

Timetable:

Action	Date	FR Cite
Final Action (Sodium Bicarbonate Labeling)	To Be	Determined
Final Action (Overindulgence Labeling)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF52

349. OVER–THE–COUNTER (OTC) DRUG REVIEW—SKIN BLEACHING PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses skin bleaching drug products containing hydroquinone.

Timetable:

Action	Date	FR Cite
NPRM	08/29/06	71 FR 51146

Action	Date	FR Cite
NPRM Comment Period End	12/27/06	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF53

350. OVER–THE–COUNTER (OTC) DRUG REVIEW—STIMULANT DRUG PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the use of stimulant active ingredients to relieve symptoms associated with a hangover.

Timetable:

Action	Date	FR Cite
NPRM (Amendment) (Hangover)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF56

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

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

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

Timetable:

Action	Date	FR Cite
NPRM	09/18/08	73 FR 54106
NPRM Comment Period End	12/02/08	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

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RIN: 0910–AF61

352. OVER–THE–COUNTER ANTIDIARRHEAL DRUG PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. These actions address new labeling for antidiarrheal drug products.

Timetable:

Action	Date	FR Cite
NPRM (New Labeling)	To Be	Determined
Final Action (New Labeling)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF63

353. OVER–THE–COUNTER (OTC) DRUG REVIEW—TOPICAL ANTIMICROBIAL DRUG PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses health care products. The second action addresses food handler products. The third action addresses testing requirements. The fourth action addresses consumer products. The final actions listed will address the healthcare, consumer, and first aid antiseptic drug products respectively.

Timetable:

Action	Date	FR Cite
NPRM (Healthcare)	06/17/94	59 FR 31402
NPRM (Food Handlers)	To Be	Determined
NPRM (Testing)	To Be	Determined
NPRM (Consumer)	12/00/10	
Final Action (Healthcare)	To Be	Determined
Final Action (Consumer)	To Be	Determined
Final Action (First Aid Antiseptic)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF69

354. OVER–THE–COUNTER (OTC) DRUG REVIEW—URINARY ANALGESIC DRUG PRODUCTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the products used for urinary pain relief.

Timetable:

Action	Date	FR Cite
NPRM (Urinary Analgesic)	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF70

355. STATUS OF CERTAIN ADDITIONAL OVER–THE–COUNTER DRUG CATEGORY II ACTIVE INGREDIENTS

Legal Authority: 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

Abstract: The Food and Drug Administration (FDA) is proposing that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this proposed rule because we did not receive any data and information on these ingredients in response to our request on December 31, 2003 (68 FR 75585). This proposed rule is part of FDA's ongoing review of OTC drug products.

Timetable:

Action	Date	FR Cite
NPRM	06/19/08	73 FR 34895
NPRM Comment Period End	09/17/08	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
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RIN: 0910–AF95

Department of Health and Human Services (HHS) Food and Drug Administration (FDA) — Completed Actions

356. PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS

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

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

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

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

process that achieves at least a five-log destruction of SE.

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

On July 9, 2009, FDA published the final rule that requires shell egg producers to implement measures to prevent SE from contaminating eggs on the farm and from further growth during storage and transportation, and requires these producers to maintain records concerning their compliance with the rule and to register with FDA. FDA took this action because SE is among the leading bacterial causes of foodborne illness in the United States, and shell eggs are a primary source of human SE infections. The final rule will reduce SE-associated illnesses and deaths by reducing the risk that shell eggs are contaminated with SE.

Egg producers with 50,000 or more laying hens have 12 months to comply with the final rule, as do persons who must comply with only the refrigeration requirements. Producers with fewer than 50,000 but at least 3,000 laying hens have 36 months to comply. Producers with fewer than 3,000 laying hens and those who sell all of their eggs directly to consumers are exempt from the rule.

FDA is developing guidance documents and will hold public meetings this year to help ensure covered persons understand how to comply with the final rule.

Timetable:

Action	Date	FR Cite
NPRM	09/22/04	69 FR 56824
NPRM Comment Period End	12/21/04	
NPRM Reopened Comment Period End	06/09/05	70 FR 24490
NPRM Extension of Reopened Comment Period End	07/25/05	70 FR 33404
Final Action	07/09/09	74 FR 33030

Regulatory Flexibility Analysis Required: Yes

Agency Contact: John F. Sheehan, Director, Department of Health and Human Services, Food and Drug Administration, Division of Plant and Dairy Food Safety (HFS–315), Room 3B–012, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC14

357. SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED TO PREVENT THE TRANSMISSION OF BOVINE SPONGIFORM ENCEPHALOPATHY

Legal Authority: 21 USC 321; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371

Abstract: On October 6, 2005, the Food and Drug Administration (FDA) proposed to amend its regulations to prohibit the use of certain cattle origin materials in the food or feed of all animals to further strengthen existing safeguards designed to help prevent the spread of bovine spongiform encephalopathy (BSE) in U.S. cattle. The discovery of a BSE-positive dairy cow in December 2003 has caused FDA to review its policies for prevention of BSE, which resulted in this rulemaking. On April 28, 2008, FDA published a final rule prohibiting the use of certain cattle origin materials in the food and feed of all animals. On October 23, 2008 FDA corrected the final rule on BSE that appeared in the Federal Register of April 25, 2008 (73 FR 22719-22758). The final rule was inadvertently published with incorrect dollar amounts in two separate areas: the summary of economic impacts and the paperwork burden table.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/04	69 FR 42288
ANPRM Comment Period End	08/13/04	
NPRM	10/06/05	70 FR 58569
NPRM Comment Period End	12/20/05	
Final Rule	04/25/08	73 FR 22720
Final Rule–Correction	10/23/08	73 FR 63072
Final Rule Effective	04/27/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Burt Pritchett, Biologist, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Room 2654 (MPN–4, HFV–222), 7519 Standish Place, Rockville, MD 20855
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RIN: 0910–AF46

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Proposed Rule Stage

358. ● REVISIONS TO THE MEDICARE ADVANTAGE AND MEDICARE PRESCRIPTION DRUG BENEFIT PROGRAMS FOR CONTRACT YEAR 2011 (CMS–4085–F)

Legal Authority: MMA 2003; MIPPA (title XVIII of the Social Security Act)

Abstract: This proposed rule sets forth programmatic and operational changes to the Medicare Advantage and Prescription Drug Benefit programs (for example, strengthens beneficiary protections and sponsor entrance and exit rules, provides plan offerings with meaningful differences, improves payment rules and data collection for oversight and quality assessment).

Timetable:

Action	Date	FR Cite
NPRM	10/22/09	74 FR 54634

HHS—CMS

Proposed Rule Stage

Action	Date	FR Cite
NPRM Comment Period End	12/07/09	
Final Action	10/00/12	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alissa Deboy, Director, Division of Drug Plan Policy and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop C1–26–26, 7500 Security Boulevard, Baltimore, MD 21244
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RIN: 0938–AP77

359. ● 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)

Regulatory Plan: This entry is Seq. No. 53 in part II of this issue of the **Federal Register**.

RIN: 0938–AP80

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

Regulatory Plan: This entry is Seq. No. 54 in part II of this issue of the **Federal Register**.

RIN: 0938–AP82

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Final Rule Stage

361. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CY 2010 (CMS–1413–FC)

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1871

Abstract: This rule revises payment polices under the physician fee schedule, as well as other policy changes to payment under Part B.

Timetable:

Action	Date	FR Cite
NPRM	07/13/09	74 FR 33520
NPRM Comment Period End	08/31/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Diane Milstead, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicaid Mangement, Mailstop C4–03–06, 7500 Security Blvd, Baltimore, MD 21244
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RIN: 0938–AP40

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

Legal Authority: BBA; BBA; BIPA; MMA; MMSEA; MIPPA; DRA; TRHCA

Abstract: This rule revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system and to implement certain related provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). In addition, the rule describes 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 changes the Ambulatory Surgical Center Payment System list of services and rates. These changes applicable to services furnished on or after January 1 annually.

Timetable:

Action	Date	FR Cite
NPRM	07/20/09	74 FR 35231
NPRM Comment Period End	08/31/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alberta Dwivedi, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, Mailstop C5–01–26, 7500 Security Blvd, Baltimore, MD 21244
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RIN: 0938–AP41

363. CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP); ALLOTMENT METHODOLOGY AND STATES' FISCAL YEAR 2009 CHIP ALLOTMENTS (CMS–2291–F)

Legal Authority: 42 USC 1397dd(g); 42 USC 1397ee(g); secs 2104(e) and 2104(f) of the Social Security Act; CHIPRA of 2009 (PL 111–3)

Abstract: This proposed rule describes the implementation of certain funding provisions under existing Medicaid laws, the Children's Health Insurance Program (CHIP) and recent legislation, and other related CHIP legislation. It proposes methodologies and procedures for determining States' fiscal year (FY) 2009 through FY 2013 allotments and payments

Timetable:

Action	Date	FR Cite
NPRM	09/16/09	74 FR 47517
NPRM Comment Period End	11/16/09	
Final Action	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Richard Strauss, Technical Director, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid State Operations, Mailstop S3–13–15, 7500 Security Boulevard, Baltimore, MD 21244
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RIN: 0938–AP53

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Long-Term Actions

364. HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (COPS) (CMS–3819–P) (SECTION 610 REVIEW)

Legal Authority: 42 USC 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bb

Abstract: This proposed rule would revise the existing Conditions of Participation (CoPs) that Home Health Agencies (HHAs) must meet to participate in the Medicare program. The requirements focus on the actual care delivered to patients by HHAs, reflect an interdisciplinary view of patient care, allow HHAs greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of our efforts to achieve broad-based improvements and measurements of the quality of care furnished through Federal programs while at the same time reducing procedural burdens on providers.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11005
NPRM Comment Period End	06/09/97	
Second NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Agency Contact: Mercedes Benitez–McCray, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Clinical Standards & Quality, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
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RIN: 0938–AG81

365. ELECTRONIC CLAIMS ATTACHMENTS STANDARDS (CMS–0050–IFC)

Legal Authority: 42 USC 1320d–2(a)(2)(B)

Abstract: This rule sets forth electronic standards for health care claims attachments. The standards are required by the Health Insurance Portability and Accountability Act of 1996. They will be used to transmit clinical or administrative data for claims adjudication purposes.

Timetable:

Action	Date	FR Cite
NPRM	09/23/05	70 FR 55989
NPRM Comment Period End	11/22/05	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Elizabeth Holland, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of E–Health Standards and Services, Mailstop S2–26–17, 7500 Security Boulevard, Baltimore, MD 21244
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RIN: 0938–AK62

366. HOME AND COMMUNITY–BASED SERVICES (HCBS) STATE PLAN OPTION (CMS–2249–F) (SECTION 610 REVIEW)

Legal Authority: Deficit Reduction Act of 2005; PL 109–171, sec 6086

Abstract: This rule amends the Medicaid regulations to define and describe the home- and community-based State plan services implementing the new section 1915(i) of the Social Security Act as added by section 6086 of the Deficit Reduction Act of 2005.

Timetable:

Action	Date	FR Cite
NPRM	04/04/08	73 FR 18676
NPRM Comment Period End	06/03/08	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Suzanne Bosstick, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–1301
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RIN: 0938–AO53

367. REQUIREMENTS FOR LONG–TERM CARE FACILITIES: HOSPICE SERVICES (CMS–3140–P) (SECTION 610 REVIEW)

Legal Authority: 42 USC 1302; 42 USC 1395hh

Abstract: This proposed rule would establish requirements that long-term care (LTC) facilities must have an agreement with hospice agencies when hospice care is provided in a long-term care facility to participate in the Medicare and Medicaid programs. We are proposing these new requirements to ensure that quality hospice care is provided to eligible residents.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Trish Brooks, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
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RIN: 0938–AP32

368. STATE FLEXIBILITY FOR MEDICAID BENEFIT PACKAGES (CMS–2232–F4)

Legal Authority: PL 109–171, sec 6044

Abstract: This rule replaces the final rule published on December 3, 2008 (73 FR 73694) to implement provisions of the Deficit Reduction Act (DRA) of 2005. It also provides States increased flexibility under an approved State plan to define the scope of covered medical assistance by offering coverage of benchmark or benchmark-equivalent benefit packages to certain Medicaid-eligible individuals. In addition, this final rule responds to public comments on the February 22, 2008 proposed rule as well as public comments on the December 3, 2009 ''final rule'' which was temporarily delayed twice, once by an interim final rule with comment period published on February 2, 2009, and the second time by a final rule published on April 3, 2009, further delaying the effective date and reopening the comment period.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Chris Gerhardt, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mailstop S2–01–16,

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RIN: 0938–AP72

Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)

Completed Actions

369. MEDICAID GRADUATE MEDICAL EDUCATION (CMS–2279–F)

Legal Authority: title XIX; Social Security Act

Abstract: As part of the President's 2008 Budget, this rule establishes that States may not include GME as a reimbursable cost or program under their approved Medicaid State Plan. The rule enhances fiscal integrity and improves accountability with respect to payment for medical services in the Medicaid program.

Timetable:

Action	Date	FR Cite
NPRM	05/23/07	72 FR 28930
NPRM Comment Period End	06/22/07	
Withdrawn	10/08/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kristin Fan, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicaid State Operations, Mailstop S3–13–15, 7500 Security Boulevard, Baltimore, MD 21224
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RIN: 0938–AO95

370. GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (CMS–4137–IFC)

Legal Authority: Genetic information Nondiscrimination Act of 2008 (PL 110–223), enacted May 21, 2008.

Abstract: This rule implements statutory changes to the PHSA affecting the group and individual health insurance markets, non-federal governmental plans, and Medicare supplemental insurance (Medigap) made by the Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110-223).

Timetable:

Action	Date	FR Cite
ANPRM	10/10/08	73 FR 60208
ANPRM Comment Period End	12/09/08	
Interim Final Rule	10/07/09	74 FR 51663

Regulatory Flexibility Analysis Required: Yes

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RIN: 0938–AP37

371. CHANGES TO THE HOSPITAL INPATIENT AND LONG–TERM CARE PROSPECTIVE PAYMENT SYSTEM FOR FY 2010 (CMS–1406–F)

Legal Authority: Sec 1886(d) of the Social Security Act

Abstract: This rule revises the Medicare hospital inpatient and Long Term Care prospective payment systems (IPPS) for operating and capital-related costs to implement changes arising from our continuing experience with these systems.

Timetable:

Action	Date	FR Cite
NPRM	05/22/09	74 FR 24080
NPRM Comment Period End	06/30/09	
Final Rule	08/27/09	74 FR 43753

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Tiffany Swygert, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Div of Acute Care, Hosp and Ambulatory Policy Group, Mailstop C4–25–11, 7500 Security Blvd, Baltimore, MD 21244
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RIN: 0938–AP39

372. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2010 (CMS–1410–F)

Legal Authority: Social Security Act, sec 1888(e)

Abstract: This rule updates the payment rates used under the SNF PPS beginning October 1, 2009.

Timetable:

Action	Date	FR Cite
NPRM	05/12/09	74 FR 22208
NPRM Comment Period End	06/30/09	
Final Action	08/11/09	74 FR 40287

Regulatory Flexibility Analysis Required: Yes

Agency Contact: William Ullman, Technical Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, Mailstop C5–06–27, 7500 Security Boulvard, Baltimore, MD 21244
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RIN: 0938–AP46

373. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM AND RATE UPDATE FOR CY 2010 (CMS–1560–F)

Legal Authority: Social Security Act, secs 1102 and 1871; 42 USC 1302 and 42 USC 1395(hh); Social Security Act, sec 1895; 42 USC 1395(fff)

Abstract: This rule updates the 60-day national episode rate and the national per visit rate amounts under the Medicare Prospective Payment System for home health agencies, effective January 1, 2010.

Timetable:

Action	Date	FR Cite
NPRM	08/06/09	74 FR 39435
NPRM Comment Period End	08/28/09	
Final Action	11/10/09	74 FR 58077
Final Action Effective	01/01/10	

HHS—CMS **Completed Actions**

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Randy Throndset, Technical Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Management, Mailstop C5–07–28, 7500 Security Boulevard, Baltimore, MD 21244
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RIN: 0938–AP55

374. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION FACILITIES FOR FY 2010 (CMS–1538–F)

Legal Authority: Social Security Act, sec 1886(j); PL 106–554; PL 106–113

Abstract: This rule updates rates for the prospective payment system for inpatient rehabilitation facilities for FY 2010.

Timetable:

Action	Date	FR Cite
NPRM	05/06/09	74 FR 21052
Final Action	08/13/09	74 FR 40947
NPRM Comment Period End	06/29/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 0938–AP56

[FR Doc. E9–28598 Filed 12–04–09; 8:45 am]
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Federal Register

Monday,
December 7, 2009

Part VII

Department of Homeland Security

Semiannual Regulatory Agenda

DEPARTMENT OF HOMELAND SECURITY (DHS)

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chs. I and II

[DHS Docket No. OGC-RP-04-001]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, DHS.

ACTION: Semiannual regulatory agenda.

SUMMARY: This regulatory agenda is a semiannual summary of all current and projected rulemakings, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS's regulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department's regulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

Please direct general comments and inquiries on the agenda to the Regulatory Affairs Division, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528.

Specific

Please direct specific comments and inquiries on individual regulatory actions identified in this agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

SUPPLEMENTARY INFORMATION:

DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of all current and projected rulemakings, as well as actions completed since the publication of the last regulatory agenda for the Department.

DHS's last semiannual regulatory agenda was published on May 11, 2009, at 74 FR 21944.

Beginning in fall 2007, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov.

As part of the Unified Agenda, federal agencies are also required to prepare a Regulatory Plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year. As in past years, for fall editions of the Unified Agenda, the entire regulatory plan, including DHS's regulatory plan, is printed in the **Federal Register**.

The Regulatory Flexibility Act (5 U.S.C. 602) requires federal agencies to publish their regulatory flexibility agenda in the **Federal Register.** A regulatory flexibility agenda shall contain, among other things, ''a brief description of the subject area of any rule . . . which is likely to have a significant economic impact on a substantial number of small entities.'' DHS's printed agenda entries include regulatory actions that are in the Department's regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the Internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Dated: October 9, 2009.

Christina E. McDonald,

Deputy Associate General Counsel for Regulatory Affairs.

U.S. Citizenship and Immigration Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
375	Registration Requirements for Employment-Based Categories Subject to Numerical Limitations **(Reg Plan Seq No. 59)**	1615–AB71
376	Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule	1615–AB80

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. Citizenship and Immigration Services—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
377	Commonwealth of the Northern Mariana Islands Transitional Nonimmigrant Investor Classification **(Reg Plan Seq No. 63)**	1615–AB75

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

DHS

U.S. Coast Guard—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
378	Claims Procedures Under the Oil Pollution Act of 1990 (USCG-2004-17697)	1625–AA03
379	Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG-2001-10486) **(Reg Plan Seq No. 66)**	1625–AA32
380	Commercial Fishing Industry Vessels (USCG-2003-16158)	1625–AA77
381	Inspection of Towing Vessels (USCG-2006-24412) **(Reg Plan Seq No. 67)**	1625–AB06

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. Coast Guard—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
382	Numbering of Undocumented Barges (USCG-1998-3798)	1625–AA14
383	Passenger Weight and Inspected Vessel Stability Requirements (USCG-2007-0030)	1625–AB20
384	Great Lakes Pilotage Rates—2010 Annual Review and Adjustment **(Section 610 Review)**	1625–AB39

U.S. Customs and Border Protection—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
385	Importer Security Filing and Additional Carrier Requirements **(Reg Plan Seq No. 69)**	1651–AA70

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Transportation Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
386	Aircraft Repair Station Security **(Reg Plan Seq No. 72)**	1652–AA38

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Transportation Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
387	Modification of the Aviation Security Infrastructure Fee (ASIF) (Market Share)	1652–AA43

Federal Emergency Management Agency—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
388	Update of FEMA's Public Assistance Regulations **(Reg Plan Seq No. 84)**	1660–AA51

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Department of Homeland Security (DHS) — Proposed Rule Stage
U.S. Citizenship and Immigration Services (USCIS)

375. REGISTRATION REQUIREMENTS FOR EMPLOYMENT–BASED CATEGORIES SUBJECT TO NUMERICAL LIMITATIONS

Regulatory Plan: This entry is Seq. No. 59 in part II of this issue of the **Federal Register**.

RIN: 1615–AB71

376. ADJUSTMENT OF THE IMMIGRATION AND NATURALIZATION BENEFIT APPLICATION AND PETITION FEE SCHEDULE

Legal Authority: 8 USC 1356(m)

Abstract: This rule will adjust the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does not adequately recover the full costs of services provided by USCIS. Without an adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. The fee review is undertaken pursuant to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03. The CFO Act requires each agency's Chief Financial Officer (CFO) to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' Id. at 902(a)(8). This rule will reflect recommendations made by the DHS CFO and USCIS CFO, as required under the CFO Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/10	
NPRM Comment Period End	07/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Rendell Jones, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Suite 4018, Washington, DC 20259
Phone: 202 272–1969
Fax: 202 272–1970
Email: rendell.jones@dhs.gov

RIN: 1615–AB80

Department of Homeland Security (DHS) — Final Rule Stage
U.S. Citizenship and Immigration Services (USCIS)

377. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL NONIMMIGRANT INVESTOR CLASSIFICATION

Regulatory Plan: This entry is Seq. No. 63 in part II of this issue of the **Federal Register**.

RIN: 1615–AB75

Department of Homeland Security (DHS) — Proposed Rule Stage
U.S. Coast Guard (USCG)

378. CLAIMS PROCEDURES UNDER THE OIL POLLUTION ACT OF 1990 (USCG–2004–17697)

Legal Authority: 33 USC 2713 and 2714

Abstract: This rulemaking implements section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement) of the Oil Pollution Act of 1990. An interim rule was published in 1992, and provides the basic requirements for the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, for the designation of the sources of the discharge, and for the advertisement of where claims are to be filed. The interim rule also includes the processing of natural resource damage (NRD) claims. The NRD claims, however, were not processed until September 25, 1997, when the Department of Justice issued an opinion that the Oil Spill Liability Trust Fund (OSLTF) is available without further appropriation to pay trustee NRD claims under the general claims provisions of the Oil Pollution Act (OPA) of 1990, 33 U.S.C. 2712(a)(4). Release of this more comprehensive notice of proposed rulemaking has been delayed while the Coast Guard gained experience on NRD claims, as well as other OPA damages. This rulemaking supports the Coast Guard's broad role and responsibility of maritime stewardship.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/92	57 FR 36314
Correction	09/09/92	57 FR 41104
Interim Final Rule Comment Period End	12/10/92	
Supplemental NPRM	10/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Benjamin White, Project Manager, National Pollution Funds Center, Department of Homeland Security, U.S. Coast Guard, NPFC MS 7100, United States Coast Guard, 4200 Wilson Boulevard, Arlington, VA 20598–7100
Phone: 202 493–6863

Email: benjamin.h.white@uscg.mil

RIN: 1625–AA03

379. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG–2001–10486)

Regulatory Plan: This entry is Seq. No. 66 in part II of this issue of the **Federal Register**.

RIN: 1625–AA32

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

Legal Authority: 46 USC 4502(a) to 4502(d); 46 USC 4505 and 4506; 46 USC 6104; 46 USC 10603; DHS Delegation No. 0170.1(92)

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

Timetable:

Action	Date	FR Cite
ANPRM	03/31/08	73 FR 16815
ANPRM Comment Period End	12/15/08	
NPRM	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Jack Kemerer, Project Manager, CG–5433, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 372–1249
Email: jack.a.kemerer@uscg.mil

RIN: 1625–AA77

381. INSPECTION OF TOWING VESSELS (USCG–2006–24412)

Regulatory Plan: This entry is Seq. No. 67 in part II of this issue of the **Federal Register**.

RIN: 1625–AB06

Department of Homeland Security (DHS) Long-Term Actions

U.S. Coast Guard (USCG)

382. NUMBERING OF UNDOCUMENTED BARGES (USCG–1998–3798)

Legal Authority: 46 USC 12301

Abstract: Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires that all undocumented barges of more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system for these barges. The numbering of undocumented barges will allow identification of owners of barges found abandoned and help prevent future marine pollution. This rulemaking supports the Coast Guard's broad role and responsibility of maritime stewardship.

Timetable:

Action	Date	FR Cite
Request for Comments	10/18/94	59 FR 52646
Comment Period End	01/17/95	
ANPRM	07/06/98	63 FR 36384
ANPRM Comment Period End	11/03/98	
NPRM	01/11/01	66 FR 2385
NPRM Comment Period End	04/11/01	
NPRM Reopening of Comment Period	08/12/04	69 FR 49844
NPRM Comment Period End	11/10/04	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Patricia Williams, Project Manager, National Vessel Documentation Center, Department of Homeland Security, U.S. Coast Guard, 792 T.J. Jackson Drive, Falling Waters, WV 25419
Phone: 304 271–2506

RIN: 1625–AA14

383. PASSENGER WEIGHT AND INSPECTED VESSEL STABILITY REQUIREMENTS (USCG–2007–0030)

Legal Authority: 33 USC 1321(j); 43 USC 1333; 46 USC 2103, 2113, 3205, 3301, 3306, 3307, 3703, 5115, 6101; 49 USC App 1804; EO 11735; EO 12234; Dept of Homeland Security Delegation No 0170.1; PL 103–206, 107 Stat 2439; 49 USC App 1804; EO 11735

Abstract: The Coast Guard proposes developing a rule that addresses both the stability calculations and the environmental operating requirements for certain domestic passenger vessels. The proposed rule would address the outdated per-person weight averages that are currently used in stability calculations for certain domestic passenger vessels. In addition, the proposed rule would add environmental operating requirements for domestic passenger vessels that could be adversely affected by sudden inclement weather. This rulemaking would increase passenger safety by significantly reducing the risk of certain types of passenger vessels capsizing due to either passenger overloading or operating these vessels in hazardous weather conditions. This rulemaking would support the Coast Guard's broad role and responsibility of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	08/20/08	73 FR 49244
NPRM Comment Period End	11/18/08	
NPRM Comment Period Reopened	12/08/08	73 FR 74426
Comment Period End	02/06/09	
NPRM Comment Period Reopened	02/18/09	74 FR 7576
Comment Period End	03/20/09	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: William Peters, Program Manager, Office of Design and Engineering Standards, Systems Engineering Division (CG–5212), Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126
Phone: 202 372–1371
Email: william.s.peters@uscg.mil

RIN: 1625–AB20

384. • GREAT LAKES PILOTAGE RATES—2010 ANNUAL REVIEW AND ADJUSTMENT (SECTION 610 REVIEW)

Legal Authority: 46 USC 9303(f)

DHS—USCG **Long-Term Actions**

Abstract: The Coast Guard is proposing to update the rates for pilotage on the Great Lakes by 5.07 percent to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The proposed update reflects an August 1, 2010, increase in benchmark contractual wages and benefits, as well as an increase in the ratio of pilots to ''bridge hours.'' This rulemaking promotes the Coast Guard strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	10/30/09	74 FR 56153
NPRM Comment Period End	11/30/09	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Agency Contact: Paul Wasserman, Director, Great Lakes Pilotage (CG–54122), Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7581, Washington, DC 20593–7581
Phone: 202 372–1535
Email: paul.m.wasserman@uscg.mil

RIN: 1625–AB39

Department of Homeland Security (DHS) **Final Rule Stage**
U.S. Customs and Border Protection (USCBP)

385. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS

Regulatory Plan: This entry is Seq. No. 69 in part II of this issue of the **Federal Register**.

RIN: 1651–AA70

Department of Homeland Security (DHS) **Proposed Rule Stage**
Transportation Security Administration (TSA)

386. AIRCRAFT REPAIR STATION SECURITY

Regulatory Plan: This entry is Seq. No. 72 in part II of this issue of the **Federal Register**.

RIN: 1652–AA38

Department of Homeland Security (DHS) **Long-Term Actions**
Transportation Security Administration (TSA)

387. MODIFICATION OF THE AVIATION SECURITY INFRASTRUCTURE FEE (ASIF) (MARKET SHARE)

Legal Authority: 49 USC 44901; 49 USC 44940

Abstract: The Transportation Security Administration will revise the method for apportioning the Aviation Security Infrastructure Fee (ASIF) among air carriers. The ASIF is a fee imposed on air carriers and foreign air carriers to help pay the Government's costs of providing civil aviation security services.

Starting in fiscal year 2005, the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71; Nov. 19, 2001), codified at 49 U.S.C. 44940, authorizes TSA to change the methodology for imposing the ASIF on air carriers and foreign air carriers from a system based on their 2000 screening costs to a system based on market share or other appropriate measures.

On November 5, 2003, the Transportation Security Administration (TSA) published a notice requesting comment on possible changes in order to allow for open industry and public input. TSA sought comments on issues regarding how to impose the ASIF, and whether, when, and how often the ASIF should be adjusted. The comment period was extended on the notice for an additional 30 days, until February 5, 2004. TSA is considering a market share methodology for implementation.

Timetable:

Action	Date	FR Cite
Notice; Requesting Comment–Imposition of the Aviation Security Infrastructure Fee (ASIF)	11/05/03	68 FR 62613
Notice—Imposition of ASIF; Comment Period End	01/05/04	
Notice—Imposition of ASIF; Comment Period Extended	12/31/03	68 FR 75611
Notice—Imposition of ASIF; Extended Comment Period End	02/05/04	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

DHS—TSA **Long-Term Actions**

Agency Contact: Michael Gambone, Deputy Director, Office of Revenue, Department of Homeland Security, Transportation Security Administration, Office of Finance and Administration, TSA–14, HQ, W12–319, 601 South 12th Street, Arlington, VA 20598–6014
Phone: 571 227–1081
Fax: 571 227–2904
Email: michael.gambone@dhs.gov

Nicholas (Nick) Acheson, Sr. Economist, Regulatory Development and Economic Analysis, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–410N, 601 South 12th Street, Arlington, VA 20598–6028
Phone: 571 227–5474
Fax: 571 227–1362
Email: nicholas.acheson@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–AA43

Department of Homeland Security (DHS)
Federal Emergency Management Agency (FEMA) **Proposed Rule Stage**

388. UPDATE OF FEMA'S PUBLIC ASSISTANCE REGULATIONS

Regulatory Plan: This entry is Seq. No. 84 in part II of this issue of the **Federal Register**.

RIN: 1660–AA51

[FR Doc. E9–28603 Filed 12–04–09; 8:45 am]
BILLING CODE 9110–9B–S

Federal Register

Monday,
December 7, 2009

Part VIII

Department of the Interior

Semiannual Regulatory Agenda

DEPARTMENT OF THE INTERIOR (DOI)

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Ch. I

30 CFR Chs. II and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

Semiannual Regulatory Agenda

AGENCY: Office of the Secretary, Interior.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between fall 2009 and spring 2010. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: Unless otherwise indicated, all Agency Contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You should direct all comments and inquiries about these rules to the appropriate Agency Contact. You should direct general comments relating to the agenda to the Office of Executive Secretariat, Department of the Interior, at the address above or at 202-208-3181.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

For this edition of the Department's regulatory agenda, we have included the most important significant regulatory actions in the Regulatory Plan, which appears in part II of today's **Federal Register**. The Table of Contents below lists the Regulatory Plan entries and denotes them by a bracketed bold reference that directs the reader to the appropriate Sequence Number in part II.

John A. Strylowski,

Federal Register Liaison Officer.

Minerals Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
389	Revised Requirements for Well Plugging and Platform Decommissioning	1010–AD61

Department of the Interior (DOI)
Minerals Management Service (MMS)

Proposed Rule Stage

389. ● REVISED REQUIREMENTS FOR WELL PLUGGING AND PLATFORM DECOMMISSIONING

Legal Authority: 31 USC 9701; 43 USC 1334

Abstract: This rule would establish timely submission requirements for decommissioning and abandonment plans, and establish deadlines for decommissioning permits. The rule would also implement timeframes and clarify requirements for plugging and abandonment of idle wells and decommissioning idle facilities.

Timetable:

Action	Date	FR Cite
NPRM	02/00/10	
NPRM Comment Period End	04/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: William Hauser, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
Phone: 703 787–1613
Fax: 703 787–1546
Email: william.hauser@mms.gov

RIN: 1010–AD61

[FR Doc. E9–28601 Filed 12–04–09; 8:45 am]

BILLING CODE 4310–MR–S

Federal Register

Monday,
December 7, 2009

Part IX

Department of Justice

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF JUSTICE

8 CFR Ch. V

21 CFR Ch. I

27 CFR Ch. II

28 CFR Ch. I, V

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its fall 2009 regulatory agenda pursuant to Executive Order 12866 ''Regulatory Planning and Review,'' 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601 to 612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514-8059.

SUPPLEMENTARY INFORMATION: For this edition of the Department of Justice's regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

Beginning with the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Justice's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including the Department of Justice's regulatory plan.

The Regulatory Flexibility Act (RFA) requires that, each year, the Department publish a list of those regulations that have a significant economic impact upon a substantial number of small entities and are to be reviewed under section 610 of the Act during the succeeding 12 months. This edition of the Department's regulatory agenda includes two regulations requiring such a review: ''Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities'' (RIN 1190-AA44) and ''Nondiscrimination on the Basis of Disability in State and Local Government Services'' (RIN 1190-AA46). In accordance with the RFA, comments are specifically invited on these regulations. Those comments should be addressed to the contact persons listed in the entries for these items.

Dated: September 18, 2009.

Kevin R. Jones,

Acting Assistant Attorney General, Office of Legal Policy.

Civil Rights Division—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
390	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review) (Reg Plan Seq No. 89)**	1190–AA44
391	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review) (Reg Plan Seq No. 90)**	1190–AA46

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Department of Justice (DOJ)
Civil Rights Division (CRT)

Final Rule Stage

390. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 89 in part II of this issue of the **Federal Register**.

RIN: 1190–AA44

391. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 90 in part II of this issue of the **Federal Register**.

RIN: 1190–AA46

[FR Doc. E9–28566 Filed 12–04–09; 8:45 am]
BILLING CODE 4410–BP–S

Federal Register

Monday,
December 7, 2009

Part X

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Internet has become the means for disseminating the entirety of the Department of Labor's semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** Notice contains the regulatory flexibility agenda. In addition, the Department's Regulatory Plan, a subset of the Department's regulatory agenda, is being published in the **Federal Register**. The Regulatory Plan contains a statement of the Department's regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Director, Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-2312, Washington, DC 20210; (202) 693-5959.

NOTE: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department's semiannual agenda is available online at www.reginfo.gov.

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory flexibility agenda. The Department's Regulatory Flexibility Agenda published with this notice, includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department's semiannual regulatory agenda.

The next 12-month review list for the Department of Labor is provided below, and public comment is invited on the listing. A brief description of each rule, the legal basis for the rule, and the agency contact are provided with each agenda item.

Occupational Safety and Health Administration

Methylene Chloride (RIN 1218-AC23)

Bloodborne Pathogens (RIN 1218-AC34)

Employee Benefits Security Administration

Plan Assets-Participant Contributions Regulations (RIN 1210-AB11)

In addition, the Department's Regulatory Plan, also a subset of the Department's regulatory agenda, is being published in the **Federal Register**. The Regulatory Plan contains a statement of the Department's regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and are invited to participate in and comment on the review or development of the regulations listed on the agenda.

HILDA L. SOLIS,

Secretary of Labor.

Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
392	Proposal to Rescind the Form T-1; Require Subsidiary Organization Reporting; Revise Interpretation Regarding LMRDA Coverage of Public Sector Intermediate Unions	1215–AB75
393	Interpretation of the ''Advice'' Exemption of Section 203(c) of the Labor-Management Reporting and Disclosure Act **(Reg Plan Seq No. 94)**	1215–AB79

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
394	Notification of Employee Rights Under Federal Labor Laws	1215–AB70

DOL

Employee Benefits Security Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
395	Plan Assets—Participant Contributions Regulation **(Section 610 Review)**	1210–AB11

Employee Benefits Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
396	Amendment of Regulation Relating to Definition of Plan Assets—Participant Contributions	1210–AB02

Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
397	Explosives and Blasting **(Section 610 Review)**	1219–AB62

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
398	Occupational Exposure to Crystalline Silica **(Reg Plan Seq No. 108)**	1218–AB70
399	Occupational Exposure to Beryllium	1218–AB76
400	Methylene Chloride **(Section 610 Review)**	1218–AC23
401	Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	1218–AC33
402	Bloodborne Pathogens (610 Review) **(Section 610 Review)**	1218–AC34

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
403	Confined Spaces in Construction	1218–AB47

Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
404	Electric Power Transmission and Distribution; Electrical Protective Equipment	1218–AB67
405	Cranes and Derricks in Construction **(Reg Plan Seq No. 110)**	1218–AC01

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Department of Labor (DOL)
Employment Standards Administration (ESA)

Proposed Rule Stage

392. PROPOSAL TO RESCIND THE FORM T–1; REQUIRE SUBSIDIARY ORGANIZATION REPORTING; REVISE INTERPRETATION REGARDING LMRDA COVERAGE OF PUBLIC SECTOR INTERMEDIATE UNIONS

Legal Authority: 29 USC 438

Abstract: On October 2, 2008, the Department published a final rule establishing a Form T-1, Trust Annual Report, which certain labor organizations must file to disclose financial information regarding trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). This rulemaking would propose to rescind the Form T-1. It would instead propose that filers of Form LM-2, Labor Organization Annual Report, report on their wholly owned, wholly controlled and wholly financed organizations (''subsidiary organizations'') on their Form LM-2 report. Additionally, the rulemaking would propose to change an interpretation of the LMRDA regarding intermediate bodies. The proposed revised interpretation would state that intermediate bodies are covered only if they are themselves composed, in whole or part, of private sector affiliates.

Timetable:

Action	Date	FR Cite
NPRM	01/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AB75

393. ● INTERPRETATION OF THE ''ADVICE'' EXEMPTION OF SECTION 203(C) OF THE LABOR–MANAGEMENT REPORTING AND DISCLOSURE ACT

Regulatory Plan: This entry is Seq. No. 94 in part II of this issue of the **Federal Register**.

RIN: 1215–AB79

Department of Labor (DOL)
Employment Standards Administration (ESA)

Final Rule Stage

394. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Legal Authority: EO 13496

Abstract: Pursuant to Executive Order 13496 of January 30, 2009, the Department of Labor's Employment Standards Administration, proposes to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of the order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of the order.

Timetable:

Action	Date	FR Cite
NPRM	08/03/09	74 FR 38488
NPRM Comment Period End	09/02/09	
Final Action	06/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AB70

Department of Labor (DOL)
Employee Benefits Security Administration (EBSA)

Prerule Stage

395. PLAN ASSETS—PARTICIPANT CONTRIBUTIONS REGULATION (SECTION 610 REVIEW)

Legal Authority: 29 USC 1135

Abstract: EBSA is conducting a review of the plan assets-participant contributions regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rule; the nature of complaints or comments received from the public concerning the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local rules; and the extent to which technology, economic conditions, or other factors have changed in industries affected by the rule.

Timetable:

Action	Date	FR Cite
Begin Review	03/01/06	
End Review	02/00/10	

Regulatory Flexibility Analysis Required: Undetermined

Agency Contact: Melissa R. Dennis, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N–5655, Washington, DC 20210
Phone: 202 693–8500
Fax: 202 219–7291

RIN: 1210–AB11

Department of Labor (DOL)
Employee Benefits Security Administration (EBSA)

Final Rule Stage

396. AMENDMENT OF REGULATION RELATING TO DEFINITION OF PLAN ASSETS—PARTICIPANT CONTRIBUTIONS

Legal Authority: 29 USC 1135

Abstract: This rulemaking will amend the regulation that defines when participant moneys paid to or withheld by an employer for contribution to an employee benefit plan constitute ''plan assets'' for purposes of title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code. The regulation contains an amendment to the current regulation that will establish a safe harbor period of a specified number of business days during which certain moneys that a participant pays to, or has withheld by, an employer for contribution to a plan would not constitute ''plan assets.''

Timetable:

Action	Date	FR Cite
NPRM	02/29/08	73 FR 11072
NPRM Comment Period End	04/29/08	
Final Action	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Louis J. Campagna, Chief, Division of Fiduciary Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N–5655, Washington, DC 20210
Phone: 202 693–8510
Fax: 202 219–7291

RIN: 1210–AB02

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Completed Actions

397. EXPLOSIVES AND BLASTING (SECTION 610 REVIEW)

Legal Authority: 30 USC 811

Abstract: MSHA is reviewing the existing coal and metal and nonmetal standards for explosives and blasting in view of advances in technology and for consistency. The next action will be an advance notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
Withdrawn	09/03/09	

Regulatory Flexibility Analysis Required: Undetermined

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–AB62

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Prerule Stage

398. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Regulatory Plan: This entry is Seq. No. 108 in part II of this issue of the **Federal Register**.

RIN: 1218–AB70

399. OCCUPATIONAL EXPOSURE TO BERYLLIUM

Legal Authority: 29 USC 655(b); 29 USC 657

Abstract: In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard by the Paper Allied-Industrial, Chemical, and Energy Workers Union, Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage.

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium including: Current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008.

Timetable:

Action	Date	FR Cite
Request for Information	11/26/02	67 FR 70707
SBREFA Report Completed	01/23/08	
Initiate Peer Review of Health Effects and Risk Assessment	03/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AB76

400. METHYLENE CHLORIDE (SECTION 610 REVIEW)

Legal Authority: 5 USC 553; 5 USC 610; 29 USC 655(b)

Abstract: OSHA will undertake a review of the Methylene Chloride Standard (29 CFR 1910.1052) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with

other Federal, State, or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/06	
Request for Comments	07/10/07	72 FR 37501
Comment Period End	10/09/07	
Reopen Comment Period	01/08/08	73 FR 1299
Comment Period End	03/10/08	
End Review	04/00/10	

Regulatory Flexibility Analysis Required: No

Agency Contact: John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3641, Washington, DC 20210
Phone: 202 693–2400
Fax: 202 693–1641
Email: smith.john@dol.gov

RIN: 1218–AC23

401. OCCUPATIONAL EXPOSURE TO DIACETYL AND FOOD FLAVORINGS CONTAINING DIACETYL

Legal Authority: 29 USC 655(b); 29 USC 657

Abstract: On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all employees exposed to diacetyl, a major component in artificial butter flavoring. Diacetyl and a number of other volatile organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in a multitude of food products including microwave popcorn, certain bakery goods, and some snack foods. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking.

Evidence from NIOSH and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is associated with bronchiolitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung. Severe obstructive airway disease has been observed in the microwave popcorn industry and in food flavoring manufacturing plants. Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining, the nose, and airways of rats and mice. OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) on January 21, 2009, but withdrew the ANPRM on March 17, 2009, in order to facilitate timely development of a standard. The Agency subsequently initiated review of the draft proposed standard in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBREFA Panel Report was completed on July 2, 2009.

Timetable:

Action	Date	FR Cite
Stakeholder Meeting	10/17/07	72 FR 54619
ANPRM	01/21/09	74 FR 3937
ANPRM Withdrawn	03/17/09	74 FR 11329
ANPRM Comment Period End	04/21/09	
Completed SBREFA Report	07/02/09	
Initiate Peer Review of Health Effects and Risk Assessment	10/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AC33

402. BLOODBORNE PATHOGENS (610 REVIEW) (SECTION 610 REVIEW)

Legal Authority: 5 USC 533; 5 USC 610; 29 USC 655(b)

Abstract: OSHA will undertake a review of the Bloodborne Pathogen Standard (29 CFR 1910.1030) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for rule, whether the rule overlaps, duplicates or conflicts with other Federal, State or local regulations, and the degree to which technology, economic conditions or other factors may have changed since the rule was evaluated.

Timetable:

Action	Date	FR Cite
Begin Review	10/22/09	
Request for Comments	04/00/10	

Regulatory Flexibility Analysis Required: No

Agency Contact: John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3641, Washington, DC 20210
Phone: 202 693–2400
Fax: 202 693–1641
Email: smith.john@dol.gov

RIN: 1218–AC34

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

403. CONFINED SPACES IN CONSTRUCTION

Legal Authority: 29 USC 655(b); 40 USC 333

Abstract: In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment.

Timetable:

Action	Date	FR Cite
SBREFA Panel Report	11/24/03	
NPRM	11/28/07	72 FR 67351
NPRM Comment Period End	01/28/08	

DOL—OSHA **Proposed Rule Stage**

Action	Date	FR Cite
NPRM Comment Period Extended	02/28/08	73 FR 3893
Public Hearing	07/22/08	
Close Record	10/23/08	
Analyze Comments	03/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AB47

Department of Labor (DOL) **Final Rule Stage**

Occupational Safety and Health Administration (OSHA)

404. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

Legal Authority: 29 USC 655(b); 40 USC 333

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 35 years old. OSHA has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking also addresses fall protection in aerial lifts for work on power generation, transmission, and distribution installations. OSHA published an NPRM on June 15, 2005. A public hearing was held March 6 to 14, 2006. OSHA reopened the record to gather additional information on minimum approach distances for specific range of voltages. The record was reopened a second time to allow more time for comment and to gather information on minimum approach distances for all voltages and on the newly revised Institute of Electrical and Electronics Engineers consensus standard.

Timetable:

Action	Date	FR Cite
SBREFA Report	06/30/03	
NPRM	06/15/05	70 FR 34821
NPRM Comment Period End	10/13/05	
Comment Period Extended to 01/11/2006	10/12/05	70 FR 59290
Public Hearing To Be Held 03/06/2006	10/12/05	70 FR 59290
Post–Hearing Comment Period End	07/14/06	
Reopen Record	10/22/08	73 FR 62942
Comment Period End	11/21/08	
Close Record	11/21/08	
Second Reopening Record	09/14/09	74 FR 46958
Comment Period End	10/15/09	
Public Hearings	10/28/09	
Post–Hearing Comment Period End	02/00/10	
Final Action	09/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AB67

405. CRANES AND DERRICKS IN CONSTRUCTION

Regulatory Plan: This entry is Seq. No. 110 in part II of this issue of the **Federal Register**.

RIN: 1218–AC01

[FR Doc. E9–28591 Filed 12–04–09; 8:45 am]
BILLING CODE 4510–23–S

Federal Register

Monday,
December 7, 2009

Part XI

Department of Transportation

Semiannual Regulatory Agenda

DEPARTMENT OF TRANSPORTATION (DOT)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chs. I-III

23 CFR Chs. I-III

33 CFR Chs. I and IV

46 CFR Chs. I-III

48 CFR Ch. 12

49 CFR Subtitle A, Chs. I-VI and Chs. X-XII

OST Docket 99-5129

Department Regulatory Agenda; Semiannual Summary

AGENCY: Office of the Secretary, DOT.

ACTION: Semiannual regulatory agenda.

SUMMARY: The regulatory agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of and allow it to more effectively participate in the Department's regulatory activity. The public is also invited to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

You should direct all comments and inquiries on the agenda in general to Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-4723.

Specific

You should direct all comments and inquiries on particular items in the agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 755-7687.

Table of Contents

SUPPLEMENTARY INFORMATION:

Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed. To view additional information about the Department of Transportation's regulatory activities online, go to http://regs.dot.gov.

To help the Department achieve these goals and in accordance with Executive Order 12866 ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semiannual regulatory agenda. It summarizes all current and projected rulemaking, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding 12 months or such longer period as may be anticipated or for which action has been completed since the last agenda.

The agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by the Department Regulations Council. The Department's last agenda was published in the **Federal Register** on May 11, 2009 (74 FR 21970). The next one is scheduled for publication in the **Federal Register** in May 2010.

The Internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), DOT's printed agenda entries include only:

1. The Agency's agenda preamble;
2. Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and
3. Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list see section heading ''Explanation of Information on the Agenda'') on these entries is available in the Unified Agenda published on the Internet.

Significant/Priority Rulemakings

The agenda covers all rules and regulations of the Department. We have classified rules as a DOT agency priority in the agenda if they are, essentially, very costly, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT agency priority rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decides a rule is subject to its review under Executive Order 12866, we have classified it as significant in the agenda.

Explanation of Information on the Agenda

The format for this agenda is required by a fall 2009 memorandum from the Office of Management and Budget.

First, the agenda is divided by initiating offices. Then, the agenda is divided into five categories: (1) Prerule stage, (2) proposed rule stage, (3) final rule stage, (4) long-term actions, and (5)

completed actions. For each entry, the agenda provides the following information: (1) Its ''significance''; (2) a short descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for a decision on whether to take the action; (8) whether the rulemaking will affect small entities and/or levels of government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (With minor exceptions, DOT requires an economic analysis for all its rulemakings.); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled ''Additional Information.''

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the ''Timetable'' column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which we expect to make a decision on whether to issue it. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the agenda for the first time.

Request for Comments

General

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information, as well as make the agenda easier to use. We would like you, the public, to make suggestions or comments on how the agenda could be further improved.

Reviews

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in Appendix D.

Regulatory Flexibility Act

The Department is especially interested in obtaining information on requirements that have a ''significant economic impact on a substantial number of small entities'' and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (Section 610 Review) appears at the end of the title for these reviews. Please see Appendix D for the Department's section 610 review plans.

Federalism

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we encourage State and local governments to provide us with information about how the Department's rulemakings impact them.

Purpose

The Department is publishing this regulatory agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the agenda. Regulatory action, in addition to the items listed, is not precluded.

Dated: October 19, 2009.

Ray LaHood,

Secretary of Transportation.

Appendix A—Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most if not all such documents, including the semiannual agenda, are available through the Internet at http://www.regulations.gov. See Appendix C for more information.

Federal Highway Administration (FHWA)

Jennifer Outhouse, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Federal Motor Carrier Safety Administration (FMCSA)

LaKisha Pearson, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

DOT

Federal Railroad Administration (FRA)

Michelle Silva, Docket Clerk, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W31-109, Washington, DC 20590; telephone (202) 493-6030.

National Highway Traffic Safety Administration (NHTSA)

(Name of contact person), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Federal Transit Administration (FTA)

(Name of contact person), Federal Transit Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Saint Lawrence Seaway Development Corporation (SLSDC)

(Name of contact person), Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590.

Pipeline and Hazardous Materials Safety Administration (PHMSA)

(Name of contact person), Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue SE., Washington, DC 20590.

Maritime Administration (MARAD)

Kimberly Lewis, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-5158.

The Research and Innovative Technology Administration (RITA)

(Name of contact person), The Research and Innovative Technology Administration (RITA),1200 New Jersey Avenue SE., Washington, DC 20590.

Federal Aviation Administration (FAA)

To obtain a copy of a specific Federal Aviation Administration (FAA) regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address or telephone number listed; access the FAA's Regulations and Policies web page at http://www.faa.gov/regulations__policies/; call (202) 267-9680; or write to us at Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591.

Office of the Secretary (OST)

To obtain a copy of a specific regulatory document or to receive future copies of the Department's regulatory agenda write to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-4723.

Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA – Rebecca MacPherson, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone (202) 267-3073.

FHWA – Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0761.

FMCSA – Steven J. LaFreniere, Regulatory Ombudsman, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0596.

NHTSA – Steve Wood, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-2992.

FRA – Kathryn Shelton, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room W31-214, Washington, DC 20590; telephone (202) 493-6063.

FTA – Linda Lasley, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room E56-202, Washington, DC 20590; telephone (202) 366-4063.

SLSDC – Carrie Mann Lavigne, Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0091.

PHMSA – Patricia Burke, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4400.

MARAD – Christine Gurland, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5157.

RITA – Robert Monniere, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5498.

OST – Neil Eisner, Office of Regulation and Enforcement, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4723.

Appendix C—Public Rulemaking Dockets

All comments via the Internet are submitted through the Federal Docket Management System (FDMS) at the following address: http://www.regulations.gov. The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced Internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, 1-800-647-5527. Working Hours: 9-5.

Appendix D—Review Plans for Section 610 and Other Requirements

Part I – The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under Executive Order 12866 ''Regulatory Planning and Review'' and section 610 of the Regulatory Flexibility Act to conduct such reviews. This includes the use of plain language techniques in new rules and considering its use in existing rules when we have the opportunity and resources permit its use. We are committed to continuing our reviews of existing rules and, if needed, will initiate rulemaking actions based on these reviews.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that (1) have been published within the last 10 years and (2) have a ''significant economic impact on a substantial number of small entities'' (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews comply with

section 610 of the Regulatory Flexibility Act.

Other Review Plan(s)

All elements of the Department, except for the Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures and Executive Order 12866.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially mandated review. If there is any change to the review plan, we will note the change in the following agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II – The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the agenda. Thus, Year 1 (2008) begins in the fall of 2008 and ends in the fall of 2009; Year 2 (2009) begins in the fall of 2009 and ends in the fall of 2010; and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses should be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

Section 610 Review

The Agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies' section 610 analyses listed each fall in this agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each fall agenda, the Agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (e.g., ''these rules only establish petition processes that have no cost impact'' or ''these rules do not apply to any small entities''). For parts, subparts, or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The Agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each fall agenda, the Agency will also publish information on the results of the examinations completed during the previous year.

The FAA, in addition to reviewing its rules in accordance with the Section 610 Review Plan, has established a tri-annual process to comply with the review requirements of the Department's Regulatory Policies and Procedures, Executive Order 12866, and Plain Language Review Plan. The FAA's latest review notice was published November 15, 2007 (72 FR 64170). In that notice, the FAA requested comments from the public to identify those regulations currently in effect that it should amend, remove, or simplify. The FAA also requested the public provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain-language that might be used, and provide suggested language on how those rules should be written. The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how it will adjust its regulatory priorities.

Part III – List of Pending Section 610 Reviews

The Agenda identifies the pending DOT Section 610 Reviews by inserting (Section 610 Review) after the title for the specific entry. For further information on the pending reviews, see the agenda entries at www.reginfo.gov. For example, to obtain a list of all entries that are Section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting advanced search) and, in effect, generate the desired ''index'' of reviews.

OFFICE OF THE SECRETARY
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 91 through 99 and 14 CFR parts 200 through 212	2008	2009
2	48 CFR parts 1201 through 1253, and new parts and subparts	2009	2010
3	14 CFR parts 213 through 232	2010	2011
4	14 CFR parts 234 through 254	2011	2012
5	14 CFR parts 255 through 298 and 49 CFR part 40	2012	2013

DOT

OFFICE OF THE SECRETARY (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
6	14 CFR parts 300 through 373	2013	2014
7	14 CFR parts 374 through 398	2014	2015
8	14 CFR part 399 and 49 CFR parts 1 through 11	2015	2016
9	49 CFR parts 17 through 28	2016	2017
10	49 CFR parts 29 through 39 and parts 41 through 89	2017	2018

Year 1 (fall 2008) List of rules with ongoing analysis

49 CFR part 91 – International Air Transportation Fair Competitive Practices
49 CFR part 92 – Recovering Debts to the United States by Salary Offset
49 CFR part 93 – Aircraft Allocation
49 CFR part 95 – Advisory Committees
49 CFR part 98 – Enforcement of Restrictions on Post-Employment Activities
49 CFR part 99 – Employee Responsibilities and Conduct
14 CFR part 200 – Definitions and Instructions
14 CFR part 201 – Air carrier authority under subtitle VII of title 49 of The United States Code [Amended]
14 CFR part 203 – Waiver of Warsaw Convention liability limits and defenses
14 CFR part 204 – Data to support fitness determinations
14 CFR part 205 – Aircraft accident liability insurance
14 CFR part 206 – Certificates of public convenience and necessity: Special authorizations and exemptions
14 CFR part 207 – Charter trips by U.S. scheduled air carriers
14 CFR part 208 – Charter trips by U.S. charter air carriers
14 CFR part 211 – Applications for permits to foreign air carriers
14 CFR part 212 – Charter rules for U.S. and foreign direct air carriers

Year 2 (fall 2009) List of rules that will be analyzed during the next year

48 CFR part 1201 – Federal acquisition regulations system
48 CFR part 1202 – Definitions of words and terms
48 CFR part 1203 – Improper business practices and personal conflicts of interest
48 CFR part 1204 – Administrative matters
48 CFR part 1205 – Publicizing contract actions
48 CFR part 1206 – Competition requirements
48 CFR part 1207 – Acquisition planning
48 CFR part 1211 – Describing agency needs
48 CFR part 1213 – Simplified acquisition procedures
48 CFR part 1214 – Sealed bidding
48 CFR part 1215 – Contracting by negotiation
48 CFR part 1216 – Types of contracts
48 CFR part 1217 – Special contracting methods
48 CFR part 1219 – Small business programs
48 CFR part 1222 – Application of labor laws to government acquisitions
48 CFR part 1223 – Environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace
48 CFR part 1224 – Protection of privacy and freedom of information
48 CFR part 1227 – Patents, data, and copyrights
48 CFR part 1228 – Bonds and insurance
48 CFR part 1231 – Contract cost principles and procedures
48 CFR part 1232 – Contract financing
48 CFR part 1233 – Protests, disputes, and appeals
48 CFR part 1234 – [Reserved]
48 CFR part 1235 – Research and development contracting
48 CFR part 1236 – Construction and architect-engineer contracts
48 CFR part 1237 – Service contracting
48 CFR part 1239 – Acquisition of information technology
48 CFR part 1242 – Contract administration and audit services
48 CFR part 1245 – Government property
48 CFR part 1246 – Quality assurance
48 CFR part 1247 – Transportation
48 CFR part 1252 – Solicitation provisions and contract clauses
48 CFR part 1253 – Forms

DOT

FEDERAL AVIATION ADMINISTRATION
SECTION 610 REVIEW PLAN

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR parts 119 through 129 and parts 150 through 156	2008	2009
2	14 CFR parts 133 through 139 and parts 157 through 169	2009	2010
3	14 CFR parts 141 through 147 and parts 170 through 187	2010	2011
4	14 CFR parts 189 through 198 and parts 1 through 16	2011	2012
5	14 CFR parts 17 through 33	2012	2013
6	14 CFR parts 34 through 39 and parts 400 through 405	2013	2014
7	14 CFR parts 43 through 49 and parts 406 through 415	2014	2015
8	14 CFR parts 60 through 77	2015	2016
9	14 CFR parts 91 through 105	2016	2017
10	14 CFR parts 417 through 460	2017	2018

The FAA has elected to use the two-step, 2-year process used by most DOT modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the ''analysis year''), all rules published during the previous 10 years within a 10 percent block of the regulations will be analyzed to identify those with a SEIOSNOSE. During the second year (the ''review year''), each rule identified in the analysis year as having a SEIOSNOSE will be reviewed in accordance with section 610 (b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT semiannual regulatory agenda.

Tri-Annual Review Plan

The FAA, in addition to reviewing its rules in accordance with the Section 610 Review Plan, has established a tri-annual process to comply with the review requirements of the Department's Regulatory Policies and Procedures, Executive Order 12866, and Plain Language Review Plan. Our latest review notice was published November 15, 2007 (72 FR 64170). In that notice, we requested comments from the public to identify those regulations currently in effect that we should amend, remove, or simplify. We also requested the public provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain-language that might be used, and provide suggested language on how those rules should be written. The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how we will adjust our regulatory priorities.

Year 1 (2008) List of rules analyzed and summary of results

14 CFR part 119 – Certification: Air Carriers and Commercial Operators

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 121 – Operating Requirements: Domestic, Flag, And Supplemental Operations

- Section 610: The Agency conducted a Section 610 Review of this part and found six amendments that could have a SEIOSNOSE.

Amendment No. 121-216

Amendment No. 121-216 removed the requirement that windshear flight guidance equipment be installed on older airplanes; amended the provision allowing for an extended compliance period based on an approved airplane retrofit schedule; and provided for acceptance of alternative airplane equipment in the form of an approved airborne windshear detection and avoidance system (predictive systems). The final rule allowed certificate holders to install windshear equipment in coordination with the installation of traffic alert and collision avoidance system (TCAS II) equipment, thereby, reducing the prospect that carriers would have to divert critical maintenance resources from other safety programs.

Original FAA finding: This amendment primarily was in response to an Air Transport Association (ATA) petition to the FAA, dated June 1, 1989, to amend the windshear rule to exclude certain older airplanes from the flight guidance systems requirements and to extend the compliance date. The FAA determined that ATA's petition had merit and issued amendment No. 121-216. In doing so, the FAA found that there would be a significant beneficial economic impact on a substantial number of small nonscheduled part 121 certificate holders due to the cost relief from not having to install the equipment on certain older aircraft.

Finding of this 5 U.S.C. section 610 analysis and review: The benefits to small entities of amendment No. 121-216 have probably diminished over time. However, the original FAA finding of a positive SEIOSNOSE should still stand.

Amendment No. 121-269

Amendment No. 121-269 upgraded the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments as an option for future type certification.

Original FAA finding: The FAA found that this amendment would have a SEIOSNOSE. The FAA conducted an exhaustive analysis of potential alternatives to seek possible ways of mitigating the burden on small entities and still provide an equivalent level of safety. In its analysis, the Agency considered several alternatives that ranged from relatively low-cost, purely preventive approaches (e.g., banning certain types of material from air transport), to mitigating approaches such as: (1) Retrofit of detection systems

only; (2) a requirement for detection systems on newly manufactured aircraft only; (3) a requirement for detection and/or suppression systems for extended over water operations only; (4) retrofit of detection and suppression systems; (5) a requirement for detection and suppression systems on newly manufactured aircraft only; and (6) logical combinations of these alternatives.

Finding of this 5 U.S.C. section 610 analysis and review: During the comment period, the FAA did not receive any comments that indicated that the amendment would place small part 121 operators at a competitive disadvantage relative to large part 121 operators or that there were alternatives that could provide the same level of safety benefit at reduced costs to small operators. Moreover, no analysis was submitted that indicated that fire safety risks for small part 121 carriers differed from those large part 121 carriers. Therefore, even though this amendment did have a SEIOSNOSE, it was necessary in order to achieve the level of safety sought by this rule action.

Amendment No. 121-282

Amendment No. 121-282 required design approval holders of certain turbine-powered transport category airplanes, and of any subsequent modifications to these airplanes, to substantiate that the design of the fuel tank system precluded the existence of ignition sources within the airplane fuel tanks. It also required developing and implementing maintenance and inspection instructions to assure the safety of the fuel tank system. For new type designs, this amendment also required demonstrating that ignition sources could not be present in fuel tanks when failure conditions were considered, identifying any safety-critical maintenance actions, and incorporating a means either to minimize development of flammable vapors in fuel tanks or to prevent catastrophic damage if ignition did occur.

Original FAA finding: The FAA determined that this amendment would have a SEIOSNOSE. The FAA identified 143 air carriers that would be impacted by this amendment. Of the 143 impacted air carriers, 107 were small airlines.

Finding of this 5 U.S.C. section 610 analysis and review: In order to mitigate the costs to the extent possible without reducing the effectiveness of the amendment, the FAA extended operator compliance time from 18 months to 36 months. In addition, the Agency determined that fewer fuel tank re-inspections would be needed than originally estimated in the NPRM. The net result of these modifications was to reduce the overall cost impact from $172.2 million to $126.6 million (in 2000 $$), a 26.4 percent reduction. The FAA was not able to identify any other alternatives that could reduce the cost impact to small entities and still achieve the desired safety results. A review of the petition for exemption history revealed that no relief was sought from this amendment since its issuance.

Amendment No. 121-284

Amendment No. 121-284 (67 FR 72726) required airplanes operated under part 121 to undergo inspections and records reviews by the Administrator or a designated representative after their 14th year in service and at specified intervals thereafter. This amendment also prohibited operation of those airplanes after specified deadlines unless damage-tolerance-based inspections and procedures were included in their maintenance or inspection programs. This amendment represented a critical step toward compliance with the Aging Aircraft Safety Act of 1991.

Original FAA finding: The FAA conducted a full regulatory flexibility analysis to assess the impact of this amendment on small entities. The FAA determined that 58 small part 121 carriers would be impacted by this amendment. Two of these were estimated to incur annualized costs greater than 1 percent of annual revenues. A step the FAA took to significantly lower compliance costs on the carriers, including small entities, was to lengthen the time period between required inspections from 5 years to 7 years. This longer period was expected to lower compliance costs to operators by enabling them to schedule the required inspections during heavy maintenance checks. To further assist carriers in complying with the requirements, the FAA also issued an advisory circular to provide guidance for complying with a damage-tolerance supplemental structural inspections program (DT-SSIP).

Finding of this 5 U.S.C. section 610 analysis and review: A review of the petition for exemption records indicated that no one sought relief from these requirements since they were implemented. The FAA took actions to minimize the costs on small entities to the extent that it thought was possible and still meet the objectives of the Aging Aircraft Safety Act. Based on the comments it received in response to this interim final rule, the FAA took further steps in amendment No. 121-284 (70 FR 5517).

Amendment No. 121-297

Amendment No. 121-297 introduced airplane weight and performance characteristics as the basis for collision avoidance system requirements to capture cargo airplanes weighing more than 33,000 pounds (lbs.) maximum certificated takeoff weight (MCTOW). This action was mandated by the Wendell H. Ford Aviation Investment and Reform Act (AIR-21), enacted April 5, 2000, to take measures to reduce the risk and collateral damage of a mid-air collision involving a cargo airplane.

Original FAA finding: The FAA found that this amendment would have a SEIOSNOSE. The FAA identified 24 all cargo turbine-powered fleet operators who would be impacted by this amendment. Eleven, or roughly 46 percent, of these operators were determined to be significantly impacted. The FAA identified seven all cargo piston-powered operators who would be impacted by this amendment. Six, or 86 percent, of these operators were determined to be significantly impacted. The Agency believed that a compliance cost of 2 percent or less of a firm's revenue was affordable. The costs to these firms exceeded this level. Due to the congressional mandate, the FAA was limited in what actions it could take to mitigate the impact on small entities. The Agency was able, however, to reduce the TCAS requirement from TCAS II to TCAS I for piston-powered airplanes to mitigate some of the costs to operators of those airplanes. It also eliminated the requirement for TCAS I in turbine-powered airplanes of less than 33,000 pounds maximum certificated takeoff weight. Finally, the FAA set the rule's compliance date at the latest date allowed by the congressional mandate. Taken together, these measures were viewed as the upper level of the extent to which the FAA could mitigate cost impacts on small entities and still achieve the goals of the legislation.

DOT

Finding of this 5 U.S.C. section 610 analysis and review: Between April 2003 and January 2005, the FAA received five petitions from small entities for exemption from the TCAS requirements of this amendment. Two of these exemptions were denied because they sought relief strictly on the basis of economic impact and did not differ in any material way from other similar requests that had been denied in the past for airplanes involved in non-cargo operations. Three exemptions were granted because they were found to be necessary to ensure that needed services in Alaska would not be disrupted and doing so would not adversely impact safety. The original FAA finding of a SEIOSNOSE held true but should be fully diminished as the compliance date is 4 years past.

Amendment No. 121-340

Amendment No. 121-340 established a performance-based set of requirements that set acceptable flammability exposure values in tanks most prone to explosion or required the installation of an ignition mitigation means in an affected fuel tank.

Original FAA finding: The FAA determined that this amendment would have a SEIOSNOSE. The FAA identified 14 small air carriers that would be affected. Of these 14, 3 were found to be affected significantly. This determination was based on whether or not the cost to the carrier was equal to or exceeded 2 per cent of its revenue. Three carriers met this criterion. The FAA considered several alternative approaches to this amendment to ease the burden on small carriers. The Agency concluded that this amendment provided the best balance of cost and benefits for the United States society. The FAA argued, further, that the risk is largely the same, regardless of whether the plane was flown by a large or small entity.

Finding of this 5 U.S.C. section 610 analysis and review: This amendment still has a SEIOSNOSE. The FAA will need to make a determination regarding the continued need for this regulation.

14 CFR part 125 – Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons on Board Such Aircraft

- Section 610: The Agency conducted a Section 610 Review of this part and found part 125 itself and five amendments that could have a SEIOSNOSE.

Part 125

Part 125 provides a single set of certification and operation rules for U.S.-registered airplanes, which have a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when used in any non-common (private) carriage operation.

Original FAA finding: The economic impacts of part 125 were estimated and documented by a study conducted by the Aerospace Corporation during December 1978 and January 1979 and reflected data available at that time. While their study did not specifically address the economic impact on small entities, their estimate of $88.28 million in first year total costs (in 1979 dollars, $222.2 million in current dollars), and $20.45 million in recurring annual costs (in 1979 dollars, $51.12 million in current dollars), it can reasonably be concluded that this rule did have a SEIOSNOSE.

Finding of this 5 U.S.C. section 610 analysis and review: A review of petitions for exemption from part 125 revealed that relief was generally sought from safety requirements such as collision avoidance systems. The FAA denied these requests because petitioners were never able to provide convincing arguments for why it would be in the public interest to grant them the requested relief. There was no evidence in the record to suggest that part 125 continues to have a SEIOSNOSE.

Amendment No. 125-10

Amendment No. 125-10 required digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as, in selected aircraft operated in general aviation.

Original FAA finding: The FAA determined that this amendment could have aSEIOSNOSE. In order to mitigate the cost to some extent, the FAA modified its proposal to extend the compliance period from 2 years to 3 years. Given that this rule action was in response to a congressional mandate, the Agency was constrained to take sufficient action to ensure the NTSB had available data in needed for accident investigation purposes if acquiring that data was technologically feasible.

Finding of this 5 U.S.C. section 610 analysis and review: Since this rulemaking was promulgated over 20 years ago, the cost impact has diminished substantially and has approached if not reached a negligible level. This analysis concludes that there is no longer a SEIOSNOSE as a result of this amendment.

Amendment No. 125-11

This amendment required the installation and use of a Traffic Alert and Collision Avoidance System (TCAS) in large transport-type airplanes and certain turbine-powered smaller airplanes. The Airport and Airway Safety and Capacity Expansion Act of 1987 directed the FAA to require the installation and operation of TCAS in commercial aircraft flying in the United States.

Original FAA finding: The FAA found that this amendment would have a SEIOSNOSE.

Finding of this 5 U.S.C. section 610 analysis and review: The FAA estimated the average total cost impact of this amendment on part 125 operators at $96,000 in 1989 dollars ($151,000 in current dollars) annualized over the period of 1989 to 2003. The FAA concluded, however, that there were no viable alternatives for small air carriers to adopt that would reduce the cost of compliance and still achieve the levels of protection sought by this amendment. This amendment implemented a congressional mandate, thereby limiting the discretion the Agency had and still has in mitigating the burden on small entities. Moreover, a review of the petition for exemption records indicates that the Agency has been consistent in denying requests for relief from this requirement on safety grounds. This analysis finds, therefore, that a SEIOSNOSE may still exist and the FAA will need to make a determination regarding the continued need for this regulation.

Amendment No. 125-36

Amendment No. 125-36 was part of a larger action that required design approval holders of certain turbine-powered transport category airplanes, and any subsequent modifications to these airplanes, to substantiate that the design of the fuel tank system precluded the existence of ignition sources within the airplane fuel tanks. It also required

developing and implementing maintenance and inspection instructions to assure the safety of the fuel tank system. For new type designs, this amendment also required demonstrating that ignition sources could not be present in fuel tanks when failure conditions were considered, identifying any safety-critical maintenance actions, and incorporating a means either to minimize development of flammable vapors in fuel tanks or to prevent catastrophic damage if ignition did occur.

Original FAA finding: The FAA determined that this amendment would have aSEIOSNOSE. The FAA identified 143 carriers that would be impacted by this amendment. Of the 143 impacted air carriers, 107 were small airlines.

Finding of this 5 U.S.C. section 610 analysis and review: In order to mitigate the costs to the extent possible without reducing the effectiveness of the amendment, the FAA extended operator compliance time from 18 months to 36 months. In addition, the Agency determined that fewer fuel tank re-inspections would be needed than originally estimated in the NPRM. The net result of these modifications was to reduce the overall cost impact from $172.2 million to $126.6 million (in 2000 $), a 26.4 percent reduction. The FAA was not able to identify any other alternatives that could reduce the cost impact to small entities and still achieve the desired safety results. A review of the petition for exemption history revealed that no relief was sought from this amendment since its issuance.

Amendment No. 125-41

Amendment No. 125-41 was part of a larger rulemaking action that introduced airplane weight and performance characteristics as the basis for collision avoidance system requirements to capture cargo airplanes weighing more than 33,000 pounds maximum certificated takeoff weight (MCTOW). This action was mandated by the Wendell H. Ford Aviation Investment and Reform Act (AIR-21) enacted April 5, 2000, to take measures to reduce the risk and collateral damage of a mid-air collision involving a cargo airplane.

Original FAA finding: The FAA found that this amendment would have a SEIOSNOSE. The FAA identified 24 all-cargo turbine-powered fleet operators who would be impacted by this amendment. Eleven, or roughly 46 percent, of these operators were determined to be significantly impacted. The FAA identified seven all-cargo, piston-powered operators who would be impacted by this amendment. Six, or 86 percent, of these operators were determined to be significantly impacted. The Agency believed that a compliance cost of 2 percent or less of a firm's revenue was affordable. The costs to these firms exceeded that level. Due to the congressional mandate, the FAA was limited in what actions it could take to mitigate some of the costs to operators of those airplanes. It also eliminated the requirement for TCAS I in turbine-powered airplanes of less than 33,000 pounds maximum certificated takeoff-weight. Finally, the FAA set the rule's compliance date at the latest date allowed by the congressional mandate. Taken together, these measures were viewed as the upper level of the extent to which the FAA could mitigate cost impacts on small entities and still achieve the goals of the legislation.

Finding of this 5 U.S.C. section 610 analysis and review: Between April 2003 and January 2005, the FAA received five petitions from small entities for exemption from the TCAS requirements of this amendment. Two of these exemptions were denied because they sought relief strictly on the basis of economic impact and did not differ in any material way from other similar requests that had been denied in the past for airplanes involved in non-cargo operations. Three exemptions were granted because they were found to be necessary to ensure that needed services in Alaska would not be disrupted and doing so would not adversely impact safety. The original FAA finding of a SEIOSNOSE holds true but should be fully diminished as the compliance date is 4 years past.

Amendment No. 125-55

Amendment No. 125-55 established a performance-based set of requirements that set acceptable flammability exposure values in tanks most prone to explosion or required the installation of an ignition mitigation means in an affected fuel tank.

Original FAA finding: The FAA determined that this amendment would have a SEIOSNOSE. The FAA identified 14 small air carriers that would be affected. Of these 14, three were found to be affected significantly. This determination was based on whether or not the cost to the carrier was equal to or exceeded 2 percent of its revenue. Three carriers met this criterion. The FAA considered several alternative approaches to this amendment to ease the burden on small carriers. The Agency concluded that this amendment provided the best balance of cost and benefits for the United States society. The FAA argued, further, that the risk is largely the same, regardless of whether the plane was flown by a large or small entity.

Finding of this 5 U.S.C. section 610 analysis and review: This amendment still has a SEIOSNOSE. The FAA will need to make a determination regarding the continued need for this regulation.

14 CFR part 129 – Operations: foreign air carriers and foreign operators of U.S.-registered aircraft engaged in common carriage

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE because this part does not impact domestic entities

14 CFR part 150 – Airport noise compatibility planning

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 151 – Federal aid to airports

- Section 610: The Agency conducted a Section 610 Review of this part and found there have not been any amendments to part 151 since the Regulatory Flexibility Act was enacted.

14 CFR part 152 – Airport aid program

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 153 – Airport operations

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 155 – Release of airport property from surplus property disposal restrictions

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 156 – State block grant pilot program

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

Year 2 (2009) List of rules analyzed and summary of results

14 CFR part 133 – Rotorcraft external-load operations
- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 135 – Operating requirements: Commuter and on demand operations and rules governing persons on board such aircraft
- Section 610: The Agency conducted a Section 610 Review of this part and found three amendments that could have a SEIOSNOSE.

Amendment No. 135-42

Amendment No. 135-42 revised the operating rules for air taxi and commercial operators by requiring that all turbine-powered (rather than just turbojet) airplanes with 10 or more seats be equipped with an approved ground proximity warning system.

Original FAA finding: The FAA certified that this amendment may have a SEIOSNOSE because the annual cost that would be imposed on small part 135 operators to install a ground proximity warning system on turbine-powered airplanes would exceed the significant impact criteria in place when the rule was promulgated. The FAA concluded after analysis, however, that there were no viable alternatives to the provisions of the amendment and issued the rule in final.

Finding of this 5 U.S.C. section 610 analysis and review: Between the period January 2003 and December 2008, the period beyond the analysis period of this final rule, there were no cases of affected parties seeking relief from the provisions of the amendment. The original finding of a possible SEIOSNOSE should be fully diminished as the compliance date was 16 years ago.

Amendment No. 135-66 (61 FR 69302)

Amendment No. 135-66 (61 FR 69302) was one part of an overall strategy to further reduce the impact of aircraft noise on the park environment and to assist the National Park Service in achieving its statutory mandate to provide the substantial restoration of natural quiet and experience in Grand Canyon National Park (GCNP).

Original FAA finding: The FAA found that this amendment would have a SEIOSNOSE. This amendment affected commercial sightseeing operators conducting flight over the GCNP under part 135. This amendment was unique in that most of the economic impact fell upon small businesses.

Finding of this 5 U.S.C. section 610 analysis and review: Consistent with the spirit and intent of the RFA, the FAA chose a regulatory alternative that tailored most requirements to the size of the firm. In doing so, the Agency believed that the regulatory requirements in this amendment provided the least burdensome way for small entities to accomplish the goals of the final rule-restore natural quiet and preserve the opportunity for the public to enjoy air tours at the GCNP. In addition, the FAA proposed to take further action that would phase out noisier aircraft from air tour service prior to the 2008 deadline imposed by the statute.

Amendment No. 135-107

Amendment No. 135-107 set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. The intended effect of this amendment was to standardize requirements for air tour operators and consolidate air tour safety standards within part 135.

Original FAA finding: The FAA determined that there would be a SEIOSNOSE. The FAA estimated that part 135 commercial air tour operators would incur 82 percent of the costs of the rule. The FAA noted that helicopter operators would incur much higher costs than airplane operators due to the requirement to equip their aircraft with floats if they conducted operations over water and to the requirement to prepare helicopter performance plans. The FAA believed, however, that the only way to accomplish the commercial air tour safety needs for helicopter operations was to impose the higher standards on those entities.

Finding of this 5 U.S.C. section 610 analysis and review: A review of the petition for exemption and petition for rulemaking records since this amendment was issued found that no entities sought relief from the float equipage requirement. The cost impacts from the original estimates remain valid. However, absent requests for relief from the regulated community, the notion espoused by the FAA that a number of options were available to operators to avoid or minimize the costs, may have merit. The FAA noted, for example, that some operators may alter their air tour routes to avoid the compliance costs. The Agency added that others may elect to only equip part of their fleet to ensure the affordability to their business. This analysis concludes that there continues to be a SEIOSNOSE, but there is no evidence to suggest that small businesses are suffering a hardship.

14 CFR part 136 – Commercial air tours and national parks air tour management
- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 137 – Agricultural aircraft operations
- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 139 – Certification of airports
- Section 610: The Agency conducted a Section 610 Review of this part and found one amendment with a SEIOSNOSE.

Amendment No. 139-94

Amendment No. 139-94 established certification requirements for airports serving scheduled air carrier operations in aircraft designed for more than 9 passenger seats but less than 31 passenger seats.

Original FAA finding: The FAA determined that this amendment would have a SEIOSNOSE. The FAA stated that under SBA's definition of a ''small'' public entity, there were more than 200 small entity airports that would be affected by this rule action. For each small entity, the FAA estimated the average initial hours required to set up a recordkeeping system, as mandated by this amendment, would be 70 hours and expected a continuing paperwork requirement of about 90 hours annually. Having sought possible alternatives to mitigate the costs on small entities, the FAA, in consultation with industry, concluded that there existed a need to require at least some minimum level of both risk reduction and accident mitigation measures at airports during operations of smaller air carrier airplanes. The FAA believed that the chosen alternative was the only one that was relatively affordable and would achieve the safety objectives of the rule. The Agency recognized the need, however, to provide some flexibility in the implementation of certain safety measures at airports with infrequent air

carrier service or where local resources were severely limited. The FAA added that other measures at its disposal to mitigate impacts on small airport operators included its authority to permit alternative means of compliance to accommodate local conditions and the use of its statutory authority to grant exemptions from part 139 requirements, as appropriate. Other methods the FAA identified as ways small entity airports could mitigate the economic impact of this amendment included Airport Improvement Program (AIP) funding, which was available for certain capital expenditures that could be required by this amendment. Examples of these requirements were firefighting equipment, airport marking, and signs. Another potential source of revenue to assist small airports in meeting the regulatory requirements of this amendment was the Essential Air Service (EAS) Program. The FAA believed that, ultimately, most of the costs of these amendments would be borne by the Federal Government through increased subsidies.

Finding of this 5 U.S.C. section 610 analysis and review: The original funding still holds true. The flexibility that the FAA afforded airport operators in meeting the requirements of this amendment, combined with numerous avenues for funding support that were and still are available to airport operators, substantially mitigate the impact of this amendment on small entities.

14 CFR part 157 – Notice of construction, alteration, activation, and deactivation of airports

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 158 – Passenger facility charges (PFCs)

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 161 – Notice and approval of airport noise and access restrictions

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 169 – Expenditure of Federal funds for nonmilitary airports or air navigation facilities thereon

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

FEDERAL HIGHWAY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	None	2008	2009
2	23 CFR parts 1 through 260	2009	2010
3	23 CFR parts 420 through 470	2010	2011
4	23 CFR part 500	2011	2012
5	23 CFR parts 620 through 637	2012	2013
6	23 CFR parts 645 through 669	2013	2014
7	23 CFR parts 710 through 924	2014	2015
8	23 CFR parts 940 through 973	2015	2016
9	23 CFR parts 1200 through 1252	2016	2017
10	New parts and subparts	2017	2018

Federal-Aid Highway Program

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. Section 145 of title 23 expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for the construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

Year 2 (fall 2009) List of rules that will be analyzed during the next year

23 CFR part 1 – General
23 CFR part 140 – Reimbursement
23 CFR part 172 – Administration of engineering and design-related service contracts
23 CFR part 180 – Credit assistance for Surface Transportation projects
23 CFR part 190 – Incentive payments for controlling outdoor advertising on the Interstate system
23 CFR part 192 – Drug offender's driver's license suspension
23 CFR part 200 – Title VI program and related statutes-implementation and review procedures
23 CFR part 230 – External programs
23 CFR part 260 – Education and training programs

DOT

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 372, subpart A, and 381	2008	2009
2	49 CFR parts 386, 389, and 395	2009	2010
3	49 CFR parts 325, 388, 350, and 355	2010	2011
4	49 CFR parts 380 and 382 to 385	2011	2012
5	49 CFR parts 390 to 393 and 396 to 399	2012	2013
6	49 CFR parts 356, 367, 369 to 371, 372, subparts B-C	2013	2014
7	49 CFR parts 373, 374, 376, and 379	2014	2015
8	49 CFR parts 360, 365, 366, and 368	2015	2016
9	49 CFR parts 377, 378, and 387	2016	2017
10	49 CFR parts 303, 375, and new parts and subparts	2017	2018

Year 1 (fall 2008) List of rules analyzed and a summary of results

49 CFR part 372, subpart A–Exemptions

- Section 610: There is no SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FMCSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 381 – Waivers, exemptions, and pilot programs

- Section 610: There is no SEIOSNOSE. No small entities are affected.
- General: These regulations are cost effective and impose the least burden. FMCSA's plain language review of these rules indicates no need for substantial revision.

Year 2 (fall 2009) List of rules that will be analyzed during the next year

49 CFR part 386 – Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings

49 CFR part 389 – Rulemaking procedures—Federal motor carrier safety regulations

49 CFR part 395 – Hours of service of drivers

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR 571.223 through 571.500, and parts 575 and 579	2008	2009
2	23 CFR parts 1200 and 1300	2009	2010
3	49 CFR parts 501 through 526 and 571.213	2010	2011
4	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	2011	2012
5	49 CFR 571.101 through 571.110, and 571.135, 571.138 and 571.139	2012	2013
6	49 CFR parts 529 through 578, except parts 571 and 575	2013	2014
7	49 CFR 571.111 through 571.129 and parts 580 through 588	2014	2015
8	49 CFR 571.201 through 571.212	2015	2016
9	49 CFR 571.214 through 571.219, except 571.217	2016	2017
10	49 CFR parts 591 through 595 and new parts and subparts	2017	2018

Year 1 (fall 2008) List of rules analyzed and a summary of the results

49 CFR part 571.223 – Rear impact guards

- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.224 – Rear impact protection

- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.225 – Child restraint anchorage systems

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.301 – Fuel system integrity

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.302 – Flammability of interior materials

DOT

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.303 – Fuel system integrity of compressed natural gas vehicles
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.304 – Compressed natural gas fuel container integrity
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.305 – Electric-powered vehicles: electrolyte spillage and electrical shock protection
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.401 – Interior trunk release
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.403 – Platform lift systems for motor vehicles
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.404 – Platform lift installations in motor vehicles
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.500 – Low-speed vehicles
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 575 – Consumer information
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 579 – Reporting of information and communications about potential defects
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

Year 2 (fall 2009) List of rules that will be analyzed during the next year

23 CFR part 1200 – Uniform procedures for State highway safety programs
23 CFR part 1204 – [Reserved]
23 CFR part 1205 – Highway safety programs; determinations of effectiveness
23 CFR part 1206 – Rules of procedure for invoking sanctions under the Highway Safety Act of 1966
23 CFR part 1208 – National minimum drinking age
23 CFR part 1210 – Operation of motor vehicles by intoxicated minors
23 CFR part 1215 – Use of safety belts-compliance and transfer-of-funds procedures
23 CFR part 1225 – Operation of motor vehicles by intoxicated persons
23 CFR part 1235 – Uniform system for parking for persons with disabilities
23 CFR part 1240 – Safety incentive grants for use of seat belts-allocations based on seat belt use rates
23 CFR part 1250 – Political subdivision participation in State highway safety programs
23 CFR part 1251 – State highway safety agency
23 CFR part 1252 – State matching of planning and administration costs
23 CFR part 1270 – Open container laws
23 CFR part 1275 – Repeat intoxicated driver laws

FEDERAL RAILROAD ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 200 and 201	2008	2009
2	49 CFR parts 207, 209, 211, 215, 238, and 256	2009	2010
3	49 CFR parts 210, 212, 214, 217, and 268	2010	2011

DOT

FEDERAL RAILROAD ADMINISTRATION (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
4	49 CFR part 219	2011	2012
5	49 CFR parts 218, 221, 241, and 244	2012	2013
6	49 CFR parts 216, 228, and 229	2013	2014
7	49 CFR parts 223 and 233	2014	2015
8	49 CFR parts 224, 225, 231, and 234	2015	2016
9	49 CFR parts 222, 227, 235, 236, 250, 260, and 266	2016	2017
10	49 CFR parts 213, 220, 230, 232, 239, 240, and 265	2017	2018

Year 1 (Fall 2008) List of rules analyzed and a summary of results

49 CFR part 200 – Informal rules of practice for passenger service

- Section 610: There is no SEIOSNOSE.
- General: The rule prescribes procedures under which applications are received and heard and by which rules and orders are issued primarily affecting the Class I railroads and Amtrak, none of which are small entities. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 201 – Formal rules of practice for passenger service

- Part 201 was removed from the CFR on May 27, 2009.

Year 2 (Fall 2009) List of rule(s) that will be analyzed during next year

49 CFR part 207 – Informal rules of practice for passenger safety
49 CFR part 209 – Railroad safety enforcement procedures
49 CFR part 211 – Rules of practice
49 CFR part 215 – Railroad freight car safety standards
49 CFR part 238 – Passenger equipment safety standards
49 CFR part 256 – Passenger assistance for railroad passenger terminals

FEDERAL TRANSIT ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 604, 605, and 633	2008	2009
2	49 CFR parts 661 and 665	2009	2010
3	49 CFR part 633	2010	2011
4	49 CFR parts 609 and 611	2011	2012
5	49 CFR parts 613 and 614	2012	2013
6	49 CFR part 622	2013	2014
7	49 CFR part 630	2014	2015
8	49 CFR part 639	2015	2016
9	49 CFR parts 659 and 663	2016	2017
10	49 CFR part 665	2017	2018

Year 1 (fall 2008) List of rules analyzed and summary of results

49 CFR part 604 – Charter service

- Section 610: The Agency has determined that the rule will not have a significant effect on a substantial number of small entities.
- General: This rule clarifies and sets forth provisions to protect private charter operators from unfair competition by public transit agencies. The rule was drafted using plain language techniques.

49 CFR part 661 – Buy America

- Section 610: The Agency has determined that the rule will not have a significant effect on a substantial number of small entities.
- General: This rulemaking amends FTA's Buy America requirements by adding bi-metallic rail to the list of traction power equipment. The rule was drafted using plain language techniques.

Year 2 (fall 2009) List of rules that will be analyzed during the next year

49 CFR part 605 – School bus operations
49 CFR part 633 – Program management oversight
49 CFR part 665 – Bus testing

DOT

MARITIME ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	46 CFR parts 201 through 205	2008	2009
2	46 CFR parts 221 through 232	2009	2010
3	46 CFR parts 249 through 296	2010	2011
4	46 CFR part 298	2011	2012
5	46 CFR parts 307 through 309	2012	2013
6	46 CFR part 310	2013	2014
7	46 CFR parts 315 through 340	2014	2015
8	46 CFR parts 345 through 381	2015	2016
9	46 CFR parts 382 through 389	2016	2017
10	46 CFR parts 390 through 393	2017	2018

Year 1 (fall 2008) List of rules analyzed and a summary of the results

46 CFR part 201 – Rules of practice and procedure
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: No changes are needed. Where confusing or wordy language has been identified, revisions will be made.

46 CFR part 202 – Procedures relating to review by Secretary of Transportation of actions by Maritime Subsidy Board
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: No changes are needed. Where confusing or wordy language has been identified, revisions will be made.

46 CFR part 203 – Procedures relating to conduct of certain hearings under the Merchant Marine Act, 1936
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- General: No changes are needed. Where confusing or wordy language has been identified, revisions will be made.

46 CFR part 204 – Claims against the Maritime Administration under the Federal Tort Claim Act
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- General: No changes are needed. Where confusing or wordy language has been identified, revisions will be made.

46 CFR part 205 – Audit appeals; policy and procedure
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- General: No changes are needed. Where confusing or wordy language has been identified, revisions will be made.

Year 2 (fall 2009) List of rules that will be analyzed during the next year

46 CFR part 221 – Regulated transactions involving documented vessels and other maritime interests
46 CFR part 232 – Uniform financial reporting requirements

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	part 178	2008	2009
2	parts 178 through 180	2009	2010
3	parts 172 and 175	2010	2011
4	sections 171.15 and 171.16	2011	2012
5	parts 106, 107, 171, 190, 195	2012	2013
6	parts 174, 177, 191, 192	2013	2014
7	parts 176, 199	2014	2015
8	parts 172 through 178	2015	2016
9	parts 172, 173, 174, 176, 177, 193	2016	2017
10	parts 173, 194	2017	2018

Year 1 (fall 2008) List of rules with ongoing analysis

49 CFR part 178 – Specifications for packaging

Year 2 (fall 2009) List of rules that will be analyzed during the next year

49 CFR part 178 – Specifications for packagings
49 CFR part 179 – Specifications for tank cars
49 CFR part 180 – Continuing qualification and maintenance of packagings

DOT

RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION (RITA)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR part 241, form 41	2008	2009
2	14 CFR part 241, schedule T-100, and part 217	2009	2010
3	14 CFR part 298, 49 CFR 1420	2010	2011
4	14 CFR part 241, section 19-7	2011	2012
5	14 CFR part 291	2012	2013
6	14 CFR part 234	2013	2014
7	14 CFR part 249	2014	2015
8	14 CFR part 248	2015	2016
9	14 CFR part 250	2016	2017
10	14 CFR part 374a, ICAO	2017	2018

Year 1 (fall 2008) List of rules with ongoing analysis
14 CFR part 241 – Uniform system of accounts and reports for large certificated air carriers, form 41

Year 2 (fall 2009) List of rules that will be analyzed during the next year
14 CFR part 217 – Reporting traffic statistics by foreign air carriers in civilian scheduled, charter, and nonscheduled services
14 CFR part 241 – Uniform system of accounts and reports for large certificated air carriers, Schedule T-100

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	33 CFR parts 401 through 403	2008	2009

Year 1 (fall 2008) List of rules with ongoing analysis
33 CFR part 401 – Seaway Regulations and Rules
33 CFR part 402 – Tariff of Tolls
33 CFR part 403 – Rules of Procedure of the Joint Tolls Review Board

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
406	Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft	2105–AD87
407	+Enhancing Airline Passenger Protections—Part 2 **(Reg Plan Seq No. 111)**	2105–AD92

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Aviation Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
408	+Flight Crewmember Duty Limitations and Rest Requirements	2120–AI93
409	+Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers **(Reg Plan Seq No. 113)**	2120–AJ00
410	+Activation of Ice Protection	2120–AJ43
411	+Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments **(Reg Plan Seq No. 114)**	2120–AJ53
412	+Flight and Duty Time Limitations and Rest Requirements **(Reg Plan Seq No. 115)**	2120–AJ58

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

DOT

Federal Aviation Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
413	+Automatic Dependent Surveillance—Broadcast (ADS-B) Equipage Mandate To Support Air Traffic Control Service **(Reg Plan Seq No. 116)**	2120–AI92

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Aviation Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
414	+Pilot Age Limit	2120–AJ01
415	+Production and Airworthiness Approvals	2120–AJ44

+ DOT-designated significant regulation

Federal Motor Carrier Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
416	+Unified Registration System	2126–AA22

+ DOT-designated significant regulation

Federal Motor Carrier Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
417	+National Registry of Certified Medical Examiners **(Reg Plan Seq No. 119)**	2126–AA97
418	Interstate Van Operations	2126–AA98
419	+Commercial Driver's License Testing and Commercial Learner's Permit Standards **(Reg Plan Seq No. 120)**	2126–AB02

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Motor Carrier Safety Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
420	+Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States	2126–AA35

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
421	Early Warning Reporting Information	2127–AK28

DOT

Federal Railroad Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
422	+Hours of Service—Passenger Train Employees **(Rulemaking Resulting From a Section 610 Review)**	2130–AC15

+ DOT-designated significant regulation

Federal Railroad Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
423	+Positive Train Control **(Reg Plan Seq No. 126)**	2130–AC03

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Transit Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
424	Bus Testing: Phase-In of Brake Performance and Emissions Testing, and Program Updates **(Completion of a Section 610 Review)**	2132–AA95
425	Buy America; Petition for Rulemaking **(Completion of a Section 610 Review)**	2132–AA99
426	School Bus Operations **(Completion of a Section 610 Review)**	2132–AB00

Pipeline and Hazardous Materials Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
427	+Hazardous Materials: Revisions to Requirements for the Transportation of Lithium Batteries	2137–AE44

+ DOT-designated significant regulation

Maritime Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
428	+Cargo Preference—Compromise, Assessment, Mitigation, Settlement and Collection of Civil Penalties **(Reg Plan Seq No. 129)**	2133–AB75

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Department of Transportation (DOT)
Office of the Secretary (OST)

Proposed Rule Stage

406. • USE OF THE SEAT–STRAPPING METHOD FOR CARRYING A WHEELCHAIR ON AN AIRCRAFT

Legal Authority: The Department has authority and responsibility under the ACAA (49 USC 41705) to; ensure that US and foreign air carriers do not discriminate against air traveler; on the basis of disability

Abstract: This rulemaking would address whether or not carriers should be allowed to utilize the seat-strapping method to stow a passenger's wheelchair in the aircraft cabin.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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

DOT—OST **Proposed Rule Stage**

Email: blane.workie@dot.gov

RIN: 2105–AD87

407. ● +ENHANCING AIRLINE PASSENGER PROTECTIONS—PART 2

Regulatory Plan: This entry is Seq. No. 111 in part II of this issue of the **Federal Register**.

RIN: 2105–AD92

BILLING CODE 4910—9X—S

Department of Transportation (DOT)
Federal Aviation Administration (FAA) **Proposed Rule Stage**

408. +FLIGHT CREWMEMBER DUTY LIMITATIONS AND REST REQUIREMENTS

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44703; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 44904

Abstract: This rulemaking would withdraw a previously published NPRM (RIN 2120-AF63) that proposed to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The NPRM also proposed to establish consistent and clear duty period limitations, flight time limitations, and rest requirements for domestic, flag, supplemental, commuter and on-demand operations. This action is necessary, because (1) the NPRM is outdated and (2) there were many significant issues commenters raised.

Timetable:

Action	Date	FR Cite
Notice of Withdrawal	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Larry Youngblut, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20951
Phone: 202 267–9360
Email: larry.youngblut@faa.gov

RIN: 2120–AI93

409. +QUALIFICATION, SERVICE, AND USE OF CREWMEMBERS AND AIRCRAFT DISPATCHERS

Regulatory Plan: This entry is Seq. No. 113 in part II of this issue of the **Federal Register**.

RIN: 2120–AJ00

410. +ACTIVATION OF ICE PROTECTION

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 46105; 49 USC 44702; 49 USC 44717; 49 USC 44904

Abstract: This rulemaking would amend the regulations applicable to operators of certain airplanes used in air carrier service and certificated for flight in icing conditions. The standards would require either the installation of ice detection equipment or changes to the Airplane Flight Manual to ensure timely activation of the airframe ice protection system. This regulation is the result of information gathered from a review of icing accidents and incidents, and it is intended to improve the level of safety when airplanes are operated in icing conditions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Jerry Ostronic, Air Carrier Operations Branch, AFS 220, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 267–8166
Fax: 202 267–5229
Email: jerry.c.ostronic@faa.gov

RIN: 2120–AJ43

411. ● +AIR AMBULANCE AND COMMERCIAL HELICOPTER OPERATIONS; SAFETY INITIATIVES AND MISCELLANEOUS AMENDMENTS

Regulatory Plan: This entry is Seq. No. 114 in part II of this issue of the **Federal Register**.

RIN: 2120–AJ53

412. ● +FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS

Regulatory Plan: This entry is Seq. No. 115 in part II of this issue of the **Federal Register**.

RIN: 2120–AJ58

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Final Rule Stage

413. +AUTOMATIC DEPENDENT SURVEILLANCE—BROADCAST (ADS–B) EQUIPAGE MANDATE TO SUPPORT AIR TRAFFIC CONTROL SERVICE

Regulatory Plan: This entry is Seq. No. 116 in part II of this issue of the **Federal Register**.

RIN: 2120–AI92

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Completed Actions

414. +PILOT AGE LIMIT

Legal Authority: 49 USC 44701; 49 USC 44702; 49 USC 44709 to 44711; 49 USC 44716; 49 USC 44717; 49 USC 44903; 49 USC 44904; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44705; 49 USC 44713; 49 USC 44722; 49 USC 44901; 49 USC 44912; 49 USC 46105

Abstract: This rulemaking would correct the language of the Code of Federal Regulations to bring it into conformance with recent legislation raising the upper age limit for pilots serving in domestic, flag, and supplemental operations until they reach their 65th birthday. Congress enacted legislation, effective December 13, 2007, mandating an Age-65 limit for pilots for purposes of Title 49 USC.

Timetable:

Action	Date	FR Cite
Final Rule	07/15/09	74 FR 34229
Final Rule Effective	07/15/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Larry Youngblut, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20951
Phone: 202 267–9360
Email: larry.youngblut@faa.gov

RIN: 2120–AJ01

415. +PRODUCTION AND AIRWORTHINESS APPROVALS

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701; 49 USC 44704; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715; 49 USC 45303; 49 USC 44702

Abstract: This rulemaking would amend the certification procedures and identification requirements for aeronautical products and articles. These amendments would update and standardize those requirements for production approval holders (PAHs), revise export airworthiness approval requirements to facilitate global manufacturing, move all part-marking requirements from part 21 to part 45, and amend the identification requirements for products and articles. The intent of these changes is to continue to promote safety by ensuring that aircraft, and products and articles designed specifically for use in aircraft, wherever manufactured, meet appropriate minimum standards for design and construction. This rulemaking was split from RIN 2120-AI78.

Timetable:

Action	Date	FR Cite
Final Rule	10/16/09	74 FR 53368
Final Rule Effective	10/14/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Barbara Capron, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 267–3343
Email: barbara.capron@faa.gov

RIN: 2120–AJ44

BILLING CODE 4910—13—S

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Proposed Rule Stage

416. +UNIFIED REGISTRATION SYSTEM

Legal Authority: PL 104–88; 109 stat 803, 888 (1995); 49 USC 13908; PL 109–159, sec 4304

Abstract: This rulemaking would replace three current identification and registration systems: the US DOT number identification system, the commercial registration system, and the financial responsibility system, with an online Federal unified registration system (URS). This program would serve as a clearinghouse and depository of information on, and identification of, brokers, freight forwarders, and others required to register with the Department of Transportation. The Agency is revising this rulemaking to address amendments directed by SAFETEA-LU. The replacement system for the Single State Registration System, which the ICC Termination Act originally directed be merged under URS, will be addressed separately.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/96	61 FR 43816
ANPRM Comment Period End	10/25/96	
NPRM	05/19/05	70 FR 28990
NPRM Comment Period End	08/17/05	
Supplemental NPRM	04/00/10	

Regulatory Flexibility Analysis Required: Yes

DOT—FMCSA **Proposed Rule Stage**

Agency Contact: Valerie Height, Management Analyst, Department of Transportation, Federal Motor Carrier Safety Administration, Office of Policy Plans and Regulation (MC–PRR), 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–0901
Email: valerie.height@dot.gov

RIN: 2126–AA22

Department of Transportation (DOT) — Federal Motor Carrier Safety Administration (FMCSA) — Final Rule Stage

417. +NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS

Regulatory Plan: This entry is Seq. No. 119 in part II of this issue of the **Federal Register**.

RIN: 2126–AA97

418. INTERSTATE VAN OPERATIONS

Legal Authority: PL 109–59 (2005), Sec 4136

Abstract: This rulemaking would make the requirements concerning driver qualifications; driving of CMVs; parts and accessories necessary for safe operations; hours of service; and inspection, repair, and maintenance applicable to the operation of vehicles designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation, in interstate commerce, regardless of the distance traveled. Currently the safety regulations apply to such vans when the vehicle is operated beyond a 75 air-mile radius of the driver's work reporting location. This action is in response to SAFETEA-LU.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AA98

419. +COMMERCIAL DRIVER'S LICENSE TESTING AND COMMERCIAL LEARNER'S PERMIT STANDARDS

Regulatory Plan: This entry is Seq. No. 120 in part II of this issue of the **Federal Register**.

RIN: 2126–AB02

Department of Transportation (DOT) — Federal Motor Carrier Safety Administration (FMCSA) — Long-Term Actions

420. +SAFETY MONITORING SYSTEM AND COMPLIANCE INITIATIVE FOR MEXICO–DOMICILED MOTOR CARRIERS OPERATING IN THE UNITED STATES

Legal Authority: PL 107–87, sec 350; 49 USC 113; 49 USC 31136; 49 USC 31144; 49 USC 31502; 49 USC 504; 49 USC 5113; 49 USC 521(b)(5)(A)

Abstract: This rule would implement a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. It also would establish suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporate criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM but which are necessary to comply with the FY-2002 DOT Appropriations Act. On January 16, 2003, the Ninth Circuit Court of Appeals remanded this rule, along with two other NAFTA-related rules, to the agency, requiring a full environmental impact statement and an analysis required by the Clean Air Act. On June 7, 2004, the Supreme Court reversed the Ninth Circuit and remanded the case, holding that FMCSA is not required to prepare the environmental documents. FMCSA originally planned to publish a final rule by November 28, 2003. FMCSA will determine the next steps to be taken after enactment of any pending legislation authorizing cross border trucking.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22415
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
Interim Final Rule Comment Period End	04/18/02	
Interim Final Rule Effective*	05/03/02	
Notice of Intent To Prepare an EIS	08/26/03	68 FR 51322
EIS Public Scoping Meetings	10/08/03	68 FR 58162
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Dominick Spataro, Chief, Borders Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 266–2995
Email: dom.spataro@dot.gov

RIN: 2126–AA35

BILLING CODE 4910—EX—S

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Completed Actions

421. EARLY WARNING REPORTING INFORMATION

Legal Authority: 49 USC 30166

Abstract: This rulemaking would amend certain provisions of the early warning reporting (EWR) rule published pursuant to the Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act. This rulemaking would modify the threshold for submitting quarterly EWR reports for some manufacturers and add new requirements to maintain the consistency of the EWR data from quarter to quarter.

Timetable:

Action	Date	FR Cite
NPRM	12/05/08	73 FR 74101
NPRM Comment Period End	02/03/09	
Final Action	09/17/09	74 FR 47740
Final Action Effective	10/19/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Christina Morgan, Chief, Early Warning Reporting, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–4238
Email: tina.morgan@dot.gov

RIN: 2127–AK28

BILLING CODE 4910—59—S

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Proposed Rule Stage

422. ● +HOURS OF SERVICE—PASSENGER TRAIN EMPLOYEES (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Legal Authority: PL 110–432, Div A, 122 Stat 4848 et seq; Rail Safety Improvement Act of 2008; sec 108(e) (49 USC 21109)

Abstract: This rulemaking would establish hours of service requirements for train employees engaged in commuter and intercity passenger rail transport.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AC15

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Final Rule Stage

423. ● +POSITIVE TRAIN CONTROL

Regulatory Plan: This entry is Seq. No. 126 in part II of this issue of the **Federal Register**.

RIN: 2130–AC03

BILLING CODE 4910—06—S

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Completed Actions

424. BUS TESTING: PHASE–IN OF BRAKE PERFORMANCE AND EMISSIONS TESTING, AND PROGRAM UPDATES (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 49 USC 5318(a)

Abstract: This rulemaking modifies the Bus Testing rule to incorporate tests for brake performance and emissions. This rulemaking also updates and clarifies the existing regulation found at 49 CFR 665.

Timetable:

Action	Date	FR Cite
NPRM	09/30/08	73 FR 56781
NPRM Comment Period End	12/01/08	
Final Rule	10/05/09	74 FR 51083
Final Rule Effective	01/01/10	

Regulatory Flexibility Analysis Required: No

Agency Contact: Richard Wong, Attorney–Advisor, Department of Transportation, Federal Transit Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–6067
Fax: 202 366–3809
Email: richard.wong@dot.gov

RIN: 2132–AA95

425. BUY AMERICA; PETITION FOR RULEMAKING (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 49 USC 5323(j)

Abstract: This rulemaking reclassifies bi-metallic aluminum rail under FTA's Buy America rule. Both running rail (carrying the weight of the train) and power rail (carrying the electric power supply) were treated alike under the Buy America regulation, i.e., all rail products must be produced in the

DOT—FTA **Completed Actions**

United States, including all manufacturing processes, except metallurgical processes involving refinement of steel additives. FTA now classifies bi-metallic aluminum rail as ''traction power equipment,'' subject to a 60/40% domestic/nondomestic content requirement and final assemble in the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/24/08	73 FR 70950
NPRM Comment Period End	01/23/09	
Final Rule	06/25/09	74 FR 30237
Final Rule Effective	07/27/09	

Regulatory Flexibility Analysis Required: No

Agency Contact: Richard Wong, Attorney–Advisor, Department of Transportation, Federal Transit Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–6067
Fax: 202 366–3809
Email: richard.wong@dot.gov

RIN: 2132–AA99

426. SCHOOL BUS OPERATIONS (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 49 USC 5323(f)

Abstract: This rulemaking would have amended the regulations that govern the provision of services to school students and personnel by recipients of Federal funds from the Federal Transit Administration for consistency with the statutory provisions enacted by SAFETEA-LU regarding penalties for violations of the regulations. This rulemaking would also have clarified the exisiting requirements for differentiating permissible services from prohibited services to school students and personnel. FTA, however, recently determined that withdrawal of the NPRM is appropriate in consideration of public misconceptions with FTA's regulatory proposal.

Timetable:

Action	Date	FR Cite
Withdrawn	06/26/09	74 FR 30499

Regulatory Flexibility Analysis Required: No

Agency Contact: Michael Culotten, Attorney–Advisor, Department of Transportation, Federal Transit Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 493–0509
Fax: 202 366–3809

RIN: 2132–AB00

BILLING CODE 4910—57—S

Department of Transportation (DOT) — Proposed Rule Stage
Pipeline and Hazardous Materials Safety Administration (PHMSA)

427. ● +HAZARDOUS MATERIALS: REVISIONS TO REQUIREMENTS FOR THE TRANSPORTATION OF LITHIUM BATTERIES

Legal Authority: 49 USC 5101 et seq

Abstract: This rulemaking would amend the Hazardous Materials Regulations to comprehensively address the safe transportation of lithium cells and batteries. The intent of the rulemaking is to strengthen the current regulatory framework by imposing more effective safeguards, including design testing to address risks related to internal short circuits, and enhanced packaging, hazard communication, and operational measures for various types and sizes of lithium batteries in specific transportation contexts. The rulemaking responds to several recommendations issued by the National Transportation Safety Board.

Timetable:

Action	Date	FR Cite
NPRM	01/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kevin Leary, Transportation Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–8553
Email: kevin.leary@dot.gov

RIN: 2137–AE44

BILLING CODE 4910—60—S

Department of Transportation (DOT) — Proposed Rule Stage
Maritime Administration (MARAD)

428. +CARGO PREFERENCE — COMPROMISE, ASSESSMENT, MITIGATION, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

Regulatory Plan: This entry is Seq. No. 129 in part II of this issue of the **Federal Register**.

RIN: 2133–AB75

[FR Doc. E9–28604 Filed 12–04–09; 8:45 am]

BILLING CODE 4910–81–S

Federal Register

Monday,
December 7, 2009

Part XII

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY (TREAS)

DEPARTMENT OF THE TREASURY

31 CFR Subtitle A, Chs. I and II

Semiannual Agenda and Fiscal Year 2010 Regulatory Plan

AGENCY: Department of the Treasury.

ACTION: Semiannual regulatory agenda and annual regulatory plan.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order (EO) 12866 (''Regulatory Planning and Review''), which require the publication by the Department of a semiannual agenda of regulations. E.O. 12866 also requires the publication by the Department of a regulatory plan for fiscal year 2010.

FOR FURTHER INFORMATION CONTACT: The Agency Contact identified in the item relating to that regulation.

SUPPLEMENTARY INFORMATION: The semiannual regulatory agenda includes regulations that the Department has issued or expects to issue and rules currently in effect that are under departmental or bureau review. For this edition of the regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

Beginning with the fall 2007 edition, the Internet is the primary medium for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury's printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rule that has been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including Treasury's regulatory plan.

The semiannual agenda and The Regulatory Plan of the Department of the Treasury conform to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

Dated: September 11, 2009.

Richard G. Lepley,

Deputy Assistant General Counsel for General Law and Regulation.

Comptroller of the Currency—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
429	Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act	1557–AC80

Department of the Treasury (TREAS) — Final Rule Stage
Comptroller of the Currency (OCC)

429. INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM UNDER THE GRAMM–LEACH–BLILEY ACT

Legal Authority: 12 USC 93a; 15 USC 6801 et seq

Abstract: Pursuant to section 728 of the Financial Services Regulatory Relief Act, the OCC, FRB, FDIC, OTS, NCUA, FTC, CFTC, and SEC jointly proposed, on March 29, 2007, to amend their rules that implement sections 502 and 503 of the Gramm-Leach-Bliley Act to allow financial institutions to provide a safe harbor model privacy form and remove the sample clauses contained in these rules as of two years after the publication date of a final rule. The Agencies will issue a final rule that reflects comments received from the public.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75164
ANPRM Comment Period End	03/29/04	
NPRM	03/29/07	72 FR 14940
NPRM Comment Period End	05/29/07	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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

RIN: 1557–AC80

[FR Doc. E9–28577 Filed 12–04–09; 8:45 am]

BILLING CODE 4810–33–S

Federal Register

Monday,
December 7, 2009

Part XIII

Environmental Protection Agency

Semiannual Regulatory Agenda

ENVIRONMENTAL PROTECTION AGENCY (EPA)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-8950-1]

EPA-HQ-OA-2007-1172

EPA-HQ-OW-2009-0082

Fall 2009 Regulatory Agenda

AGENCY: Environmental Protection Agency.

ACTION: Semiannual regulatory agenda and semiannual regulatory flexibility agenda.

SUMMARY: The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda online (the e-agenda) at www.reginfo.gov to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Rules and major policymakings completed or canceled since the last agenda.

Definitions:

''E-agenda,'' ''online regulatory agenda,'' and ''semiannual regulatory agenda'' all refer to the same comprehensive collection of information on rulemakings that, until May 2007, was published in the **Federal Register,** but which now is only available through an online database.

The Regulatory Plan provides more detailed information than the regulatory agenda on the most important significant rulemakings that we will be developing over the coming years.

''Monthly Action Initiation List'' (AIL) refers to a list that EPA posts online each month of the regulations newly approved for development.

''Unified Agenda'' refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center.

''Regulatory agenda preamble'' refers to the document you are reading now. It introduces both EPA's e-agenda and regulatory flexibility agenda.

''Regulatory Flexibility Agenda'' refers to a document that contains a limited amount of information (less than is in the e-agenda) about regulations that may have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act of 1980 requires that we publish the Regulatory Flexibility Agenda in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you have questions or comments about a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the semiannual regulatory agenda, please contact: Caryn Muellerleile (muellerleile.caryn@epa.gov; 202-564-2855) or Phil Schwartz (schwartz.philip@epa.gov; 202-564-6564).

TO BE PLACED ON AN AGENDA MAILING LIST: If you would like to receive an e-mail with a link to new semiannual regulatory agendas as soon as they are published, please send an e-mail message with your name and address to: nscep@bps-lmit.com and put ''E-Regulatory Agenda: Electronic Copy'' in the subject line. If you would like to regularly receive information about the rules newly approved for development, sign up for our monthly Action Initiation List by going to http://www.epa.gov/lawsregs/search/ail.html#notification and completing the five steps listed there.

If you would like to receive a hard copy of the semiannual agenda about 2 months after publication, call 800-490-9198 or send an e-mail with your name and complete address to: nscep@bps-lmit.com and put ''Regulatory Agenda Hard Copy'' in the subject line.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Map of Regulatory Agenda Information

Type of Information	Online Locations	Federal Register Location
Semiannual Regulatory Agenda (The e-Agenda; the online Agenda)	www.reginfo.gov/, www.regulations.gov, and http://www.epa.gov/lawsregs/search/regagenda.html	Not in FR
The Regulatory Plan	www.reginfo.gov/, www.regulations.gov, and http://www.epa.gov/lawsregs/search/regagenda.html	Part II of today's issue
Monthly Action Initiation List	http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail& d=EPA-HQ-OA-2008-0265 and http://www.epa.gov/lawsregs/search/ail.html	Not in FR

EPA

Type of Information	Online Locations	Federal Register Location
Semiannual Regulatory Flexibility Agenda	www.regulations.gov, and http://www.epa.gov/lawsregs/search/regagenda.html	Part XII of today's issue

B. What Are EPA's Regulatory Goals and Values, and What Key Principles, Statutes, and Executive Orders Guide Our Rule and Policymaking Process?

For a detailed discussion of the goals and values we aspire to in rulemaking please see our Statement of Regulatory Priorities at http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/200910/Statement__2000.html and published in part II of today's issue of the **Federal Register**.

Besides the fundamental environmental laws authorizing EPA actions such as the Clean Air Act and Clean Water Act, there are legal requirements that apply to the issuance of regulations that are generally contained in the Administrative Procedure Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and the Congressional Review Act. We also must meet a number of requirements contained in Executive Orders: 12866 (Regulatory Planning and Review; 58 FR 51735; October 4, 1993),12898 (Environmental Justice; 59 FR 7629; February 16, 1994), 13045 (Children's Health Protection; 62 FR 19885; April 23, 1997), 13132 (Federalism; 64 FR 43255;August 10, 1999), 13175 (Consultation and Coordination With Indian Tribal Governments; 65 FR 67249; November 9, 2000), 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; 66 FR 28355; May 22, 2001).

C. How Can You Be Involved in EPA's Rule and Policymaking Process?

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. We urge you to participate as early in the process as possible. You may also participate by commenting on proposed rules that we publish in the **Federal Register** (FR).

Information on submitting comments to the rulemaking docket is provided in each of our Notices of Proposed Rulemaking (NPRMs), and we always accept comments through the regulations.gov e-docket. To be most effective, comments should contain information and data that support your position, and you also should explain why we should incorporate your suggestion in the rule or nonregulatory action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

We believe our actions will be more cost-effective and protective if our development process includes stakeholders working with us to identify the most practical and effective solutions to problems, and we stress this point most strongly in all of our training programs for rule and policy developers. Democracy gives real power to individual citizens, but with that power comes responsibility. We urge you to become involved in EPA's rule and policymaking process. For more information about public involvement in EPA activities, please visit www.epa.gov/publicinvolvement.

D. What Actions Are Included in the E-Agenda and the Regulatory Flexibility Agenda?

EPA includes regulations and certain major policy documents in the e-agenda. However, there is no legal significance to the omission of an item from the agenda, and we generally do not include minor amendments or the following categories of actions:

- Administrative actions such as delegations of authority, changes of address, or phone numbers;
- Under the Clean Air Act: Revisions to State Implementation Plans; Equivalent Methods for Ambient Air Quality Monitoring; Deletions from the New Source Performance Standards source categories list; Delegations of Authority to States; Area Designations for Air Quality Planning Purposes;
- Under the Federal Insecticide, Fungicide, and Rodenticide Act: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins;
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations;
- Under the Resource Conservation and Recovery Act: Authorization of State solid waste management plans; hazardous waste delisting petitions;
- Under the Clean Water Act: State Water Quality Standards; deletions from the section307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States;
- Under the Safe Drinking Water Act: Actions on State underground injection control programs.

The regulatory flexibility agenda normally includes:

- Actions that are likely to have a significant economic impact on a substantial number of small entities, and
- Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act. We have one rule concluding review in 2009.

E. How Is the E-Agenda Organized?

You can now choose how both the www.reginfo.gov and www.regulations.gov versions of the e-Agenda are organized. Current choices include: EPA subagency; stage of rulemaking, explained below; alphabetically by title; and by the Regulation Identifier Number (RIN), which is assigned sequentially when an action is added to the agenda.

Stages of rulemaking include:

1. Prerulemaking–Prerulemaking actions are generally intended to determine whether EPA should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking, such as advance notices of proposed rulemaking (ANPRMs), significant studies or analyses of the possible need for regulatory action, announcement of

reviews of existing regulations required under section 610 of the Regulatory Flexibility Act, requests for public comment on the need for regulatory action, or important preregulatory policy proposals.
2. Proposed Rule–This section includes EPA rulemaking actions that are within a year of proposal (publication of Notices of Proposed Rulemakings (NPRMs)).
3. Final Rule–This section includes rules that will be issued as a final rule within a year.
4. Long-Term Actions–This section includes rulemakings for which the next scheduled regulatory action is after October 2010.
5. Completed Actions–This section contains actions that have been promulgated and published in the **Federal Register** since publication of the spring 2009 agenda. It also includes actions that we are no longer considering. If an action appears in the completed section, it will not appear in future agendas unless we decide to initiate action again, in which case it will appear as a new entry. EPA also announces the results of our Regulatory Flexibility Act section 610 reviews in this section of the agenda.

F. What Information Is in the E-Agenda and Regulatory Flexibility Agenda?

E-Agenda entries include:

Title: Titles for new entries (those that have not appeared in previous agendas) are preceded by a bullet (•). The notation ''Section 610 Review'' follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 610).

Priority: Entries are placed into one of five categories described below. OMB reviews all significant rules including both of the first two categories, ''economically significant'' and ''other significant.''

Economically Significant: Under E.O. 12866, a rulemaking action that may 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.

Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:
1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or
3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

Substantive, Nonsignificant: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (e.g., certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance Exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under E.O. 12866, then we would classify the action as either ''Economically Significant'' or ''Other Significant.''

Informational/Administrative/Other: An action that is primarily informational or pertains to an action outside the scope of E.O. 12866.

Also, if we believe that a rule may be ''Major'' as defined in the Congressional Review Act (5 U.S.C. 801, *et seq.*) because it is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in this law, we indicate this under the ''Priority'' heading with the statement '' Major under 5 U.S.C. 801.''

Legal Authority: The sections of the United States Code (USC), Public Law (PL), Executive Order(EO), or common name of the law that authorizes the regulatory action.

CFR Citation: The sections of the Code of Federal Regulations that would be affected by the action.

Legal Deadline: An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

Abstract: A brief description of the problem the action will address.

Timetable: The dates (and citations) that documents for this action were published in the **Federal Register** and, where possible, a projected date for the next step. Projected publication dates frequently change during the course of developing an action. The projections in the agenda are our best estimates as of the date we submit the agenda for publication. For some entries, the timetable indicates that the date of the next action is ''to be determined.''

Regulatory Flexibility Analysis Required: Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the RFA. Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

Small Entities Affected: Indicates whether we expect the rule to have any effect on small businesses, small governments, or small nonprofit organizations.

Government Levels Affected: Indicates whether we expect the rule to have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism Implications: Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates: Section 202 of the Unfunded Mandates Reform Act generally requires an assessment of anticipated costs and benefits if a rule includes a mandate that may result in expenditures of more than $100 million in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If we expect to exceed this $100 million threshold, we note it in this section.

Energy Impacts: Indicates whether the action is a significant energy action under E.O. 13211.

International Trade Impacts: Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

EPA

Agency Contact: The name, address, phone number, and e-mail address of a person who is knowledgeable about the regulation.

SAN Number: An identification number that EPA uses to track rulemakings and other actions under development.

URLs: For some of our actions we include the Internet addresses for: Reading copies of rulemaking documents; submitting comments on proposals; and getting more information about the rulemaking and the program of which it is a part. (Note: To submit comments on proposals, you can go to our electronic docket, which is at: www.regulations.gov. Once there, follow the online instructions to access the docket and submit comments. A Docket identification (ID) number will assist in the search for materials. We include this number in the additional information section of many of the agenda entries that have already been proposed.)

RIN: The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN stand for the EPA office with lead responsibility for developing the action.

Regulatory Flexibility Agenda entries contain a **Federal Register** sequence number and a subset of the information in the e-Agenda:

RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule, Contact Person's name, mailing address and phone number.

G. How Can I Find Out About Rulemakings That Start Up After the Regulatory Agenda Is Signed?

EPA posts monthly updates of the rulemakings that the Agency's senior managers have decided that we should work on. We also distribute this list via e-mail. You can see the current list, which we call the Action Initiation List, at http://www.epa.gov/lawsregs/search/ail.html where you will also find information about how to get an e-mail notification when a new list is posted.

H. What Tools for Mining Regulatory Agenda Data and for Finding More About EPA Rules and Policies Are Available at Reginfo.gov, EPA.gov, and Regulations.gov?

1.The Reginfo.gov Searchable Database

GSA's Regulatory Information Service Center, which coordinates publication of the Agenda for the Office of Management and Budget, has developed and continues to improve a regulatory agenda database that includes powerful search, display, and data transmission options. You can:

- See the preamble. On the Main Agenda Page, select Current Agenda Agency Preambles.
- Get a complete list of EPA's entries. On the Main Agenda Page, under Agency, select Environmental Protection Agency.
- View the contents of all of EPA's entries. On the Agenda Search Page, select ''Advanced Search''; select Continue; Select Environmental Protection Agency and then Continue; Select ''Search.''
- Get a listing of entries with specified characteristics. Follow the procedure described immediately above for viewing the contents of all entries, but on the screen headed ''Advanced Search-Select Additional Fields'' select the characteristics you are seeking before clicking on ''Search.'' For example, if you wish to see a listing of all economically significant actions that may have a significant economic impact on a substantial number of small businesses, you would check Economically Significant under Priority and check Business under Regulatory Flexibility Analysis required.
- Download the results of your searches in XML format.

2. Subject Matter EPA Web sites

Some of the actions listed in the agenda include a URL that provides additional information on the rulemaking.

3. Public Dockets

When EPA publishes either an Advanced Notice of Proposed Rulemaking (ANPRM) or a NPRM in the **Federal Register**, the Agency may establish a docket to accumulate materials throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to a particular Agency action or activity. EPA most commonly uses dockets for rulemaking actions, but dockets may also be used for Regulatory Flexibility Act section 610 reviews of rules with significant economic impacts on a substantial number of small entities and for various nonrulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the Paperwork Reduction Act, and other non-rule activities. If there is a docket on a particular action, information about the location will be in that action's agenda entry. URL's for many of EPA's dockets are included in the agenda entry. To enter the docket, copy the URL into a browser window. To locate a docket you can also use the docket search features at regulations.gov.

I. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities

Section 610 of the RFA requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. EPA completed one Section 610 review in 2009.

EPA concluded that there is a continued need for this rule.

Rule Being Reviewed	RIN	Docket ID
Revisions to the Underground Injection Control (UIC) Requirements for Class V Wells (Section 610 Review)	2040–AF04	EPA-HQ-OW-2009-0082

EPA

J. What Other Special Attention Do We Give to the Impacts of Rules on Small Businesses, Small Governments, and Small Nonprofit Organizations?

For each of our rulemakings, we consider whether there will be any adverse impact on any small entity. We attempt to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under RFA/SBREFA (the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act), the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed information about the Agency's policy and practice with respect to implementing RFA/SBREFA, please visit the RFA/SBREFA Web site at http://www.epa.gov/sbrefa/.

For a list of the rules underdevelopment for which a Regulatory Flexibility Analysis will be required and for a list of rules under development that may affect small entities, but not significantly affect a substantial number of them, please use the advanced search function at http://www.reginfo.gov/public/do/eAgendaAdvancedSearch.

K. Thank You for Collaborating With Us

Finally, we would like to thank those of you who choose to join with us in solving the complex issues involved in protecting human health and the environment. Collaborative efforts such as EPA's open rulemaking process are a valuable tool for addressing the problems we face and the regulatory agenda is an important part of that process.

Dated: September 9, 2009.

Louise Wise,

Deputy Associate Administrator, Office of Policy, Economics and Innovation.

CLEAN AIR ACT—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
430	SAN No. 4884. 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 **(Reg Plan Seq No. 135)**	2060–AM44

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN AIR ACT—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
431	SAN No. 5250. Renewable Fuels Standard Program **(Reg Plan Seq No. 148)**	2060–AO81

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
432	SAN No. 5007 Pesticides; Competency Standards for Occupational Users	2070–AJ20
433	SAN No. 5006 Pesticides; Agricultural Worker Protection Standard Revisions	2070–AJ22

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
434	SAN No. 5379 Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program **(Reg Plan Seq No. 152)**	2070–AJ55

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

EPA

SAFE DRINKING WATER ACT (SDWA)—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
435	SAN No. 2281 National Primary Drinking Water Regulations: Radon	2040–AA94

SAFE DRINKING WATER ACT (SDWA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
436	SAN No. 5332 Revisions to the Underground Injection Control (UIC) Requirements for Class V Wells **(Completion of a Section 610 Review)**	2040–AF04

Environmental Protection Agency (EPA) **Proposed Rule Stage**

Clean Air Act

430. 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

Regulatory Plan: This entry is Seq. No. 135 in part II of this issue of the **Federal Register**.

RIN: 2060–AM44

Environmental Protection Agency (EPA) **Final Rule Stage**

Clean Air Act

431. RENEWABLE FUELS STANDARD PROGRAM

Regulatory Plan: This entry is Seq. No. 148 in part II of this issue of the **Federal Register**.

RIN: 2060–AO81

Environmental Protection Agency (EPA) **Long-Term Actions**

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

432. PESTICIDES; COMPETENCY STANDARDS FOR OCCUPATIONAL USERS

Legal Authority: 7 USC 136; 7 USC 136i; 7 USC 136w

Abstract: The EPA is proposing change to federal regulations guiding the certified pesticide applicator program (40 CFR 171). Change is sought to strengthen the regulations to better protect pesticide applicators and the public and the environment from harm due to pesticide exposure. The possible need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the potential need for changes to the regulation.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required: Yes

EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) — Long-Term Actions

Agency Contact: Kathy Davis, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
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Richard Pont, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
Phone: 703 305–6448
Fax: 703 308–2962
Email: pont.richard@epa.gov

RIN: 2070–AJ20

433. PESTICIDES; AGRICULTURAL WORKER PROTECTION STANDARD REVISIONS

Legal Authority: 7 USC 136; 7 USC 136w

Abstract: The EPA is developing a proposal to revise the Federal regulations guiding agricultural worker protection (40 CFR part 170). The changes under consideration are intended to improve agricultural workers' ability to protect themselves from potential exposure to pesticides and pesticide residues. In addition, EPA is proposing to make adjustments to improve and clarify current requirements and facilitate enforcement. Other changes sought are to establish a right-to-know Hazard Communication program and make improvements to pesticide safety training, with improved worker safety the intended outcome. The potential need for change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kathy Davis, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
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RIN: 2070–AJ22

Environmental Protection Agency (EPA) — Final Rule Stage
Toxic Substances Control Act (TSCA)

434. ● LEAD; AMENDMENT TO THE OPT–OUT AND RECORDKEEPING PROVISIONS IN THE RENOVATION, REPAIR, AND PAINTING PROGRAM

Regulatory Plan: This entry is Seq. No. 152 in part II of this issue of the **Federal Register**.

RIN: 2070–AJ55

Environmental Protection Agency (EPA) — Long-Term Actions
Safe Drinking Water Act (SDWA)

435. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

Legal Authority: 42 USC 300f, et seq

Abstract: In 1999, EPA proposed regulations for radon which provide flexibility in how to manage the health risks from radon in drinking water. The proposal was based on the unique framework in the 1996 SDWA. The proposed regulation would provide for either a maximum contaminant level (MCL), or an alternative maximum contaminant level (AMCL) with a multimedia mitigation (MMM) program to address radon in indoor air. Under the proposal, public water systems in States that adopted qualifying MMM programs would be subject to the AMCL, while those in States that did not adopt such programs would be subject to the MCL.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/86	51 FR 34836
NPRM original	07/18/91	56 FR 33050
Notice99	02/26/99	64 FR 9560
NPRM	11/02/99	64 FR 59246
NPRM Comment Period End	01/03/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Rebeccak Allen, Environmental Protection Agency, Water, 4607M, Washington, DC 20460
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Eric Burneson, Environmental Protection Agency, Water, 4607M, Washington, DC 20460
Phone: 202 564–5250
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RIN: 2040–AA94

Environmental Protection Agency (EPA) **Completed Actions**

Safe Drinking Water Act (SDWA)

436. REVISIONS TO THE UNDERGROUND INJECTION CONTROL (UIC) REQUIREMENTS FOR CLASS V WELLS (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 5 USC 610

Abstract: Class V wells are regulated under the authority of part C of the Safe Drinking Water Act (SDWA). The SDWA is designed to protect the quality of drinking water in the United States, and part C specifically mandates the regulation of underground injection of fluids through wells. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority. Most Class V wells are authorized by rule as long as (1) they do not endanger underground sources of drinking water (USDWs), and (2) the well owners or operators submit basic inventory and assessment information. If a Class V well may endanger USDWs, UIC Program Directors can require the owner/operator to apply for a permit, order preventive actions (including closure of the well) to prevent the violation, require remediation to assure USDWs are protected, or take enforcement action.

On December 7, 1999, EPA finalized additional requirements for motor vehicle waste disposal wells and large capacity cesspools, to embrace priorities and help achieve goals defined under the 1996 Amendments to the SDWA, and to fulfill the first phase of the Agency's requirements under the 1997 consent decree with the Sierra Club. The 1999 Rule established requirements for two categories of Class V injection wells determined by EPA to be a source of endangerment to drinking water. Specifically, the rule covers: (1) Existing motor vehicle waste disposal wells located in ground water protection areas or other sensitive ground water areas; and, (2) new and existing large-capacity cesspools and new motor vehicle waste disposal wells nationwide. The conclusion that these Class V wells pose an endangerment to USDWs is based on substantial information and the combined professional judgment of EPA and State geologists and engineers that are responsible for implementing the Class V UIC program.

This entry in the regulatory agenda announced that while EPA had taken steps in the 1999 Rulemaking process to evaluate and mitigate impacts on small entities, pursuant to section 610 of the Regulatory Flexibility Act, EPA would review the Class V Rule. As part of the review, EPA considered and solicited comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Based on the evaluation of the Class V Rule during promulgation and comment received, EPA believes there is a continued need for the Class V Rule. EPA assumes that the regulatory impact of two endangering well types on small business is not significant because the Agency believes most of these well types have been either closed or permitted.

Timetable:

Action	Date	FR Cite
Final Action	12/07/99	64 FR 68546
Begin Review	05/11/09	74 FR 21991
End Comment Period	08/11/09	
End Review	09/02/09	

Regulatory Flexibility Analysis Required: No

Agency Contact: Stephanie Flaharty, Environmental Protection Agency, Water, 4601M, Washington, DC 20460
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Sandy Evalenko, Environmental Protection Agency, Water, 4101M, Washington, DC 20460
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RIN: 2040–AF04

[FR Doc. E9–28594 Filed 12–04–09; 8:45 am]
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Federal Register

Monday,
December 7, 2009

Part XIV

General Services Administration

Semiannual Regulatory Agenda

GENERAL SERVICES ADMINISTRATION (GSA)

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 102, 105, 300, 301, and 302

48 CFR Chs. 5 and 61

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the spring 2009 edition. This agenda was developed under the guidelines of Executive Order 12866 ''Regulatory Planning and Review.'' GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. Proposed rules may be reviewed in their entirety at the Government's rulemaking website at http://www.regulations.gov.

Since the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for spring editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA's regulatory plan.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, Supervisor, Regulatory Secretariat Branch at (202) 208-7282.

Dated: September 23, 2009.

Michael Robertson,

Associate Administrator, Office of Governmentwide Policy.

Dated: September 4, 2009.

Al Matera,

Director, Acquisition Policy Division.

Dated: September 8, 2009.

Sloan W. Farrell,

Team Leader, External Programs, Office of Civil Rights.

Dated: September 4, 2009.

Christopher T. Giavis,

Office of Portfolio Management

General Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
437	General Services Administration Acquisition Regulation (GSAR) Case 2006-G522; Federal Supply Schedule Contracts—Recovery Purchasing by State and Local Governments Through Federal Supply Schedules	3090–AI32
438	GSAR Case 2008-G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules	3090–AI68

General Services Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
439	General Services Administration Acquisition Regulation (GSAR) Case 2005-G501; Federal Agency Retail Pharmacy Program	3090–AI06
440	General Services Administration Acquisition Regulation (GSAR) Case 2006-G507; Rewrite of Part 538, Federal Supply Schedule Contracting	3090–AI77

General Services Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
441	GSAR Case 2006-G501; GSA Mentor-Protégé Program	3090–AI56

General Services Administration (GSA) — Final Rule Stage

OFFICE OF ACQUISITION POLICY

437. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2006–G522; FEDERAL SUPPLY SCHEDULE CONTRACTS—RECOVERY PURCHASING BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL SUPPLY SCHEDULES

Legal Authority: 40 USC 121(c); 40 USC 502(d)

Abstract: The rule is amending the General Services Administration Acquisition Regulation (GSAR) to implement section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 833 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President or to facilitate recovery from terrorism, or nuclear, biological, chemical, or radiological attack.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/01/07	72 FR 4649
Interim Final Rule Comment Period End	04/02/07	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
Phone: 202 208–7282
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RIN: 3090–AI32

438. GSAR CASE 2008–G517; COOPERATIVE PURCHASING–ACQUISITION OF SECURITY AND LAW ENFORCEMENT RELATED GOODS AND SERVICES (SCHEDULE 84) BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL SUPPLY SCHEDULES

Legal Authority: 40 USC 121(c)

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Public Law 110-248, The Local Preparedness Acquisition Act. The Act authorizes the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/19/08	73 FR 54334
Interim Final Rule Comment Period End	11/18/08	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
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RIN: 3090–AI68

General Services Administration (GSA) — Long-Term Actions

OFFICE OF ACQUISITION POLICY

439. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2005–G501; FEDERAL AGENCY RETAIL PHARMACY PROGRAM

Legal Authority: 40 USC 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add a new subpart and clause required by the Department of Veterans Affairs (VA), consistent with congressional intent under section 603 of the Veterans Health Care Act of 1992 (VHCA) and 38 U.S.C. 8126, that certain Federal agencies (i.e., VA, Department of Defense (DoD), Public Health Service (including the Indian Health Service), and the Coast Guard) have access to Federal pricing for pharmaceuticals purchased for their beneficiaries.
GSA is responsible for the schedules program and rules related to its operation. Under GSA's delegation of authority, the VA procures medical supplies under the VA Federal Supply Schedule program. VA and DoD seek this amendment. This new subpart adds a clause unique to the virtual depot system established by a Federal Agency Retail Pharmacy Program utilizing contracted retail pharmacies as part of a centralized pharmaceutical commodity management program. At this time, only DoD has a program in place, and the rule would facilitate DoD's access to Federal pricing on Federal Supply Schedule (FSS) pharmaceutical contracts for covered drugs purchased by DoD and dispensed to TRICARE beneficiaries through retail pharmacies in the TRICARE network.

Timetable:

Action	Date	FR Cite
NPRM	04/12/05	70 FR 19045
NPRM Comment Period End	06/13/05	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800

GSA — Long-Term Actions

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RIN: 3090–AI06

440. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2006–G507; REWRITE OF PART 538, FEDERAL SUPPLY SCHEDULE CONTRACTING

Legal Authority: 40 USC 121(c)

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 538 that provide requirements for Federal Supply Schedule Contracting actions.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	01/26/09	74 FR 4596
NPRM Comment Period End	03/27/09	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
Phone: 202 208–7282
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

RIN: 3090–AI77

General Services Administration (GSA) — Completed Actions

441. GSAR CASE 2006–G501; GSA MENTOR–PROTÉGÉ PROGRAM

Legal Authority: 40 USC 486(c)

Abstract: The General Services Administration (GSA) is issuing this final rule to amend its acquisition regulations to formally encourage GSA prime contractors to assist small business, including veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged business, and women-owned small business, in enhancing their capabilities to perform contracts and subcontracts for GSA and other Federal agencies. The program seeks to increase the base of small business eligible to perform GSA contracts and subcontracts. The program also seeks to foster long-term business relationships between GSA prime contractors and small business entities and to increase the overall number of small business entities that receive GSA contracts, and subcontract awards.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Completed:

Reason	Date	FR Cite
Final Rule	08/14/09	74 FR 41060
Final Rule Effective	09/14/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers
Phone: 202 208–7282
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

RIN: 3090–AI56

[FR Doc. E9–28606 Filed 12–04–09; 8:45 am]
BILLING CODE 6820–34–S

Federal Register

Monday,
December 7, 2009

Part XV

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION (SBA)

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Semiannual regulatory agenda.

SUMMARY: The Regulatory Flexibility Act (RFA) and Executive Order 12866 require each agency to publish semiannually a regulatory agenda (agenda) that includes an inventory of all current and projected rulemakings, including regulations the agency expects to develop during the next 12 months and regulations completed since the last publication of the agency's agenda. SBA is publishing this Agenda to provide the public with notice about SBA's regulatory activities and to provide specific information about those activities. This information will promote the public's participation in SBA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: For additional information about specific regulatory actions listed in the Agenda, you should direct your comments and inquiries to the appropriate agency contact identified in each entry. For general information about the Agenda, you should direct your comments or inquiries to Martin ''Sparky'' Conrey, Assistant General Counsel for Legislation and Appropriations, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 619-0638, martin.conrey@sba.gov.

SUPPLEMENTARY INFORMATION: This agenda announces the proposed regulatory actions that SBA plans for the next 12 months and those that were completed since the spring 2009 edition of the agenda. SBA is combining the publication of its agenda as required by statute and Executive order, and conforming them to the Unified Agenda of Federal Regulatory and Deregulatory Actions format developed by the Regulatory Information Service Center.

The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, completed, or withdrawn by SBA. Accordingly, rulemaking action in SBA's agenda is grouped according to its stage of development. The stages of development are pre-rulemaking, proposed rules, final rules, and rulemaking actions completed since the spring 2009 agenda. The agenda is intended to facilitate comments and views by interested members of the public. SBA encourages public participation in its rulemaking process through various mediums including www.regulations.gov. This website allows SBA to place rules on the website and receive public comments though that medium. SBA also provides a link from www.sba.gov to that website.

SBA's regulations promote statutory mandates and Presidential directives linked to SBA's goals to improve the economic environment for small business; drive business formation, job growth, and economic expansion, particularly in underserved markets; restore homes and businesses affected by disaster; and to operate and manage SBA's programs and resources efficiently and effectively.

Publication of proposed rulemaking actions in the agenda does not impose any obligation on SBA to take any final action with regard to any specific item. Furthermore, SBA is not precluded from rulemaking activities that are not listed in this agenda. The dates listed in the timetables for specific actions are estimates and not commitments to act on or by the particular date.

For this edition of the SBA's regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

Beginning with the fall 2007 publication, the Internet has become the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the RFA (5 U.S.C. 602), SBA's printed agenda entries include only rules that are in the Agency's regulatory flexibility agenda, in accordance with the RFA, because they are likely to have a significant economic impact on a substantial number of small entities.

Printing of these entries is limited to fields that contain information required by the RFA's agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including SBA's regulatory plan.

Karen G. Mills,

Administrator.

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
442	Small Business Development Centers (SBDC) Program Revisions	3245–AE05
443	8(a) Business Development **(Reg Plan Seq No. 158)**	3245–AF53
444	Small Business Size Regulations; Business Status Determinations; Protest and Appeal Regulations	3245–AF65
445	Small Business Size Standards: Retail Trade Industries **(Reg Plan Seq No. 159)**	3245–AF69
446	Small Business Size Standards: Other Services **(Reg Plan Seq No. 160)**	3245–AF70
447	Small Business Size Standards: Accommodations and Food Service Industries **(Reg Plan Seq No. 161)**	3245–AF71
448	Women-Owned Small Business Federal Contract Assistance Procedures—Eligible Industries	3245–AF80
449	SBA Express Loan Program	3245–AF85
450	Implementation of Energy Independence and Security Act of 2007	3245–AF86

SBA

Small Business Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
451	Implementation of Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008	3245–AF87
452	Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Expedited Disaster Assistance Program	3245–AF88
453	Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Private Loan Disaster Program	3245–AF99
454	Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Immediate Disaster Assistance Program	3245–AG00
455	Interest Rate—Resetting Fixed Interest Rate	3245–AG03
456	504 Program Governance Regulations	3245–AG04
457	Small Business Size Standards for Loan, Investment, and Surety Programs	3245–AG05
458	Women-Owned Small Business Federal Contract Program **(Reg Plan Seq No. 162)**	3245–AG06

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
459	Lender Oversight Program	3245–AE14

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
460	Definition of ''Employee'' for Purposes of the HUBZone Program	3245–AF44
461	Implementation of American Recovery and Reinvestment Act of 2009	3245–AF89

Small Business Administration (SBA) — Proposed Rule Stage

442. SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM REVISIONS

Legal Authority: 15 USC 634(b)(6); 15 USC 648

Abstract: This rule would propose amendments to SBA's SBDC program regulations for the purpose of conforming the regulations to existing statutory requirements. This rule would amend: (1) Procedures for approving and funding of SBDCs; (2) approval procedures for travel outside the continental U.S. and U.S. territories; (3) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (4) requirements for new and renewal applications for SBDC awards, including the requirements for electronic submission through the approved electronic Government submission facility; and (5) provisions regarding the collection and use of individual SBDC client data.

Timetable:

Action	Date	FR Cite
NPRM	08/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Antonio Doss, Director, Office of Small Business Development Centers, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–6766
Email: antonio.doss@sba.gov

RIN: 3245–AE05

443. 8(A) BUSINESS DEVELOPMENT

Regulatory Plan: This entry is Seq. No. 158 in part II of this issue of the **Federal Register**.

RIN: 3245–AF53

444. SMALL BUSINESS SIZE REGULATIONS; BUSINESS STATUS DETERMINATIONS; PROTEST AND APPEAL REGULATIONS

Legal Authority: 15 USC 632; 15 USC 634

Abstract: SBA is proposing to standardize protest and appeal regulations across all small business programs and clarify the effect of a negative determination on the procurement in question. SBA's proposed rule will clarify that an award should not be made to an ineligible concern, and in cases where an award

has been made prior to an SBA final decision finding a business to be ineligible, the contracting agency shall either terminate the contract, not exercise an option, or not award further task or delivery orders to the ineligible concern. SBA is also proposing to clarify how contracting officers select NAICS codes for multiple award task and delivery order contracts. The changes recommended were prompted by recent bid protest litigation, a survey of cases handled by SBA's Government Contracting Area Offices, and recent rulings by SBA's Office of Hearings and Appeals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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–AF65

445. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES

Regulatory Plan: This entry is Seq. No. 159 in part II of this issue of the **Federal Register**.

RIN: 3245–AF69

446. SMALL BUSINESS SIZE STANDARDS: OTHER SERVICES

Regulatory Plan: This entry is Seq. No. 160 in part II of this issue of the **Federal Register**.

RIN: 3245–AF70

447. SMALL BUSINESS SIZE STANDARDS: ACCOMMODATIONS AND FOOD SERVICE INDUSTRIES

Regulatory Plan: This entry is Seq. No. 161 in part II of this issue of the **Federal Register**.

RIN: 3245–AF71

448. WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES—ELIGIBLE INDUSTRIES

Legal Authority: Not Yet Determined

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). 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.

Timetable:

Action	Date	FR Cite
NPRM	10/01/08	73 FR 57014
NPRM Comment Period End	10/31/08	
Reopening of Comment Period	01/12/09	74 FR 1153
Comment Period End	03/13/09	
Withdrawal and New Rule	02/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AF80

449. SBA EXPRESS LOAN PROGRAM

Legal Authority: 15 USC 636(a)(31)

Abstract: SBA plans to issue regulations for the SBA Express loan program codified in section 7(a)(31) of the Small Business Act. The SBA Express loan program reduces the number of Government mandated forms and procedures, streamlines the processing and reduces the cost of smaller, less complex SBA loans. SBA Express loans carry a maximum SBA guaranty of 50 percent.

Timetable:

Action	Date	FR Cite
NPRM	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
Phone: 202 205–7562
Email: grady.hedgespeth@sba.gov.

RIN: 3245–AF85

450. IMPLEMENTATION OF ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

Legal Authority: 15 USC 636(a)(32)

Abstract: SBA plans to issue regulations to implement the small business energy provisions in the Energy Independence and Security Act of 2007. The new regulations will provide guidance on several program changes, including larger 504 loan limits to help small businesses develop energy efficient technologies, investments in energy saving small businesses, and an energy saving debenture program.

Timetable:

Action	Date	FR Cite
NPRM	05/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–6490

RIN: 3245–AF86

451. IMPLEMENTATION OF MILITARY RESERVIST AND VETERAN SMALL BUSINESS REAUTHORIZATION AND OPPORTUNITY ACT OF 2008

Legal Authority: 15 USC 632(q); 15 USC 636(j)

Abstract: SBA plans to issue regulations to implement section 205 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act. These regulations will provide guidance on tolling of time limitations for veteran-owned small businesses.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AF87

452. IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: EXPEDITED DISASTER ASSISTANCE PROGRAM

Legal Authority: PL 110–246, sec 12085

Abstract: This proposed rule would establish and implement an expedited disaster assistance business loan program under which the SBA may, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business concern under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as added by this Act. Paragraph (9) of section 7(b) of the Small Business Act provides that if the President declares a major disaster, the Administrator of the SBA may declare eligibility for additional disaster assistance if certain conditions are satisfied.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: James E. Rivera, Acting Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619–0005
Fax: 202 205–7728
Email: james.rivera@sba.gov

RIN: 3245–AF88

453. ● IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: PRIVATE LOAN DISASTER PROGRAM

Legal Authority: PL 110–246, sec 12083

Abstract: This proposed rule would establish and implement a private loan disaster program under which the SBA may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual. SBA may guarantee up to 85 percent of any loan under this program and the maximum amount of a loan under this program is $2 million.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: James E. Rivera, Acting Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619–0005
Fax: 202 205–7728
Email: james.rivera@sba.gov

RIN: 3245–AF99

454. ● IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: IMMEDIATE DISASTER ASSISTANCE PROGRAM

Legal Authority: 15 USC 636(b), 636(c), 636(d)

Abstract: This proposed rule would establish and implement an immediate disaster assistance program under which the Administration participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if such balance is less than or equal to $25,000 for businesses affected by a disaster. To receive a loan under section 42(a) of the Small Business Act, the applicant must also apply for, and meet basic eligibility standards for, a loan under section 7(b) or 7(c) of the Small Business Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: James E. Rivera, Acting Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619–0005
Fax: 202 205–7728
Email: james.rivera@sba.gov

RIN: 3245–AG00

455. ● INTEREST RATE—RESETTING FIXED INTEREST RATE

Legal Authority: 15 USC 634

Abstract: SBA currently offers either a fixed or variable interest rate for 7(a) loans. In addition to these rates, the Agency is working to develop a shorter term fixed interest rate with the ability to be re-set periodic intervals. This type of rate is currently available in the commercial market place and will help provide additional options for small business borrowers. By authorizing this option, SBA is recognizing a need to allow lenders to utilize market opportunities. For example, SBA recently revised section 120.214 to allow the use of LIBOR.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
Phone: 202 205–7562
Email: grady.hedgespeth@sba.gov.

RIN: 3245–AG03

456. ● 504 PROGRAM GOVERNANCE REGULATIONS

Legal Authority: 15 USC 695 et seq

Abstract: Title V of the Small Business Investment Act of 1958 (the ''Act'') authorizes SBA to assist development company financings of small businesses in order to foster economic development and to create or preserve job opportunities in both urban and rural areas. SBA intends to propose a regulatory framework by analyzing the best CDC structure to improve the growth of CDC's and their ability to provide capital to small businesses by reducing the regulatory burden while maintaining appropriate controls to mitigate risk, and to encourage the expansion of CDC financings into communities not currently served. As part of this project, SBA will review existing regulations to determine what will be deleted or amended based upon the proposed regulatory framework. Also, SBA will review existing CDC

SBA **Proposed Rule Stage**

loan program regulations unrelated to CDC corporate governance to identify any needed technical changes and appropriate clarifications.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
Phone: 202 205–7562
Email: grady.hedgespeth@sba.gov.

RIN: 3245–AG04

457. • SMALL BUSINESS SIZE STANDARDS FOR LOAN, INVESTMENT, AND SURETY PROGRAMS

Legal Authority: Not Yet Determined

Abstract: SBA currently sets different size standards for participation in its financial assistance programs. 7(a) borrowers use the standards set out for procurement programs or a temporary alternate standard; 504 borrowers may use the 7(a) standards or an alternate standard; SBIC investment may be made to small businesses that qualify through another standard; and Surety Bond program participants must meet still different requirements. As part of an overall Agency program, SBA will review financial program eligibility regulations in order to update size eligibility requirements among these programs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis Required: Yes

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–AG05

458. WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

Regulatory Plan: This entry is Seq. No. 162 in part II of this issue of the **Federal Register**.

RIN: 3245–AG06

Small Business Administration (SBA) **Final Rule Stage**

459. LENDER OVERSIGHT PROGRAM

Legal Authority: 15 USC 634(b)(6),(b)(7),(b)(14),(h), and note; 687(f),697(e)(c)(8), and 650.

Abstract: This rule implements the Small Business Administration's (SBA) statutory authority under the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) to regulate Small Business Lending Companies (SBLCs) and non-federally regulated lenders (NFRLs). It also conforms SBA rules to various changes in the section 7(a) Business Loan Program and the Certified Development Company (CDC) Program.

In particular, this rule (1) Defines SBLCs and NFRLs; (2) clarifies SBA's authority to regulate SBLCs and NFRLs; (3) authorizes SBA to set certain minimum capital standards for SBLCs, to issue cease and desist orders, and revoke or suspend lending authority of SBLCs and NFRLs; (4) establishes the Bureau of Premier Certified Lender Program Oversight in the Office of Credit Risk management; (5) transfers existing SBA enforcement authority over CDCs from the Office of Financial Assistance to the appropriate official in the Office of Capital Access; and (6) defines SBA's oversight and enforcement authorities relative to all SBA lenders participating in the 7(a) and CDC programs and intermediaries in the Microloan program.

Timetable:

Action	Date	FR Cite
NPRM	10/31/07	72 FR 61752
NPRM Comment Period Extended	12/20/07	72 FR 72264
NPRM Comment Period End	02/29/08	
Interim Final Rule	12/11/08	73 FR 75498
Interim Final Rule Comment Period End	03/11/09	
Interim Final Rule Effective	01/12/09	
Final Action	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Bryan Hooper, Director, Office of Credit Risk Management, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
Phone: 202 205–3049
Fax: 202 205–6831
Email: bryan.hooper@sba.gov

RIN: 3245–AE14

Small Business Administration (SBA) **Completed Actions**

460. DEFINITION OF ''EMPLOYEE'' FOR PURPOSES OF THE HUBZONE PROGRAM

Legal Authority: 15 USC 657 (a)

Abstract: The purpose of this rule is to amend the definition of ''employee'' under 13 CFR 126.103. The definition of ''employee'' in part 126 is relevant to SBA's determination of whether a concern is eligible for certification as a HUBZone small business concern. On May 13, 2004, SBA issued an Advance Notice of Proposed Rulemaking requesting comments on, among other

things, specific issues related to the definition of ''employee,'' including the status of part-time, leased, and temporary employees, and the use of the term ''full-time equivalent'' in the definition of ''employee.'' After careful consideration of the comments received, SBA has decided to amend the definition of ''employee'' to reflect current business operations, market conditions, and personnel practices within the small business community.

Completed:

Reason	Date	FR Cite
Final Action	11/03/09	74 FR 56699
Final Action Effective	05/03/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Guy A. Torres
Phone: 202 205–7583
Email: guy.torres@sba.gov

RIN: 3245–AF44

461. IMPLEMENTATION OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Legal Authority: 15 USC 636; 15 USC 683(b); 15 USC 686(a); 15 USC 695,697

Abstract: SBA plans to issue regulations to implement the American Recovery and Reinvestment Act of 2009. The new regulations will make conforming changes to existing regulations and establish several new programs. These programs include a secondary market guarantee program for 504 first mortgages, a refinancing program for community development loans, a business stabilization loan program for small businesses experiencing immediate financial hardship, and a program to make loans to systemically important SBA secondary market broker-dealers. In addition, new regulations will increase the maximum leverage limits for small business investment companies, and will increase the maximum contract amount in the Surety Bond Guarantee program.

Completed:

Reason	Date	FR Cite
Withdrawn—Duplicate	10/10/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Eric R Zarnikow
Phone: 202 205–6657
Fax: 202 481–0797
Email: eric.zarnikow@sba.gov

RIN: 3245–AF89

[FR Doc. E9–28586 Filed 12–04–09; 8:45 am]
BILLING CODE 8025–01–S

Federal Register

Monday,
December 7, 2009

Part XVI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation;
Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 ''Regulatory Planning and Review.'' This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

Published proposed rules may be reviewed in their entirety at the Government's rulemaking website at http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, Supervisor, Regulatory Secretariat Branch, Room 4041, 1800 F Street NW., Washington, DC 20405, (202) 501-4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at http://www.acquisition.gov/far.

Dated: September 3, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy.

DOD/GSA/NASA (FAR)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
462	FAR Case 2006-005, HUBZone Program Revisions	9000–AL18
463	FAR Case 2009-009, American Recovery and Reinvestment Act—Reporting Requirements	9000–AL21

DOD/GSA/NASA (FAR)—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
464	FAR Case 2006-034, Socioeconomic Program Parity	9000–AK92

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR) — Final Rule Stage

462. FAR CASE 2006–005, HUBZONE PROGRAM REVISIONS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement revisions to the Small Business Administration's HUBZone Program as a result of revisions to the Small Business Administration's regulations. This was not a significant regulatory action and, therefore, was not subject to review under section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/13/09	74 FR 16823
NPRM Comment Period End	06/12/09	
Final Rule	06/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat, DOD/GSA/NASA (FAR), Room 4041, 1800 F Street NW, Washington, DC 20405

FAR **Final Rule Stage**

Phone: 202 208–7282
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

RIN: 9000–AL18

463. FAR CASE 2009–009, AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under section 6(b) of Executive Order 12866 ''Regulatory Planning and Review,'' dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/09	74 FR 14639
Interim Final Rule Comment Period End	06/01/09	
Final Rule	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat, DOD/GSA/NASA (FAR), Room 4041, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AL21

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Long-Term Actions

464. FAR CASE 2006–034, SOCIOECONOMIC PROGRAM PARITY

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to ensure that the FAR reflects the Small Business Administration's (SBA) interpretation of the Small Business Act and SBA regulations with regard to the relationship among various small business programs.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	03/10/08	73 FR 12699
NPRM Comment Period End	05/09/08	
Final Rule	12/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Hada Flowers, Supervisor, Regulatory Secretariat, DOD/GSA/NASA (FAR), Room 4041, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AK92

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Monday,
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Part XVII

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION (FCC)

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2009

AGENCY: Federal Communications Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. *See* 5 U.S.C. 602. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418-0990.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

Docket Number — assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.*, Docket No. 96-1 or Docket No. 99-1). The abbreviation for the responsible bureau usually precedes the docket number, as in ''MM Docket No. 96-222,'' which indicates that the responsible bureau is the Mass Media Bureau (now the Media Bureau). A docket number consisting of only five digits (*e.g.*, Docket No. 29622) indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI) — issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM) — issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

Further Notice of Proposed Rulemaking (FNPRM) —issued by the Commission when additional comment in the proceeding is sought.

Memorandum Opinion and Order (MO&O) — issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

Rulemaking (RM) Number — assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

Report and Order (R&O) — issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
465	Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996 (CC Docket Nos. 96-146, 93-22)	3060–AG42
466	Implementation of the Subscriber Selection Changes Provision of the Telecommunications Act of 1996 (CC Docket No. 94-129)	3060–AG46
467	Implementation of the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities	3060–AG58
468	Telecommunications Relay Services, the Americans With Disabilities Act of 1990, and the Telecommunications Act of 1996 (CC Docket No. 90-571)	3060–AG75
469	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02-278)	3060–AI14
470	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03-123)	3060–AI15
471	Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CG Docket No. 04-53)	3060–AI20
472	Rules and Regulations Implementing Minimum Customer Account Record Exchange (CARE) Obligations on All Local and Interexchange Carriers (CG Docket No. 02-386)	3060–AI58
473	Truth in Billing and Billing Format	3060–AI61
474	Closed Captioning of Video Programming **(Section 610 Review)**	3060–AI72

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OFFICE OF ENGINEERING AND TECHNOLOGY—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
475	Revision of the Rules Regarding Ultra-Wideband Transmission	3060–AH47
476	New Advanced Wireless Services (ET Docket No. 00-258)	3060–AH65
477	Transfer of the 3650 Through 3700 MHz Band From Federal Government Use (WT Docket No. 05-96; ET Docket No. 02-380)	3060–AH75
478	Exposure to Radiofrequency Electromagnetic Fields	3060–AI17
479	Unlicensed Operation of the 3650-3700 Band (ET Docket No. 04-151)	3060–AI50
480	Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04-186)	3060–AI52
481	Unlicensed Devices and Equipment Approval (ET Docket No. 03-201)	3060–AI54

INTERNATIONAL BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
482	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures (IB Docket No. 95-117)	3060–AD70
483	Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band (IB Docket No. 95-91; GEN Docket No. 90-357)	3060–AF93
484	Allocate & Designate: Spec for Fixed-Sat Srv (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHz Bands); Allocate: Fixed & Mobile 40.5-42.5 GHz; Wireless 46.9-47 GHz; Gov Oper 37-38 & 40-40.5 GHz (IB Docket No. 97)	3060–AH23
485	Space Station Licensing Reform (IB Docket No. 02-34)	3060–AH98
486	Mitigation of Orbital Debris (IB Docket No. 02-54)	3060–AI06
487	Amendment of the Commission's Rules (IB Docket No. 04-47)	3060–AI41
488	Reporting Requirements for U.S. Providers of International Telecommunications Services (IB Docket No. 04-112)	3060–AI42
489	Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands (IB Docket No. 02-364)	3060–AI44
490	Amendment of the Commission's Rules To Allocate Spectrum and Adopt Service Rules and Procedures To Govern the Use of Vehicle-Mounted Earth Stations (IB Docket No. 07-101)	3060–AI90

INTERNATIONAL BUREAU—Completed Actions

Sequence Number	Title	Regulation Identifier Number
491	Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the L-Band (IB Docket No. 96-132)	3060–AF89

MEDIA BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
492	Cable Television Rate Regulation	3060–AF41
493	Cable Television Rate Regulation: Cost of Service	3060–AF48
494	Cable Home Wiring	3060–AG02
495	Competitive Availability of Navigation Devices (CS Docket No. 97-80)	3060–AG28
496	Cable Horizontal and Vertical Ownership Limits (MM Docket No. 92-264)	3060–AH09
497	Digital Audio Broadcasting Systems (MM Docket No. 99-325)	3060–AH40
498	Second Periodic Review of Rules and Policies Affecting the Conversion to DTV	3060–AH54
499	Direct Broadcast Public Interest Obligations (MM Docket No. 93-25)	3060–AH59
500	Revision of EEO Rules and Policies (MM Docket No. 98-204)	3060–AH95
501	Broadcast Multiple and Cross-Ownership Limits	3060–AH97
502	Establishment of Rules for Digital Low Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03-185)	3060–AI38
503	Joint Sales Agreements in Local Television Markets (MB Docket No. 04-256)	3060–AI55
504	Significantly Viewed Out-of-Market Broadcast Stations (MB Docket No. 05-49)	3060–AI56

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MEDIA BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
505	Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services (MB Docket No. 05-210)	3060–AI63
506	Digital Television Distributed Transmission System Technologies (MB Docket No. 05-312)	3060–AI68
507	Implementation of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 05-311)	3060–AI69
508	Program Access Rules—Sunset of Exclusive Contracts Prohibition and Examination of Programming Tying Arrangements; (MB Docket Nos. 07-29, 07-198)	3060–AI87
509	Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07-91)	3060–AI89
510	DTV Consumer Education Initiative (MB Docket No. 07-148)	3060–AI96
511	Broadcast Localism (MB Docket No. 04-233)	3060–AJ04
512	Creating a Low Power Radio Service (MM Docket NO. 99-25)	3060–AJ07
513	Sponsorship Identification Rules and Embedded Advertising (MB Docket No. 08-90)	3060–AJ10
514	An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification (MM Docket No. 93-177)	3060–AJ17
515	Amendment of Parts 73 and 74 of the Commission's Rules To Establish Rules for Replacement Digital Low Power Television Translator Stations; MB Docket No. 08-253	3060–AJ18
516	Policies To Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures; MB Docket No. 09-52	3060–AJ23
517	Promoting Diversification of Ownership in the Broadcast Services (MB Docket No. 07-294)	3060–AJ27

OFFICE OF MANAGING DIRECTOR—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
518	Assessment and Collection of Regulatory Fees	3060–AI79

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
519	Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems	3060–AG34
520	Enhanced 911 Services for Wireline	3060–AG60
521	In the Matter of the Communications Assistance for Law Enforcement Act	3060–AG74
522	Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements	3060–AG85
523	1998 Biennial Regulatory Review—Review of Accounts Settlement in Maritime Mobile and Maritime Mobile-Satellite Radio Services; (IB Docket No. 98-96)	3060–AH30
524	Implementation of 911 Act	3060–AH90
525	Commission Rules Concerning Disruptions to Communications	3060–AI22
526	E911 Requirements for IP-Enabled Service Providers	3060–AI62
527	Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks	3060–AI78
528	Stolen Vehicle Recovery System (SVRS)	3060–AJ01
529	The Commercial Mobile Alert System	3060–AJ03

WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
530	Implementation of the Communications Act, Amendment of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	3060–AG21
531	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems	3060–AH12

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WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
532	Fixed Satellite Service and Terrestrial System in the Ku-Band	3060–AH17
533	Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to the Commission's Rules	3060–AH32
534	Implementation of the Communications Act of 1934 as Amended	3060–AH33
535	Amendment of Parts 13 and 80 of the Commission's Rules Governing Maritime Communications	3060–AH55
536	Competitive Bidding Procedures	3060–AH57
537	2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services	3060–AH81
538	In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	3060–AH82
539	Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers	3060–AH83
540	Year 2000 Biennial Review (WT Docket No. 01-108)	3060–AI26
541	Air-Ground Telecommunications Services	3060–AI27
542	Amendments of Various Rules Affecting Wireless Radio Services (WT Docket No. 03-264)	3060–AI30
543	Facilitating the Provision of Spectrum-Based Services to Rural Areas	3060–AI31
544	Improving Public Safety Communications in the 800 MHz Band Industrial/Land Transportation and Business Channels	3060–AI34
545	Review of Part 87 of the Commission's Rules Concerning Aviation (WT Docket No. 01-289)	3060–AI35
546	Implementation of the Commercial Spectrum Enhancement Act (CSEA) and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05-211)	3060–AI88
547	Facilitating the Provision of Fixed and Mobile Broadband Access Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geost	3060–AJ12
548	Amendment of the Rules Regarding Maritime Automatic Identification Systems; WT Docket No. 04-344	3060–AJ16
549	Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band	3060–AJ19
550	Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands	3060–AJ20
551	Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, WT Docket No. 08-166; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary	3060–AJ21
552	Amendment of the Commission's Rules To Improve Public Safety Communications in the 800 MHz Band, and To Consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pool Channels	3060–AJ22
553	Amendment of Part 101 to Accommodate 30 MHz Channels in the 6525-6875 MHz Band and Provide Conditional Authorization on Channels in the 21.8-22.0 and 23.0-23.2 GHz Band; WT Docket No. 04-114	3060–AJ28

WIRELESS TELECOMMUNICATIONS BUREAU—Completed Actions

Sequence Number	Title	Regulation Identifier Number
554	Amendment of the Commission's Rules Concerning Maritime Communications	3060–AF14
555	39 GHz Channel Plan	3060–AG16
556	Amendment of the Rules To License Fixed Services at 24 GHz	3060–AH41

WIRELINE COMPETITION BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
557	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060–AF85
558	Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	3060–AG43
559	Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	3060–AG50
560	Local Telephone Networks That LECs Must Make Available to Competitors	3060–AH44
561	2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements	3060–AH72
562	Access Charge Reform and Universal Service Reform	3060–AH74
563	Numbering Resource Optimization	3060–AH80
564	National Exchange Carrier Association Petition	3060–AI47
565	IP-Enabled Services	3060–AI48
566	Consumer Protection in the Broadband Era	3060–AI73
567	Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07-135)	3060–AJ02
568	Jurisdictional Separations	3060–AJ06

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WIRELINE COMPETITION BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
569	Implementation of NET 911 Improvement Act	3060–AJ09

Federal Communications Commission (FCC) **Long-Term Actions**
Consumer and Governmental Affairs Bureau

465. POLICIES AND RULES GOVERNING INTERSTATE PAY–PER–CALL AND OTHER INFORMATION SERVICES PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NOS. 96–146, 93–22)

Legal Authority: 47 USC 228

Abstract: The Commission received comments on proposed rules designed to implement the 1996 Telecommunications Act with respect to information services to prevent abusive and deceptive practices by entities that might try to circumvent the statutory requirements. The proposed rules address generally the use of dialing sequences other than the 900 service access code to provide information services. The Commission issued an NPRM on these issues July 16, 2004.

Timetable:

Action	Date	FR Cite
NPRM	07/26/96	61 FR 39107
Order	07/26/96	61 FR 39084
NPRM Comment Period End	09/16/96	
Notice to Refresh Record	03/27/03	68 FR 14939
Comment Period End	05/27/03	
NPRM	10/15/04	69 FR 61184

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Erica H. McMahon, Chief, Consumer Policy Division, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AG42

466. IMPLEMENTATION OF THE SUBSCRIBER SELECTION CHANGES PROVISION OF THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NO. 94–129)

Legal Authority: 47 USC 154; 47 USC 201; 47 USC 258

Abstract: In December 1998, the Commission established new rules and policies implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The rules provide, among other things, that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to 150 percent of all charges paid by the subscriber after such violation. In April 2000, the Commission modified the slamming liability rules by giving victims of slamming adequate redress, ensuring that carriers that slam do not profit from their fraud, and allowing States to act as the primary administrator of slamming complaints. In May 2001, the Commission adopted streamlined procedures for the carrier-to-carrier sale or transfer of customer bases.

In February 2003, the Commission adopted a Reconsideration Order and Second FNPRM. The Reconsideration Order addresses, amongst other things, the requirement that a carrier's sales agent drop-off a carrier change request phone call once the customer has been connected to an independent third party verifier, and the applicability of our slamming rules to local exchange carriers. In the Second FNPRM, the Commission sought comment on rule modifications with respect to third party verifications.

On January 4, 2008, the Commission released an Order that confirmed that a LEC that is executing a carrier change on behalf of another carrier may not re-verify whether the person listed on the change order is actually authorized to do so.

On January 9, 2008, the Commission released a Fourth Report and Order that modified the slamming rules regarding the content of independent third party verifications of a consumer's intent to switch carriers.

Timetable:

Action	Date	FR Cite
MO&O on Recon and FNPRM	08/14/97	62 FR 43493
FNPRM Comment Period End	09/30/97	
Second R&O and Second FNPRM	02/16/99	64 FR 7745
First Order on Recon	04/13/00	65 FR 47678
Third R&O and Second Order on Recon	11/08/00	65 FR 66934
Third FNPRM	01/29/01	66 FR 8093
Order	03/01/01	66 FR 12877
First R&O and Fourth R&O	06/06/01	66 FR 30334
Second FNPRM	03/17/03	68 FR 19176
Third Order on Recon	03/17/03	68 FR 19152
Second FNPRM Comment Period End	06/17/03	
First Order on Recon & Fourth Order on Recon	03/15/05	70 FR 12605
Fifth Order on Recon	03/23/05	70 FR 14567
Order	02/04/08	73 FR 6444
Fourth R&O	03/12/08	73 FR 13144

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

FCC—Consumer and Governmental Affairs Bureau — Long-Term Actions

Agency Contact: Nancy Stevenson, Deputy Chief, Consumer Policy Div., Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AG46

467. IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996; ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT, AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

Legal Authority: 47 USC 255; 47 USC 251(a)(2)

Abstract: This proceeding is initiated to implement the provisions of sections 255 and 251(a)(2) of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

Timetable:

Action	Date	FR Cite
Notice	03/07/96	61 FR 9164
Notice	07/30/96	61 FR 39657
R&O	08/14/96	61 FR 42181
NOI	09/26/96	61 FR 50465
Notice	10/23/96	61 FR 54999
NPRM	05/22/98	63 FR 28456
Notice	10/28/98	63 FR 57686
Notice	04/13/99	64 FR 18021
Notice	04/19/99	64 FR 19178
Notice	06/02/99	64 FR 29644
R&O	11/19/99	64 FR 63235
Further NOI	11/19/99	64 FR 63277
Public Notice	07/13/00	65 FR 43372
Public Notice	01/07/02	67 FR 678
Notice	04/23/02	67 FR 19753
Notice	09/06/02	67 FR 57009
Notice	10/30/02	67 FR 66154
Public Notice	07/21/04	69 FR 43586
Notice	07/29/04	69 FR 45318
Notice	02/14/05	70 FR 7503
Notice	04/06/05	70 FR 17456
Public Notice	07/20/05	70 FR 41754
Notice	03/29/06	71 FR 15738
Notice	07/26/06	71 FR 42396
Public Notice	08/02/06	71 FR 43768
R&O	08/06/07	72 FR 43546
NPRM	11/21/07	72 FR 465494
Notice	12/10/07	72 FR 69686
Notice	12/11/07	72 FR 70324
Notice	03/06/08	73 FR 12174
Notice/Announcement of Effective Date	03/20/08	73 FR 14941
Final Rule: Notice Removal	04/21/08	73 FR 21251
R&O	05/07/08	73 FR 25566
R&O	06/12/08	73 FR 33324
Public Notice	08/01/08	73 FR 45008
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Cheryl J. King, Deputy Chief, Disability Rights Office, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AG58

468. TELECOMMUNICATIONS RELAY SERVICES, THE AMERICANS WITH DISABILITIES ACT OF 1990, AND THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NO. 90–571)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225

Abstract: This item addresses the requirement that telecommunications relay services be capable of handling any type of call normally provided by common carriers.

Timetable:

Action	Date	FR Cite
NPRM	12/04/90	55 FR 50037
R&O and Request for Comments	08/01/91	56 FR 36729
Order on Recon & Second R&O	03/03/93	58 FR 12175
FNPRM	03/30/93	58 FR 12204
MO&O	11/28/95	60 FR 58626
Order	09/08/97	62 FR 47152
Second NPRM	04/05/01	66 FR 18059
Fifth R&O	02/07/03	68 FR 6352
Fifth R&O (Correction)	02/24/03	68 FR 8553
Public Notice	04/15/03	68 FR 18205
Public Notice	08/27/04	69 FR 52694
Petitions for Recon of Fifth R&O Denied	09/01/04	69 FR 53346
Notice	09/01/04	69 FR 53442
Public Notice	11/12/04	69 FR 65401
Notice	12/27/04	69 FR 77246
Notice	04/06/05	70 FR 17456
Notice	04/19/06	71 FR 20101
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Thomas Chandler, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1475
Email: thomas.chandler@fcc.gov

RIN: 3060–AG75

469. RULES AND REGULATIONS IMPLEMENTING THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) OF 1991 (CG DOCKET NO. 02–278)

Legal Authority: 47 USC 227

Abstract: The Commission released a Notice of Proposed Rulemaking (NPRM) on September 18, 2002, seeking comment on the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). The NPRM sought comment on the effectiveness of the company-specific do-not-call lists and whether to revisit the option of establishing a national do-not-call list.

On July 3, 2003, the Commission released a Report and Order establishing, along with the FTC, a national do-not-call registry. The Commission's Report and Order also adopted rules on the use of predictive dialers, the transmission of caller ID information by telemarketers, and the sending of unsolicited fax advertisements.

On September 21, 2004, the Commission released an Order adopting a limited safe harbor period from the prohibition on placing automatic telephone dialing systems or prerecorded message calls to wireless numbers when such calls are made to numbers that have been recently ported from wireline to wireless service. In addition, the Commission amended its existing safe harbor rules for telemarketers subject to the do-not-call registry to require such telemarketers to access the do-not-call list every 31 days, rather than every three months.

On December 9, 2005, the Commission released an NPRM proposing to amend the fax advertising rules to implement the Junk Fax Protection Act of 2005. On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration amending its facsimile advertising rules. On October 14, 2008, the Commission released an Order on Reconsideration addressing certain issues raised in petitions for reconsideration and/or clarification of

the Report and Order and Third Order on Reconsideration.

On January 4, 2008, the Commission released a Declaratory Ruling, clarifying that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the ''prior express consent'' of the called party.

Following a December 4, 2007 NPRM, on June 17, 2008, the Commission released a Report and Order amending its rules to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely, unless the registration is cancelled by the consumer or the number is removed by the database administrator.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62667
NPRM Comment Period Extended	11/29/02	67 FR 71126
Reply Comment Period Extended	12/26/02	67 FR 78763
Comment Period End	01/31/03	
FNPRM	04/03/03	68 FR 16250
Order	07/25/03	68 FR 44144
Order Effective	08/25/03	
Order on Recon	08/25/03	68 FR 50978
Order	10/14/03	68 FR 59130
FNPRM	03/31/04	69 FR 16873
Order	10/08/04	69 FR 60311
Order	10/28/04	69 FR 62816
Order on Recon	04/13/05	70 FR 19330
Order	06/30/05	70 FR 37705
NPRM	12/19/05	70 FR 75102
Public Notice	04/26/06	71 FR 24634
Order	05/03/06	71 FR 25967
NPRM	12/14/07	72 FR 71099
Declaratory Ruling	02/01/08	73 FR 6041
R&O	07/14/08	73 FR 40183
Order on Recon	10/30/08	73 FR 64556
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI14

470. RULES AND REGULATIONS IMPLEMENTING SECTION 225 OF THE COMMUNICATIONS ACT (TELECOMMUNICATIONS RELAY SERVICE) (CG DOCKET NO. 03–123)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225

Abstract: This proceeding established a new docket flowing from the previous telecommunications relay service (TRS) history, CC Docket No. 98-67. This proceeding continues the Commission's inquiry into improving the quality of TRS and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

Timetable:

Action	Date	FR Cite
NPRM	08/25/03	68 FR 50993
Public Notice	07/26/04	69 FR 44534
R&O, Order on Recon	09/01/04	69 FR 53346
FNPRM	09/01/04	69 FR 53382
Public Notice	11/12/04	69 FR 65401
Public Notice	01/11/05	70 FR 2360
Public Notice	02/17/05	70 FR 8034
Declaratory Ruling /Interpretation	02/25/05	70 FR 9239
Public Notice	03/07/05	70 FR 10930
Public Notice	03/16/05	70 FR 12884
Order	03/23/05	70 FR 14568
Public Notice /Announcement of Date	04/06/05	70 FR 17334
Public Notice	05/11/05	70 FR 24790
Order	07/01/05	70 FR 38134
Public Notice	07/13/05	70 FR 38134
Order on Recon	08/31/05	70 FR 51643
R&O	08/31/05	70 FR 51649
Public Notice	09/07/05	70 FR 53191
Order on Clarification	09/14/05	70 FR 54294
Notice	09/14/05	70 FR 54381
Order on Clarification	09/14/05	70 FR 54298
Public Notice	10/12/05	70 FR 59346
Public Notice	11/30/05	70 FR 71849
R&O/Order on Recon	12/23/05	70 FR 76208
Order	12/28/05	70 FR 76712
Order	12/29/05	70 FR 77052
Notice	01/11/06	71 FR 1753
Notice	01/11/06	71 FR 1755
Public Notice/Petition for Rulemaking Withdrawn	01/18/06	71 FR 2942
NPRM	02/01/06	71 FR 5221
Notice	02/01/06	71 FR 5221
Notice/Announcement of Effective Date	03/15/06	71 FR 13281
Notice	03/24/06	71 FR 14893
Public Notice	05/10/06	71 FR 27252
Notice	05/24/06	71 FR 29961
Declaratory Ruling/Clarification	05/31/06	71 FR 30818
FNPRM	05/31/06	71 FR 30848
FNPRM	06/01/06	71 FR 31131
Declaratory Ruling/Dismissal of Petition	06/21/06	71 FR 35553
Clarification	06/28/06	71 FR 36690
Public Notice	06/28/06	71 FR 36794
Public Notice	06/28/06	71 FR 36796
Declaratory Ruling on Recon	07/06/06	71 FR 38268
Public Notice	08/02/06	71 FR 43768
Order on Recon	08/16/06	71 FR 47141
MO&O	08/16/06	71 FR 47145
Clarification	08/23/06	71 FR 49380
FNPRM	09/13/06	71 FR 54009
Correction	09/27/06	71 FR 56442
Final Rule; Clarification	02/14/07	72 FR 6960
Notice	02/14/07	72 FR 7031
Public Notice	03/01/07	72 FR 9333
Notice	03/01/07	72 FR 9332
Public Notice	03/07/07	72 FR 10214
Order	03/14/07	72 FR 11789
Public Notice	04/12/07	72 FR 18478
Notice	04/18/07	72 FR 19501
Notice	05/02/07	72 FR 24305
Public Notice	05/16/07	72 FR 27570
Public Notice	05/16/07	72 FR 27569
Notice	06/06/07	72 FR 31327
Notice	06/13/07	72 FR 32661
Public Notice	07/18/07	72 FR 39423
R&O	08/06/07	72 FR 43546
Notice	08/06/07	72 FR 43638
Public Notice	08/16/07	72 FR 46060
Order	11/01/07	72 FR 61813
Public Notice	11/01/07	72 FR 61882
Notice	12/11/07	72 FR 70324
Public Notice	01/04/08	73 FR 863
R&O/Declaratory Ruling	01/17/08	73 FR 3197
Notice	01/17/08	73 FR 3253
Order	02/19/08	73 FR 9031
Public Notice	02/19/08	73 FR 9118
Public Notice	03/27/08	73 FR 16304
Public Notice	04/07/08	73 FR 18796
Order	04/21/08	73 FR 21347
R&O	04/21/08	73 FR 21252
Order	04/23/08	73 FR 21843
Public Notice	04/30/08	73 FR 23361
Order	05/15/08	73 FR 28057
Public Notice	05/23/08	73 FR 26992
Notice	06/16/08	73 FR 34015
Declaratory Ruling	07/08/08	73 FR 38928
Notice	07/18/08	73 FR 41351
FNPRM	07/18/08	73 FR 41307

Action	Date	FR Cite
R&O	07/18/08	73 FR 41286
Notice/Announcement of Effective Date	07/30/08	73 FR 4417
Public Notice	08/01/08	73 FR 45006
Public Notice	08/05/08	73 FR 45354
Public Notice	08/22/08	73 FR 49670
Comment Period End	09/29/08	
Public Notice	10/10/08	73 FR 60172
Order	10/23/08	73 FR 63078
2nd R&O and Order on Recon	12/30/08	73 FR 79683
Order	05/06/09	74 FR 20892
Public Notice	05/07/09	74 FR 21364
NPRM	05/21/09	74 FR 23815
Public Notice	05/21/09	74 FR 23859
Public Notice Comment Period End	06/08/09	
Public Notice Comment Period End	06/11/09	
Public Notice	06/12/09	74 FR 28046
NPRM Comment Period End	07/20/09	
Order	07/29/09	74 FR 37624
Public Notice	08/07/09	74 FR 39669
Comment Period End	08/10/09	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI15

471. RULES AND REGULATIONS IMPLEMENTING THE CONTROLLING THE ASSAULT OF NON–SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 (CG DOCKET NO. 04–53)

Legal Authority: 15 USC 7706; 15 USC 7712; PL 108–187

Abstract: The Commission has adopted rules to protect consumers from unwanted electronic mobile service messages to implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

Timetable:

Action	Date	FR Cite
NPRM	03/31/04	69 FR 16873
NPRM Comment Period End	05/17/04	
Order	09/16/04	69 FR 55765
Order	03/25/05	70 FR 34665
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI20

472. RULES AND REGULATIONS IMPLEMENTING MINIMUM CUSTOMER ACCOUNT RECORD EXCHANGE (CARE) OBLIGATIONS ON ALL LOCAL AND INTEREXCHANGE CARRIERS (CG DOCKET NO. 02–386)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 and 202; 47 USC 303(r)

Abstract: On December 20, 2002, the Commission issued a Public Notice directing interested parties to file comments on issues raised in a petition filed with the Commission by Americatel Corporation and on a separate petition filed by AT&T, Sprint, and MCI. The petitions asked the Commission to address problems relating to the exchange of customer account records between local and long distance telephone service providers. On March 25, 2004, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-386 seeking further comment on the two petitions and seeking comment as to whether to replace the current voluntary industry process for the exchange of customer account information between local and long distance service providers with mandatory, minimum standards applicable to all such providers.

On February 25, 2005, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in CG Docket No. 02-386. The Report and Order adopted final rules governing the exchange of customer account information between local and long distance telephone service providers. The Commission adopted these rules to help to ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on the need for rules governing the exchange of customer account information between local telephone service providers.

On April 15, 2005, and June 15, 2005, a coalition of local and long distance carriers proposed minor modifications and clarifications to section 64.4002 of the Commission's CARE rules. On August 29, 2005, the Commission released a public notice requesting comment on the coalition's proposed clarifications and modifications. Notice of the proposed changes was published in the Federal Register on September 7, 2005 (70 FR 53137). The comment cycle established by the August 29 public notice closed October 3, 2005.

On September 13, 2006, the Commission released an Order on Reconsideration adopting the clarifications and technical corrections to the Report and Order, as proposed by the coalition of carriers.

On December 21, 2007, the Commission released a Report and Order declining to adopt mandatory data exchange requirements between local exchange carriers.

Timetable:

Action	Date	FR Cite
NPRM	04/19/04	69 FR 20845
NPRM Comment Period End	06/18/04	
R&O and FNPRM	06/02/05	70 FR 32258
FNPRM Comment Period End	08/01/05	
Public Notice	08/29/05	70 FR 53137—01
Public Notice Comment Period End	10/03/05	
Order on Recon	12/13/06	71 FR 74819
R&O	01/08/08	73 FR 1297
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI58

473. TRUTH IN BILLING AND BILLING FORMAT

Legal Authority: 47 USC 201; 47 USC 258

Abstract: In 1999, the Commission adopted truth-in-billing rules to address

concerns that there is consumer confusion relating to billing for telecommunications services. On March 18, 2005, the Commission released an Order and FNPRM to further facilitate the ability of telephone consumers to make informed choices among competitive service offerings.

Timetable:

Action	Date	FR Cite
FNPRM	05/25/05	70 FR 30044
R&O	05/25/05	70 FR 29979
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI61

474. CLOSED CAPTIONING OF VIDEO PROGRAMMING (SECTION 610 REVIEW)

Legal Authority: 47 USC 613

Abstract: The Commission's closed captioning rules are designed to make video programming more accessible to deaf and hard of hearing Americans. This proceeding resolves some issues regarding the Commission's closed captioning rules that were raised for comment in 2005, and also seeks comment on how a certain exemption from the closed captioning rules should be applied to digital multicast broadcast channels.

Timetable:

Action	Date	FR Cite
NPRM	02/03/97	62 FR 4959
R&O	09/16/97	62 FR 48487
Notice	10/02/97	62 FR 54848
Order on Recon	10/28/98	63 FR 55959
Notice	09/29/00	65 FR 58552
Notice	01/05/01	66 FR 1136
Notice	12/31/03	68 FR 75558
Notice	05/11/04	69 FR 26095
NPRM	09/26/05	70 FR 56150
Comment Period Extended	11/25/05	70 FR 71077
Comment Period End	12/16/05	
Notice	09/27/07	72 FR 70324
Order and Declaratory Ruling	01/13/09	74 FR 1594
NPRM	01/13/09	74 FR 1654
Comment Period End	02/27/09	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI72

Federal Communications Commission (FCC) Office of Engineering and Technology

Long-Term Actions

475. REVISION OF THE RULES REGARDING ULTRA–WIDEBAND TRANSMISSION

Legal Authority: 47 USC 154; 47 USC 302 to 304; 47 USC 307; 47 USC 544A

Abstract: The First Report and Order amends the Commission's rules to permit the marketing and operation of certain types of new products incorporating Ultra-Wideband (UWB) technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. UWB technology holds great promise for a vast array of new applications that we believe will provide significant benefits for public safety, businesses and consumers. With appropriate technical standards, UWB devices can operate using spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently.

The Memorandum Opinion and Order responded to fourteen petitions for reconsideration that were filed in response to the regulations for unlicensed ultra-wideband (UWB) operations. In general, this document does not make any significant changes to the existing UWB parameters as the Commission is reluctant to do so until it has more experience with UWB devices. The Commission believes that any major changes to the rules for existing UWB product categories at this early stage would be disruptive to current industry product development efforts.

The Further Notice of Proposed Rulemaking proposed new rules to address issues raised by some of the petitions for reconsideration that were outside the scope of the proceeding. New rules were proposed to address issues regarding the operation of low pulse repetition frequency UWB systems, including vehicular radars, in the 3.1-10.6 GHz band; and the operation frequency hopping vehicular radars in the 22-29 GHz band as UWB devices. The Commission also proposed new rules that would establish new peak power limits for wideband part 15 devices that do no operate as UWB devices and proposed to eliminate the definition of a UWB device.

The Second Report and Order and Second Memorandum Opinion and Order responds to two petitions for reconsideration that were filed in response to the Commission's decision to establish regulations for unlicensed UWB operation. It also responds to the rulemaking proposals contained in the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in this docket. The order establishes new rules for wideband unlicensed devices operating in the 5925-7250 MHz, 16.2-17.7 GHz, and 22.12-29 GHz bands.

Timetable:

Action	Date	FR Cite
NPRM	06/14/00	65 FR 37332
NPRM Comment Period End	10/12/00	
First R&O	05/16/02	67 FR 34852
MO&O	04/22/03	68 FR 19746
FNPRM	04/22/03	68 FR 19773
Second R&O and Second MO&O	02/09/05	70 FR 6771
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH47

476. NEW ADVANCED WIRELESS SERVICES (ET DOCKET NO. 00–258)

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

Abstract: This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Third Notice of Proposed Rulemaking discusses the frequency bands that are still under consideration in this proceeding and invites additional comments on their disposition. Specifically, it addresses the Unlicensed Personal Communications Service (UPCS) band at 1910-1930 MHz, the Multipoint Distribution Service (MDS) spectrum at 2155-2160/62 MHz bands, the Emerging Technology spectrum, at 2160-2165 MHz, and the bands reallocated from MSS 91990-2000 MHz, 2020-2025 MHz, and 2165-2180 MHz. We seek comment on these bands with respect to using them for paired or unpaired Advance Wireless Service (AWS) operations or as relocation spectrum for existing services.

The 7th Report and Order facilitates the introduction of Advanced Wireless Service (AWS) in the band 1710-1755 MHz—an integral part of a 90 MHz spectrum allocation recently reallocated to allow for such new and innovative wireless services. We largely adopt the proposals set forth in our recent AWS Fourth NPRM in this proceeding that are designed to clear the 1710-1755 MHz band of incumbent Federal Government operations that would otherwise impede the development of new nationwide AWS services. These actions are consistent with previous actions in this proceeding and with the United States Department of Commerce, National Telecommunications and Information Administration (NTIA) 2002 Viability Assessment, which addressed relocation and reaccommodation options for Federal Government operations in the band.

The 8th Report and Order reallocated the 2155-2160 MHz band for Fixed and Mobile services and designates the 2155-2175 MHz band for Advanced Wireless Service (AWS) use. This proceeding continues the Commission's ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including Advanced Wireless Services.

The Order requires Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band to provide information on the construction status and operational parameters of each incumbent BRS system that would be the subject of relocation.

The Notice of Proposed Rule Making requested comments on the specific relocation procedures applicable to Broadband Radio Service (BRS) operations in the 2150-2160/62 MHz band, which the Commission recently decided will be relocated to the newly restructured 2495-2690 MHz band. The Commission also requested comments on the specific relocation procedures applicable to Fixed Microwave Service (FS) operations in the 2160-2175 MHz band.

The Office of Engineering and Technology (OET) and the Wireless Telecommunications Bureau (WTB) set forth the specific data that Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band must file along with the deadline date and procedures for filing this data on the Commission's Universal Licensing System (ULS). The data will assist in determining future AWS licensee's relocation obligations.

The 9th Report and Order established procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150-2160/62 MHz band, as well as for the relocation of Fixed Microwave Service (FS) operations from the 2160-2175 MHz band, and modified existing relocation procedures for the 2110-2150 MHz and 2175-2180 MHz bands. It also established cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110-2150 MHz and 2160-2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150-2160/62 MHz band. The Commission continues its ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including AWS. The Order dismisses a petition for reconsideration filed by the Wireless Communications Association International, Inc. (WCA) as moot.

Two petitions for Reconsideration were filed in response to the 9th Report and Order.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7438
NPRM Comment Period End	03/09/01	
Final Report	04/11/01	66 FR 18740
FNPRM	09/13/01	66 FR 47618
MO&O	09/13/01	66 FR 47591
First R&O	10/25/01	66 FR 53973
Petition for Recon	11/02/01	66 FR 55666
Second R&O	01/24/03	68 FR 3455
Third NPRM	03/13/03	68 FR 12015
Seventh R&O	12/29/04	69 FR 7793
Petition for Recon	04/13/05	70 FR 19469
Eighth R&O	10/26/05	70 FR 61742
Order	10/26/05	70 FR 61742
NPRM	10/26/05	70 FR 61752
Public Notice	12/14/05	70 FR 74011
Ninth R&O and Order	05/24/06	71 FR 29818
Petition for Recon	07/19/06	71 FR 41022
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH65

477. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE (WT DOCKET NO. 05–96; ET DOCKET NO. 02–380)

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303; 47 USC 307; 47 USC 332

Abstract: This proceeding seeks to determine whether the 3650 to 3700 MHz band should be used for unlicensed devices or some or all of the band should be used for unlicensed options.

In January 1999, the 3650-3700 MHz band (3650 MHz band) was transferred from Government/non-Government shared use to a mixed-use band. In October 2000, in ET Docket No. 98-237, the FCC allocated the band to fixed and mobile terrestrial services on a co-primary basis, but in order to protect grandfathered Fixed Satellite Service (FSS) earth stations and Federal Government radiolocation operations, limited the mobile allocation to base stations use only. At this same time, the FCC proposed licensing and service rules for fixed and mobile operations in the band. Subsequently, in December 2002, in ET Docket No. 02-380, the FCC sought comment, in part, on the possibility of allowing unlicensed devices to operate in the 3650 MHz band. In April 2004, in ET Docket No. 04-151, the FCC followed-up on this inquiry by releasing a Notice of Proposed Rulemaking (NPRM) seeking comment on whether the 3650 MHz band should be used for unlicensed devices or part or all of the band should be used for licensed operations.

The NPRM proposes to allow unlicensed devices to operate in all, or part, of the 3650 MHz band at higher power levels than usually permitted for unlicensed services. These devices would be subject to smart (or cognitive) requirements and other safeguards designed to prevent interference to the licensed FSS earth stations now resident in the band. As with other unlicensed devices, these devices would not be permitted to cause interference to licensed services, such as the FSS earth stations, and would have to accept interference. The NPRM also seeks comment on other options for the band, including licensed use of the band by fixed and mobile services, or segmenting the 3650 MHz band to provide for a combination of unlicensed and licensed terrestrial services. The Notice seeks comment on issues related both to allocation changes necessary to set the relative priority between terrestrial and FSS licensed operations, and to licensing rule changes necessary to implement licensed terrestrial service operations.

Timetable:

Action	Date	FR Cite
NPRM	03/16/00	65 FR 14230
First R&O and Second NPRM	11/17/00	65 FR 69612
Petition for Recon	03/28/01	66 FR 16940
R&O	02/27/02	67 FR 17038
MO&O and Third R&O	05/02/03	68 FR 38635
Notice of Inquiry	01/21/03	68 FR 2730
NPRM	05/14/04	69 FR 26790
Final Rule	05/11/05	70 FR 24712
Final Rule	07/20/05	70 FR 41631
MO&O	07/25/07	72 FR 40767
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH75

478. EXPOSURE TO RADIOFREQUENCY ELECTROMAGNETIC FIELDS

Legal Authority: 47 USC 151; 47 USC 302 and 303; 47 USC 309(j); 47 USC 336

Abstract: The Notice of Proposed Rulemaking (NPRM) proposed amendments to the FCC rules relating to compliance of transmitters and facilities with guidelines for human exposure to radio frequency (RF) energy.

Timetable:

Action	Date	FR Cite
NPRM	09/08/03	68 FR 52879
NPRM Comment Period End	12/08/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI17

479. UNLICENSED OPERATION OF THE 3650–3700 BAND (ET DOCKET NO. 04–151)

Legal Authority: 47 USC 154

Abstract: The notice of proposed rulemaking proposed to maximize the efficient use of the 3650-3700 MHz band. The proposal would allow unlicensed devices to operate in either all, or portions of, this radiofrequency (RF) band under flexible technical limitations with smart/cognitive features that should prevent interference to licensed satellite services. The proposal fostered the introduction of new and advanced services to the American public, especially in rural areas.

The Report and Order adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a contention-base protocol, in the 3650-3700 MHz band. The Commission also adopted a streamlined licensing mechanism with minimal regulatory entry requirements that will encourage multiple entrants and stimulate the rapid expansion of wireless broadband services—-especially in rural American and will also serve as a safeguard to protect incumbent satellite earth stations from harmful interference.

In the Memorandum Opinion and Order, the Commission addressed several petitions for reconsideration and an emergency motion for stay that were filed in response 3650 MHz Allocation Order in ET Docket No. 98-237.

In light of its full review of the refreshed record in this proceeding, and in light of the decisions made in the companion Report and Order, the Commission denied the aspects of the petitions that challenge and seek to reverse the allocation decisions made in the 3650 MHz Allocation Order.

The Commission denied the motion for stay. When the Commission established the November 30, 2000, filing deadline, it did so because it found that additional new FSS facilities permitted by the Freeze Memorandum Opinion and Order could affect the use of the 3650-3700 MHz band by the terrestrial services. By deciding in this Order to maintain the FSS allocation changes made in the 3650 MHz Allocation Order, the Commission, reaffirmed its conclusion that allowing additional primary FSS earth stations in the 3650 MHz band could negatively affect the prospects for viable FS/MS terrestrial operations.

The Memorandum Opinion and Order addressed petitions for reconsideration filed in response to the Commission's Report and Order relating to the 3650-3700 MHz band (3650 MHz band) proceeding. The Commission affirmed its previous decisions to create a

spectrum environment that will encourage multiple entrants and stimulate the expansion of broadband service to rural and under served areas. To facilitate rapid deployment in the band, the Commission maintains the previously adopted, non-exclusive licensing scheme. The clarification and modification will facilitate operation of the widest variety of broadband technologies with minimal risk of interference in both the near and long terms. They should further reduce the potential for co-channel interference, provide additional protections to the multiple users in the band under the current licensing regime, and create incentives for the rapid development of broadly compatible contention technologies.

Timetable:

Action	Date	FR Cite
NPRM	05/14/04	69 FR 26790
R&O & MO&O	05/11/05	70 FR 24712
MO&O	07/25/07	72 FR 40767
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI50

480. UNLICENSED OPERATION IN THE TV BROADCAST BANDS (ET DOCKET NO. 04–186)

Legal Authority: 47 USC 154(i); 47 USC 302; 47 USC 303(e) and 303(f); 47 USC 303(r); 47 USC 307

Abstract: The Commission adopted rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed ''white spaces''). This action will make a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. The actions taken are a conservative first step that includes many safeguards to prevent harmful interference to incumbent communications services. Moreover, the Commission will closely oversee the development and introduction of these devices to the market and will take whatever actions may be necessary to avoid, and if necessary correct, any interference that may occur.

Timetable:

Action	Date	FR Cite
NPRM	06/18/04	69 FR 34103
First R&O	11/17/06	71 FR 66876
FNPRM	11/17/06	71 FR 66897
R&O and MO&O	02/17/09	74 FR 7314
Petitions for Reconsideration	04/13/09	74 FR 16870
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI52

481. UNLICENSED DEVICES AND EQUIPMENT APPROVAL (ET DOCKET NO. 03–201)

Legal Authority: 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 306

Abstract: The Notice of Proposed Rulemaking (NPRM) proposed to update section 15.247 of the rules to allow the use of more efficient antenna technologies with unlicensed devices.

The Report and Order updates several technical rules for unlicensed radiofrequency devices in part 15 of the Commission's rules. The rule changes will allow device manufacturers to develop expanded applications for unlicensed devices and will allow unlicensed device operators, including Wireless Internet Service providers greater flexibility to modify or substitute parts as long as the overall system operation is unchanged. The changes are part of an ongoing process of updating our rules to promote more efficient sharing of spectrum used by unlicensed devices and remove unnecessary regulations that inhibit such sharing. The Commission received one petition for reconsideration in this proceeding.

The Second Report and Order amended the Commission's rules to provide for more efficient equipment authorization of both existing modular transmitter devices and emerging partitioned (or ''split'') modular transmitter devices. These rule changes will benefit manufacturers by allowing greater flexibility in certifying equipment and providing relief from the need to obtain a new equipment authorization each time the same transmitter is installed in a different final product. The rule changes will also enable manufacturers to develop more flexible and more advanced unlicensed transmitter technologies. The Commission further found that modular transmitter devices authorized in accordance with the revised equipment authorization procedures will not pose any increased risk of interference to other radio operations.

The Further NPRM, seeks comment on whether there is a need to require unlicensed transmitters operating in the 915 MHz band under sections 15.247 and 15.249 of the rules to comply with a spectrum etiquette requirement, and the impact that requiring an etiquette would have on the development and operation of unlicensed 915 MHz devices operating under those rule sections. The Commission also seeks comment on the particular etiquette suggested by Cellnet that would require digitally modulated spread spectrum transmitters operating in the 915 MHz band under section 15.247 of the rules to operate at less than the 1-watt maximum power if they are continuously silent less than 90 percent of the time within a 0.4 second interval. This etiquette would require that the maximum permitted power level decrease in accordance with a specified formula as the silent interval between transmission decreases. The Commission further seeks comment on alternatives to the etiquette suggested by Cellnet.

The Memorandum Opinion and Order dismissed two petitions for reconsideration of the rules adopted in the Report and Order, 69 FR 54027, September 7, 2004, in this proceeding. It dismissed a petition for reconsideration filed by Warren C. Havens and Telesaurus Holdings GB LLC (Havens) requesting that the Commission suspend the rule changes adopted for unlicensed devices in the 902-928 MHz (915 MHz) band until such time as it completes a formal inquiry with regard to the potential effect of such changes to Location and Monitoring Service (LMS) licensees in the band. The Commission also dismissed a petition for reconsideration

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filed by Cellnet Technology (Cellnet) requesting that the Commission adopt spectrum sharing requirements in the unlicensed bands, for example, a ''spectrum etiquette,'' particularly in the 915 MHz band.

Timetable:

Action	Date	FR Cite
NPRM	09/17/03	68 FR 68823
R&O	09/07/04	69 FR 54027
Petition for Recon	11/19/04	69 FR 67736
Petition for Recon	02/15/05	70 FR 7737
Second R&O	05/23/07	72 FR 28889
FNPRM	08/01/07	72 FR 42011
MO&O	08/01/07	72 FR 41937

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI54

Federal Communications Commission (FCC) — Long-Term Actions
International Bureau

482. STREAMLINING THE COMMISSION'S RULES AND REGULATIONS FOR SATELLITE APPLICATION AND LICENSING PROCEDURES (IB DOCKET NO. 95–117)

Legal Authority: 47 USC 4; 47 USC 154; 47 USC 303; 47 USC 554; 47 USC 701 to 744

Abstract: On February 10, 1997, the FCC adopted rules and policies that streamlined the application and licensing requirements of part 25 of its rules, which deals with communication satellites and earth stations. The streamlined rules waived the construction permit requirement for satellite space stations, changed the license term for temporary fixed earth stations; and adjusted or changed the rules concerning minor modifications and basic requirements for satellite service applications. The streamlined rules also resulted in the creation of a new application form, FCC Form 312. Form 312 eliminated from the International Bureau's use of the FCC Form 493, FCC Form 430, FCC Form 702, and FCC Form 704. Petitions for Reconsideration were filed in this matter. In March 1997, the Commission released a Public Notice concerning these petitions. The Commission addressed the issues in the Petitions for Reconsideration in an Order released on October 10, 2008. The docket in this proceeding is now closed.

Timetable:

Action	Date	FR Cite
NPRM	09/09/95	60 FR 46252
R&O, Recon Pending	02/10/97	62 FR 5924
Public Notice/Petitions for Recon	03/26/97	62 FR 14430
Order on Reconsideration	11/29/08	73 FR 70897

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AD70

483. ESTABLISHMENT OF RULES AND POLICIES FOR THE DIGITAL AUDIO RADIO SATELLITE SERVICE IN THE 2310–2360 MHZ FREQUENCY BAND (IB DOCKET NO. 95–91; GEN DOCKET NO. 90–357)

Legal Authority: 47 USC 151; 47 USC 151(i); 47 USC 154(j); 47 USC 157; 47 USC 309(j)

Abstract: The Commission is proposing rules to govern satellite digital audio radio services (SDARS). The Commission adopted service rules for SDARS in 1997 and sought further comment on proposed rules governing the use of complementary terrestrial repeaters. The Commission released a second further notice of proposed rulemaking in January 2008 to consider new proposals for rules governing terrestrial repeaters and operations of Wireless Communications Service (WCS) devices in the 2305—2360 MHz band.

Timetable:

Action	Date	FR Cite
NPRM	06/15/95	60 FR 35166
R&O	03/11/97	62 FR 11083
FNPRM	04/18/97	62 FR 19095
Second FNPRM	01/15/08	73 FR 2437
FNPRM Comment Period End	03/17/08	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AF93

484. ALLOCATE & DESIGNATE: SPEC FOR FIXED–SAT SRV (37.5–38.5, 40.5–41.5 & 48.2–50.2 GHZ BANDS); ALLOCATE: FIXED & MOBILE 40.5–42.5 GHZ; WIRELESS 46.9–47 GHZ; GOV OPER 37–38 & 40–40.5 GHZ (IB DOCKET NO. 97)

Legal Authority: 47 USC 154(i); 47 USC 301 and 302; 47 USC 303(e) to 303(g); 47 USC 303(r); 47 USC 304; 47 USC 307

Abstract: This item adopts a plan for nongovernment operations in the 36.0-51.4 GHz portion of the V-band, establishing priorities for different services in different parts of this band.

Timetable:

Action	Date	FR Cite
NPRM	04/04/97	62 FR 16129
R&O	01/15/99	64 FR 2585
Correction	02/08/99	64 FR 6138
Correction	02/10/99	64 FR 6565
Notice of Petition for Recon	03/22/99	64 FR 13796
Order on Recon	12/01/99	
FNPRM	07/05/01	66 FR 35399
Second R&O	08/25/04	69 FR 52198

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH23

485. SPACE STATION LICENSING REFORM (IB DOCKET NO. 02–34)

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303(c); 47 USC 303(g); . . .

Abstract: The Commission has adopted a Notice of Proposed Rulemaking (NPRM) to streamline its procedures for reviewing satellite license applications. Currently, the Commission uses processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issues a public notice establishing a cut-off date for other mutually exclusive satellite applications, and then considers all those applications together. In cases where sufficient spectrum to accommodate all the applicants is not available, the Bureau directs the applicants to negotiate a mutually agreeable solution. Those negotiations usually take a long time, and delay provision of satellite services to the public.

The NPRM invites comment on two alternatives for expediting the satellite application process. One alternative is to replace the processing round procedure with a ''first-come, first-served'' procedure that would allow the Bureau to issue a satellite license to the first party filing a complete, acceptable application. The other alternative is to streamline the processing round procedure by adopting one or more of the following proposals: (1) Placing a time limit on negotiations; (2) establishing criteria to select among competing applicants; (3) dividing the available spectrum evenly among the applicants.

In the First Report and Order in this proceeding, the Commission determined that different procedures were better-suited for different kinds of satellite applications. For most geostationary orbit (GSO) satellite applications, the Commission adopted a first-come, first-served approach. For most non-geostationary orbit (NGSO) satellite applications, the Commission adopted a procedure in which the available spectrum is divided evenly among the qualified applicants. The Commission also adopted measures to discourage applicants from filing speculative applications, including a bond requirement, payable if a licensee misses a milestone. The bond amounts originally were $5 million for each GSO satellite, and $7.5 million for each NGSO satellite system. These were interim amounts. Concurrently with the First Report and Order, the Commission adopted an FNPRM to determine whether to revise the bond amounts on a long-term basis.

In the Second Report and Order, the Commission adopted a streamlined procedure for certain kinds of satellite license modification requests.

In the Third Report and Order in this proceeding, the Commission adopted a standardized application form for satellite licenses, and adopted a mandatory electronic filing requirement for certain satellite applications.

In the Fourth Report and Order in this proceeding, the Commission extended the mandatory electronic filing requirement to all satellite applications.

In the Fifth Report and Order in this proceeding, the Commission revised the bond amounts based on the record developed in response to FNPRM. The bond amounts are now $3 million for each GSO satellite, and $5 million for each NGSO satellite system.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12498
NPRM Comment Period End	07/02/02	
Second R&O (Release Date)	06/20/03	68 FR 62247
Second FNPRM (Release Date)	07/08/03	68 FR 53702
Third R&O (Release Date)	07/08/03	68 FR 63994
FNPRM	08/27/03	68 FR 51546
First R&O	08/27/03	68 FR 51499
FNPRM Comment Period End	10/27/03	
Fourth R&O (Release Date)	04/16/04	69 FR 67790
Fifth R&O, First Order on Recon (Release Date)	07/06/04	69 FR 51586
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH98

486. MITIGATION OF ORBITAL DEBRIS (IB DOCKET NO. 02–54)

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f) and 303(g); 47 USC 303(r)

Abstract: The Commission has adopted rules that require all entities seeking FCC authorization for satellite services to address orbital debris mitigation as part of their application for FCC authorization. Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. In addition, the Commission established requirements for the removal of geostationary spacecraft from operational orbits at the end of their useful lives and amended the Commission's rules regarding orbit-raising maneuvers, the use of inclined orbits, and orbital longitudinal tolerance station-keeping requirements. The Commission indicated that it will seek further comment on the application of the Commission's longitudinal tolerance station-keeping requirements for Fixed-Satellite space stations to space stations in the Mobile-Satellite Service and remote sensing services.

Timetable:

Action	Date	FR Cite
NPRM	05/03/02	67 FR 22376
NPRM Comment Period End	08/16/02	
First R&O	08/27/03	68 FR 59127
Second R&O	09/09/04	69 FR 54581
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI06

487. AMENDMENT OF THE COMMISSION'S RULES (IB DOCKET NO. 04–47)

Legal Authority: 47 USC 34 to 39; 47 USC 151; 47 USC 161; 47 USC 201 to 205; . . .

Abstract: FCC amended several rules. Specifically, FCC: (1) Amended the procedures for discontinuing an international service; (2) allowed U.S. carriers to resell the U.S.-inbound service of foreign carriers; and (3) amended the submarine cable landing licensing procedures compliance with the Coastal Zone Management Act of 1972. The North American Submarine Cable Association filed a petition for reconsideration regarding the amendment to the submarine cable licensing procedures.

Timetable:

Action	Date	FR Cite
NPRM	03/22/04	69 FR 13276
NPRM Comment Period End	06/07/04	
R&O	09/25/07	72 FR 54363
Petition for Recon	01/02/08	73 FR 187
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI41

488. REPORTING REQUIREMENTS FOR U.S. PROVIDERS OF INTERNATIONAL TELECOMMUNICATIONS SERVICES (IB DOCKET NO. 04–112)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 201 to 205; . . .

Abstract: FCC is reviewing the reporting requirements to which carriers providing U.S. international services are subject under 47 CFR part 43. FCC proposes to amend 47 CFR 43.61 and 47 CFR 43.82 and to repeal 47 CFR 43.53.

Timetable:

Action	Date	FR Cite
NPRM	04/12/04	
NPRM Comment Period End	08/23/04	69 FR 29676
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI42

489. REVIEW OF THE SPECTRUM SHARING PLAN AMONG NON–GEOSTATIONARY SATELLITE ORBIT MOBILE SATELLITE SERVICE SYSTEMS IN THE 1.6/2.4 GHZ BANDS (IB DOCKET NO. 02–364)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 302(a); 47 USC 303(e); . . .

Abstract: This docket involves the spectrum sharing plan for the low earth orbit satellite systems in the 1.6 GHz and 2.4 GHz bands (Big LEOs). In November 2007, the Commission resolved the 1.6 GHz spectrum sharing plan between Globalstar Inc. and Iridium Satellite LLC, whereby Globalstar will have exclusive MSS use of 7.775 megahertz of spectrum at 1610-1617.775 MHz, Iridium will have exclusive MSS use of 7.775 megahertz of spectrum at 1618.725-1626.5 MHz, and the two Big LEO operators will share 0.95 megahertz of spectrum at 1617.775-1618.725 MHz. Separately, in April 2006, the Commission affirmed the spectrum sharing plan between Globalstar and the fixed and mobile (except aeronautical mobile) services in the 2495-2500 MHz band in order to accommodate the relocation of Broadband Radio Service Channel 1 to the 2496-2502 MHz band. (Iridium does not operate in the 2.4 GHz band.)

Timetable:

Action	Date	FR Cite
NPRM	01/29/03	68 FR 33666
R&O	08/09/04	69 FR 48157
FNPRM	08/09/04	69 FR 48192
Petitions for Recon	10/12/04	69 FR 60626
First Order on Recon	06/19/06	71 FR 35178
Petitions for Further Recon	07/27/06	71 FR 44029
Second Order on Recon and Second R&O	12/13/07	72 FR 70807
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI44

490. AMENDMENT OF THE COMMISSION'S RULES TO ALLOCATE SPECTRUM AND ADOPT SERVICE RULES AND PROCEDURES TO GOVERN THE USE OF VEHICLE–MOUNTED EARTH STATIONS (IB DOCKET NO. 07–101)

Legal Authority: 47 USC 151; 47 USC 154(i) and (j); 47 USC 157(a); 47 USC 301; 47 USC 303 (c); 47 USC 303 (f); 47 USC 303 (g); 47 USC 303 (r); 47 USC 303 (y); 47 USC 308

Abstract: The Commission seeks comment on the proposed amendment of parts 2 and 25 of the Commission's rules to allocate spectrum for use with Vehicle-Mounted Earth Stations (VMES) in the Fixed-Satellite Service in the Ku-band uplink at 14.0-14.5 GHz and Ku-band downlink 11.72-12.2 GHz on a primary basis, and in the extended Ku-band downlink at 10.95-11.2 GHz and 11.45-11.7 GHz on a non-protected basis, and to adopt Ku-band VMES licensing and service rules modeled on the FCC's rules for Ku-band Earth Stations on Vessels (ESVs). The record in this proceeding will provide a basis for Commission action to facilitate introduction of this proposed service.

Timetable:

Action	Date	FR Cite
NPRM	07/08/07	72 FR 39357
NPRM Comment Period End	09/04/07	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI90

Federal Communications Commission (FCC)

International Bureau

Completed Actions

491. ESTABLISHING RULES AND POLICIES FOR THE USE OF SPECTRUM FOR MOBILE SATELLITE SERVICE IN THE L–BAND (IB DOCKET NO. 96–132)

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 316; 47 USC 403

Abstract: The Commission has established licensing policies to govern mobile-satellite services (MSS) in the L-band. Specifically, the Commission has modified the license of Motient Services, Inc. (Motient), the only U.S. MSS system currently authorized to operate in the L-band, to use up to 20 megahertz of spectrum across the entire L-band. Previously, Motient was authorized only to operate in the upper portion of the L-band. In addition, the Commission has adopted and incorporated into part 25 of the rules specific operational parameters and technical requirements to ensure the integrity of maritime distress and safety communications service will not be compromised by MSS operation in the lower portion of the L-band. Petitions for reconsideration were filed.

Timetable:

Action	Date	FR Cite
NPRM	06/18/96	61 FR 40772
NPRM Comment Period End	09/23/96	
R&O	08/07/02	67 FR 51105

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AF89

Federal Communications Commission (FCC)

Media Bureau

Long-Term Actions

492. CABLE TELEVISION RATE REGULATION

Legal Authority: 47 USC 154; 47 USC 543

Abstract: The Commission has adopted rate regulations to implement section 623 of the 1992 Cable Act to ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. Reconsideration was requested. The Fourteenth Order on Reconsideration addresses petitions on issues governing regulated services by cable systems. In a subsequent notice, comment was sought on recalibrating the competitive differential between rates of systems subject to effective competition and noncompetitive systems. In addition, comment was sought as to whether there may be a different approach to establish reasonable rates on the basic service tier.

Timetable:

Action	Date	FR Cite
NPRM	01/04/93	58 FR 48
R&O and FNPRM	05/21/93	58 FR 29736
MO&O and FNPRM	08/18/93	58 FR 43816
Third R&O	11/30/93	58 FR 63087
Order on Recon, Fourth R&O, and Fifth NPRM	04/15/94	59 FR 17943
Third Order on Recon	04/15/94	59 FR 17961
Fifth Order on Recon and FNPRM	10/13/94	59 FR 51869
Fourth Order on Recon	10/21/94	59 FR 53113
Sixth Order on Recon, Fifth R&O, and Seventh NPRM	12/06/94	59 FR 62614
Seventh Order on Recon	01/25/95	60 FR 4863
Ninth Order on Recon	02/27/95	60 FR 10512
Eighth Order on Recon	03/17/95	60 FR 14373
Sixth R&O and Eleventh Order on Recon	07/12/95	60 FR 35854
Thirteenth Order on Recon	10/05/95	60 FR 52106
Twelfth Order on Recon	10/26/95	60 FR 54815
Tenth Order on Recon	04/08/96	61 FR 15388
Order on Recon of the First R&O and FNPRM	04/15/96	61 FR 16447
MO&O	02/12/97	62 FR 6491
Report on Cable Industry Prices	02/24/97	62 FR 8245
R&O	03/31/97	62 FR 15118
Fourteenth Order on Recon	10/15/97	62 FR 53572
NPRM and Order	09/05/02	67 FR 56882

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AF41

493. CABLE TELEVISION RATE REGULATION: COST OF SERVICE

Legal Authority: 47 USC 154; 47 USC 543

Abstract: The Commission has established rules pursuant to which cable operators may set rates for regulated cable service in accordance with traditional cost-of-service principles, as modified to take account of unique characteristics of the cable industry. In the latest NPRM, comment was sought on rule changes that may be necessary or desirable in order to account for changes in the regulatory process resulting from the end of the Commission's statutory authority to regulate certain tiers of cable programming service.

Timetable:

Action	Date	FR Cite
NPRM	07/30/93	58 FR 40762
R&O	04/15/94	59 FR 17975
Second NPRM	04/15/94	59 FR 18066
MO&O	10/14/94	59 FR 52087
Second R&O/First Order on Recon/FNPRM	03/08/96	61 FR 9361
Correction	03/22/96	61 FR 11749
NPRM and Order	09/05/02	67 FR 56882

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AF48

494. CABLE HOME WIRING

Legal Authority: 47 USC 544(i)

Abstract: On October 6, 1997, the FCC adopted a Report and Order and Second Notice of Proposed Rulemaking (FCC 97-376) that amends its cable inside wiring rules to enhance competition in the video distribution marketplace. The Second FNPRM seeks comment on, among other things, whether there are circumstances where the FCC should adopt restrictions on exclusive contracts in order to further promote competition in the multiple dwelling unit marketplace. The 2nd Report and Order addresses multiple dwelling units when the occupant charges video service providers. In the First Order on Reconsideration and the Second Report and Order, the Commission modified its rules in part. The United States Court of Appeals for the District of Columbia Circuit remanded a portion of the Commission decision back to the Commission for further consideration. In September 2004, the Commission issued an FNPRM in response to the courts decision. The subsequent Report and Order and Declaratory Ruling concluded that cable wiring behind sheet rock is physically inaccessible for determining the demarcation point.

Timetable:

Action	Date	FR Cite
NPRM	11/17/92	57 FR 54209
R&O	03/02/93	58 FR 11970
NPRM	02/01/96	61 FR 3657
First Order on Recon & FNPRM	02/16/96	61 FR 6210
FNPRM	09/03/97	62 FR 46453
R&O and Second FNPRM	11/14/97	62 FR 60165
First Order on Recon and Second R&O	03/21/03	68 FR 13850
FNPRM	10/15/04	69 FR 61193
R&O and Declaratory Ruling	08/30/07	72 FR 50074
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG02

495. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES (CS DOCKET NO. 97–80)

Legal Authority: 47 USC 549

Abstract: The Commission has adopted rules to address the mandate expressed in section 629 of the Communications Act to ensure the commercial availability of ''navigation devices,'' the equipment used to access video programming and other services from multichannel video programming systems.

Specifically, in 1998, the Commission required MVPDs to make available by July 1, 2000, a security element separate from the basic navigation device (e.g., cable set-top boxes, digital video recorders, and television receivers with navigation capabilities). The separation of the security element from the host device required by this rule (referred to as the ''integration ban'') was designed to enable unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. MVPDs were permitted to continue providing equipment with integrated security until January 1, 2005, so long as modular security components, known as point-of-deployment modules, were also made available for use with host devices obtained through retail outlets. In April 2003, in response to requests from cable operators, the Commission extended the effective date of the integration ban until July 1, 2006. Then, in 2005, again at the urging of cable operators, the Commission extended that date until July 1, 2007. Also, in this proceeding, in April 2003, the Commission adopted unidirectional ''plug and play'' rules, to govern compatibility between MVPDs and navigation devices manufactured by consumer electronics manufacturers not affiliated with cable operators. In June 2007, the Commission solicited comment on proposed standards to ensure bidirectional compatibility of cable television systems and consumer electronics equipment.

Timetable:

Action	Date	FR Cite
NPRM	03/05/97	62 FR 10011
R&O	07/15/98	63 FR 38089
Order on Recon	06/02/99	64 FR 29599
FNPRM & Declaratory Ruling	09/28/00	65 FR 58255
FNPRM	01/16/03	68 FR 2278
Order and FNPRM	06/17/03	68 FR 35818
Second R&O	11/28/03	68 FR 66728
FNPRM	11/28/03	68 FR 66776
Order on Recon	01/28/04	69 FR 4081
Second R&O	06/22/05	70 FR 36040
Third FNPRM	07/25/07	72 FR 40818
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG28

496. CABLE HORIZONTAL AND VERTICAL OWNERSHIP LIMITS (MM DOCKET NO. 92–264)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 533

Abstract: Section 613 of the Communications Act requires the Commission to ''prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest.'' On October 8, 1999, the Commission issued a Third Report and Order, FCC 99-289, in this matter. The Commission revised the horizontal ownership rules as follows: (1) All multichannel video subscribers will be counted when calculating the 30 percent ownership limit; (2) actual subscriber numbers, rather than potential subscriber numbers, will be used for calculating an owner's share; and (3) the minority exception which allowed a 35 percent ownership limit for minority-owned entities under certain circumstances was eliminated. On March 2, 2001, the District of Columbia Circuit Court reversed and remanded the cable horizontal and vertical limits, as well as two aspects of the attribution rules used to determine compliance with these limits. (Time Warner

Entertainment Co. v. FCC, 240 F.3d 1126 (DC cir. 2001)). Pursuant to the court's remand, the Commission solicited comment in a Further Notice of Proposed Rulemaking (September 2001) and a Second Further Notice of Proposed Rulemaking.

In the Fourth Report and Order, the Commission set the cable horizontal ownership limit at 30 percent. In the accompanying Further Notice of Proposed Rulemaking, comment was sought on issues regarding the cable attribution rules and appropriate channel occupancy limits.

Timetable:

Action	Date	FR Cite
Second MO&O on Recon and FNPRM	07/14/98	63 FR 37790
Third R&O	12/01/99	64 FR 67198
Order on Recon	03/08/00	65 FR 12135
MO&O	06/08/00	65 FR 36382
FNPRM	10/11/01	66 FR 51905
Second FNPRM	06/18/05	70 FR 33680
Fourth R&O and FNPRM	02/29/08	73 FR 11048
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH09

497. DIGITAL AUDIO BROADCASTING SYSTEMS (MM DOCKET NO. 99–325)

Legal Authority: 47 USC 154; 47 USC 303

Abstract: The rulemaking proceeding was initiated to foster the development and implementation of terrestrial digital audio broadcasting (DAB). The transition to DAB promises the benefits that have generally accompanied digitalization—better audio fidelity, more robust transmission systems, and the possibility of new auxiliary services. In the First Report and Order, the Commission selected in-band, on-channel as the technology that will permit AM and FM radio broadcasters to introduce digital operations. Consideration of formal standard-setting procedures and related broadcasting licensing and service rule changes are addressed in a Further Notice of Proposed Rulemaking. Further technical guidance is provided in a Second Report and Order.

Timetable:

Action	Date	FR Cite
NPRM	11/09/99	64 FR 61054
First R&O	12/23/02	67 FR 78193
FNPRM and NOI	05/14/04	69 FR 27815
Second R&O	08/15/07	72 FR 45712
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH40

498. SECOND PERIODIC REVIEW OF RULES AND POLICIES AFFECTING THE CONVERSION TO DTV

Legal Authority: 47 USC 4(i) and 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

Abstract: On January 18, 2001, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking, addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television. The Second Report and Order resolved several major technical issues including the issue of receiver performance standards, DTV tuners, and revisions to certain components of the DTV transmission standard. A subsequent NPRM commenced the Commission's second periodic review of the progress of the digital television conversion. The resulting R&O adopted a multi-step process to create a new DTV table of allotments and authorizations. Also in the R&O, the Commission adopted replication and maximization deadlines for DTV broadcasters and updated rules in recognition revisions to broadcast transmission standards.

The Second R&O adopts disclosure requirements for televisions that do not include a digital tuner.

Timetable:

Action	Date	FR Cite
NPRM	03/23/00	65 FR 15600
R&O	02/13/01	66 FR 9973
MO&O	12/18/01	66 FR 65122
Third MO&O and Order on Recon	10/02/02	67 FR 61816
Second R&O and Second MO&O	10/11/02	67 FR 63290
NPRM	02/18/03	68 FR 7737
R&O	10/04/04	69 FR 59500
Second R&O	05/10/07	72 FR 26554
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH54

499. DIRECT BROADCAST PUBLIC INTEREST OBLIGATIONS (MM DOCKET NO. 93–25)

Legal Authority: 47 USC 335

Abstract: The Commission adopted rules in 1998 that implement section 25 of the Cable Television Consumer Protection and Competition Act of 1992, as codified at section 335 of the Communications Act of 1934. Section 335 directs the Commission to impose certain public interest obligations on direct broadcast satellite providers.

Timetable:

Action	Date	FR Cite
NPRM	03/08/93	58 FR 12917
R&O	02/08/99	64 FR 52399
Order on Recon	04/22/04	69 FR 21761
Order on Recon	04/28/04	69 FR 23155
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH59

500. REVISION OF EEO RULES AND POLICIES (MM DOCKET NO. 98–204)

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 257; 47 USC 301; 47 USC 303; 47 USC 307 to 309; 47 USC 334; 47 USC 403; 47 USC 554

Abstract: FCC authority to govern Equal Employment Opportunity (EEO) responsibilities of cable television operators was codified in the Cable Communications Policy Act of 1984. This authority was extended to television broadcast licensees and other multi-channel video programming distributors in the Cable and Television Consumer Protection Act of 1992. In the Second Report and Order, the FCC adopted new EEO rules and policies. This action was in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit that found prior EEO rules unconstitutional. The Third Notice of Proposed Rulemaking (NPRM) requests comment as to the applicability of the EEO rules to part-time employees. The Third Report and Order adopted revised forms for broadcast station and MVPDs Annual Employment Report. In the Fourth NPRM, comment was sought regarding public access to the data contained in the forms.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1704
Second R&O and Third NPRM	01/07/03	68 FR 670
Correction	01/13/03	68 FR 1657
Fourth NPRM	06/23/04	69 FR 34986
Third R&O	06/23/04	69 FR 34950
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH95

501. BROADCAST MULTIPLE AND CROSS–OWNERSHIP LIMITS

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309 and 310

Abstract: In 2002, the Commission undertook a comprehensive review of its broadcast multiple and cross-ownership limits examining: cross-ownership of TV and radio stations; local TV ownership limits; national TV cap; and dual network rule.

The Report and Order replaced the newspaper/broadcast cross-ownership and radio and TV rules with a tiered approach based on the number of television stations in a market. Petitions for Reconsideration are pending. Also, the Third Circuit Court of Appeals remanded portions of the Commission's decisions. In June 2006, the Commission adopted a Further Notice of Proposed Rulemaking initiating the 2006 review of the broadcast ownership rules. The further notice also sought comment on how to address the issues raised by the Third Circuit. Additional questions are raised for comment in a Second Further Notice of Proposed Rulemaking.

In the Report and Order and Order on Reconsideration, the Commission adopted rule changes regarding newspaper/broadcast cross-ownership, but otherwise generally retained the other broadcast ownership rules currently in effect.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50991
R&O	08/05/03	68 FR 46286
Public Notice	02/19/04	69 FR 9216
FNPRM	08/09/06	71 FR 4511
Second FNPRM	08/08/07	72 FR 44539
R&O and Order on Recon	02/21/08	73 FR 9481
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH97

502. ESTABLISHMENT OF RULES FOR DIGITAL LOW POWER TELEVISION, TELEVISION TRANSLATOR, AND TELEVISION BOOSTER STATIONS (MB DOCKET NO. 03–185)

Legal Authority: 47 USC 309; 47 USC 336

Abstract: This proceeding initiates the digital television conversion for low power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for these stations' conversion from analog to digital broadcasting. The Report and Order adopts definitions and permissible use provisions for digital TV translator and LPTV stations. Petitions for reconsideration of the Report and Order are pending.

Timetable:

Action	Date	FR Cite
NPRM	09/26/03	68 FR 55566
R&O	11/29/04	69 FR 69325
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI38

503. JOINT SALES AGREEMENTS IN LOCAL TELEVISION MARKETS (MB DOCKET NO. 04–256)

Legal Authority: 47 USC 151 to 152(a); 47 USC 154(i); 47 USC 303; . . .

Abstract: A joint sales agreement (JSA) is an agreement with a licensee of a brokered station that authorizes a broker to sell some or all of the advertising time for the brokered station in return for a fee or percentage of revenues paid to the licensee. The Commission has sought comment on whether TV JSAs should be attributed for purposes of determining compliance with the Commission's multiple ownership rules.

Timetable:

Action	Date	FR Cite
NPRM	08/26/04	69 FR 52464
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI55

504. SIGNIFICANTLY VIEWED OUT–OF–MARKET BROADCAST STATIONS (MB DOCKET NO. 05–49)

Legal Authority: 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 340

Abstract: Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 creates section 340 of the Communications Act, which provides satellite carries with the authority to offer Commission determined ''significantly viewed'' signals of out-of-market broadcast stations to subscribers. In the NPRM, comment was sought on implementation of section 340. The resulting Report and Order adopted a list of significantly viewed stations and procedures for stations to petition the Commission for inclusion on the list.

Timetable:

Action	Date	FR Cite
NPRM	03/08/05	70 FR 11314
R&O	12/27/05	70 FR 76504
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI56

505. REVISION OF PROCEDURES GOVERNING AMENDMENTS TO FM TABLE OF ALLOTMENTS AND CHANGES OF COMMUNITY OF LICENSE IN THE RADIO BROADCAST SERVICES (MB DOCKET NO. 05–210)

Legal Authority: 47 USC 154; 47 USC 303

Abstract: The rulemaking was initiated to reduce backlog in, and streamline, the FM allotment procedures and, to a lesser extent, streamline certain procedures pertaining to AM applications. Although the Commission has made important changes to streamline the processing of radio broadcast applications, the basic procedures for amending the Table have not changed since 1982. The Notice seeks comment on a number of specific rule and procedural changes in the handling of FM and AM applications and rulemaking petitions to amend the Table. In the area of applications procedures, the Notice seeks comments on various proposals designed to encourage only bona fide proponents to submit petitions and to limit the complexity of such petitions. If these changes are adopted, it will expedite the approval and implementation on new and upgraded radio service to the public. The Report and Order adopted the proposals from the notice. Petitions for reconsideration are pending.

Timetable:

Action	Date	FR Cite
NPRM	06/22/05	70 FR 44537
NPRM Comment Period End	10/03/05	
R&O	12/20/06	71 FR 76208
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI63

506. DIGITAL TELEVISION DISTRIBUTED TRANSMISSION SYSTEM TECHNOLOGIES (MB DOCKET NO. 05–312)

Legal Authority: 47 USC 151; 47 USC 154(i) to (j); 47 USC 157; 47 USC 301; . . .

Abstract: A digital television transmission system (DTS) employs multiple synchronized transmitters spread around a station's service area. Such distributed transmitters fill in unserved areas in the parent station's coverage area. The Notice of Proposed Rulemaking (NPRM) examines issues related to the use of DTS and proposes rules for future DTS operation. The Report and Order adopts the technical and licensing rules necessary to implement DTS service.

Timetable:

Action	Date	FR Cite
NPRM	12/07/05	70 FR 72763
R&O	12/05/08	73 FR 74047
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI68

507. IMPLEMENTATION OF THE CABLE COMMUNICATIONS POLICY ACT OF 1984 AS AMENDED BY THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992 (MB DOCKET NO. 05–311)

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 541(a)(1); 47 USC 556(c)

Abstract: Section 621(a)(1) of the Communications Act of 1934, as amended, states in relevant part that ''a franchising authority . . .may not unreasonably refuse to award an additional competitive franchise.'' The Notice of Proposed Rulemaking (NPRM) solicits comment on implementation of section 621(a)(1)'s directive, and whether the franchising process unreasonably impedes the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment and, if so, how the Commission should act to address that problem.

The subsequent Report and Order found that certain actions by local franchising authorities constitute an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1). The item included a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on how the findings should affect existing franchises.

In the Second Report and Order, a number of the rules promulgated in this docket are extended to incumbent cable operators.

Timetable:

Action	Date	FR Cite
NPRM	12/19/05	70 FR 73973
R&O and FNPRM	03/21/07	72 FR 13230
Second R&O	11/23/07	72 FR 65670
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI69

508. PROGRAM ACCESS RULES—SUNSET OF EXCLUSIVE CONTRACTS PROHIBITION AND EXAMINATION OF PROGRAMMING TYING ARRANGEMENTS; (MB DOCKET NOS. 07–29, 07–198)

Legal Authority: 47 USC 548

Abstract: The program access provisions of the Communications Act (section 628) generally prohibit exclusive contracts for satellite delivered programming between programmers in which a cable operator has an attributable interest (vertically integrated programmers) and cable operators. This limitation was set to expire on October 5, 2007, unless circumstances in the video programming marketplace indicate that an extension of the prohibition continues ''to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' The proceeding undertakes the required review. The Report and Order concluded the prohibition continues to be necessary, and accordingly, retained it until October 5, 2012. The accompanying Notice of Proposed Rulemaking (NPRM) sought comment on revisions to the Commission's program access and retransmission consent rules.

Timetable:

Action	Date	FR Cite
NPRM	03/01/07	72 FR 9289
R&O	10/04/07	72 FR 56645
NPRM	10/31/07	72 FR 61590
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI87

509. THIRD PERIODIC REVIEW OF THE COMMISSION'S RULES AND POLICIES AFFECTING THE CONVERSION TO DIGITAL TELEVISION (MB DOCKET NO. 07–91)

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 301 to 303; 47 USC 307 to 309; 47 USC 312; 47 USC 316; 47 USC 318 and 319; 47 USC 324 and 325; 47 USC 336 and 337

Abstract: Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. This proceeding is the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television (DTV). The Commission conducts these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In this review, the Commission considers how to ensure that broadcasters complete construction of their final post-transition (digital) facilities by the statutory deadline.

Timetable:

Action	Date	FR Cite
NPRM	07/09/07	72 FR 37310
R&O	01/30/08	73 FR 5634
Order on Clarification	07/10/08	73 FR 39623
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI89

510. DTV CONSUMER EDUCATION INITIATIVE (MB DOCKET NO. 07–148)

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 335 and 336

Abstract: Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. From the beginning of the digital transition, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrums available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer understanding of the benefits and the mechanics of the transition. While the Commission has been engaged in various DTV outreach efforts, this proceeding was initiated to seek public comment on whether there are additional steps relating to consumer education about the digital transition which the Commission should take.

The Report and Order found a clear and compelling need for educational efforts directed at consumers. Requirements were imposed on several participants in the DTV transition to provide information about the transition to consumers.

Timetable:

Action	Date	FR Cite
NPRM	08/16/07	72 FR 46014
R&O	03/24/08	73 FR 15431
FNPRM	05/28/08	73 FR 30591
Order	06/26/08	73 FR 36282
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI96

511. BROADCAST LOCALISM (MB DOCKET NO. 04–233)

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 532; 47 USC 536

Abstract: The concept of localism has been a cornerstone of broadcast regulation. The Commission has consistently held that as temporary trustee of the public's airwaves, broadcasters are obligated to operate their stations to serve the public interest. Specifically, broadcasters are required to air programming responsive to the needs and issues of the people in their licensed communities. The Commission opened this proceeding to seek input on a number of issues related to broadcast localism.

Timetable:

Action	Date	FR Cite
NPRM	02/13/08	73 FR 8255

Action	Date	FR Cite
NPRM Comment Period End	03/14/08	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ04

512. CREATING A LOW POWER RADIO SERVICE (MM DOCKET NO. 99–25)

Legal Authority: 47 USC 151 to 152; 47 USC 154(i); 47 USC 303; 47 USC 403; 47 USC 405

Abstract: This proceeding was initiated to establish a new noncommercial educational low power FM radio service for non-profit community organizations and public safety entities. In January 2000, the Commission adopted a Report and Order establishing two classes of LPFM stations, 100 watt (LP100) and 10 watt (LP10) facilities, with service radii of approximately 3.5 miles and 1-2 miles, respectively. The Report and Order also established ownership and eligibility rules for the LPFM service. The Commission generally restricted ownership to entities with no attributable interest in any other broadcast station or other media. To choose among entities filing mutually exclusive applications for LPFM licenses, the Commission established a point system favoring local ownership and locally-originated programming. The Report and Order imposed separation requirements for LPFM with respect to full power stations operating on co-, first- and second-adjacent and intermediate frequency (IF) channels. In December 2000, legislation was enacted that required the Commission to modify its rules to (i) prescribe LPFM station third-adjacent channel interference protection standards and (ii) prohibit any applicant from obtaining an LPFM station license if the applicant previously has engaged in the unlicensed operation of a station. In March 2001, the Commission adopted a Second Report and Order implementing this statute. In a Further Notice issued in 2005, the Commission reexamined some of its rules governing the LPFM service, noting that the rules may adjustment in order to ensure that the Commission maximizes the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. The Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility.

The Third Report and Order resolves issues raised in the Further Notice. The accompanying Second Further Notice of Proposed Rulemaking (FNPRM) considers rule changes to avoid the potential loss of LPFM stations.

Timetable:

Action	Date	FR Cite
NPRM	12/16/99	64 FR 2577
R&O	02/15/00	65 FR 7616
MO&O and Order on Recon	11/09/00	65 FR 67289
Second R&O	05/10/01	66 FR 23861
Second Order on Recon and FNPRM	07/07/05	70 FR 3918
Third R&O and Second FNPRM	01/17/08	73 FR 3202

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ07

513. SPONSORSHIP IDENTIFICATION RULES AND EMBEDDED ADVERTISING (MB DOCKET NO. 08–90)

Legal Authority: 47 USC 154(i) and (j); 47 USC 303(r); 47 USC 303(a); 47 USC 317; 47 USC 405; 47 USC 508

Abstract: The Commission undertook this proceeding to seek comment on the relationship between the Commission's sponsorship identification rules and the increasing reliance on industry by embedded advertising techniques. Due to recent technological changes that allow consumers to more easily bypass traditional commercial content, content providers may be turning to more subtle and sophisticated means of incorporating commercial messages into programming. The NPRM will seek to determine how embedded advertising affects the efficacy of the sponsorship identification rules in protecting the public's right to know who is paying to air commercials or other programming matter on broadcast outlets and cable television systems.

Timetable:

Action	Date	FR Cite
NPRM and NOI	07/24/08	73 FR 43194
NPRM Comment Period End	09/22/08	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ10

514. ● AN INQUIRY INTO THE COMMISSION'S POLICIES AND RULES REGARDING AM RADIO SERVICE DIRECTIONAL ANTENNA PERFORMANCE VERIFICATION (MM DOCKET NO. 93–177)

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 308

Abstract: This proceeding is part of a streamlining initiative to simplify the Media Bureau's licensing procedures. The Report and Order in this proceeding simplified traditional proof of performance requirements for directional AM stations. The Second Report and Order further reduces regulatory burdens on AM broadcasters by permitting the use of computer modeling.

Timetable:

Action	Date	FR Cite
NPRM	07/27/99	64 FR 40539
R&O	04/25/01	66 FR 20752
FNPRM	04/25/01	66 FR 20779
2nd R&O	10/30/08	73 FR 64558
2nd FNPRM	12/11/08	73 FR 75376

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ17

FCC—Media Bureau **Long-Term Actions**

515. • AMENDMENT OF PARTS 73 AND 74 OF THE COMMISSION'S RULES TO ESTABLISH RULES FOR REPLACEMENT DIGITAL LOW POWER TELEVISION TRANSLATOR STATIONS; MB DOCKET NO. 08–253

Legal Authority: 47 USC 151; 47 USC 154(i) and (j); 47 USC 157; 47 USC 301; 47 USC 302(a); 47 USC 303; 47 USC 307 to 309; 47 USC 312; 47 USC 316; 47 USC 318 and 319; 47 USC 324 and 325; 47 USC 336 and 337

Abstract: This proceeding was initiated to create a new digital television translator service to permit full-service television stations to continue to provide digital service to viewers within their coverage areas who have lost service as a result of the stations' digital transition.

Timetable:

Action	Date	FR Cite
NPRM	01/20/09	74 FR 61
R&O	06/02/09	74 FR 26300
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ18

516. • POLICIES TO PROMOTE RURAL RADIO SERVICE AND TO STREAMLINE ALLOTMENT AND ASSIGNMENT PROCEDURES; MB DOCKET NO. 09–52

Legal Authority: 47 USC 151 and 152; 47 USC 154(i); 47 USC 303; 47 USC 307 and 309(j)

Abstract: This proceeding was commenced to consider a number of changes to the Commission's rules and procedures to carry out the statutory goal of distributing radio service fairly and equitably, and to increase the transparency and efficiency of radio broadcast auction and licensing processes. In the NPRM, comment is sought on specific proposals regarding the procedures used to award commercial broadcast spectrum in the AM and FM broadcast bands.

Timetable:

Action	Date	FR Cite
NPRM	05/13/09	74 FR 22498
NPRM Comment Period End	07/10/09	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ23

517. • PROMOTING DIVERSIFICATION OF OWNERSHIP IN THE BROADCAST SERVICES (MB DOCKET NO. 07–294)

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154 i and (j); 47 USC 257; 47 USC 303(r); 47 USC 307 to 310; 47 USC 336; 47 USC 534 to 535

Abstract: Diversity and competition are longstanding and important Commission goals. The measures proposed, as well as those adopted in this proceeding, are intended to promote diversity of ownership of media outlets. In the Report and Order and 3rd FNPRM, measures are enacted to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. In the Report and Order and 4th FNPRM, the Commission adopts improvements to its data collection in order to obtain an accurate and comprehensive assessment of minority and female broadcast ownership in the United States.

Timetable:

Action	Date	FR Cite
R&O	05/16/08	73 FR 28361
3rd FNPRM	05/16/08	73 FR 28400
R&O	05/27/09	74 FR 25163
4th FNPRM	05/27/09	74 FR 25305
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ27

Federal Communications Commission (FCC) **Long-Term Actions**
Office of Managing Director

518. ASSESSMENT AND COLLECTION OF REGULATORY FEES

Legal Authority: 47 USC 159

Abstract: Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

Timetable:

Action	Date	FR Cite
NPRM	04/06/06	71 FR 17410
R&O	08/02/06	71 FR 43842
NPRM	05/02/07	72 FR 24213
R&O	08/16/07	72 FR 45908
FNPRM	08/16/07	72 FR 46010
NPRM	05/28/08	73 FR 30563
R&O	08/26/08	73 FR 50201
FNPRM	08/26/08	73 FR 50285
2nd R&O	05/12/09	74 FR 22104
NPRM and Order	06/02/09	74 FR 26329
R&O	08/11/09	74 FR 40089
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI79

Federal Communications Commission (FCC)

Public Safety and Homeland Security Bureau

Long-Term Actions

519. REVISION OF THE RULES TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS

Legal Authority: 47 USC 134(i); 47 USC 151; 47 USC 201; 47 USC 208; 47 USC 215; 47 USC 303; 47 USC 309

Abstract: In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of 911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services.

Timetable:

Action	Date	FR Cite
FNPRM	08/02/96	61 FR 40374
R&O	08/02/96	61 FR 40348
MO&O	01/16/98	63 FR 2631
Second R&O	06/28/99	64 FR 34564
Third R&O	11/04/99	64 FR 60126
Second MO&O	12/29/99	64 FR 72951
Fourth R&O, Third NPRM, and NPRM	09/19/00	65 FR 56752
Fourth MO&O	10/02/00	65 FR 58657
FNPRM	06/13/01	66 FR 31878
Order	11/02/01	66 FR 55618
R&O	05/23/02	67 FR 36112
Public Notice	07/17/02	67 FR 46909
Order to Stay	07/26/02	
Order on Recon	01/22/03	68 FR 2914
FNPRM	01/23/03	68 FR 3214
Second R&O, Second FNPRM	02/11/04	69 FR 6578
Second R&O	09/07/04	69 FR 54037
NPRM	06/20/07	72 FR 33948
NPRM Comment Period End	08/20/07	
Order on Recon	10/11/07	72 FR 57879
R&O	02/14/08	73 FR 8617

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG34

520. ENHANCED 911 SERVICES FOR WIRELINE

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201; 47 USC 222; 47 USC 251

Abstract: The rules generally will assist State governments in drafting legislation that will ensure that multi-line telephone systems are compatible with the enhanced 911 network.

Timetable:

Action	Date	FR Cite
NPRM	10/11/94	59 FR 54878
FNPRM	01/23/03	68 FR 3214
Second FNPRM	02/11/04	69 FR 6595
R&O	02/11/04	69 FR 6578
Public Notice	01/13/05	70 FR 2405

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG60

521. IN THE MATTER OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Legal Authority: 47 USC 229; 47 USC 1001 to 1008

Abstract: All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

Timetable:

Action	Date	FR Cite
NPRM	10/10/97	62 FR 63302
Order	01/13/98	63 FR 1943
FNPRM	11/16/98	63 FR 63639
R&O	01/29/99	64 FR 51462
Order	03/29/99	64 FR 14834
Second R&O	09/23/99	64 FR 51462
Third R&O	09/24/99	64 FR 51710
Order on Recon	09/28/99	64 FR 52244
Policy Statement	10/12/99	64 FR 55164
Second Order on Recon	05/04/01	66 FR 22446
Order	10/05/01	66 FR 50841
Order on Remand	05/02/02	67 FR 21999
NPRM	09/23/04	69 FR 56976
First R&O	10/13/05	70 FR 59704
Second R&O	07/05/06	71 FR 38091

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG74

522. DEVELOPMENT OF OPERATIONAL, TECHNICAL, AND SPECTRUM REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS REQUIREMENTS

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 160; 47 USC 201 and 202; 47 USC 303; 47 USC 337(a); 47 USC 403

Abstract: This item takes steps toward developing a flexible regulatory framework to meet vital current and future public safety communications needs.

Timetable:

Action	Date	FR Cite
NPRM	10/09/97	62 FR 60199
Second NPRM	11/07/97	62 FR 60199
First R&O	11/02/98	63 FR 58645
Third NPRM	11/02/98	63 FR 58685
MO&O	11/04/99	64 FR 60123
Second R&O	08/08/00	65 FR 48393
Fourth NPRM	08/25/00	65 FR 51788
Second MO&O	09/05/00	65 FR 53641
Third MO&O	11/07/00	65 FR 66644
Third R&O	11/07/00	65 FR 66644
Fifth NPRM	02/16/01	66 FR 10660
Fourth R&O	02/16/01	66 FR 10632
MO&O	09/27/02	67 FR 61002
NPRM	11/08/02	67 FR 68079
R&O	12/13/02	67 FR 76697
NPRM	04/27/05	70 FR 21726
R&O	04/27/05	70 FR 21671
NPRM	04/07/06	71 FR 17786
NPRM	09/21/06	71 FR 55149
Ninth NPRM	01/10/07	72 FR 1201
Ninth NPRM Comment Period End	02/26/07	
R&O and FNPRM	05/02/07	72 FR 24238
R&O and FNPRM Comment Period End	05/23/07	
Second R&O	08/24/07	72 FR 48814
Second FNPRM	05/21/08	73 FR 29582
Third FNPRM	10/03/08	73 FR 57750

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG85

523. 1998 BIENNIAL REGULATORY REVIEW—REVIEW OF ACCOUNTS SETTLEMENT IN MARITIME MOBILE AND MARITIME MOBILE–SATELLITE RADIO SERVICES; (IB DOCKET NO. 98–96)

Legal Authority: 47 USC 154(i) and 154(j); 47 USC 201 to 205; 47 USC 303(r)

Abstract: The FCC seeks comment regarding Accounts Settlement in the Maritime Mobile and Maritime Mobile Satellite Service (MSS) Radio Services.

Timetable:

Action	Date	FR Cite
NPRM	07/24/98	63 FR 39800
FNPRM	07/28/99	64 FR 40808
R&O	07/28/99	64 FR 40774
Comment Period Extended	09/03/99	64 FR 48337

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH30

524. IMPLEMENTATION OF 911 ACT

Legal Authority: 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 157; 47 USC 160; 47 USC 202; 47 USC 208; 47 USC 210; 47 USC 214; 47 USC 251(e); 47 USC 301; 47 USC 303; 47 USC 308 to 309(j); 47 USC 310

Abstract: This proceeding is separate from the Commission's proceeding on Enhanced 911 Emergency Systems (E911) in that it is intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. More specifically, a chief goal of the proceeding is to ensure that all emergency calls are routed to the appropriate local emergency authority to provide assistance. The E911 proceeding goes a step further and is aimed at improving the effectiveness and reliability of wireless 911 dispatchers with additional information on wireless 911 calls.

Timetable:

Action	Date	FR Cite
Final Rule	01/25/02	67 FR 3621

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH90

525. COMMISSION RULES CONCERNING DISRUPTIONS TO COMMUNICATIONS

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 303(r)

Abstract: The Report and Order extended the Commission's disruption reporting requirements to communications providers who are not wireline carriers. The Commission also streamlined compliance with the reporting requirements through electronic filing with a ''fill in the blank'' template and by simplifying the application of that rule. In addition, the Commission delegates authority to the Chief, Office of Engineering and Technology, to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed. Such authority was subsequently delegated to the Chief of the Public Safety and Homeland Security Bureau. These actions will allow the Commission to obtain the necessary information regarding service disruptions in an efficient and expeditious manner and to achieve significant concomitant public interest benefits.

The Commission received nine petitions for reconsideration in this proceeding, which are pending.

The Further Notice of Proposed Rulemaking (NPRM) expands the record in the proceeding to focus specifically on the unique communications needs of airports, including wireless and satellite communications. In this regard, the Commission requested comment on the additional types of airport communications (e.g., wireless, satellite) that should be required to file service disruption reports—particularly from a homeland security and defense perspective. These types of airport communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. The Commission also requested comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

Timetable:

Action	Date	FR Cite
NPRM	03/26/04	69 FR 15761
FNPRM	11/26/04	69 FR 68859
R&O	12/03/04	69 FR 70316
Announcement of Effective Date and Partial Stay	12/30/04	69 FR 78338
Petition for Recon	02/15/05	70 FR 7737
Amendment of Delegated Authority	02/21/08	73 FR 9462

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI22

526. E911 REQUIREMENTS FOR IP–ENABLED SERVICE PROVIDERS

Legal Authority: 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 251(e); 47 USC 303(r)

Abstract: The notice seeks comment on what additional steps the Commission should take to ensure that providers of voice-over Internet protocol services that interconnect with the public switched telephone network provide ubiquitous and reliable enhanced 911 service.

Timetable:

Action	Date	FR Cite
NPRM	06/29/05	70 FR 37307
NPRM Comment Period End	09/12/05	
NPRM	06/20/07	72 FR 33948
NPRM Comment Period End	07/11/07	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI62

527. RECOMMENDATIONS OF THE INDEPENDENT PANEL REVIEWING THE IMPACT OF HURRICANE KATRINA ON COMMUNICATIONS NETWORKS

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 218; 47 USC 303(r)

Abstract: In the Notice of Proposed Rulemaking (NPRM)in EB Docket No. 06-119, the Commission initiated a comprehensive rulemaking to address and implement the recommendations presented by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Independent Panel). The Independent Panel's report included recommendations which relate to: (1) Pre-positioning the communications industry and the government for disasters in order to achieve greater network reliability and resiliency; (2) improving recovery coordination to address existing shortcomings and to maximize the use of existing resources; (3) improving the operability and interoperability of public safety and 911 communications in times of crisis; and (4) improving communication of emergency information to the public. The Commission, in this proceeding, is to take the lessons learned from this disaster and build upon them to promote more effective, efficient response and recovery efforts as well as heightened readiness and preparedness in the future. To accomplish this goal, the Commission invited comment on what actions the Commission can take to address the Independent Panel's recommendations.

In the Order released June 8, 2007 (EB Docket No. 06-119 and WC Docket No. 06-63), the Commission directed the Public Safety and Homeland Security Bureau to implement several of the recommendations made by the Independent Panel. The Commission also adopted rules requiring some communications providers to have emergency/backup power and requiring certain communications providers to conduct analyses and submit reports on the redundancy and resiliency of their 911 and E911 networks and/or systems. Finally, the Commission extended limited regulatory relief from Section 272 of the Communications Act of 1934, as amended, previously accorded by the Wireline Competition Bureau.

In an Order on Reconsideration released on October 4, 2007, the Commission considered six petitions for reconsideration and/or clarification of the June 2007 Order that adopted the backup power rule (section 12.2 of the Commission's rules). The Order on Reconsideration granted in part and denied in part the petitions. The Commission modified the backup power rule to address several meritorious issues raised by petitioners. This modification will facilitate carrier compliance and reduce the burden on local exchange carriers and commercial mobile radio service providers, while continuing to further important homeland security and public safety goals.

Timetable:

Action	Date	FR Cite
NPRM	07/07/06	71 FR 38564
Order	07/11/07	72 FR 37655
Delay of Effective Date of Rule	08/10/07	72 FR 44978
Petitions for Recon	08/20/07	72 FR 46485
Order on Recon	10/11/07	72 FR 57879
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI78

528. STOLEN VEHICLE RECOVERY SYSTEM (SVRS)

Legal Authority: 47 USC 151 and 152; 47 USC 154(i); 47 USC 301 to 303

Abstract: The Report and Order amends 47 CFR 90.20(e)(6) governing stolen vehicle recovery system operations at 173.075 MHz, by increasing the radiated power limit for narrowband base stations; increasing the power output limit for narrowband base stations; increasing the power output limit for narrowband mobile transceivers; modifying the base station duty cycle; increasing the tracking duty cycle for mobile transceivers; and retaining the requirement for TV channel 7 interference studies and that such studies must be served on TV channel 7 stations.

Timetable:

Action	Date	FR Cite
NPRM	08/23/06	71 FR 49401
NPRM Comment Period End	10/10/06	
R&O	10/14/08	73 FR 60631
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ01

529. THE COMMERCIAL MOBILE ALERT SYSTEM

Legal Authority: PL 109–347 title VI; EO 13407; 47 USC 151; 47 USC 154(i)

Abstract: In the Notice of Proposed Rulemaking (NPRM), the Commission initiated a comprehensive rulemaking

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to establish a commercial mobile alert system under which commercial mobile service providers may elect to transmit emergency alerts to the public.

Timetable:

Action	Date	FR Cite
NPRM	01/03/08	73 FR 545
NPRM Comment Period End	02/04/08	

Action	Date	FR Cite
First R&O	07/24/08	73 FR 43009
Second R&O	08/14/08	73 FR 47550
FNPRM	08/14/08	73 FR 47568
Third R&O	09/22/08	73 FR 54511

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ03

Federal Communications Commission (FCC) — Long-Term Actions
Wireless Telecommunications Bureau

530. IMPLEMENTATION OF THE COMMUNICATIONS ACT, AMENDMENT OF THE COMMISSION'S RULES—BROADBAND PCS COMPETITIVE BIDDING AND THE COMMERCIAL MOBILE RADIO SERVICE SPECTRUM CAP

Legal Authority: 47 USC 154(i); 47 USC 301 and 302; 47 USC 303(r); 47 USC 309(j); 47 USC 332

Abstract: NPRM to modify the competitive bidding rules for the Broadband PCS F Block. Report and Order, adopted June 21,1996, modified the PCS/cellular rule and the cellular spectrum cap.

Timetable:

Action	Date	FR Cite
O on Recon of Fifth MO&O and D, E, & F R&O	11/15/00	65 FR 68927
Final Rule	03/02/01	66 FR 13022
Final Rule	06/04/01	66 FR 29911
Third NPRM	08/27/04	69 FR 52632
Third NPRM Comment Period Extended	10/04/04	69 FR 59166

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG21

531. AMENDMENT OF PART 90 OF THE RULES TO ADOPT REGULATIONS FOR AUTOMATIC VEHICLE MONITORING SYSTEMS

Legal Authority: 47 USC 154; 47 USC 251 and 252; 47 USC 303; 47 USC 309; 47 USC 332

Abstract: This Second Report and Order adopts rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52078
NPRM Comment Period End	11/20/97	
Second R&O	07/30/98	63 FR 40659
NPRM	05/03/99	64 FR 23571

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH12

532. FIXED SATELLITE SERVICE AND TERRESTRIAL SYSTEM IN THE KU–BAND

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303

Abstract: The Memorandum Opinion and Order and 2nd Report and Order addressed petitions for reconsideration and established technical, service, and licensing rules for Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. MVDDS will facilitate the delivery of new communications services, such as video and broadband services, to a wide range of populations, including those that are unserved or underserved. These rules will allow MVDDS licensees to share the 12 GHz band with new operators on a com-primary basis, and non-harmful interference basis with incumbent Direct Broadcast Satellite service providers.

Timetable:

Action	Date	FR Cite
NPRM	01/12/99	64 FR 1786
Order	02/16/99	64 FR 7577
Public Notice	12/15/99	64 FR 70028
FNPRM	01/24/01	66 FR 7607
R&O	02/16/01	66 FR 10601
Petitions for Recon	04/09/01	66 FR 18474
Second R&O	06/26/02	67 FR 43031
Third R&O	06/18/03	68 FR 42610
Order To Deny	07/25/03	68 FR 43942
Final Rule	05/18/04	69 FR 28062
Final Rule	06/07/04	69 FR 28062
Correcting Amendment	10/04/04	69 FR 59145

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH17

533. SERVICE RULES FOR THE 746–764 AND 776–794 MHZ BANDS, AND REVISIONS TO THE COMMISSION'S RULES

Legal Authority: 47 USC 1; 47 USC 4(i); 47 USC 7; 47 USC 10; 47 USC 201 and 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 307 and 308; 47 USC 309(j) and 309(k); 47 USC 310 and 311; 47 USC 315; 47 USC 317; 47 USC 324; 47 USC 331 and 332; 47 USC 336

Abstract: The Report and Order in this proceeding adopts service rules for licensing and auction of commercial services in spectrum in the 700 MHz

band to be vacated by UHF television licensees.

Timetable:

Action	Date	FR Cite
NPRM	07/07/99	64 FR 36686
R&O	01/20/00	65 FR 3139
Second R&O	04/04/00	65 FR 17594
MO&O and FNPRM	07/12/00	65 FR 42879
Second MO&O	02/06/01	66 FR 9035
Third R&O	02/14/01	66 FR 10204
Second MO&O	02/15/01	66 FR 10374
Order on Recon of Third R&O	10/10/01	66 FR 51594
Third MO&O and Order	07/30/02	67 FR 49244
Second FNPRM	05/21/08	73 FR 29582
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH32

534. IMPLEMENTATION OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

Abstract: In the Fourth Memorandum Opinion and Order in WT Docket No. 99-87 (Fourth Memorandum Opinion and Order), the Federal Communications Commission (Commission or FCC) clarifies the Commission's Third Report and Order in this docket, and takes the opportunity to correct the inadvertent deletion of language in the rules regarding the schedule for Private Land Mobile Radio systems in the 150-174 MHz and 421-512 MHz bands to transition to narrowband kHz technology.

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23571
R&O	01/02/01	66 FR 33
MO&O	05/16/02	67 FR 34848
NPRM	07/17/03	68 FR 42337
R&O	07/17/03	68 FR 42296
Order	04/06/04	69 FR 17959
Final Rule	06/15/05	70 FR 34666
NPRM	06/15/05	70 FR 34726
Final Rule	05/11/05	70 FR 24712
Final Rule	07/15/05	70 FR 41631
Final Rule	04/18/07	72 FR 19387
Fourth MO&O	06/17/08	73 FR 34201
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH33

535. AMENDMENT OF PARTS 13 AND 80 OF THE COMMISSION'S RULES GOVERNING MARITIME COMMUNICATIONS

Legal Authority: 47 USC 302 to 303

Abstract: This matter concerns the amendment of the rules governing maritime communications in order to consolidate, revise and streamline the regulations as well as address new international requirements and improve the operational ability of all users of marine radios.

Timetable:

Action	Date	FR Cite
NPRM	03/24/00	65 FR 21694
NPRM	08/17/00	65 FR 50173
NPRM	05/17/02	67 FR 35086
Report & Order	08/07/03	68 FR 46957
Second R&O, Sixth R&O, Second FNPRM	04/06/04	69 FR 18007
Comments Due	06/07/04	
Reply Comments Due	07/06/04	
Second R&O and Sixth R&O	11/08/04	69 FR 64664
NPRM	11/08/06	71 FR 65447
Final Action	01/25/08	73 FR 4475
Petition for Reconsideration	03/18/08	73 FR 14486
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH55

536. COMPETITIVE BIDDING PROCEDURES

Legal Authority: 47 USC 154; 47 USC 301 to 303; 47 USC 309; 47 USC 332

Abstract: This proceeding proposes resumption of installment payments for broadband Personal Communications Services (PCS), for example, for C and F Block, with payment deadline to be reinstated as of March 31, 1998. The proposal contemplates, inter alia, changes to the FCC's C Block rules to govern re-auction of surrendered spectrum in the C Block. The proposal was released on October 16, 1997, and published in the Federal Register.

Timetable:

Action	Date	FR Cite
Second R&O	10/24/97	62 FR 55348
FNPRM	10/24/97	62 FR 55375
Order on Recon of Second R&O	04/08/98	63 FR 17111
Fourth R&O	09/23/98	63 FR 50791
Second Order on Recon of Second R&O	05/18/99	64 FR 26887
Recon of Fourth R&O	03/16/00	65 FR 14213
FNPRM	06/13/00	65 FR 37092
Sixth R&O and Order on Recon	09/05/00	65 FR 53620
Order on Recon	02/12/01	66 FR 9773
Seventh R&O	10/29/01	66 FR 54447
Eighth R&O	04/08/02	67 FR 16647
Final Rule	07/21/03	68 FR 42984
Final Rule	10/07/03	68 FR 57828
Final Rule	09/30/05	70 FR 57183
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH57

537. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

Abstract: The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits.

Timetable:

Action	Date	FR Cite
NPRM	02/12/01	66 FR 9798
NPRM Comment Period End	05/14/01	
Final Rule	01/14/02	67 FR 1626
Correction to Final Rule	01/31/02	67 FR 4675
Petition for Recon	03/21/02	67 FR 13183

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH81

538. IN THE MATTER OF PROMOTING EFFICIENT USE OF SPECTRUM THROUGH ELIMINATION OF BARRIERS TO THE DEVELOPMENT OF SECONDARY MARKETS

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201 and 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 308 to 310

Abstract: The Commission has opened a proceeding to examine actions it may take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81475
NPRM Comment Period End	01/29/01	66 FR 8149
New NPRM Comment Period End	02/09/01	
NPRM	11/25/03	68 FR 66232
Final Rule	11/25/03	68 FR 66252
NPRM Comment Period End	01/05/04	
Final Rule	02/12/04	69 FR 6920
Final Rule	02/25/04	69 FR 8569
Final Rule	11/15/04	69 FR 65544
Final Rule	12/27/04	69 FR 77522
NPRM	12/27/04	69 FR 77560
Final Rule	08/01/07	72 FR 41935
Final Action	01/26/09	74 FR 4344

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH82

539. REEXAMINATION OF ROAMING OBLIGATIONS OF COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

Legal Authority: 47 USC 151; 47 USC 152(n); 47 USC 154(i) and 154(j); 47 USC 201(b); 47 USC 251(a); 47 USC 253; 47 USC 303(r); 47 USC 332(c)(1)(B); 47 USC 309

Abstract: This rulemaking considers whether the Commission should adopt an automatic roaming rule for Commercial Mobile Radio Services and sunset the current manual roaming requirement.

Timetable:

Action	Date	FR Cite
NPRM	11/21/00	65 FR 69891
NPRM	09/28/05	70 FR 56612
NPRM	01/19/06	71 FR 3029
FNPRM	08/30/07	72 FR 50085
Final Rule	08/30/07	72 FR 50064

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH83

540. YEAR 2000 BIENNIAL REVIEW (WT DOCKET NO. 01–108)

Legal Authority: Not Yet Determined

Abstract: The year 2000 part 22 Biennial Review Report and Order and subsequent Order on Reconsideration examined whether certain rules should be modified or eliminated as a result of technological changes or increased competition.

Timetable:

Action	Date	FR Cite
Final Rule	04/01/04	69 FR 17063
Final Rule Effective	06/01/04	
Final Rule	09/15/04	69 FR 55516

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI26

541. AIR–GROUND TELECOMMUNICATIONS SERVICES

Legal Authority: 47 USC 151 and 151(i); 47 USC 161; 47 USC 303(r)

Abstract: Re-examination of rules governing air-ground telecommunications services on commercial airplanes. Revision/elimination of 47 CFR 22 non-cellular provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/25/03	68 FR 44003
NPRM Comment Period End	10/23/03	
Final Rule	04/13/05	70 FR 19293
NPRM	04/13/05	70 FR 19377
Final Rule Correction	04/27/05	70 FR 21663
Final Rule	12/27/05	70 FR 76411

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI27

542. AMENDMENTS OF VARIOUS RULES AFFECTING WIRELESS RADIO SERVICES (WT DOCKET NO. 03–264)

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(r)

Abstract: This rulemaking proposes to streamline and harmonize wireless radio service rules.

Timetable:

Action	Date	FR Cite
NPRM	02/23/04	69 FR 8132
NPRM Comment Period End	05/24/04	
NPRM	10/19/05	70 FR 60770
Final Rule	10/20/05	70 FR 61049
Proposed Rule	05/02/07	72 FR 24238
Final Rule	05/16/07	72 FR 27688
Final Rule	08/24/07	72 FR 48814
Final Rule	05/02/08	73 FR 24180
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI30

543. FACILITATING THE PROVISION OF SPECTRUM–BASED SERVICES TO RURAL AREAS

Legal Authority: Not Yet Determined

Abstract: This rulemaking will facilitate the provision of spectrum-based services to rural areas.

Timetable:

Action	Date	FR Cite
NPRM	11/12/03	68 FR 64050
NPRM Comment Period End	01/26/04	
NPRM	12/15/04	69 FR 75174
Final Rule	12/15/04	69 FR 75144
Final Rule	04/27/05	70 FR 21652
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI31

544. IMPROVING PUBLIC SAFETY COMMUNICATIONS IN THE 800 MHZ BAND INDUSTRIAL/LAND TRANSPORTATION AND BUSINESS CHANNELS

Legal Authority: 47 USC 154(i); 47 USC 303(f); 47 USC 303(r); 47 USC 332

Abstract: The Commission seeks to improve public safety communications in the 800 MHz band and consolidate the 800 MHz Industrial/Land Transportation and Business Pool channels.

Timetable:

Action	Date	FR Cite
NPRM	04/05/02	67 FR 16351
Final Rule	08/19/02	67 FR 53754
Proposed Rule	02/10/03	68 FR 6687
Final Rule	11/22/04	69 FR 67823
Final Rule	11/22/04	69 FR 67853
Final Rule	02/08/05	70 FR 6750
Final Rule	02/08/05	70 FR 6761
Final Rule	04/06/05	70 FR 17327
Notice	06/15/05	70 FR 34764
Final Rule	09/28/05	70 FR 56583
Notice	10/26/05	70 FR 61823
Final Rule	12/28/05	70 FR 76704
Proposed Rule	09/21/06	71 FR 55149
Clarification	06/20/07	72 FR 33914
Final Rule	07/20/07	72 FR 39756
Final Rule; Correction	09/28/07	72 FR 54847
Notice	09/28/07	72 FR 55208
Final Rule; Clarification	10/05/07	72 FR 56923
Petition for Recon	10/01/07	72 FR 557722
Proposed Rule	11/13/07	72 FR 63869
Petition for Recon	11/14/07	72 FR 65734
Proposed Rule	03/31/08	73 FR 16822
Final Rule	06/13/08	73 FR 33728
Proposed Rule	07/13/08	73 FR 40274
Petition for Recon	07/28/08	73 FR 4375
Final Rule	11/17/08	73 FR 67794
Final Rule	02/06/09	74 FR 6235
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI34

545. REVIEW OF PART 87 OF THE COMMISSION'S RULES CONCERNING AVIATION (WT DOCKET NO. 01–289)

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 307(e)

Abstract: This proceeding is intended to streamline, consolidate and revise our part 87 rules governing the Aviation Radio Service. The rule changes are designed to ensure these rules reflect current technological advances.

Timetable:

Action	Date	FR Cite
NPRM	10/16/01	66 FR 64785
R&O and FNPRM	10/16/03	
FNPRM	04/12/04	69 FR 19140
R&O	06/14/04	69 FR 32577
NPRM	12/06/06	71 FR 70710
Final Rule	12/06/06	71 FR 70671
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI35

546. IMPLEMENTATION OF THE COMMERCIAL SPECTRUM ENHANCEMENT ACT (CSEA) AND MODERNIZATION OF THE COMMISSION'S COMPETITIVE BIDDING RULES AND PROCEDURES (WT DOCKET NO. 05–211)

Legal Authority: 15 USC 79; 47 USC 151; 47 USC 154(i) and (j); 47 USC 155; 47 USC 155(c); 47 USC 157; 47 USC 225; 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 309(j); 47 USC 325(e); 47 USC 334; 47 USC 336; 47 USC 339; 47 USC 554

Abstract: This proceeding implements rules and procedures needed to comply with the recently enacted Commercial Spectrum Enhancement Act (CSEA). It establishes a mechanism for reimbursing federal agencies out of spectrum auction proceeds for the cost of relocating their operations from certain ''eligible frequencies'' that have been reallocated from Federal to non-Federal use. It also seeks to improve the Commission's ability to achieve Congress's directives with regard to designated entities and to ensure that, in accordance with the intent of Congress, every recipient of its designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

Timetable:

Action	Date	FR Cite
NPRM	06/14/05	70 FR 43372
Declaratory Ruling	06/14/05	70 FR 43322
R&O	01/24/06	71 FR 6214
FNPRM	02/03/06	71 FR 6992

Action	Date	FR Cite
Second R&O	04/25/06	71 FR 26245
Order on Recon of Second R&O	06/02/06	71 FR 34272
NPRM	06/21/06	71 FR 35594
Comment Period End	09/20/06	
Reply Comment Period End	10/20/06	
2nd Order and Recon of 2nd R&O	04/04/08	73 FR 18528
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI88

547. FACILITATING THE PROVISION OF FIXED AND MOBILE BROADBAND ACCESS EDUCATIONAL AND OTHER ADVANCED SERVICES IN THE 2150–2162 AND 2500–2690 MHZ BANDS; REVIEWING OF THE SPECTRUM SHARING PLAN AMONG NON–GEOST

Legal Authority: 47 USC 154; 47 USC 301 to 303; 47 USC 307; 47 USC 309; 47 USC 332; 47 USC 336 and 337

Abstract: The Commission seeks comment on whether to assign Educational Broadband Service (EBS) spectrum in the Gulf of Mexico. It also seeks comment on how to license unassigned and available EBS spectrum. Specifically, we seek comment on whether it would be in the public interest to develop a scheme for licensing unassigned EBS spectrum that avoids mutual exclusivity; we ask whether EBS eligible entities could participate fully in a spectrum auction; we seek comment on the use of small business size standards and bidding credits for EBS if we adopt a licensing scheme that could result in mutually exclusive applications; we seek comment on the proper market size and size of spectrum blocks for new EBS licenses; and we seek comment on issuing one license to a State agency designated by the Governor to be the spectrum manager, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. The Commission must develop a new licensing scheme for EBS in order to achieve the Commission's goal of facilitating the development of new and innovative wireless services for the benefit of students throughout the nation.

Timetable:

Action	Date	FR Cite
NPRM	04/02/03	68 FR 34560
FNPRM	07/29/04	69 FR 72048
R&O	07/29/04	69 FR 72020
MO&O	04/27/06	71 FR 35178
Further NPRM	03/20/08	73 FR 26067
MO&O	03/20/08	73 FR 26032
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ12

548. AMENDMENT OF THE RULES REGARDING MARITIME AUTOMATIC IDENTIFICATION SYSTEMS; WT DOCKET NO. 04–344

Legal Authority: 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 306; 47 USC 307(e); 47 USC 332; 47 USC 154(i); 47 USC 161

Abstract: This action adopts additional measures for domestic implementation of Automatic Identification Systems (AIS), an advanced marine vessel tracking and navigation technology that can significantly enhance our nation's homeland security as well as maritime safety.

Timetable:

Action	Date	FR Cite
Final Rule	01/29/09	74 FR 5117
Final Rule Effective	03/02/09	
Petition for Recon	04/03/09	74 FR 15271
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ16

549. SERVICE RULES FOR ADVANCED WIRELESS SERVICES IN THE 2155–2175 MHZ BAND

Legal Authority: 47 USC 151 and 152; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 214; 47 USC 301

Abstract: This proceeding explores the possible uses of the 2155-2175 MHz frequency band (AWS-3) to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS-3 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly utilized to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services. We proposed to apply our flexible, market-oriented rules to the band in order to meet this objective.

Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed AWS-3 rules, which include adding 5 megahertz of spectrum (2175-80 MHz) to the AWS-3 band, and requiring licensees of that spectrum to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

Timetable:

Action	Date	FR Cite
NPRM	11/14/07	72 FR 64013
NPRM Comment Period End	01/14/08	
FNPRM	06/25/08	73 FR 35995
FNPRM Comment Period End	08/11/08	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ19

550. SERVICE RULES FOR ADVANCED WIRELESS SERVICES IN THE 1915–1920 MHZ, 1995–2000 MHZ, 2020–2025 MHZ, AND 2175–2180 MHZ BANDS

Legal Authority: 47 USC 151 and 152; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 214; 47 USC 301; . . .

Abstract: This proceeding explores the possible uses of the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands (collectively AWS-2) to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS-2 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly utilized to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services.

Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed rules for the 1915-1920 MHz and 1995-2000 MHz bands. In addition, the Commission proposed to add 5 megahertz of spectrum (2175-80 MHz band) to the 2155-2175 MHz band, and would require the licensee of the 2155-2180 MHz band to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

Timetable:

Action	Date	FR Cite
NPRM	11/02/04	69 FR 63489
NPRM Comment Period End	01/24/05	
FNPRM	06/25/08	73 FR 35995
FNPRM Comment Period End	08/11/08	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ20

551. RULES AUTHORIZING THE OPERATION OF LOW POWER AUXILIARY STATIONS IN THE 698–806 MHZ BAND, WT DOCKET NO. 08–166; PUBLIC INTEREST SPECTRUM COALITION, PETITION FOR RULEMAKING REGARDING LOW POWER AUXILIARY

Legal Authority: 47 USC 151 and 152; 47 USC 154(i) and 154(j); 47 USC 301 and 302(a); 47 USC 303; 47 USC 303(r); 47 USC 304; 47 USC 307 to 309; 47 USC 316; 47 USC 332; 47 USC 336 and 337

Abstract: In the Notice of Proposed Rulemaking and Order, to facilitate the DTV transition the Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in its informal complaint and petition for rulemaking.

The Commission also imposes a freeze on the filing of new license applications that seek to operate on any 700 MHz Band frequencies (698- 806 MHz) after the end of the DTV transition, February 17, 2009 as well as on granting any request for equipment authorization of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. The Commission also holds in abeyance, until the conclusion of this proceeding, any pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the DTV transition.

Timetable:

Action	Date	FR Cite
NPRM	09/03/08	73 FR 51406
NPRM Comment Period End	10/20/08	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ21

552. AMENDMENT OF THE COMMISSION'S RULES TO IMPROVE PUBLIC SAFETY COMMUNICATIONS IN THE 800 MHZ BAND, AND TO CONSOLIDATE THE 800 MHZ AND 900 MHZ BUSINESS AND INDUSTRIAL/LAND TRANSPORTATION POOL CHANNELS

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 309; 47 USC 332

Abstract: This action adopts rules which retains the current site-based licensing paradigm for the 900 MHz B/ILT ''white space,'' adopts interference protection rules applicable to all licensees operating in the 900 MHz B/ILT spectrum; and lifts, on a rolling basis, the freeze placed on applications for new 900 MHz B/ILT licenses in September 2004, the lift being tied to the completion of rebanding in each 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region.

Timetable:

Action	Date	FR Cite
NPRM	03/18/05	70 FR 13143

FCC—Wireless Telecommunications Bureau **Long-Term Actions**

Action	Date	FR Cite
NPRM Comment Period End	06/12/05	70 FR 23080
Final Rule	12/16/08	73 FR 67794

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ22

553. • AMENDMENT OF PART 101 TO ACCOMMODATE 30 MHZ CHANNELS IN THE 6525–6875 MHZ BAND AND PROVIDE CONDITIONAL AUTHORIZATION ON CHANNELS IN THE 21.8–22.0 AND 23.0–23.2 GHZ BAND; WT DOCKET NO. 04–114

Legal Authority: 47 USC 151 and 152; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 214; 47 USC 301 to 303; 47 USC 307 to 310; 47 USC 319; 47 USC 324; 47 USC 332 and 333

Abstract: The Commission seeks comments on modifying its rules to authorize channels with bandwidths of as much as 30 MHz in the 6525-6875 MHz band. We also propose to allow conditional authorization on additional channels in the 21.8-22.0 and 23.0-23.2 GHz bands.

Timetable:

Action	Date	FR Cite
NPRM	06/29/09	74 FR 36134
NPRM Comment Period End	07/22/09	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AJ28

Federal Communications Commission (FCC) **Completed Actions**
Wireless Telecommunications Bureau

554. AMENDMENT OF THE COMMISSION'S RULES CONCERNING MARITIME COMMUNICATIONS

Legal Authority: 47 USC 154; 47 USC 303

Abstract: This amendment of the Maritime Radio Service Rules is to encourage growth and improve the regulatory structure in VHF maritime communications.

Timetable:

Action	Date	FR Cite
NOI/NPRM	11/05/92	57 FR 57717
FNPRM	04/26/95	60 FR 35507
First R&O	04/26/95	60 FR 34198
Second FNPRM	06/17/97	62 FR 37533
Second R&O	06/17/97	62 FR 40281
Third R&O and MO&O	07/06/98	63 FR 40059
MO&O	04/26/99	64 FR 26885
Third NPRM	12/08/00	65 FR 76966
Fourth R&O	12/13/00	65 FR 77821
Fourth NPRM	02/04/02	67 FR 5080
Second MO&O and Fifth R&O	07/25/02	67 FR 48560
R&O	08/13/03	68 FR 48446
MO&O	04/15/04	69 FR 19947
Correcting Amendment	07/26/04	69 FR 44471
Second R&O and Sixth R&O	11/08/04	69 FR 64664
Final Rule	10/12/06	71 FR 60075
MO&O, 3rd R&O, 3rd FNPRM	11/08/06	71 FR 65447
Final Rule	01/25/08	73 FR 4475

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AF14

555. 39 GHZ CHANNEL PLAN

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 524

Abstract: This proceeding amends the FCC's rules to facilitate more effective use of the 39 GHz band.

Timetable:

Action	Date	FR Cite
NPRM	01/26/96	61 FR 2465
Order	02/22/96	61 FR 6809
Order	05/01/96	61 FR 19236
Second NPRM	01/21/98	63 FR 3075
R&O	02/06/98	63 FR 6079
MO&O	08/23/99	64 FR 45891
NPRM	12/20/99	64 FR 71088
R&O	01/02/01	66 FR 33
NPRM	12/21/01	66 FR 65866
R&O	03/04/02	67 FR 9610
R&O	12/03/02	67 FR 71861
R&O	08/13/03	68 FR 48446
R&O	08/13/03	68 FR 48446

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG16

556. AMENDMENT OF THE RULES TO LICENSE FIXED SERVICES AT 24 GHZ

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309(j)

Abstract: This rulemaking proposes licensing and service rules to govern the 24 GHz band generally.

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71088
R&O	08/05/00	65 FR 59350
Order	06/01/01	66 FR 29722
NPRM	12/21/01	66 FR 65866
Final Rule	07/27/04	69 FR 44608

Regulatory Flexibility Analysis Required: Yes

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FCC—Wireless Telecommunications Bureau **Completed Actions**

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RIN: 3060–AH41

Federal Communications Commission (FCC) **Long-Term Actions**

Wireline Competition Bureau

557. IMPLEMENTATION OF THE UNIVERSAL SERVICE PORTIONS OF THE 1996 TELECOMMUNICATIONS ACT

Legal Authority: 47 USC 151 et seq

Abstract: The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high-cost areas at rates that are reasonably comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services; and finally, that the Federal-State Joint Board and the Commission should determine those other principles that, consistent with the 1996 Act, are necessary to protect the public interest.

The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services; and finally, that the Federal-State Joint Board and the Commission should determine those other principles that, consistent with the 1996 Act, are necessary to protect the public interest.

On December 5, 2008, the Commission issued an Order granting the merger of two Rural Health Care (RHC) Pilot Program projects in Ohio: SOHCN and Holzer. SOHCN will assume responsibility for the projects.

On December 5, 2008, the Commission issued an Order granting a request from University of Mississippi Medical Center (UMC) and As one Together for Health (ATH), participants in the RHC Pilot Program, to merge and designate UMC as ATH's successor.

On December 10, 2008, the Commission issued an Order granting proposals to modify the formulas used to calculate universal service high-cost loop support and local switching support for average schedule companies. The high-cost loop and local switching support formulas were proposed by the National Exchange Carrier Association (NECA) and the Universal Service Administrative Company (USAC), respectively. The Commission's rules require that these formulas simulate the disbursements that would be received by a company that is representative of average schedule companies. The Commision found that the formulas proposed for 2009 are consistent with the methods approved in previous years

On December 15, 2008, the Commission issued an Order dismissing as moot ten requests for waiver of actions taken by the USAC. Several Petitioners requested that the Commission waive certain filing deadlines associated with the filing of their FCC Form 499-Qs to allow them to late-file corrected forms. Because the annual true-up process for the FCC Forms 499-Q at issue had already provided the relief sought by Petitioners, the Commission dismissed as moot Petitioners' requests. The Commision also denied separate requests, filed by Achieve Telecom Network of Massachusetts, LLC (Achieve), Ascent Media Group (Ascent), and New Edge Network, Inc. (New Edge) for a refund of late fees, penalties and interest charges assessed, resulting from these petitioners' late filed FCC Forms 499-Q.

On December 15, 2008, the Commission issued an Order seeking comment on a petition filed by Nex-Tech Wireless, pursuant to section 54.207 of the Commission's rules, requesting the Commission's agreement with the decision of the Kansas Corporation Commission to redefine the service area of Home Communications, Inc.

On December 15, 2008, the Commission issued an Order amending certain Eligible Telecommunications Carriers (ETC) designations granted in the Interim Cap Order. The Order amended the ETC designation of New York RSA 2 Cellular Partnership, limiting the designation to the 13 wire centers requested; granted designation to St. Lawrence Seaway Cellular Partnership in nine wire centers in the study area of Citizens Telecommunications of New York d/b/a Frontier Communications; and accepted the relinquishment of the designation of Dobson Cellular Systems Inc. and American Cellular Corp. in the state of New York.

On February 26, 2009, the Commission issued an Order accepting the relinquishment of the ETC designation of RCC Minnesota in the state of New Hampshire.

On March 5, 2009, the Commission issued an Order waiving, on its own motion, the limitation on the availability of uncapped high-cost universal service support for competitive ETCs serving tribal lands or Alaska Native regions (Covered Locations). Specifically, for the period in which the interim cap is in effect,

the Commission waived the restriction in paragraph 33 of the Interim Cap Order limiting the availability of uncapped per line support to competitive ETCs serving Covered Locations ''to one payment per each residential account.''

On March 5, 2009, the Commission issued an Order modifying a forbearance condition imposed on TracFone prior to receiving support under the Lifeline universal service program. Specifically, TracFone must request a certification from each public safety answering point (PSAP) where it provides Lifeline service confirming that TracFone provides its customers with access to basic and enhanced 911 (E911) service; however, if, within 90 days of TracFone's request a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the requirements. On March 5, 2009, the Commission issued an Order conditionally granting a petition filed by Virgin Mobile seeking forbearance from the requirement that a carrier designated as an ETC provide services, at least in part, over its own facilities. The Commission also conditionally designated Virgin Mobile as an ETC for Lifeline support only in New York, Virginia, North Carolina, and Tennessee.

On April 8, 2009, the Commission issued a Notice of Inquiry refreshing the record regarding the issues raised by the US Court of Appeals for the 10th Circuit in the Qwest II decision. In that decision, the 10th Circuit invalidated the Commission's High-Cost Universal Service Support Mechanism for non-rural carriers, which determines the amount of support to be provided to each state by comparing the statewide average forward-looking cost per line for non-rural carriers to a nationwide cost benchmark.

On April 10, 2009, the Commission issued an Order granting a request from TracFone Wireless, Inc. for a conditional waiver of section 54.418 of the Commission's rules, which requires ETCs to notify their Lifeline and Link-Up customers about the DTV transition.

On April 14, 2009, the Commission issued an Order granting 39 appeals and denying 31 appeals of decisions by the USAC related to requests for funding under the Schools and Libraries universal service support mechanism for funding years 1999 through 2008, due to theapplicant's failure to comply with the Commission's 28-day competitive bidding requirement.

On April 16, 2009, the Commission issued an Order granting a request from two participants in the RHC Pilot Program, the Texas Healthcare Network (THN) and the Texas Health Information Network Collaborative (THINC), to merge their respective RHC Pilot Program projects and designate THINC as the successor to THN's RHC Pilot Program project.

On April 21, 2009, the Commission issued an Order granting nine requests for waivers of various high-cost universal service support filing deadlines.

On April 21, 2009, the Commission issued an Order denying three requests, filed by LBH, L.L.C; Knology of the Black Hills, LLC f/k/a PrairieWave Black Hills, LLC and USCOC of Cumberland Inc. Hardy Cellular Telephone Company for waiver of high-cost universal service support filing deadlines.

On April 21, 2009, the Commission issued an Order granting in part and denying in part a request filed by Xfone for waiver of high-cost universal service support filing deadlines.

On April 21, 2009, the Commission issued an Order granting a request by ICORE on behalf of Northeast Iowa for a waiver of the data submission reporting deadline for local switching universal service support.

On April 21, 2009, the Commission issued an Order denying a request from Centennial for a waiver of high-cost universal service support filing deadlines.

On April 28, 2009, the Commission issued an Order granting a joint request filed by Qwest, Pine, and Oregon for waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules.

On May 1, 2009, the Commission issued an Order granting a petition by Verizon Wireless for a limited waiver of certain universal service FCC Form 499 revenue filing requirements.

On May 4, 2009, the Commission issued a Petition for Rulemaking seeking comment on a petition filed by Smith Bagley for an increase to Tier four of the Universal Service Low-Income Program from $25 per month to $30 per month.

On May 14, 2009, the Commission issued an Order appointing the Honorable Thomas W. Pugh, Commissioner, Minnesota Public Utilities Commission, to serve on the Federal-State Joint Board on Jurisdictional Separations.

On May 15, 2009, the Commission issued a Report and Order extending until June 30, 2010, the current freeze of part 36 category relationships and jurisdictional cost allocation factors and referred review of the Commission's jurisdictional separations rules to the Federal-State Joint Board on Separations for consideration of how the rules should be reformed.

On June 8, 2009, the Commission issued an Order accepting relinquishment of Virginia Cellular's ETC designation for the Williamsville wire center in the study area of MGW Telephone Co. in Virginia.

On June 10, 2009, the Commission issued an Order denying a request filed by Centennial Communications Corp. for waiver of the September 30, 2005, June 30, 2006, and June 30, 2007, filing deadlines for universal service Interstate Access Support (IAS) set forth in section 54.802(a) of the Commission's rules. Centennial argued that it was confused by the language in its Louisiana ETC designation order, which was granted in March 2004, and therefore did not file IAS annual certifications or line counts until February 2008. Centennial sought a waiver to permit it to receive IAS funds for the first and second quarters of 2008 and a further waiver to permit it to receive retroactive payments beginning October 1, 2005 through the end of 2007. Although the Commission denied Centennial's request for waiver, the Commission found that the amount of IAS that Centennial would have been able to receive in March 2008 if it had not missed the filing deadlines will be included in the capped level of support available to competitive ETCs in Louisiana pursuant to the Commission's Interim Cap Order.

On June 10, 2009, the Commission issued an Order denying a request for review filed in 2005 by Centennial Michigan RSA 6 Cellular Corp. and Centennial Michigan RSA 7 Cellular

Corp. (Centennial). In its request, Centennial asked the Commission to reverse a USAC decision to recover universal service high-cost support funds. The Commission found that USAC properly recovered funds that were disbursed to Centennial prior to the Commission's approval of the redefinition of the study areas of certain rural incumbent local exchange carriers.

On July 21, 2009, the Commission issued an Order addressing a request by Advantage Cellular Systems, Inc., a competitive ETC, to receive universal service high-cost support based on the own-costs exception in the Commission's Interim Cap Order. The Commission issued a protective order for parties that wanted to review Advantage's cost information, for which it sought confidential treatment.

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On July 21, 2009, the Commission issued an Order granting Minford Local Schools request for waiver of the FCC Form 471 application filing window deadline for funding year 2008 under the Schools and Libraries Universal Service Support Mechanism consistent with the relief granted Minford in the Acorn Public Library District Order.

On July 31, 2009, the Commission issued an Order granting a request from four participants in the RHC Pilot Program, North Carolina TeleHealth Network, Albemarle Health, Western Carolina University, and University Health Systems of Eastern Carolina.

On July 31, 2009, the Commission issued an Order announcing that $900 million in prior unused E-rate funds will be carried forward to increase disbursements to schools and libraries in Funding Year 2009.

Timetable:

Action	Date	FR Cite
Recommended Decision Federal–State Joint Board, Universal Service	11/08/96	61 FR 63778
First R&O	05/08/97	62 FR 32862
Second R&O	05/08/97	62 FR 32862
Order on Recon	07/10/97	62 FR 40742
R&O and Second Order on Recon	07/18/97	62 FR 41294
Second R&O, and FNPRM	08/15/97	62 FR 47404
Third R&O	10/14/97	62 FR 56118
Second Order on Recon	11/26/97	62 FR 65036
Fourth Order on Recon	12/30/97	62 FR 2093
Fifth Order on Recon	06/22/98	63 FR 43088
Fifth R&O	10/28/98	63 FR 63993
Eighth Order on Recon	11/21/98	
Second Recommended Decision	11/25/98	63 FR 67837
Thirteenth Order on Recon	06/09/99	64 FR 30917
FNPRM	06/14/99	64 FR 31780
FNPRM	09/30/99	64 FR 52738
Fourteenth Order on Recon	11/16/99	64 FR 62120
Fifteenth Order on Recon	11/30/99	64 FR 66778
Tenth R&O	12/01/99	64 FR 67372
Ninth R&O and Eighteenth Order on Recon	12/01/99	64 FR 67416
Nineteenth Order on Recon	12/30/99	64 FR 73427
Twentieth Order on Recon	05/08/00	65 FR 26513
Public Notice	07/18/00	65 FR 44507
Twelfth R&O, MO&O and FNPRM	08/04/00	65 FR 47883
FNPRM and Order	11/09/00	65 FR 67322
FNPRM	01/26/01	66 FR 7867
R&O and Order on Recon	03/14/01	66 FR 16144
NPRM	05/08/01	66 FR 28718
Order	05/22/01	66 FR 35107
Fourteenth R&O and FNPRM	05/23/01	66 FR 30080
FNPRM and Order	01/25/02	67 FR 7327
NPRM	02/15/02	67 FR 9232
NPRM and Order	02/15/02	67 FR 10846
FNPRM and R&O	02/26/02	67 FR 11254
NPRM	04/19/02	67 FR 34653
Order and Second FNPRM	12/13/02	67 FR 79543
NPRM	02/25/03	68 FR 12020
Public Notice	02/26/03	68 FR 10724
Second R&O and FNPRM	06/20/03	68 FR 36961
Twenty–Fifth Order on Recon, R&O, Order, and FNPRM	07/16/03	68 FR 41996
NPRM	07/17/03	68 FR 42333
Order	07/24/03	68 FR 47453
Order	08/06/03	68 FR 46500
Order and Order on Recon	08/19/03	68 FR 49707
Order on Remand, MO&O, FNPRM	10/27/03	68 FR 69641
R&O, Order on Recon, FNPRM	11/17/03	68 FR 74492
R&O, FNPRM	02/26/04	69 FR 13794
R&O, FNPRM	04/29/04	
NPRM	05/14/04	69 FR 3130
NPRM	06/08/04	69 FR 40839
Order	06/28/04	69 FR 48232
Order on Recon & Fourth R&O	07/30/04	69 FR 55983
Fifth R&O and Order	08/13/04	69 FR 55097
Order	08/26/04	69 FR 57289
Second FNPRM	09/16/04	69 FR 61334
Order & Order on Recon	01/10/05	70 FR 10057
Sixth R&O	03/14/05	70 FR 19321
R&O	03/17/05	70 FR 29960
MO&O	03/30/05	70 FR 21779
NPRM & FNPRM	06/14/05	70 FR 41658
Order	10/14/05	70 FR 65850
Order	10/27/05	
NPRM	01/11/06	71 FR 1721
Report Number 2747	01/12/06	71 FR 2042
Order	02/08/06	71 FR 6485
FNPRM	03/15/06	71 FR 13393
R&O and NPRM	07/10/06	71 FR 38781
Order	01/01/06	71 FR 6485
Order	05/16/06	71 FR 30298
MO&O and FNPRM	05/16/06	71 FR 29843
R&O	06/27/06	71 FR 38781
Public Notice	08/11/06	71 FR 50420
Order	09/29/06	71 FR 65517
Public Notice	03/12/07	72 FR 36706
Public Notice	03/13/07	72 FR 40816
Public Notice	03/16/07	72 FR 39421
Notice of Inquiry	04/16/07	
NPRM	05/14/07	72 FR 28936
Recommended Decision	11/20/07	
Order	02/14/08	73 FR 8670
NPRM	03/04/08	73 FR 11580
NPRM	03/04/08	73 FR 11591
R&O	05/05/08	73 FR 11837
Public Notice	07/02/08	73 FR 37882
NPRM	08/19/08	73 FR 48352
Notice of Inquiry	10/14/08	73 FR 60689
Order on Remand, R&O, FNPRM	11/12/08	73 FR 66821
R&O	05/22/09	74 FR 2395
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AF85

558. TELECOMMUNICATIONS CARRIERS' USE OF CUSTOMER PROPRIETARY NETWORK INFORMATION AND OTHER CUSTOMER INFORMATION

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 222; 47 USC 272; 47 USC 303(r)

Abstract: The Commission adopted rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act of 1934, as amended. CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.

Timetable:

Action	Date	FR Cite
NPRM	05/28/96	61 FR 26483
Public Notice	02/25/97	62 FR 8414
Second R&O and FNPRM	04/24/98	63 FR 20364
Order on Recon	10/01/99	64 FR 53242
Final Rule, Announcement of Effective Date	01/26/01	66 FR 7865
Clarification Order and Second NPRM	09/07/01	66 FR 50140
Third R&O and Third FNPRM	09/20/02	67 FR 59205
NPRM	03/15/06	71 FR 13317
NPRM	06/08/07	72 FR 31782
Final Rule, Announcement of Effective Date	06/08/07	72 FR 31948
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG43

559. IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

Legal Authority: 47 USC 151 to 155; 47 USC 157; 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218; 47 USC 251

Abstract: On August 8, 1996, the Commission adopted the Local Competition Second Report and Order (FCC 96-333), implementing the dialing parity, nondiscriminatory access, network disclosure, and numbering administration provisions of the Telecommunications Act of 1996. On July 19, 1999, the Commission released the First Order on Reconsideration (FCC 99-170), denying the petition for reconsideration of the Local Competition Second Report and Order filed by Beehive Telephone Company, Inc., which related to numbering administration.

On September 9, 1999, the Commission released the Second Order on Reconsideration (FCC 99-227), resolving petitions for reconsideration of rules adopted in the Local Competition Second Report and Order to implement the requirement of 47 U.S.C. section 251(b)(3) that LECs provide non-discriminatory access to directory assistance, directory listing and operator services. At the same time, the Commission released a Notice of Proposed Rulemaking (NPRM) (also FCC 99-227) seeking comment on issues related to developments in, and the convergence of, directory publishing and directory assistance.

On October 21, 1999, the Commission released the Third Order on Reconsideration (FCC 99-243), resolving the remaining petitions for reconsideration regarding numbering administration under 47 U.S.C. section 251(e)(1). On January 23, 2001, the Commission released a First Report and Order (FCC 01-27) resolving issues raised in the September 9, 1999 NPRM and concluding, among other things, that competing directory assistance (DA) providers that are certified as competitive local exchange carriers (competitive LECs), are agents of competitive LECs, or that offer call completion services are entitled to nondiscriminatory access to LEC local DA databases.

On January 9, 2002, the Commission released the Directory Assistance NPRM (FCC 01-384), in which the Commission solicited comment on whether there is sufficient competition in the retail DA market, and if not, what if any action the Commission should take to promote such competition. The Commission sought specific comment on whether alternative dialing methods would promote competition. Proposed methods include: (1) Presubscription to 411; (2) utilizing national 555 numbers; (3) utilizing carrier access codes (1010 numbers); and (4) utilizing 411XX numbers. The Commission also sought comment on whether the 411 dialing code should be eliminated. This proceeding is pending before the Commission.On January 29, 2002, the Commission released an Order on Reconsideration (FCC02-11) dismissing petitions for reconsideration or clarification of the Local Competition Second Report and Order regarding dialing parity under 47 U.S.C. section 251(b)(3) and network disclosure under 47 U.S.C. section 251(c)(5).

On May 3, 2005, the Commission released an Order on Reconsideration (FCC 05-93) resolving petitions for reconsideration of the Second Order on Reconsideration and the First Report and Order. The Commission clarified its rules regarding the use of DA data obtained pursuant to section 251(b)(3) of the Act, and denied BellSouth and SBC's joint petition for reconsideration which sought authority to place contractual restrictions on competing DA providers' use of DA information. The Commission reaffirmed that LECs are required to provide nondiscriminatory access to their entire local DA database including local DA data acquired from third parties. The Commission also accepted Qwest's request to withdraw its petition for reconsideration of the First Report and Order, and resolved SBC's petition for reconsideration of the Second Order on Reconsideration.

Timetable:

Action	Date	FR Cite
NPRM	04/25/96	61 FR 18311
NPRM Reply Comment Period End	06/03/96	
Second R&O	09/06/96	61 FR 47284
Second Order on Recon	09/27/99	64 FR 51910
NPRM	09/27/99	64 FR 51949
Third Order on Recon	11/18/99	64 FR 62983
First R&O	02/21/01	66 FR 10965
NPRM	02/14/02	67 FR 6902
Order on Recon	08/17/05	70 FR 48290
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AG50

560. LOCAL TELEPHONE NETWORKS THAT LECS MUST MAKE AVAILABLE TO COMPETITORS

Legal Authority: 47 USC 251

FCC—Wireline Competition Bureau

Long-Term Actions

Abstract: This revises the rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rule changes are intended to remove uncertainty regarding the incumbent LECs' unbundling obligations under the Telecommunications Act of 1996 and are expected to accelerate the development of local exchange competition.

On December 20, 2001, the Commission issued a Notice of Proposed Rulemaking to comprehensively consider the appropriate changes, if any, to its unbundling policies in light of market developments and technological advances. 67 FR 1947.

On May 29, 2002, the Commission extended the reply comment date of the Notice of Proposed Rulemaking to July 17, 2002, to allow all interested parties to incorporate their review and analysis of USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002).

On August 21, 2003, the Commission issued a Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking, in which the Commission adopted new unbundling requirements. 68 FR 52276.

In addition, the Commission initiated a Notice of Proposed Rulemaking regarding whether the Commission should modify the so-called pick-and-choose rule that permits requesting carriers to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements. 68 FR 52307.

On September 17, 2003, the Commission issued an Errata correcting the Report and Order and Order on Remand. On October 9, 2003, the Commission issued a Report seeking comment on ten petitions for clarification and/or reconsideration of the Report and Order and Order on Remand released on August 21, 2003. 68 FR 60391. By Order, the Commission denied a request to extend the comment period for petitions for clarification and/or reconsideration.On March 2, 2004, the Commission's August 21, 2003 Report and Order and Order on Remand was affirmed in part and vacated and remanded in part. USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004).

On July 13, 2004, the Commission's Second Report and Order concluded the rulemaking proceeding initiated regarding the so-called pick-and-choose rule and determined that an all-or-nothing rule for opting into other interconnection agreements will better promote increased give and take negotiations. 69 FR 43762.

On August 9, 2004, the Commission released an Order on Reconsideration addressing in part two petitions for reconsideration of the Commission's fiber-to-the-premises unbundling rules. 69 FR 54589. The Commission clarified in this Order on Reconsideration the applicability of the fiber-to-the-premises rules in multi-dwelling unit buildings.

On August 20, 2004, the Commission issued an Interim Order and Notice of Proposed Rulemaking establishing a new rulemaking proceeding to determine incumbent LEC unbundling obligations as well as establishing interim requirements to govern carrier relationships until the Commission concludes its rulemaking process. 69 FR 55111, 55128.

On October 18, 2004, the Commission released and Order on Reconsideration concluding that fiber-to-the-curb (FTTC) loops shall be subject to the same unbundling framework that the Commission established for fiber-to-the-home (FTTH) loops. 69 FR 77950.

On February 4, 2005, the Commission released an Order on Remand, 70 FR 8940, responding to the D.C. Circuit's remand of certain parts of the Triennial Review Order, including several aspects of the impairment standard as well as new determinations regarding unbundling requirements for local circuit switching, high-capacity loops, and dedicated transport. Specifically, the Commission determined that incumbent LECs have no obligation to unbundle local circuit switching and adopted a 12-monthplan to transition existing customers of unbundled switching to other arrangements. Regarding high-capacity loops, the Commission determined that competing carriers are not impaired (thus, are not entitled to access as UNEs) dark fiber loop circuits. Competing carriers are, however, impaired without access to DS1 and DS3 loops, except in wire centers that meet specific business lines and fiber-based collocation thresholds. Similarly, with respect to dedicated transport, the Commission determined that competing carriers are impaired without access to DS1, DS3 and dark fiber transport, except on routes connecting a pair of wire centers, each containing a specified number of business lines or a specified number of fiber-based collocators.

On March 14, 2005, the Commission's Wireline Competition Bureau issued an order denying a petition filed by Verizon seeking a stay of the Commission's rule allowing competitive LECs to ''convert'' tariffed incumbent LEC special access arrangements to unbundled network element (UNE) arrangements if the competitive LEC is eligible to order the UNE(s) at issue.

On April 25, 2005, and May 25, 2005, the Commission issued Public Notices establishing comment periods in response to petitions for reconsideration of the Commission's Order on Remand (Triennial Review Order).

On June 16, 2006, the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's Order on Remand, 70 FR 8940.

Timetable:

Action	Date	FR Cite
Second FNPRM	04/26/99	64 FR 20238
Fourth FNPRM	01/14/00	65 FR 2367
Errata Third R&O and Fourth FNPRM	01/18/00	65 FR 2542
Second Errata Third R&O and Fourth FNPRM	01/18/00	65 FR 2542
Supplemental Order	01/18/00	65 FR 2542
Third R&O	01/18/00	65 FR 2542
Correction	04/11/00	65 FR 19334
Supplemental Order Clarification	06/20/00	65 FR 38214
Public Notice	02/01/01	66 FR 8555
Public Notice	03/05/01	66 FR 18279
Public Notice	04/10/01	
Public Notice	04/23/01	
Public Notice	05/14/01	
NPRM	01/15/02	67 FR 1947
Public Notice	05/29/02	
Public Notice	08/01/02	
Public Notice	08/13/02	
NPRM	08/21/03	68 FR 52276
R&O and Order on Remand	08/21/03	68 FR 52276
Errata	09/17/03	
Report	10/09/03	68 FR 60391
Order	10/28/03	
Order	01/09/04	
Public Notice	01/09/04	

Action	Date	FR Cite
Public Notice	02/18/04	
Order	07/08/04	
Second R&O	07/08/04	69 FR 43762
Order on Recon	08/09/04	69 FR 54589
Interim Order	08/20/04	69 FR 55111
NPRM	08/20/04	69 FR 55128
Public Notice	09/10/04	
Public Notice	09/13/04	
Public Notice	10/20/04	
Order on Recon	12/29/04	69 FR 77950
Order on Remand	02/04/04	
Public Notice	04/25/05	70 FR 29313
Public Notice	05/25/05	70 FR 34765
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH44

561. 2000 BIENNIAL REGULATORY REVIEW—TELECOMMUNICATIONS SERVICE QUALITY REPORTING REQUIREMENTS

Legal Authority: 47 USC 154(i) and 154(j); 47 USC 201(b); 47 USC 303(r); 47 USC 403

Abstract: This NPRM proposes to eliminate our current service quality reports (ARMIS Report 43-05 and 43-06) and replace them with a more consumer-oriented report. The NPRM proposes to reduce the reporting categories from more than 30 to 6, and addresses the needs of carriers, consumers, state public utility commissions, and other interested parties.

Timetable:

Action	Date	FR Cite
NPRM	12/04/00	65 FR 75657
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AH72

562. ACCESS CHARGE REFORM AND UNIVERSAL SERVICE REFORM

Legal Authority: 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 201 to 205; 47 USC 254; 47 USC 403

Abstract: On October 11, 2001, the Commission adopted an Order reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order adopts three principal reforms. First, the Order modifies the interstate access rate structure for small carriers to align it more closely with the manner in which costs are incurred. Second, the Order removes implicit support for universal service from the rate structure and replaces it with explicit, portable support. Third, the Order permits small carriers to continue to set rates based on the authorized rate of return of 11.25 percent. The Order became effective on January 1, 2002, and the support mechanism established by the Order was implemented beginning July 1, 2002.

The Commission also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking additional comment on proposals for incentive regulation, increased pricing flexibility for rate-of-return carriers, and proposed changes to the Commission's ''all-or-nothing'' rule. Comments on the FNPRM were due on February 14, 2002, and reply comments on March 18, 2002.

On February 12, 2004, the Commission adopted a Second Report and Order resolving several issues on which the Commission sought comment in the FNPRM. First, the Commission modified the ''all-or-nothing'' rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation. Second, the Commission granted rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. Third, the Commission merged Long Term Support (LTS) with Interstate Common Line Support (ICLS).

The Commission also adopted a Second FNPRM seeking comment on two specific plans that propose establishing optional alternative regulation mechanisms for rate-of-return carriers. In conjunction with the consideration of those alternative regulation proposals, the Commission sought comment on modification that would permit a rate-of-return carrier to adopt an alternative regulation plan for some study areas, while retaining rate-of-return regulation for other of its study areas. Comments on the Second FNPRM were due on April 23, 2004, and May 10, 2004.

Timetable:

Action	Date	FR Cite
NPRM	01/25/01	66 FR 7725
FNPRM	11/30/01	66 FR 59761
R&O	11/30/01	66 FR 59719
Second FNPRM	03/23/04	69 FR 13794
Order	05/06/04	69 FR 25325
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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Email: douglas.slotten@fcc.gov

RIN: 3060–AH74

563. NUMBERING RESOURCE OPTIMIZATION

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 et seq; 47 USC 251(e)

Abstract: In 1999, the Commission released the Numbering Resource Optimization Notice of Proposed Rulemaking (Notice) in CC Docket 99-200. The Notice examined and sought comment on several administrative and technical measures aimed at improving the efficiency with which telecommunications numbering resources are used and allocated. It incorporated input from the North American Numbering Council (NANC), a Federal advisory committee, which advises the Commission on issues related to number administration.In the Numbering Resource Optimization First Report and Order and Further Notice of Proposed Rulemaking (NRO First Report and Order), released on March 31, 2000, the Commission adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. In addition, the Commission adopted a single system for allocating numbers in blocks of one thousand, rather than ten thousand, wherever possible, and established a

plan for national rollout of thousands-block number pooling. The Commission also adopted numbering resource reclamation requirements to ensure that unused numbers are returned to the North American Numbering Plan (NANP) inventory for assignment to other carriers. Also, to encourage better management of numbering resources, carriers are required, to the extent possible, to first assign numbering resources within thousands blocks (a form of sequential numbering).

In the NRO Second Report and Order, the Commission adopted a measure that requires all carriers to use at least 60 percent of their numbering resources before they may get additional numbers in a particular area. That 60 percent utilization threshold increases to 75 percent over the next three years. The Commission also established a five-year term for the national Pooling Administrator and an auditing program to verify carrier compliance with the Commission's rules. Furthermore, the Commission addressed several issues raised in the Notice, concerning area code relief. Specifically, the Commission declined to amend the existing Federal rules for area code relief or specify any new Federal guidelines for the implementation of area code relief. The Commission also declined to state a preference for either all-services overlays or geographic splits as a method of area code relief. Regarding mandatory nationwide ten-digit dialing, the Commission declined to adopt this measure at the present time. Furthermore, the Commission declined to mandate nationwide expansion of the ''D digit'' (the ''N'' of an NXX or central office code) to include 0 or 1, or to grant state commissions the authority to implement the expansion of the D digit as a numbering resource optimization measure at the present time.

In the NRO Third Report and Order, the Commission addressed national thousands-block number pooling administration issues, including declining to alter the implementation date for covered CMRS carriers to participate in pooling. The Commission also addressed Federal cost recovery for national thousands-block number pooling, and continued to require States to establish cost recovery mechanisms for costs incurred by carriers participating in pooling trials. The Commission reaffirmed the Months-To-Exhaust (MTE) requirement for carriers. The Commission declined to lower the utilization threshold established in the Second Report and Order, and declined to exempt pooling carriers from the utilization threshold. The Commission also established a safety valve mechanism to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources.

In the NRO Third Report and Order, the Commission lifted the ban on technology-specific overlays (TSOs), and delegated authority to the Common Carrier Bureau, in consultation with the Wireless Telecommunications Bureau, to resolve any such petitions. Furthermore, the Commission found that carriers who violate our numbering requirements, or fail to cooperate with an auditor conducting either a ''for cause'' or random audit, should be denied numbering resources in certain instances. The Commission also reaffirmed the 180-day reservation period, declined to impose fees to extend the reservation period, and found that State commissions should be allowed password-protected access to the NANPA database for data pertaining to NPAs located within their State.

The measures adopted in the NRO orders will allow the Commission to monitor more closely the way numbering resources are used within the NANP, and will promote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers. These measures are designed to create national standards to optimize the use of numbering resources by: (1) Minimizing the negative impact on consumers of premature area code exhausts; (2) ensuring sufficient access to numbering resources for all service providers to enter into or to compete in telecommunications markets; (3) avoiding premature exhaust of the NANP; (4) extending the life of the NANP; (5) imposing the least societal cost possible, and ensuring competitive neutrality, while obtaining the highest benefit; (6) ensuring that no class of carrier or consumer is unduly favored or disfavored by the Commission's optimization efforts; and (7) minimizing the incentives for carriers to build and carry excessively large inventories of numbers.

In NRO Third Order on Recon in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No, 95-116, the Commission reconsidered its findings in the NRO Third Report and Order regarding the local Number portability (LNP) and thousands-block number pooling requirements for carriers in the top 100 Metropolitan Statistical areas (MSAs). Specifically, the Commission reversed its clarification that those requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a request from another carrier to provide LNP. The Commission also sought comment on whether the Commission should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. The Commission also sought comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable. In addition, the Commission sought comment on whether all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

In the NRO Fourth Report and Order and Further Notice of Proposed Rulemaking, the Commission reaffirmed that carriers must deploy LNP in switches within the 100 largest Metropolitan Statistical Areas (MSAs) for which another carrier has made a specific request for the provision of LNP. The Commission delegated the authority to state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. The Commission concluded that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP, including commercial mobile radio service (CMRS) providers that were required to deploy LNP as of November 24, 2003. The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III

CMRS providers that have not received a request to provide LNP. The Commission also exempted from the pooling requirement carriers that are the only service provider receiving numbering resources in a given rate center. Additionally, the Commission sought further comment on whether these exemptions should be expanded to include carriers where there are only two service providers receiving numbering resources in the rate center. Finally, the Commission reaffirmed that the 100 largest MSAs identified in the 1990 U.S. Census reports as well as those areas included on any subsequent U.S. Census report of the 100 largest MSAs.

In the NRO Order and Fifth Further Notice of Proposed Rulemaking, the Commission granted petitions for delegated authority to implement mandatory thousands-block pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. In granting these petitions, the Commission permitted these states to optimize numbering resources and further extend the life of the specific numbering plan areas. In the Further Notice of Proposed Rulemaking, the Commission sought comment on whether it should delegate authority to all states to implement mandatory thousands-block number pooling consistent with the parameters set forth in the NRO Order.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32471
R&O and FNPRM	06/16/00	65 FR 37703
Second R&O and Second FNPRM	02/08/01	66 FR 9528
Third R&O and Second Order on Recon	02/12/02	67 FR 643
Third O on Recon and Third FNPRM	04/05/02	67 FR 16347
Fourth R&O and Fourth NPRM	07/21/03	68 FR 43003
Order and Fifth FNPRM	03/15/06	71 FR 13393
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Marilyn Jones, Attorney, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AH80

564. NATIONAL EXCHANGE CARRIER ASSOCIATION PETITION

Legal Authority: 47 USC 151 and 152; 47 USC 201 and 202; . . .

Abstract: In a Notice of Proposed Rulemaking (NPRM) released on July 19, 2004, the Commission initiated a rulemaking proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that obtain derived channel T-1 service where the customer provides the terminating channelization equipment and upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service.

Timetable:

Action	Date	FR Cite
NPRM	08/13/04	69 FR 50141
NPRM Comment Period End	11/12/04	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Douglas Slotten, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1572
Email: douglas.slotten@fcc.gov

RIN: 3060–AI47

565. IP–ENABLED SERVICES

Legal Authority: 47 USC 151 and 152; . . .

Abstract: The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services comprising each category constitute ''telecommunications services'' or ''information services'' under the definitions set forth in the Act. Finally, noting the Commission's statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

On June 16, 2005, the Commission published in the Federal Register notice that public information collections set forth in the First Report and Order were being submitted for review to the office of management and budget.

On July 27, 2005, the Commission published in the Federal Register notice that the information collection requirements adopted in the First Report and Order were approved in OMB No. 3060-1085 and would become effective on July 29, 2005.

On August 31, 2005, the Commission published in the Federal Register notice of the comment cycle for three Petitions for Reconsideration and/or Clarification of the First Report and Order.On July 10, 2006, the Commission published in the Federal Register notice that it had adopted on June 21, 2006, rules that make interim modifications to the existing approach for assessing contributions to the Federal universal service fund (USF or Fund) in order to provide stability while the Commission continues to examine more fundamental reform.

On June 8, 2007, the Commission published in the Federal Register notice that it had adopted on April 2, 2007, an item strengthening the Commission's rules to protect the privacy of customer proprietary network information (CPNI) that is collected and held by providers of communications services, and a further notice of proposed rulemaking seeking comment on what steps the Commission should take, if any, to secure further the privacy of customer information.

On August 6, 2007, the Commission published in the Federal Register notice that it had adopted on May 31, 2007, and item extending the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended, to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers

of specially designed equipment used to provide those services. In addition, the Commission extended the Telecommunications Relay Services (TRS) requirements contained in its regulations to interconnected VoIP providers.

On August 7, 2007, the Commission published in the Federal Register a notice that a petition for reconsideration of the CPNI order described above had been filed.

On August 16, 2007, the Commission published in the Federal Register notice that it had adopted on August 2, 2007, an item amending the Commission's Schedule of Regulatory Fees by, inter alia, incorporating regulatory fee payment obligations for interconnected VoIP service providers, which shall become effective November 15, 2007, which is 90 days from date of notification to Congress.

On November 1, 2007, the Commission gave notice that it granted in part, denied in part, and sought comment on petitions filed by the Voice on the Net Coalition, the United States Telecom Association, and Hamilton Telephone Company seeking a stay or waiver of certain aspects of the Commission's VoIP Telecommunications Relay Services (TRS) Order (72 FR 61813; 72 FR 61882).

On December 13, 2007, the Commission announced the effective date of its revised CPNI rules (72 FR 70808).

On December 6, 2007, OMB approved the public information collection pursuant to the Paperwork Reduction Act of 1995 for the Commission's CPNI rules (72 FR 72358).

On February 21, 2008, the Commission published in the Federal Register notice that the Commission adopted rules extending local number portability obligations and numbering administration support obligations to interconnected VoIP services. The Commission also explained it had responded to the District of Columbia Circuit Court of Appeals stay of the Commission's Intermodal Number Portability Order by publishing a Final Regulatory Flexibility Act (73 FR 9463; R&O 02/21/2008).

On February 21, 2008, the Commission published in the Federal Register notice that it sought comment on other changes to its LNP and numbering related rules, including whether to extend such rules to interconnected VoIP providers (73 FR 9507).

On August 6, 2007, the Commission published in the Federal Register notice that it had extended Telecommunications Relay Services (TRS) regulations to interconnected VoIP providers and extended certain disability access requirements to interconnected VoIP providers and to manufacturers of specially designed equipment used to provide such service (72 FR 43546).

On May 15, 2008, the Commission's Consumer and Governmental Affairs Bureau published in the Federal Register notice that it had granted interconnected VoIP providers an extension of time to route 711-dialed calls to an appropriate telecommunications relay service (TRS) center in certain circumstances (73 FR 28057).

Timetable:

Action	Date	FR Cite
NPRM	03/29/04	69 FR 16193
NPRM Comment Period End	07/14/04	
First R&O	06/03/05	70 FR 37273
Public Notice	06/16/05	70 FR 37403
First R&O Effective	07/29/05	70 FR 43323
Public Notice	08/31/05	70 FR 51815
R&O	07/10/06	71 FR 38781
R&O and FNPRM	06/08/07	72 FR 31948
FNPRM Comment Period End	07/09/07	72 FR 31782
R&O	08/06/07	72 FR 43546
Public Notice	08/07/07	72 FR 44136
R&O	08/16/07	72 FR 45908
Public Notice	11/01/07	72 FR 61813
Public Notice	11/01/07	72 FR 61882
Public Notice	12/13/07	72 FR 70808
Public Notice	12/20/07	72 FR 72358
R&O	02/21/08	73 FR 9463
NPRM	02/21/08	73 FR 9507
Order	05/15/08	73 FR 28057
Order	07/29/09	74 FR 37624
R&O	08/07/09	74 FR 39551

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Tim Stelzig, Associate Chief, Competition Policy Division, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AI48

566. CONSUMER PROTECTION IN THE BROADBAND ERA

Legal Authority: 47 USC 151 to 154; 47 USC 160; 47 USC 201 to 205; 47 USC 214; 47 USC 222; 47 USC 225; 47 USC 251 and 252; 47 USC 254 to 256; 47 USC 258; 47 USC 303(R)

Abstract: The Federal Communications Commission initiated this rulemaking in order to develop a framework that ensures that, as the telecommunications industry shifts from narrowband to broadband services, consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology providers use to offer the service. The Commission sought comment on whether adopting regulations, pursuant to its ancillary jurisdiction under Title I of the Communications Act, to address consumer privacy, unauthorized changes to service, truth-in-billing, network outage reporting, discontinuance of service, rate averaging, and enforcement concerns, would be desirable and necessary as a matter of public policy. The Commission also sought comment on whether it should instead rely on market forces to address some or all of these areas of potential concern. The rulemaking also explores whether there are other areas of consumer protection related to wireline broadband Internet access service for which the Commission should adopt regulations pursuant to its ancillary jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	10/17/05	70 FR 60259
NPRM Comment Period End	03/01/06	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3060–AI73

FCC—Wireline Competition Bureau **Long-Term Actions**

567. ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS (WC DOCKET NO. 07–135)

Legal Authority: Not Yet Determined

Abstract: The Federal Communications Commission (Commission) is examining whether its existing rules governing the setting of tariffed rates by local exchange carriers (LECs) provide incentives and opportunities for carriers to increase access demand endogenously with the result that the tariff rates are no longer just and reasonable. The Commission tentatively concluded that it must revise its tariff rules so that it can be confident that tariffed rates remain just and reasonable even if a carrier experiences or induces significant increases in access demand. The Commission seeks comment on the types of activities that are causing the increases in interstate access demand and the effects of such demand increases on the cost structures of LECs. The Commission also seeks comment on several means of ensuring just and reasonable rates going forward. The NPRM invites comment on potential traffic stimulation by rate-of-return LECs, price cap LECs, and competitive LECs, as well as other forms of intercarrier traffic stimulation. Comments were received on December 17, 2007, and reply comments were received on January 16, 2008.

Timetable:

Action	Date	FR Cite
NPRM	11/15/07	72 FR 64179
NPRM Comment Period End	12/17/07	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Douglas Slotten, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AJ02

568. JURISDICTIONAL SEPARATIONS

Legal Authority: 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 205; 47 USC 221(c); 47 USC 254; 47 USC 403; 47 USC 410

Abstract: Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and market changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' recommendation to impose an interim freeze of the part 36 category relationships and jurisdictional cost allocation factors for a period of five years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission adopted an Order and Further Notice of Proposed Rulemaking, which extended the separations freeze for a period of three years and sought comment on comprehensive reform. In 2009, the Commission adopted a Report and Order extending the separations process an additional year to June, 2010.

Timetable:

Action	Date	FR Cite
NPRM	11/05/97	62 FR 59842
NPRM Comment Period End	12/10/97	
Order	06/21/01	66 FR 33202
Order and FNPRM	05/26/06	71 FR 29882
Order and FNPRM Comment Period End	08/22/06	
Report and Order	05/15/09	74 FR 23955

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Ted Burmeister, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AJ06

569. IMPLEMENTATION OF NET 911 IMPROVEMENT ACT

Legal Authority: PL 110–283

Abstract: On July 23, 2008, the New and Emerging Technologies Act was enacted.

On August 25, 2008, the Commission released an NPRM seeking comment on implementing the NET 911 Improvement Act.

Timetable:

Action	Date	FR Cite
NPRM	08/28/08	73 FR 50741
NPRM Comment Period End	09/09/08	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Agency Contact: R. Matthew Warner, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
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RIN: 3060–AJ09

[FR Doc. E9–28607 Filed 12–04–09; 8:45 am]

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Federal Register

Monday,
December 7, 2009

Part XVIII

Federal Reserve System

Semiannual Regulatory Agenda

FEDERAL RESERVE SYSTEM (FRS)

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period November 1, 2009, through April 30, 2010. The next agenda will be published in spring 2010.

DATES: Comments about the form or content of the agenda may be submitted any time during the next six months.

ADDRESSES: Comments should be addressed to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its fall 2009 agenda as part of the Fall 2009 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following web site: www.reginfo.gov.

Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next six months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. And a third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. Matters begun and completed between issues of the agenda have not been included.

A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda and which the Board has not completed.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

Federal Reserve System—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
570	Regulation Z—Truth in Lending Act (Docket Number: R-1366)	7100–AD33

Federal Reserve System (FRS) — Proposed Rule Stage

570. • REGULATION Z—TRUTH IN LENDING ACT (DOCKET NUMBER: R–1366)

Legal Authority: 15 USC 1601 et seq

Abstract: The Federal Reserve proposed for comment amendments to Regulation Z (Truth in Lending) that would revise disclosure requirements for closed-end loans secured by real property or a dwelling. The proposed rules would require creditors to provide certain disclosures at application about risky loan features and adjustable-rate mortgages. Three days after application, consumers would receive disclosures summarizing key loan features including the annual percentage rate and finance charge, which would be revised to be a more comprehensive measure of the cost of credit. Consumers would receive a final disclosure of loan terms three days before loan consummation. Certain new periodic disclosures would be required after consummation. In addition, the proposal would prohibit certain payments to mortgage brokers and loan officers that are based on the loan's terms and conditions, and prohibit steering consumers to transactions that are not in their interest to increase compensation received. New rules regarding eligibility restrictions and disclosures for credit insurance and similar products would apply to all closed-end and open-end credit transactions.

Timetable:

Action	Date	FR Cite
Board Requested Comment	08/26/09	74 FR 43232
Board Expects Further Action By	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kathleen Ryan, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452–3667

RIN: 7100–AD33

[FR Doc. E9–28596 Filed 12–04–09; 8:45 am]

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Federal Register

Monday,
December 7, 2009

Part XIX

National Credit Union Administration

Semiannual Regulatory Agenda

NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch VII

Semiannual Regulatory Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to its ongoing policy of reviewing regulations, NCUA is publishing a list of current and projected rulemakings, reviews of existing regulations, and completed actions as of July 31, 2009, to be included in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

DATES: This information is current as of July 31, 2009.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: For each regulation listed, the person(s) named in the listing, at the above address, unless otherwise noted, or listed telephone number.

SUPPLEMENTARY INFORMATION: . The purpose of this agenda is to enable credit unions and the public to follow regulatory development and review at NCUA, and participate in that process more effectively. Entries for the agenda appear in one of five possible categories: prerule stage; proposed rule stage; final rule stage; completed/withdrawn actions; or long-term actions.

The agenda is published pursuant to NCUA Interpretive Ruling and Policy Statement Number 87-2, ''Developing and Reviewing Government Regulations,'' 54 FR 35231, (September 18, 1987), which sets out NCUA's policy and procedures for developing and reviewing its regulations. NCUA's policy is to ensure that regulations impose only the minimum required burdens on credit unions, consumers, and the public; are appropriate for the size of the financial institution it regulates; are issued only after full public participation; and are clear and understandable. Further, NCUA undertakes to review all regulations every three years to clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.

Approved by the NCUA Board on September 2, 2009.

Mary Rupp,

Secretary of the Board.

National Credit Union Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
571	Confidentiality of Suspicious Activity Reports **(Section 610 Review)**	3133–AD61

National Credit Union Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
572	Privacy of Consumer Financial Information	3133–AC84
573	Unfair or Deceptive Acts or Practices; Clarifications	3133–AD62

National Credit Union Administration (NCUA) — Proposed Rule Stage

571. CONFIDENTIALITY OF SUSPICIOUS ACTIVITY REPORTS (SECTION 610 REVIEW)

Legal Authority: 31 USC 5311 to 5330

Abstract: This rule, which corresponds to regulatory action being considered by some of the other Federal financial institution regulators, would clarify the scope of confidentiality rules governing the filing of suspicious activity reports.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Ross P. Kendall, Trial Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
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RIN: 3133–AD61

National Credit Union Administration (NCUA) — Final Rule Stage

572. PRIVACY OF CONSUMER FINANCIAL INFORMATION

Legal Authority: 15 USC 6801 et seq

Abstract: NCUA issued an interagency ANPRM and proposed rule and will issue a final rule on model privacy notices and ways financial institutions can make them clear and conspicuous.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75164
ANPRM Comment Period End	03/29/04	
NPRM	03/29/07	72 FR 14939
Correction	04/09/07	72 FR 16875
NPRM Comment Period End	05/29/07	
Final Action	12/00/09	
ANPRM	07/01/09	74 FR 31529
ANPRM Comment Period End	08/31/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
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Fax: 703 518–6569
Email: rmetz@ncua.gov

RIN: 3133–AC84

573. ● UNFAIR OR DECEPTIVE ACTS OR PRACTICES; CLARIFICATIONS

Legal Authority: 15 USC 45; 15 USC 57a

Abstract: NCUA, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision are clarifying amendments to their recently issued final rule prohibiting certain credit card practices as unfair or deceptive. See 74 FR 5498 (January 29, 2009). The clarifications address deferred interest programs and the effect of the Servicemembers' Civil Relief Act on the final rule, and add additional examples to the Official Staff Commentary. This proposed rule may be withdrawn, along with the final UDAP rule issued in January 2009, following the Federal Reserve's enactment of regulations under the Credit CARD Act.

Timetable:

Action	Date	FR Cite
NPRM	05/05/09	74 FR 20804
NPRM Comment Period End	06/04/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Moisette I. Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428
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Fax: 703 518–6319
Email: mgreen@ncua.gov

RIN: 3133–AD62

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Federal Register

Monday,
December 7, 2009

Part XX

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

NUCLEAR REGULATORY COMMISSION (NRC)

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda in accordance with Public Law 96-354, ''The Regulatory Flexibility Act,'' and Executive Order 12866, ''Regulatory Planning and Review.'' The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on May 11, 2009 (74 FR 22070).

ADDRESSES: Comments on any rule in the agenda may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Comments may also be hand delivered to the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments received on rules for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closure dates specified in the agenda.

The agenda and any comments received on any rule listed in the agenda are available for public inspection and copying for a fee at the Nuclear Regulatory Commission's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F21, Rockville, Maryland.

The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

FOR FURTHER INFORMATION CONTACT: For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact: Michael T. Lesar, Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-492-3663 (e-mail: Michael.Lesar@nrc.gov). Persons outside the Washington, DC, metropolitan area may call, toll-free: 1-800-368-5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading ''Agency Contact'' for that rule.

SUPPLEMENTARY INFORMATION: The information contained in this semiannual publication is updated to reflect any action that has occurred on rules since publication of the last NRC semiannual agenda on May 11, 2009 (74 FR 22070). Within each group, the rules are ordered according to the Regulation Identifier Number (RIN).

The information in this agenda has been updated through September 11, 2009. The date for the next scheduled action under the heading ''Timetable'' is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the agenda.

The NRC agenda lists all open rulemaking actions. One rule affects small entities.

Dated at Rockville, Maryland, this 11th day of September 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration.

Nuclear Regulatory Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
574	Distribution of Source Material To Exempt Persons and General Licensees and Revision of 10 CFR 40.22 General License [NRC-2009-0084]	3150–AH15
575	Revision of Fee Schedules; Fee Recovery for FY 2010 [NRC-2009-0333]	3150–AI70

Nuclear Regulatory Commission—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
576	Controlling the Disposition of Solid Materials [NRC-1999-0002]	3150–AH18

Nuclear Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identifier Number
577	Revision of Fee Schedules; Fee Recovery for FY 2009 [NRC-2008-0620]	3150–AI52

Nuclear Regulatory Commission (NRC) — Proposed Rule Stage

574. DISTRIBUTION OF SOURCE MATERIAL TO EXEMPT PERSONS AND GENERAL LICENSEES AND REVISION OF 10 CFR 40.22 GENERAL LICENSE [NRC–2009–0084]

Legal Authority: 42 USC 2201; 42 USC 5841

Abstract: The proposed rule would amend the Commission's regulations to improve the control over the distribution of source material to exempt persons and to general licensees in order to make part 40 more risk-informed. The proposed rule also would govern the licensing of source material by adding specific requirements for licensing of and reporting by distributors of products and materials used by exempt persons and general licensees. Source material is used under general license and under various exemptions from licensing requirements in part 40 for which there is no regulatory mechanism for the Commission to obtain information to fully assess the resultant risks to public health and safety. Although estimates of resultant doses have been made, there is a need for ongoing information on the quantities and types of radioactive material distributed for exempt use and use under general license. Obtaining information on the distribution of source material is particularly difficult because many of the distributors of source material to exempt persons and generally licensed persons are not currently required to hold a license from the Commission. Distributors are often unknown to the Commission. No controls are in place to ensure that products and materials distributed are maintained within the applicable constraints of the exemptions. In addition, the amounts of source material allowed under the general license in section 40.22 could result in exposures above 1 mSv/year (100 mrem/year) to workers at facilities that are not required to meet the requirements of parts 19 and 20. Without knowledge of the identity and location of the general licensees, it would be difficult to enforce restrictions on the general licensees. This rule also would address PRM-40-27 submitted by the State of Colorado and Organization of Agreement States.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Gary C. Comfort, Jr., Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001
Phone: 301 415–8106
Email: gary.comfort@nrc.gov

RIN: 3150–AH15

575. ● REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2010 [NRC–2009–0333]

Legal Authority: 42 USC 2201; 42 USC 5841

Abstract: The proposed rule amend the Commission's licensing, inspection, and annual fees charged to its applicants and licensees. The rulemaking is necessary to recover, through the assessment of fees, approximately 90 percent of the NRC's budget authority for fiscal year (FY) 2010, less the amounts appropriated from the Nuclear Waste Fund, amounts appropriated for Waste Incidental to Reprocessing, and amounts appropriated for generic homeland security activities, as required by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended.

Based on the NRC FY 2010 budget submitted to the Congress, the NRC's required fee recovery amount for the FY 2010 budget is approximately $887.2 million. After accounting for billing adjustments (i.e., expected unpaid invoices, payments for prior year invoices), the total amount to be billed as fees is $881.4 million. The OBRA-90, as amended, requires that the fees for FY 2010 be collected by September 30, 2010.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Renu Suri, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001
Phone: 301 415–0161
Email: renu.suri@nrc.gov

RIN: 3150–AI70

Nuclear Regulatory Commission (NRC) — Long-Term Actions

576. CONTROLLING THE DISPOSITION OF SOLID MATERIALS [NRC–1999–0002]

Legal Authority: 42 USC 2201; 42 USC 5841

Abstract: The staff provided a draft proposed rule package on Controlling the Disposition of Solid Materials to the Commission on March 31, 2005, which the Commission disapproved. The Commission's decision was based on the fact that the Agency is currently faced with several high priority and complex tasks, that the current approach to review specific cases on an individual basis is fully protective of public health and safety, and that the immediate need for this rule has changed due to the shift in timing for reactor decommissioning. The Commission has deferred action on this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kimyata Morgan Butler, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001
Phone: 301 415–0733
Email: kimyata.morganbutler@nrc.gov

RIN: 3150–AH18

Nuclear Regulatory Commission (NRC) **Completed Actions**

577. REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2009 [NRC–2008–0620]

Legal Authority: 42 USC 2201; 42 USC 5841

Abstract: The final rule amends the Commission's licensing, inspection, and annual fees charged to its applicants and licensees. The amendments implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in Fiscal Year (FY) 2009, less the amounts appropriated from the Nuclear Waste Fund, and for Waste Incidental to Reprocessing, generic homeland security activities, and scholarships and fellowships. Based on the bill reported by the House Appropriations Committee on June 25, 2008, the NRC's required fee recovery amount for the FY 2009 budget is approximately $ 870.6 million. After accounting for carryover and billing adjustments, the total amount to be recovered through fees is approximately $ 864.8 million.

Completed:

Reason	Date	FR Cite
Final Rule	06/10/09	74 FR 27642
Final Rule Effective	08/10/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Renu Suri
Phone: 301 415–0161
Email: renu.suri@nrc.gov

RIN: 3150–AI52

[FR Doc. E9–28595 Filed 12–04–09; 8:45 am]
BILLING CODE 7590–01–S

Federal Register

Monday,
December 7, 2009

Part XXI

Securities and Exchange Commission

Semiannual Regulatory Agenda

SECURITIES AND EXCHANGE COMMISSION (SEC)

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-9082, 34-60955, IA-2947, IC-28992, File No. S7-26-09]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing an agenda of its rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. No. 96-354, 94 Stat. 1164) (Sep. 19, 1980). Information in the agenda was accurate on November 6, 2009, the day on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of a Regulatory Flexibility Act analysis is required.

The Commission's complete RFA agenda will be available online at www.reginfo.gov.

DATES: Comments should be received on or before December 31, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-26-09 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. S7-26-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202-551-5019.

SUPPLEMENTARY INFORMATION: The RFA requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

''Securities Act''—Securities Act of 1933

''Exchange Act''—Securities Exchange Act of 1934

''Investment Company Act''—Investment Company Act of 1940

''Investment Advisers Act''—Investment Advisers Act of 1940

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

Dated: November 6, 2009.

Elizabeth M. Murphy,

Secretary.

DIVISION OF CORPORATION FINANCE—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
578	Revisions to Regulation D	3235–AK52

DIVISION OF CORPORATION FINANCE—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
579	Proxy Disclosure and Solicitation Enhancements	3235–AK28
580	Amendments to Rules Requiring Internet Availability of Proxy Materials	3235–AK25

SEC

DIVISION OF CORPORATION FINANCE—Completed Actions

Sequence Number	Title	Regulation Identifier Number
581	Revisions of Limited Offering Exemptions in Regulation D	3235–AJ88
582	Proxy Disclosure Regarding Executive Compensation and Related Party Transactions	3235–AI80

DIVISION OF INVESTMENT MANAGEMENT—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
583	Indexed Annuities and Certain Other Insurance Contracts	3235–AK49

DIVISION OF INVESTMENT MANAGEMENT—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
584	Amendments to Form ADV	3235–AI17
585	Temporary Rule Regarding Principal Trades With Certain Advisory Clients	3235–AJ96
586	Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act	3235–AJ06

DIVISION OF INVESTMENT MANAGEMENT—Completed Actions

Sequence Number	Title	Regulation Identifier Number
587	Political Contributions by Certain Investment Advisers	3235–AH72
588	Regulation S-AM: Limitations on Affiliate Marketing	3235–AJ24

DIVISION OF TRADING AND MARKETS—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
589	Publication or Submission of Quotations Without Specified Information	3235–AH40

DIVISION OF TRADING AND MARKETS—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
590	Proposed Amendment to Municipal Securities Disclosure	3235–AJ66
591	Nationally Recognized Statistical Rating Organizations	3235–AK14

DIVISION OF TRADING AND MARKETS—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
592	Rule 15c2-2: Confirmation of Transactions in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings	3235–AJ11
593	Rule 15c2-3: Point-of-Sale Disclosure of Purchases in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings	3235–AJ12
594	Rule 15c-100: Schedule 15C	3235–AJ13
595	Rule 15c-101: Schedule 15D	3235–AJ14

SEC

DIVISION OF TRADING AND MARKETS—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
596	Processing of Reorganization Events, Tender Offers, and Exchange Offers	3235–AH53

DIVISION OF TRADING AND MARKETS—Completed Actions

Sequence Number	Title	Regulation Identifier Number
597	Amendments to Regulation SHO	3235–AK22

Securities and Exchange Commission (SEC) — Proposed Rule Stage
Division of Corporation Finance

578. ● REVISIONS TO REGULATION D

Legal Authority: 15 USC 77b(a0(15); 15 USC 77b(b); 15 USC 77d; 15 USC 77r; 15 USC 77s; 15 USC 77s(a); 15 USC 77z–3

Abstract: The Division is considering recommending that the Commission propose revisions to Regulation D, including, among other things, revisions to the accredited investor eligibility standards.

Timetable:

Action	Date	FR Cite
NPRM	09/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Anthony G. Barone, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 Phone: 202 551–3460

RIN: 3235–AK52

Securities and Exchange Commission (SEC) — Final Rule Stage
Division of Corporation Finance

579. PROXY DISCLOSURE AND SOLICITATION ENHANCEMENTS

Legal Authority: 15 USC 78n

Abstract: The Commission proposed amendments to enhance disclosure in the proxy statement, including information about directors.

Timetable:

Action	Date	FR Cite
NPRM	07/17/09	74 FR 35976
NPRM Comment Period End	09/15/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 Phone: 202 551–3430 Email: harrisons@sec.gov

RIN: 3235–AK28

580. AMENDMENTS TO RULES REQUIRING INTERNET AVAILABILITY OF PROXY MATERIALS

Legal Authority: 15 USC 78c(b); 15 USC 78j; 15 USC 78m; 15 USC 78n; 15 USC 78o; 15 USC 78w(a); 15 USC 78mm; 15 USC 80a–20; 15 USC 80a–29; 15 USC 80a–37

Abstract: The Commission proposed revisions to the notice and access model for providing proxy materials to shareholders electronically.

Timetable:

Action	Date	FR Cite
NPRM	10/21/09	74 FR 53954
NPRM Comment Period End	11/20/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Steven Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 Phone: 202 551–3430

RIN: 3235–AK25

Securities and Exchange Commission (SEC)
Division of Corporation Finance

Completed Actions

581. REVISIONS OF LIMITED OFFERING EXEMPTIONS IN REGULATION D

Legal Authority: 15 USC 77b(a)(15); 15 USC 77b(b); 15 USC 77c(b); 15 USC 77d; 15 USC 77r; 15 USC 77s; 15 USC 77s(a); 15 USC 77z–3

Abstract: The Commission is withdrawing this item because of the passage of time since the Notice of Proposed Rulemaking, but see RIN 3235-AK52.

Timetable:

Action	Date	FR Cite
NPRM	08/10/07	72 FR 45116
NPRM Comment Period End	10/09/07	
Withdrawn	10/01/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Anthony G. Barone, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–3460

RIN: 3235–AJ88

582. PROXY DISCLOSURE REGARDING EXECUTIVE COMPENSATION AND RELATED PARTY TRANSACTIONS

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 80a et seq

Abstract: The Commission is withdrawing this item from the Agenda because the topic is partially addressed in item 3235-AK28 and because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

Timetable:

Action	Date	FR Cite
NPRM	02/08/06	71 FR 6542
NPRM Comment Period End	04/10/06	
Final Rule	09/08/06	71 FR 53158
Final Rule Effective	11/07/06	
Second NPRM	09/08/06	71 FR 53267
Second NPRM Comment Period End	10/23/06	
Interim Final Rule	12/29/06	71 FR 78338
Interim Final Rule Effective	12/29/06	
Interim Final Rule Comment Period End	01/29/07	
Withdrawn	10/01/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Anne Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–3500

RIN: 3235–AI80

Securities and Exchange Commission (SEC)
Division of Investment Management

Proposed Rule Stage

583. ● INDEXED ANNUITIES AND CERTAIN OTHER INSURANCE CONTRACTS

Legal Authority: 15 USC 77c(a)(8); 15 USC 77s(a); 15 USC 78l(h); 15 USC 78o; 15 USC 78w(a); 15 USC 78mm

Abstract: A Federal appeals court issued an opinion on July 21, 2009, remanding SEC Rule 151A. A party has petitioned the court for panel rehearing, and that petition is currently pending. The Commission staff is evaluating what recommendation to make to the Commission on how to respond to the court's decision.

Timetable:

Action	Date	FR Cite
Action	10/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Michael Kosoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6754
Fax: 202 772–9285
Email: kosoffm@sec.gov

RIN: 3235–AK49

Securities and Exchange Commission (SEC)
Division of Investment Management

Final Rule Stage

584. AMENDMENTS TO FORM ADV

Legal Authority: 15 USC 80b–4, 80b–6(4), 80b–ll(a), 80b–3(c)(1); 15 USC 77s(a); 15 USC 78(wa), 78bb(e)(2); 15 USC 77sss(a); 15 USC 78a–37(a)

Abstract: The Commission proposed amendments to Form ADV part 2 to require registered investment advisers to deliver to clients and prospective clients a brochure written in plain English.

The amendments are designed to require advisers to provide clients and prospective clients with clear, current, and more meaningful disclosure of the business practices, conflicts of interest, and background of investment advisers and their advisory personnel. Under the proposal, advisers would file their brochures with the Commission electronically, and the brochures would be available to the public through the Commission's Web site.

Timetable:

Action	Date	FR Cite
NPRM	04/17/00	65 FR 20524
NPRM Comment Period End	06/03/00	
Second NPRM	03/14/08	73 FR 13958
Second NPRM Comment Period End	05/16/08	
Final Action	02/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Sarah Ten Siethoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6729
Email: tensiethoffs@sec.gov

RIN: 3235–AI17

SEC—Division of Investment Management **Final Rule Stage**

585. TEMPORARY RULE REGARDING PRINCIPAL TRADES WITH CERTAIN ADVISORY CLIENTS

Legal Authority: 15 USC 80b–6a; 15 USC 80b–11(a)

Abstract: The Commission adopted an interim final temporary rule that will expire on December 31, 2009, to provide an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when acting in a principal capacity in transactions with certain of their advisory clients.

As contemplated in the temporary rule release, the Division has been assessing the operation of the temporary rule as well as public comment letters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/28/07	72 FR 55022
Interim Final Rule Effective	09/30/07	
Interim Final Rule Comment Period End	11/30/07	
Interim Final Rule Extension	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Matthew Goldin, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6726
Fax: 202 772–9284
Email: goldinm@sec.gov

RIN: 3235–AJ96

586. INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM UNDER THE GRAMM–LEACH–BLILEY ACT

Legal Authority: 15 USC 6804; 15 USC 78q and 78W; 15 USC 80a–30 and 80a–37; 15 USC 80b–4 and 80b–11

Abstract: The Commission, together with the Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision and Commodity Futures Trading Commission (the Agencies), requested comment on whether the Agencies should consider amending the regulations that implement the privacy provisions of the Gramm-Leach-Bliley Act (''GLBA'') to allow or require financial institutions to provide alternative types of privacy notices that would be easier for consumers to understand.

Pursuant to the Financial Services Regulatory Relief Act, the Agencies proposed a model form that may be used at the option of financial institutions to comply with disclosures required under the privacy provision of GLBA. The Commission reopened the comment period on the proposed model privacy notice to solicit public comment on data and a report on consumer testing of a revised version of the proposed model privacy form.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75165
ANPRM Comment Period End	03/29/04	
NPRM	03/29/07	72 FR 14490
NPRM Comment Period End	05/29/07	
Second NPRM	04/20/09	74 FR 17925
Second NPRM Comment Period End	05/20/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Thoreau Adrian Bartmann, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6792
Email: bartmannt@sec.gov

RIN: 3235–AJ06

Securities and Exchange Commission (SEC) **Completed Actions**

Division of Investment Management

587. POLITICAL CONTRIBUTIONS BY CERTAIN INVESTMENT ADVISERS

Legal Authority: 15 USC 204; 15 USC 206(4); 15 USC 211(a)

Abstract: The Commission is withdrawing this item from the Agenda because the topic is addresssed under RIN 3235-AK39.

Timetable:

Action	Date	FR Cite
NPRM	08/10/99	64 FR 43556
NPRM Comment Period End	11/01/99	
Withdrawn	08/07/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Daniel Seth Kahl, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6730
Email: kahld@sec.gov

RIN: 3235–AH72

588. REGULATION S–AM: LIMITATIONS ON AFFILIATE MARKETING

Legal Authority: PL 108–159, 117 Stat 1952, 214, 216

Abstract: In response to the Fair and Accurate Credit Transactions Act of 2003, the Commission adopted amendments to Regulation S-P concerning the disposal of consumer report information and Regulation S-AM, which relates to limitations on affiliate marketing. The Commission initially adopted the disposal amendments, and then adopted proposed Regulation S-AM.

Timetable:

Action	Date	FR Cite
NPRM	07/14/04	69 FR 42302
NPRM Comment Period End	08/13/04	
Second NPRM	09/20/04	69 FR 56304
Second NPRM Comment Period End	10/20/04	
Final Rule	12/08/04	69 FR 71322
Final Rule Effective	01/11/05	
Second Final Rule	08/11/09	74 FR 40398
Final Rule Effective	09/10/09	
Compliance Date Extended	11/12/09	74 FR 58204
Extended Compliance Date	01/01/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Thoreau Adrian Bartmann, Division of Investment Management, Securities and Exchange

SEC—Division of Investment Management — Completed Actions

Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6792
Email: bartmannt@sec.gov
RIN: 3235–AJ24

Securities and Exchange Commission (SEC) — Proposed Rule Stage
Division of Trading and Markets

589. PUBLICATION OR SUBMISSION OF QUOTATIONS WITHOUT SPECIFIED INFORMATION

Legal Authority: 15 USC 78c; 15 USC 78j(b); 15 USC 78o(c); 15 USC 78o(g); 15 USC 78q(a); 15 USC 78w(a)

Abstract: As part of its efforts to respond to fraud and manipulation in the microcap securities market, the Commission proposed amendments to Rule 15c2-11. These amendments would limit the rule's piggyback provision and increase public availability of issuer information. The amendments would expand the information review requirements for non-reporting issuers and the documentation required for significant relationships between the broker-dealer and the issuer of the security to be quoted. Finally, the amendments would exclude from the rule securities of larger, more liquid issuers.

Timetable:

Action	Date	FR Cite
NPRM	02/25/98	63 FR 9661
NPRM Comment Period End	04/27/98	
Second NPRM	03/08/99	64 FR 11124
Second NPRM Comment Period End	04/07/99	
Second NPRM Comment Period Extended	04/14/99	64 FR 18393
Comment Period End	05/08/99	
Supplemental NPRM	09/00/10	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Victoria L. Crane, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5744
Fax: 202 772–9355
Email: cranev@sec.gov

RIN: 3235–AH40

Securities and Exchange Commission (SEC) — Final Rule Stage
Division of Trading and Markets

590. PROPOSED AMENDMENT TO MUNICIPAL SECURITIES DISCLOSURE

Legal Authority: 15 USC 78b; 15 USC 78c(b); 15 USC 78j; 15 USC 78o(c); 15 USC 78o–4; 15 USC 78q; 15 USC 78w(a)(1)

Abstract: The Commission proposed amending Rule 15c2-12 under section 15 of the Exchange Act to improve the system of continuing disclosure previously established by Rule 15c2-12.

Timetable:

Action	Date	FR Cite
NPRM	07/24/09	74 FR 36832
NPRM Comment Period End	09/08/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Martha Mahan Haines, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5681
Fax: 703 772–9274
Email: hainesm@sec.gov

RIN: 3235–AJ66

591. NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS

Legal Authority: 15 USC 78o–7; 15 USC 89q

Abstract: The Commission adopted rule amendments that impose additional requirements on nationally recognized statistical rating organizations (''NRSROs'') in order to address concerns about the integrity of their credit rating procedures and methodologies in light of the role they played in determining credit ratings for securities collateralized by or linked to subprime residential mortgages.

The Commission simultaneously proposed rule amendments regarding the disclosure of ratings history. The proposed rules include reproposals of certain amendments to Rule 17g-5. The Division is considering recommending that the Commission adopt certain parts of the proposal.

Timetable:

Action	Date	FR Cite
NPRM	06/25/08	73 FR 36212
NPRM Comment Period End	07/25/08	
Final Rule	02/09/09	74 FR 6465
Second NPRM	02/09/09	74 FR 6485
Second NPRM Comment Period End	03/26/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 3235–AK14

Securities and Exchange Commission (SEC) **Long-Term Actions**
Division of Trading and Markets

592. RULE 15C2–2: CONFIRMATION OF TRANSACTIONS IN OPEN–END MANAGEMENT INVESTMENT COMPANY SHARES, UNIT INVESTMENT TRUST INTERESTS, AND MUNICIPAL FUND SECURITIES USED FOR EDUCATION SAVINGS

Legal Authority: 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

Abstract: The Commission proposed new Rule 15c2-2 under the Exchange Act, together with accompanying Schedule 15C. The Commission also proposed related amendments to Rule 10b-10. Proposed Rule 15c2-2 and Schedule 15C would provide for improved confirmation disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts. The amendments to Rule 10b-10 in part would reflect the new rule and would provide improved confirmation disclosure about certain callable securities. They also would clarify that the confirmation disclosure requirements do not determine broker-dealer disclosure obligations under other provisions of the law.

Timetable:

Action	Date	FR Cite
NPRM	02/10/04	69 FR 6438
NPRM Comment Period End	04/12/04	
NPRM Comment Period Extended	03/04/05	70 FR 10521
NPRM Comment Period End	04/04/05	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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RIN: 3235–AJ11

593. RULE 15C2–3: POINT–OF–SALE DISCLOSURE OF PURCHASES IN OPEN–END MANAGEMENT INVESTMENT COMPANY SHARES, UNIT INVESTMENT TRUST INTERESTS, AND MUNICIPAL FUND SECURITIES USED FOR EDUCATION SAVINGS

Legal Authority: 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

Abstract: The Commission proposed new Rule 15c2-3 under the Exchange Act, together with accompanying Schedule 15D. Proposed Rule 15c2-3 and Schedule 15D would provide for pre-transaction ''point of sale'' disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts.

Timetable:

Action	Date	FR Cite
NPRM	02/10/04	69 FR 6438
NPRM Comment Period End	04/12/04	
NPRM Comment Period Extended	03/04/05	70 FR 10521
NPRM Comment Period End	04/04/05	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
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RIN: 3235–AJ12

594. RULE 15C–100: SCHEDULE 15C

Legal Authority: 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

Abstract: The Commission proposed new Schedule 15C and Rules 15c2-2 and 15c2-3 under the Exchange Act, together with accompanying Schedule 15D. The Commission also proposed related amendments to Rule 10b-10. Proposed Rules 15c2-2 and 15c2-3 and Schedules 15C and 15D would provide for improved confirmation and pre-transaction ''point of sale'' disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts. The amendments to Rule 10b-10 in part would reflect the new rules and would provide improved confirmation disclosure about certain callable securities. They also would clarify that the confirmation disclosure requirements do not determine broker-dealer disclosure obligations under other provisions of the law.

Timetable:

Action	Date	FR Cite
NPRM	02/10/04	69 FR 6438
NPRM Comment Period End	04/12/04	
NPRM Comment Period Extended	03/04/05	70 FR 10521
NPRM Comment Period End	04/04/05	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
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RIN: 3235–AJ13

595. RULE 15C–101: SCHEDULE 15D

Legal Authority: 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

Abstract: The Commission proposed new Rule 15c2-3 under the Exchange Act, together with accompanying Schedule 15D. Proposed Rule 15c2-3 and Schedule 15D would provide for pre-transaction ''point of sale'' disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts.

Timetable:

Action	Date	FR Cite
NPRM	02/10/04	69 FR 6438
NPRM Comment Period End	04/12/04	
NPRM Comment Period Extended	03/04/05	70 FR 10521
NPRM Comment Period End	04/04/05	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Alicia Goldin, Division of Trading and Markets,

SEC—Division of Trading and Markets — Long-Term Actions

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100 F Street NE, Washington, DC 20549
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RIN: 3235–AJ14

596. PROCESSING OF REORGANIZATION EVENTS, TENDER OFFERS, AND EXCHANGE OFFERS

Legal Authority: 15 USC 78b; 15 USC 78k–1(a)(1)(B); 15 USC 78n(d)(4); 15 USC 78o(c)(3); 15 USC 78o(c)(6); 15 USC 78q–1(a); 15 USC 78q–1(d)(1); 15 USC 78w(a)

Abstract: The Commission proposed amendments to Rule 17Ad-14 under the Exchange Act. The amendments would require the establishment of book-entry accounts in connection with reorganization events and would give securities depositories up to 3 business days after the expiration of a tender offer, exchange offer, or reorganization event to deliver physical securities certificates to the agents.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47209
NPRM Comment Period End	11/03/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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RIN: 3235–AH53

Securities and Exchange Commission (SEC) Division of Trading and Markets — Completed Actions

597. AMENDMENTS TO REGULATION SHO

Legal Authority: 15 USC 78b and 78c(b); 15 USC 78F; 15 USC 78j; 15 USC 78k–1; 15 USC 78l(h); 15 USC 78o and 78o–3; 15 USC 78q and 78q–1; 15 USC 78s; 15 USC 78w(a)

Abstract: The Commission adopted a final rule that made permanent an interim final rule, Rule 204T, to address abusive ''naked'' short selling in all equity securities by requiring that participants of a clearing agency registered with the Commission deliver securities by settlement date, or if the participants have not delivered shares by settlement date, immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/17/08	73 FR 61706
Interim Final Rule Effective	10/17/08	
Interim Final Rule Comment Period End	12/16/08	
Final Action	07/31/09	74 FR 38266
Final Action Effective	07/31/09	

Regulatory Flexibility Analysis Required: Yes

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RIN: 3235–AK22

[FR Doc. E9–28561 Filed 12–04–09; 8:45 am]
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H.R. 955/P.L. 111–99

To designate the facility of the United States Postal Service located at 10355 Northeast Valley Road in Rollingbay, Washington, as the ''John 'Bud' Hawk Post Office''. (Nov. 30, 2009; 123 Stat. 3011)

H.R. 1516/P.L. 111–100

To designate the facility of the United States Postal Service located at 37926 Church Street in Dade City, Florida, as the ''Sergeant Marcus Mathes Post Office''. (Nov. 30, 2009; 123 Stat. 3012)

H.R. 1713/P.L. 111–101

To name the South Central Agricultural Research Laboratory of the Department of Agriculture in Lane, Oklahoma, and the facility of the United States Postal Service located at 310 North Perry Street in Bennington, Oklahoma, in honor of former Congressman Wesley ''Wes'' Watkins. (Nov. 30, 2009; 123 Stat. 3013)

H.R. 2004/P.L. 111–102

To designate the facility of the United States Postal Service located at 4282 Beach Street in Akron, Michigan, as the ''Akron Veterans Memorial Post Office''. (Nov. 30, 2009; 123 Stat. 3014)

H.R. 2215/P.L. 111–103

To designate the facility of the United States Postal Service located at 140 Merriman Road in Garden City, Michigan, as the ''John J. Shivnen Post Office Building''. (Nov. 30, 2009; 123 Stat. 3015)

H.R. 2760/P.L. 111–104

To designate the facility of the United States Postal Service located at 1615 North Wilcox Avenue in Los Angeles, California, as the ''Johnny Grant Hollywood Post Office Building''. (Nov. 30, 2009; 123 Stat. 3016)

H.R. 2972/P.L. 111–105

To designate the facility of the United States Postal Service located at 115 West Edward Street in Erath, Louisiana, as the ''Conrad DeRouen, Jr. Post Office''. (Nov. 30, 2009; 123 Stat. 3017)

H.R. 3119/P.L. 111–106

To designate the facility of the United States Postal Service located at 867 Stockton Street in San Francisco, California, as the ''Lim Poon Lee Post Office''. (Nov. 30, 2009; 123 Stat. 3018)

H.R. 3386/P.L. 111–107

To designate the facility of the United States Postal Service located at 1165 2nd Avenue in Des Moines, Iowa, as the ''Iraq and Afghanistan Veterans Memorial Post Office''. (Nov. 30, 2009; 123 Stat. 3019)

H.R. 3547/P.L. 111–108

To designate the facility of the United States Postal Service located at 936 South 250 East in Provo, Utah, as the ''Rex E. Lee Post Office Building''. (Nov. 30, 2009; 123 Stat. 3020)

S. 748/P.L. 111–109

To redesignate the facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, as the ''Cesar E. Chavez Post Office''. (Nov. 30, 2009; 123 Stat. 3021)

S. 1211/P.L. 111–110

To designate the facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, as the ''Jack F. Kemp Post Office Building''. (Nov. 30, 2009; 123 Stat. 3022)

S. 1314/P.L. 111–111

To designate the facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, as the ''Dr. Martin Luther King, Jr. Post Office''. (Nov. 30, 2009; 123 Stat. 3023)

S. 1825/P.L. 111–112

To extend the authority for relocation expenses test programs for Federal employees, and for other purposes. (Nov. 30, 2009; 123 Stat. 3024)

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