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REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions-Fall 2018

AGENCY: Regulatory Information Service Center.

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

SUMMARY: Publication of the Unified Agenda of Regulatory and Deregulatory Actions and the Regulatory Plan represent key components of the regulatory planning mechanism prescribed in Executive Order 12866, "Regulatory Planning and Review," Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," January 30, 2017, and Executive Order 13777, "Enforcing the Regulatory Reform Agenda," February 24, 2017. The fall editions of the Unified Agenda include the agency regulatory plans required by EO 12866, which identify regulatory priorities and provide additional detail about the most important significant regulatory actions that agencies expect to take in the coming year.

In addition, the Regulatory Flexibility Act requires that agencies publish semiannual "regulatory flexibility agendas" describing regulatory actions they are developing that will have significant effects on small businesses and other small entities (5 U.S.C. 602).

The Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda), published in the fall and spring, helps agencies fulfill all of these requirements. All federal regulatory agencies have chosen to publish their regulatory agendas as part of this publication. The complete Unified Agenda and Regulatory Plan can be found online at **http://www.reginfo.gov** and a reduced print version can be found in the **Federal Register**. Information regarding obtaining printed copies can also be found on the Reginfo.gov website (or below, VI. How Can Users Get Copies of the Plan and the Agenda?).

The fall 2018 Unified Agenda publication appearing in the **Federal Register** includes 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 that 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 2018 Unified Agenda contains the Regulatory Plans of 28 Federal agencies and 66 Federal agency regulatory agendas.

ADDRESSES: Regulatory Information Service Center (MVE), General Services Administration, 1800 F Street NW., 2219F, 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 (MVE), U.S. General Services Administration, 1800 F Street NW., 2219F, 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 Fall 2018 Regulatory Plan

AGENCY REGULATORY PLANS

Cabinet Departments

Department of Agriculture

Department of Commerce

Department of Defense

Department of Education

Department of Energy

Department of Health and Human Services

Department of Homeland Security

Department of Housing and Urban Development

Department of the Interior

Department of Justice

Department of Labor

Department of Transportation

Department of the Treasury

Department of Veterans Affairs

Other Executive Agencies

Architectural and Transportation Barriers Compliance Board

Environmental Protection Agency

Equal Employment Opportunity Commission

General Services Administration

National Aeronautics and Space Administration

National Archives and Records Administration

Office of Personnel Management

Pension Benefit Guaranty Corporation

Small Business Administration

Social Security Administration

Independent Regulatory Agencies

Consumer Financial Protection Bureau

Consumer Product Safety Commission

Federal Trade Commission

National Indian Gaming Commission

Nuclear Regulatory Commission

AGENCY AGENDAS

Cabinet Departments

Department of Agriculture

Department of Commerce

Department of Energy

Department of Health and Human Services

Department of Homeland Security

Department of the Interior

Department of Justice

Department of Labor

Department of Transportation

Department of the Treasury

Other Executive Agencies

Architectural and Transportation Barriers Compliance Board

Committee for Purchase From People Who Are Blind or Severely Disabled

Environmental Protection Agency

General Services Administration

National Aeronautics and Space Administration

Railroad Retirement Board

Small Business Administration

Joint Authority

Department of Defense/General Services Administration/National Aeronautics and Space Administration (Federal Acquisition Regulation)

Independent Regulatory Agencies

Commodity Futures Trading Commission

Consumer Financial Protection Bureau

Consumer Product Safety Commission

Federal Communications Commission

Federal Reserve System

National Labor Relations Board

Nuclear Regulatory Commission

Securities and Exchange Commission

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Introduction to the Fall 2018 Regulatory Plan

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Department of Commerce

Department of Defense

Department of Education

Department of Energy

Department of Health and Human Services

Department of Homeland Security

Department of Housing and Urban Development

Department of Interior

Department of Justice

Department of Labor

Department of Transportation

Department of Treasury

Department of Veterans Affairs

Other Executive Agencies

Environmental Protection Agency

Equal Employment Opportunity Commission

General Services Administration

National Aeronautics and Space Administration

National Archives and Records Administration

Office of Personnel Management

Pension Benefit Guaranty Corporation

Small Business Administration

Social Security Administration

Federal Acquisition Regulation

Independent Regulatory Agencies

Consumer Product Safety Commission

Federal Trade Commission

National Indian Gaming Commission

Nuclear Regulatory Commission

AGENCY REGULATORY FLEXIBILITY AGENDAS

Cabinet Departments

Department of Agriculture

Department of Commerce

Department of Energy

Department of Health and Human Services

Department of Homeland Security

Department of Interior

Department of Justice

Department of Labor

Department of Transportation

Department of Treasury

Other Executive Agencies

Architectural and Transportation Barriers Compliance Board

Committee For Purchase From the People Who Are Blind or Severely Disabled

Environmental Protection Agency

General Services Administration

National Aeronautics and Space Administration

Railroad Retirement Board

Small Business Administration

Federal Acquisition Regulation

Independent Agencies

Commodity Futures Trading Commission

Consumer Financial Protection Bureau

Consumer Product Safety Commission

Federal Communication Commission

Federal Reserve System

National Labor Relations Board

Nuclear Regulatory Commission

Securities and Exchange Commission

Surface Transportation Board

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 and deregulatory priorities, and, for the most part, (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 30 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. The complete Unified Agenda is available to the public at http://www.reginfo.gov. The online Unified Agenda offers flexible search tools and access to the historic Unified Agenda database to1995. The complete online edition of the Unified Agenda includes regulatory agendas from 65 Federal agencies. Agencies of the United States Congress are not included.

The fall 2018 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 that 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://www.reginfo.gov.

The following agencies have no entries 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.

Cabinet Departments

Department of Defense*

Department of Education*

Department of Housing and Urban Development*

Department of State

Department of Veterans Affairs*

Other Executive Agencies

Agency for International Development

American Battle Monuments Commission

Commission on Civil Rights

Corporation for National and Community Service

Council on Environmental Quality

Court Services and Offender Supervision Agency for the District of Columbia

Equal Employment Opportunity Commission*

Federal Mediation Conciliation Service

Institute of Museum and Library Services

National Archives and Records Administration*

National Endowment for the Arts

National Endowment for the Humanities

National Mediation Board

Office of Government Ethics

Office of Management and Budget

Office of Personnel Management*

Peace Corps

Pension Benefit Guaranty Corporation*

Presidio Trust

Social Security Administration*

Tennessee Valley Authority

Independent Agencies

Council of the Inspectors General on Integrity and Efficiency

Farm Credit Administration

Federal Deposit Insurance Corporation

Federal Energy Regulatory Commission

Federal Housing Finance Agency

Federal Maritime Commission

Federal Trade Commission*

National Commission on Military, National, and Public Service

National Credit Union Administration

National Indian Gaming Commission*

National Transportation Safety Board

Postal Regulatory Commission

The Regulatory Information Service Center compiles 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 (incorporated in Executive Order 13563). The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency officials, 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 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 helps 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, "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, "Regulatory Planning and Review," 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 13771

Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," January 30, 2017 (82 FR 9339) requires each agency to identify for elimination two prior regulations for every one new regulation issued, and the cost of planned regulations be prudently managed and controlled through a budgeting process.

Executive Order 13777

Executive Order 13777, "Enforcing the Regulatory Reform Agenda," February 24, 2017 (82 FR 12285) requires each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. The Executive Order also directs that each agency designate a regulatory Reform Task Force.

Executive Order 13563

Executive Order 13563, "Improving Regulation and Regulatory Review," January 18, 2011 (76 FR 3821) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866, which includes the general principles of regulation and public participation, and orders integration and innovation in coordination across agencies; flexible approaches where relevant, feasible, and consistent with regulatory approaches; scientific integrity in any scientific or technological information and processes used to support the agencies' regulatory actions; and retrospective analysis of existing regulations.

Executive Order 13132

Executive Order 13132, "Federalism," 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 a regulation with federalism implications, which either preempt State law or impose non-statutory 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 a regulation, 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, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 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 in 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 part of the Agenda contains a preamble providing information specific to that agency. 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' 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. 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.

Long-Term Actions are rulemakings reported during the publication cycle that are outside of the required 12-month reporting period for which the Agenda was intended. Completed Actions in the

publication cycle are rulemakings that are ending their lifecycle either by Withdrawal or completion of the rulemaking process. Therefore, the Long-Term and Completed RINs do not represent the ongoing, forward-looking nature intended for reporting developing rulemakings in the Agenda pursuant to Executive Order 12866, section 4(b) and 4(c). To further differentiate these two stages of rulemaking in the Unified Agenda from active rulemakings, Long-Term and Completed Actions are reported separately from active rulemakings, which can be any of the first three stages of rulemaking listed above. A separate search function is provided on http://reginfo.gov to search for Completed and Long-Term Actions apart from each other and active RINs.

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 online 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 (EO) 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 displayed in the form 12/00/19 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.

Included in the Regulatory Plan -- whether the rulemaking was included in the agency's current regulatory plan published in fall 2017.

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 RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

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, Public Law 112-4 is the fourth public law of the 112th 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 Regulatory Plan and 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 Unified Agenda. Sequence numbers are not used in the online Unified Agenda.

U.S.C.-- 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, along with flexible search tools.

The Government Printing Office's GPO FDsys website contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register**. These documents are available at **http://www.fdsys.gov**.

Dated: October 15, 2018.

NAME: John C. Thomas,

Executive Director.

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Introduction to the Fall 2018 Regulatory Plan

Regulatory reform is a cornerstone of President Trump's agenda for economic growth. This Plan reaffirms the principles of individual liberty and limited government essential to reform. It also highlights the success of ongoing efforts, initiatives for improving accountability, and the promotion of good regulatory practices.

Across the Trump Administration, real regulatory reform is underway. As the agency examples throughout the Plan demonstrate, the benefits of a more rational regulatory system are felt far and wide and create opportunities for economic growth and development. Farmers can more productively use their land. Small businesses can hire more workers and provide more affordable healthcare. Innovators will be able to pursue advances in autonomous vehicles, drones, and commercial space exploration. Veterans enjoy expanded access to doctors through a telehealth program. Infrastructure can be improved more quickly with streamlined permitting requirements. These reforms and many others make life better for all Americans through lower consumer prices, more jobs, and, in the long run,

improvements in well-being that result from the advance of innovative new products and services.

Private choices of individuals and businesses should generally prevail in a free society. Yet in modern times, the expansion of the administrative state has placed undue burdens on the public, impeding economic growth, technological innovation, and consumer choice. This Administration has spearheaded an unprecedented effort to restore appropriate checks on the regulatory state, ensuring that agencies act within the boundaries of the law and in a manner that yields the greatest benefits to the American people while imposing the fewest burdens. Our policies focus on restoring political accountability and protecting the constitutional values of due process and fair notice. Government should respect the private decisions of individuals and businesses unless a compelling need can be shown for intervention, a longstanding principle affirmed in Executive Order 12866 ("Regulatory Planning and Review," September 30, 1993). We approach regulation with humility, trusting Americans to direct their energy and capital productively and to reap the benefits that result from a free exchange of goods and ideas.

The Administration's regulatory agenda involves structural reforms as well as the practical work of eliminating and revising regulations. Agencies continue to advance the health and safety mandates that Congress has entrusted to them and to revamp vital programs to increase their effectiveness. At the same time, agencies are revising or rescinding regulations that fail to address real-world problems, that are needlessly burdensome, and that prevent Americans from advancing innovative solutions. Our reform efforts emphasize the rule of law, respect for the Constitution's separation of powers, and the limits of agency authority.

Reducing Regulatory Burdens

At the outset, President Trump set forth a general mandate for regulatory reform across the Administration. Consistent with legal obligations, Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs," January 30, 2017) directs a two-fold approach to reform: It requires that agencies eliminate two regulations for each new significant regulation and also requires that agencies offset any new regulatory costs. By requiring a reduction in the number of regulations, the order incentivizes agencies to identify regulations and guidance documents that do not provide sufficient benefits to the public. Agencies have reduced or eliminated unnecessary requirements large and small. For the first time in decades, Federal agencies have decreased new regulatory costs, while continuing to pursue important regulatory priorities.

Agencies have achieved historic and meaningful regulatory reform in the first two years.

- For fiscal year 2018, agencies achieved $23 billion in net regulatory cost savings across the government.
- Agencies issued 176 deregulatory actions (57 of which are significant deregulatory actions) and 14 significant regulatory actions.
- These results expand and build upon the success of the Administration's first year, for a total regulatory cost reduction of $33 billion.

In addition to these impressive results, the agencies project $18 billion in regulatory cost savings for 2019. In addition, the "Safer Affordable Fuel-Efficient Vehicles Rule" revises the greenhouse gas standards and Corporate Average Fuel Economy standards for passenger cars and light trucks. The Department of Transportation and the Environmental Protection Agency have proposed a range of options that are projected to save between

$120 and $340 billion in regulatory costs and anticipate completion of the rule in fiscal year 2019. The momentum for reform continues to accelerate as agencies complete substantial deregulatory actions.

Promoting the Rule of Law: Political Accountability, Guidance Documents, and Respecting Congress' Lawmaking Power

The Administration's regulatory reform is committed to the rule of law, understood as respect for the constitutional structure as well as the specific laws enacted by Congress. The Constitution establishes a relatively simple framework for regulation. Congress is vested with limited and enumerated legislative powers, which it may use to set regulatory policy and establish the authority of agencies to issue regulations. The President is vested with the executive power, which includes overseeing and directing administration of the laws. Within the framework and directions established by Congress, political accountability for regulatory policy depends on presidential responsibility and control. As Alexander Hamilton explained, "Energy in the executive is a leading character of good government. It is essential to the protection of the community against foreign attacks: it is not less essential to the steady administration of the laws." The Federalist No. 70.

The annual Regulatory Plan has provided a longstanding form of presidential accountability for the regulatory policy of federal agencies as well as for the specific regulatory actions planned for the forthcoming year. Through the process of reviewing the Plan and Unified Agenda of Regulatory and Deregulatory Actions, OIRA helps agencies to direct administrative action consistent with presidential priorities. Agency heads explain their priorities through the narrative of the Regulatory Plan and list specific deregulatory and regulatory actions expected to be completed in the coming year. This process provides an important gatekeeping role to ensure agencies pursue only those actions consistent with law and that have the support of the heads of agencies and ultimately the President. Likewise, review of draft regulatory actions through Executive Order 12866 advances good regulatory policy consistent with legal requirements, sound analysis, and presidential priorities.

Faithful execution of the laws also includes respect for the lawmaking power of Congress. Although Congress often confers substantial discretion on agencies, OIRA works with agencies to limit expansive interpretations of executive authority and to regulate within the boundaries of the law. Carefully examining statutory authority and keeping agencies within the limits set by Congress protects against executive agencies exercising the legislative power. OIRA also works with agencies to ensure compliance with the Administrative Procedure Act. The requirements of public notice and opportunity for comment bolster the legitimacy of agency action and can provide refinements that improve the ultimate policy chosen by an agency.

Moreover, OIRA is looking closely at existing statutory requirements for limiting administrative excess across federal agencies, including within the historically independent agencies. Under the Paperwork Reduction Act, all federal agencies must comply with specific requirements before collecting information from the public. OIRA plays an important role in reviewing forms that collect information, verifying that they have practical utility and are as minimally burdensome as possible. Reduction of paperwork burdens plays an important role in eliminating unnecessary, duplicative, or conflicting regulatory requirements.

The Administration's commitment to the rule of law finds expression in other initiatives, such as restoring the proper use of guidance documents. While guidance documents may provide needed clarification of existing legal obligations, they have sometimes been stretched to impose new obligations. OIRA and the White House Counsel's Office have repeatedly affirmed the importance of due process and fair notice in regulatory

policy and worked closely with agencies to prevent the misuse of guidance documents. Agencies should not surprise the public with new requirements through an informal memo, speech, or blog post. When agencies impose new regulatory obligations, they must follow the appropriate administrative procedures.

Through the review process for significant guidance documents, OIRA has identified proposed agency guidance that should be undertaken only through notice and comment rulemaking. Some agencies have withdrawn expansive guidance from the previous administration and are replacing it with rulemaking, rather than simply a revised guidance document. Rulemaking undoubtedly requires more agency time and resources; however, it also provides fair notice and allows input from the public, which ultimately results in more lawful and predictable regulatory policy.

Other agencies are also taking important steps. The Department of Justice clarified that guidance documents would not be used for enforcement purposes. Several agencies subsequently followed this principle, including a group of historically independent financial regulatory agencies. Other agencies are in the process of revising their guidance policies to promote greater accountability in the development, promulgation, and access to guidance documents.

Ensuring the proper use of guidance documents; eliminating outdated or stale guidance; requiring internal checks that enhance accountability for guidance; and providing greater transparency and online access to guidance documents are steps forward in promoting sound regulatory policy across the federal government. OIRA will continue to work with agencies to improve and refine their guidance practices.

Good Regulatory Practices: Transparency, Coordination, and Analysis

Regulatory reform in the Trump Administration includes the promotion and expansion of longstanding good regulatory practices such as transparency, coordination, and cost-benefit analysis. These practices improve regulatory outcomes irrespective of the policy preferences of an agency or administration.

Transparency in the regulatory process provides one of the most important checks on administrative agencies by allowing the public to have notice of regulatory actions and opportunities for comment in the administrative process. This Administration has taken specific steps to improve transparency.

For example, OIRA collaborates with agencies to make the Unified Agenda of Regulatory and Deregulatory Actions a more accurate reflection of what agencies plan to pursue in the coming year. Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.

This Administration has also published the so-called "Inactive List," a list of regulations contemplated by agencies, but previously not made public in the Agenda. Agencies continue to review these lists and remove actions they no longer plan to pursue. Publication of the list promotes agency accountability for all regulatory actions under consideration and a more accurate picture of regulations in the pipeline.

Furthermore, in the process of implementing the historic reforms of Executive Order 13771, OIRA published detailed information about the cost allowances, cost savings, and specific actions counted as regulatory and deregulatory. OIRA issued early guidance on how the Executive Order would be implemented. Drawing from the successful experience of similar deregulatory programs in the United Kingdom and Canada, the guidance explained

that even small deregulatory actions would be counted in order to incentivize agencies to eliminate unnecessary regulatory burdens of all sizes. This transparency allows the public to understand the accounting methodology and the choices made to encourage the greatest possible reform efforts from the agencies.

Coordination is an important component of the OIRA regulatory review process. Coordination facilitates consistent application of presidential priorities, legal interpretation, and regulatory policy across different agencies. Centralized review allows the Administration to advance broader principles, such as concern for the rule of law, due process, and fair notice, as well as to reduce regulatory costs across the board.

Through the review process, agencies and senior officials within the Executive Office of the President have an opportunity to comment on draft regulations. These reviewers flag policy concerns or problems of duplication, inconsistency, and inefficiency. Such coordination allows for careful consideration of competing priorities and how they should be balanced across the Executive Branch. The review process also allows for coordination in other contexts, such as when one agency's rule implicates the programs or legal authorities of another. Interagency review can ameliorate problems arising from overlapping statutory mandates. Review can also strengthen the legal foundation and the supporting analysis of rules—bolstering their effectiveness and also their ability to survive legal challenge.

The historically independent agencies sometimes participate in the review process when a regulation raises issues that implicate their jurisdiction. Because these agencies are not generally subject to other White House coordination mechanisms, the review process provides an opportunity to ensure greater consistency across all agencies within the Executive Branch.

Finally, *cost-benefit analysis* must justify the need for regulation. As Executive Order 12866 recognizes, private choices of individuals and businesses are the baseline in the American system of government. To warrant departure from this baseline, regulatory actions must be consistent with statutory authority and should have benefits that substantially exceed costs.

Careful analysis that accurately captures both the benefits and costs of regulation is essential to achieving good regulatory policy. Consideration of alternatives and an assessment of their costs and benefits serves an important function by providing transparency for regulatory decisions and information that can inform public comment on the impact of regulatory alternatives before a rule is finalized. While anticipating and quantifying the costs and benefits of regulations pose challenges in some contexts, OIRA will continue to work closely with agencies to improve their analyses.

One of the practical consequences of Executive Order 13771 is that agencies have a new and meaningful incentive to engage in retrospective review of regulations, which President Obama called for in Executive Order 13563 ("Improving Regulation and Regulatory Review," January 18, 2011). When issuing a rule, an agency can only *predict* the costs and benefits. Periodically reviewing the *actual* costs and benefits of regulations allows agencies to modify rules for greater effectiveness or to repeal rules that are unnecessary or counterproductive.

<u>Review of tax regulations under Executive Order 12866</u>

Administration-wide regulatory reform efforts have been coupled with targeted reforms in specific high-burden areas. For example, the President issued Executive Order 13789 ("Identifying and Reducing Tax Regulatory Burdens," April 21, 2017), directing the Department of the Treasury to identify and reduce tax regulatory burdens because America's

"Federal tax system should be simple, fair, efficient, and pro-growth." In addition to other measures, the President called for a review of whether tax regulations should go through the centralized OIRA regulatory review process. Tax regulations were previously exempt from this process, in part contributing to the problem of burdensome, complicated, and inefficient tax regulatory policy identified by Executive Order 13789.

After conducting this review, the Office of Management and Budget and the Department of the Treasury signed a Memorandum of Agreement (MOA), "Review of Tax Regulations under Executive Order 12866" (April 11, 2018). The MOA recognizes the importance of presidential oversight and accountability, particularly where tax regulations reflect the exercise of discretion, raise important legal or policy questions, or impose substantial costs on the public. Tax regulations uniquely impact all Americans and have significant consequences for investment, economic growth, and innovation. The OIRA review process provides an important check to ensure that tax regulations are consistent with the President's priorities for a "simple, fair, efficient, and pro-growth" tax system.

The historic reforms enacted in the Tax Cuts and Jobs Act (TCJA) require Treasury to issue a number of regulations. The MOA provides for the possibility of expedited review of TCJA regulations in order to provide timely guidance and information to the public. Over the past few months, Treasury and OIRA have worked closely together to improve tax regulations, ensuring that regulations are consistent with law, demonstrate benefits that exceed the costs, and impose the fewest possible burdens on the public. The review process encourages greater transparency of the impacts of the regulation, highlighting where the agency exercises discretion and the anticipated burdens placed on the public, including paperwork and other compliance burdens. When Treasury provides this information in a proposed rule, the public has a more informed basis from which to comment on the rule and share information about the consequences of particular regulatory choices. Moreover, the review process facilitates coordination with other agencies to avoid conflict with other administration priorities.

The improvement of tax regulations demonstrates a specific success in the Administration's regulatory reform agenda. It also reaffirms the value of the OIRA centralized review process for promoting presidential priorities and good regulatory practices such as transparency, coordination, and robust cost-benefit analysis.

Conclusion

Consistent with its longstanding commitment to the principles of good regulatory policy, OIRA works closely with agencies to advance regulatory policy that is consistent with law and the President's priorities and yields substantial net benefits for the public. The first two years of the Administration have produced unparalleled reform, and we project even more significant results in the coming year.

Neomi Rao
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

DEPARTMENT OF AGRICULTURE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
1	NOP; Strengthening Organic Enforcement	0581–AD09	Proposed Rule Stage
2	National Bioengineered Food Disclosure Standard	0581–AD54	Final Rule Stage
3	Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs	0579–AE35	Proposed Rule Stage
4	Importation, Interstate Movement, and Release Into the Environment of Certain Genetically Engineered Organisms	0579–AE47	Proposed Rule Stage
5	Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents	0584–AE57	Proposed Rule Stage
6	Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)	0584–AE61	Proposed Rule Stage
7	Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)	0584–AE62	Proposed Rule Stage
8	Reform Provisions for the Supplemental Nutrition	0584–AE64	Proposed

	Assistance Program's Quality Control System		Rule Stage
9	Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements	0584–AE53	Final Rule Stage
10	Egg Products Inspection Regulations	0583–AC58	Final Rule Stage
11	Modernization of Swine Slaughter Inspection	0583–AD62	Final Rule Stage
12	Update and Clarification of the Locatable Minerals Regulations	0596–AD32	Prerule Stage
13	Oil and Gas Resource Revision	0596–AD33	Prerule Stage
14	Servicing Regulation for the Rural Utilities Service (RUS) Telecommunications Programs	0572–AC41	Final Rule Stage
15	oneRD Guaranteed Loan Regulation	0572–AC43	Final Rule Stage

DEPARTMENT OF COMMERCE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
16	Revisions to the Export Administration Regulations: Control of Firearms and Related Articles the President Determines No Longer	0694–AF47	Final Rule Stage

	Warrant Control Under the United States Munitions List		
17	Magnuson-Stevens Act; Fishery Management Councils; Financial Disclosure and Recusal	0648–BH73	Proposed Rule Stage
18	Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood	0648–BH87	Proposed Rule Stage
19	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico	0648–BB38	Final Rule Stage
20	Commerce Trusted Trader Program	0648–BG51	Final Rule Stage
21	Setting and Adjusting Patent Fees	0651–AD31	Proposed Rule Stage

DEPARTMENT OF DEFENSE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
22	Contractor Purchasing System Review Threshold (DFARS Case 2017-D038)	0750–AJ48	Proposed Rule Stage

23	Brand Name or Equal (DFARS Case 2017-D040)	0750–AJ50	Proposed Rule Stage
24	Submission of Summary Subcontract Report (DFARS Case 2017-D005)	0750–AJ42	Final Rule Stage
25	Regulatory Program of the Army Corps of Engineers Tribal Consultation and National Historic Preservation Act compliance	0710–AA75	Prerule Stage
26	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers	0710–AA78	Proposed Rule Stage
27	Definition of “Waters of the United States”	0710–AA80	Proposed Rule Stage
28	Compensatory Mitigation for Losses of Aquatic Resources—Review and Approval of Mitigation Banks and In-Lieu Fee Programs	0710–AA83	Proposed Rule Stage
29	Modification of Nationwide Permits	0710–AA84	Proposed Rule Stage
30	Policy for Domestic, Municipal, and Industrial Water Supply Uses of Reservoir Projects Operated by the Department of the Army, U.S. Army Corps of Engineers	0710–AA72	Final Rule Stage
31	Establishment of TRICARE Select and Other TRICARE Reforms	0720–AB70	Final Rule Stage

DEPARTMENT OF EDUCATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
32	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	1870–AA14	Proposed Rule Stage
33	State Authorization and Related Issues	1840–AD36	Proposed Rule Stage
34	Accreditation and Related Issues	1840–AD37	Proposed Rule Stage
35	Ensuring Student Access to High Quality and Innovative Postsecondary Educational Programs	1840–AD38	Proposed Rule Stage
36	Eligibility of Faith-Based Entities and Activities-Title IV Programs	1840–AD40	Proposed Rule Stage
37	TEACH Grants	1840–AD44	Proposed Rule Stage
38	Institutional Accountability	1840–AD26	Final Rule Stage
39	Program Integrity; Gainful Employment	1840–AD31	Final Rule Stage

DEPARTMENT OF ENERGY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
40	Energy Conservation Standards for Residential Conventional Cooking Products	1904–AD15	Proposed Rule Stage
41	Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products	1904–AD38	Proposed Rule Stage
42	Energy Conservation Program: Definition for General Service Lamps	1904–AE26	Proposed Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
43	HIPAA Privacy: Request for Information on Changes to Support, and Remove Barriers to, Coordinated Care	0945–AA00	Prerule Stage
44	HIPAA Privacy Rule: Presumption of Good Faith of Health Care Providers	0945–AA09	Proposed Rule Stage
45	Protecting Statutory Conscience Rights in Health Care; Delegations of Authority	0945–AA10	Final Rule Stage

46	Revising Outdated Requirements for Opioid Treatment Providers (OTPS)	0930–AA27	Proposed Rule Stage
47	Coordinating Care and Information Sharing in the Treatment of Substance Use Disorders	0930–AA32	Proposed Rule Stage
48	Food Standards: General Principles and Food Standards Modernization (Reopening of Comment Period)	0910–AC54	Proposed Rule Stage
49	Mammography Quality Standards Act; Amendments to Part 900 Regulations	0910–AH04	Proposed Rule Stage
50	Medical Device De Novo Classification Process	0910–AH53	Proposed Rule Stage
51	Nonprescription Drug Product With an Additional Condition for Nonprescription Use	0910–AH62	Proposed Rule Stage
52	Format and Content of Reports Intended to Demonstrate Substantial Equivalence	0910–AH89	Proposed Rule Stage
53	Nutrient Content Claims, Definition of Term: Healthy	0910–AI13	Proposed Rule Stage
54	Compliance With Statutory Program Integrity Requirements	0937–AA07	Final Rule Stage
55	Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CMS-3347-P)	0938–AT36	Proposed Rule Stage

56	CY 2020 Notice of Benefit and Payment Parameters (CMS-9926-P)	0938–AT37	Proposed Rule Stage
57	Exchange Program Integrity (CMS-9922-P)	0938–AT53	Proposed Rule Stage
58	Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2020 (CMS-4185-P)	0938–AT59	Proposed Rule Stage
59	Modernizing and Clarifying the Physician Self-Referral Regulations (CMS-1720-P)	0938–AT64	Proposed Rule Stage
60	Adoption and Foster Care Analysis and Reporting System	0970–AC72	Proposed Rule Stage

DEPARTMENT OF HOMELAND SECURITY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
61	EB-5 Immigrant Investor Program Realignment	1615–AC26	Prerule Stage
62	Inadmissibility on Public Charge Grounds	1615–AA22	Proposed Rule Stage
63	Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap Subject	1615–AB71	Proposed Rule Stage

	Aliens		
64	EB-5 Immigrant Investor Regional Center Program	1615–AC11	Proposed Rule Stage
65	Strengthening the H-1B Nonimmigrant Visa Classification Program	1615–AC13	Proposed Rule Stage
66	U.S. Citizenship and Immigration Services Biometrics Collection for Consistent, Efficient, and Effective Operations	1615–AC14	Proposed Rule Stage
67	Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization	1615–AC15	Proposed Rule Stage
68	Electronic Processing of Immigration Benefit Requests	1615–AC20	Proposed Rule Stage
69	Updating Adjustment of Status Procedures for More Efficient Processing and Immigrant Visa Usage	1615–AC22	Proposed Rule Stage
70	Improvements to the Medical Certification for Disability Exceptions Processing	1615–AC23	Proposed Rule Stage
71	Credible Fear Reform	1615–AC24	Proposed Rule Stage
72	Employment Authorization Documents for Asylum Applicants	1615–AC27	Proposed Rule Stage
73	EB-5 Immigrant Investor Program Modernization	1615–AC07	Final Rule

			Stage
74	Removal of Certain International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended (STCW) Training Requirements	1625–AC48	Proposed Rule Stage
75	TWIC Reader Requirements; Delay of Effective Date	1625–AC47	Final Rule Stage
76	Collection of Biometric Data From Aliens Upon Entry To and Exit From the United States	1651–AB12	Final Rule Stage
77	Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders—Automation of CBP Form I-94W	1651–AB14	Final Rule Stage
78	Vetting of Certain Surface Transportation Employees	1652–AA69	Proposed Rule Stage
79	Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA)	1652–AA70	Proposed Rule Stage
80	Protection of Sensitive Security Information	1652–AA08	Final Rule Stage
81	Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees	1652–AA35	Final Rule Stage
82	Security Training for Surface Transportation	1652–AA55	Final Rule

	Employees		Stage
83	Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children	1653–AA75	Proposed Rule Stage
84	Establishing a Maximum Period of Authorized Stay for F-1 and Other Nonimmigrants	1653–AA78	Proposed Rule Stage
85	Adjusting Program Fees for the Student and Exchange Visitor Program	1653–AA74	Final Rule Stage
86	Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster	1660–AA83	Final Rule Stage
87	Update to FEMA's Regulations on Rulemaking Procedures	1660–AA91	Final Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
88	Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses	2501–AD87	Proposed Rule Stage
89	Project Approval for Single Family Condominium	2502–AJ30	Final Rule

	(FR-5715)		Stage
90	Affirmatively Furthering Fair Housing Streamlining and Enhancement (FR-6123)	2529–AA97	Prerule Stage

DEPARTMENT OF THE INTERIOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
91	Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf	1082–AA01	Proposed Rule Stage

DEPARTMENT OF JUSTICE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
92	Bump-Stock-Type Devices	1140–AA52	Final Rule Stage
93	Implementation of the Provision of the Comprehensive Addiction and Recovery Act of 2016 Relating to the Partial Filling of Prescriptions for Schedule II Controlled Substances	1117–AB45	Proposed Rule Stage

94	Procedures for Asylum	1125–AA87	Proposed Rule Stage

DEPARTMENT OF LABOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
95	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees	1235–AA20	Proposed Rule Stage
96	Regular and Basic Rates Under the Fair Labor Standards Act	1235–AA24	Proposed Rule Stage
97	Joint Employment Under the Fair Labor Standards Act	1235–AA26	Proposed Rule Stage
98	Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A workers)	1205–AB89	Proposed Rule Stage
99	Health Reimbursement Arrangements and Other Account-Based Group Health Plans	1210–AB87	Proposed Rule Stage
100	Definition of an “Employer” Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple Employer Plans	1210–AB88	Proposed Rule Stage

101	Standards Improvement Project IV	1218–AC67	Final Rule Stage
102	Tracking of Workplace Injuries and Illnesses	1218–AD17	Final Rule Stage
103	Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors	1218–AD21	Final Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
104	Processing Buy America Waivers Based on Non availability	2105–AE79	Proposed Rule Stage
105	Registration and Marking Requirements for Small Unmanned Aircraft	2120–AK82	Final Rule Stage
106	Removing Regulatory Barriers for Automated Driving Systems	2127–AM00	Prerule Stage
107	The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021—2026 Passenger Cars and Light Trucks	2127–AL76	Proposed Rule Stage
108	Passenger Equipment Safety Standards	2130–AC46	Final Rule

	Amendments		Stage
109	Pipeline Safety: Class Location Requirements	2137–AF29	Prerule Stage
110	Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft	2137–AF20	Proposed Rule Stage
111	Pipeline Safety: Safety of Hazardous Liquid Pipelines	2137–AE66	Final Rule Stage
112	Pipeline Safety: Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments	2137–AE72	Final Rule Stage
113	Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act)	2137–AF08	Final Rule Stage

DEPARTMENT OF VETERANS AFFAIRS

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
114	Veterans Community Walk-in Care	2900–AQ47	Proposed Rule Stage
115	Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act), Public Law	2900–AQ42	Final Rule

	115-174, 132 Stat. 1296		Stage
116	Veterans Health Administration Benefits Claims, Appeals, and Due Process	2900–AQ44	Final Rule Stage
117	Veterans Care Agreements	2900–AQ45	Final Rule Stage
118	Veterans Community Care Program	2900–AQ46	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
119	Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act	2060–AM75	Proposed Rule Stage
120	Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program	2060–AT67	Proposed Rule Stage
121	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Project Emissions Accounting	2060–AT89	Proposed Rule Stage

122	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review	2060–AT90	Proposed Rule Stage
123	Mercury and Air Toxics Standards for Power Plants Residual Risk and Technology Review and Cost Review	2060–AT99	Proposed Rule Stage
124	The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks	2060–AU09	Proposed Rule Stage
125	Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)	2070–AK34	Proposed Rule Stage
126	Pesticides; Certification of Pesticide Applicators Rule; Reconsideration of the Minimum Age Requirements	2070–AK37	Proposed Rule Stage
127	Pesticides; Agricultural Worker Protection Standard; Reconsideration of Several Requirements	2070–AK43	Proposed Rule Stage
128	Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process	2010–AA12	Proposed Rule Stage
129	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues From Electric Utilities: Amendments to the National Minimum Criteria (Phase 2)	2050–AG98	Proposed Rule Stage

130	National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040–AF15	Proposed Rule Stage
131	National Primary Drinking Water Regulations: Regulation of Perchlorate	2040–AF28	Proposed Rule Stage
132	Revised Definition of “Waters of the United States”	2040–AF75	Proposed Rule Stage
133	Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	2040–AF77	Proposed Rule Stage
134	Peak Flows Management	2040–AF81	Proposed Rule Stage
135	Clean Water Act Section 404(c) Regulatory Revision	2040–AF88	Proposed Rule Stage
136	Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides	2060–AT68	Final Rule Stage
137	Renewable Fuel Volume Standards for 2019 and Biomass-Based Diesel (BBD)Volume for 2020	2060–AT93	Final Rule Stage
138	Review of Dust-Lead Hazard Standards and the Definition of Lead-Based Paint	2070–AJ82	Final Rule Stage
139	Service Fees for the Administration of the Toxic Substances Control Act	2070–AK27	Final Rule Stage
140	Clean Water Act Hazardous Substances Spill Prevention	2050–AG87	Final Rule Stage

141	Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Reconsideration of Amendments	2050–AG95	Final Rule Stage
142	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues From Electric Utilities: Amendments to the National Minimum Criteria (Phase 1, Part 2)	2050–AH01	Final Rule Stage
143	Definition of "Waters of the United States"—Recodification of Preexisting Rule	2040–AF74	Final Rule Stage

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
144	Amendments to Regulations Under the Americans With Disabilities Act	3046–AB10	Proposed Rule Stage
145	Amendments to Regulations Under the Genetic Information Nondiscrimination Act of 2008	3046–AB11	Proposed Rule Stage

GENERAL SERVICES ADMINISTRATION

Sequence Number	Title	Regulation Identifier	Rulemaking Stage

		Number	
146	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015-G506, Adoption of Construction Project Delivery Method Involving Early Industry Engagement	3090–AJ64	Proposed Rule Stage
147	General Services Acquisition Regulation (GSAR); GSAR Case 2016-G511, Contract Requirements for GSA Information Systems	3090–AJ84	Proposed Rule Stage
148	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2016-G515, Cyber Incident Reporting	3090–AJ85	Proposed Rule Stage
149	Federal Permitting Improvement Steering Council (FPISC); FPISC Case 2018-001; Fees for Governance, Oversight, and Processing of Environmental Reviews and Authorizations	3090–AJ88	Proposed Rule Stage
150	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	Final Rule Stage
151	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013-G502, Federal Supply Schedule Contract Administration	3090–AJ41	Final Rule Stage
152	General Services Administration Acquisition	3090–AK03	Final Rule

	Regulation (GSAR); GSAR Case 2019-G501, Ordering Procedures for Commercial e-Commerce Portals		Stage

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
153	Detection and Avoidance of Counterfeit Parts	2700–AE38	Proposed Rule Stage

OFFICE OF PERSONNEL MANAGEMENT

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
154	Freedom of Information Act (FOIA) Regulations	3206–AK53	Proposed Rule Stage
155	Direct-Hire Authority for Agency Chief Information Officers	3206–AN65	Proposed Rule Stage
156	Administrative Law Judges	3206–AN72	Final Rule Stage

SMALL BUSINESS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
157	Small Business HUBZone Program and Government Contracting Programs	3245–AG38	Proposed Rule Stage
158	Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification	3245–AG75	Proposed Rule Stage
159	Implementation of the Small Business 7(a) Lending Oversight Reform Act of 2018	3245–AH05	Proposed Rule Stage

SOCIAL SECURITY ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
160	Revised Medical Criteria for Evaluating Digestive Disorders, Cardiovascular Disorders, and Skin Disorders	0960–AG65	Proposed Rule Stage
161	Removing Inability to Communicate in English as an Education Category	0960–AH86	Proposed Rule Stage
162	Newer and Stronger Penalties (Conforming	0960–AH91	Proposed

	Changes)		Rule Stage
163	Privacy Act Exemption: Personnel Security and Suitability Program Files	0960–AH97	Proposed Rule Stage
164	References to Social Security and Medicare in Electronic Communications	0960–AI04	Proposed Rule Stage
165	Availability of Information and Records to the Public	0960–AI07	Proposed Rule Stage
166	Setting the Manner for the Appearance of Parties and Witnesses at a Hearing	0960–AI09	Proposed Rule Stage
167	Redeterminations When There Is a Reason To Believe Fraud or Similar Fault Was Involved in an Individual's Application for Benefits	0960–AI10	Proposed Rule Stage
168	Hearings Held by Administrative Appeals Judges of the Appeals Council	0960–AI25	Proposed Rule Stage
169	Rules Regarding the Frequency and Notice of Continuing Disability Reviews	0960–AI27	Proposed Rule Stage
170	Privacy and Disclosure of Official Records and Information	0960–AI38	Proposed Rule Stage
171	Revised Medical Criteria for Evaluating Musculoskeletal Disorders (3318P)	0960–AG38	Final Rule Stage
172	Privacy Act Exemption: Social Security Administration Violence Evaluation and Reporting System (SSAvers)	0960–AI08	Final Rule Stage

CONSUMER PRODUCT SAFETY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
173	Regulatory Options for Table Saws	3041–AC31	Final Rule Stage
174	Portable Generators	3041–AC36	Final Rule Stage

NUCLEAR REGULATORY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
175	Low-Level Radioactive Waste Disposal [NRC-2011-0012]	3150–AI92	Proposed Rule Stage
176	Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning [NRC-2015-0070]	3150–AJ59	Proposed Rule Stage
177	Cyber Security at Fuel Cycle Facilities [NRC-2015-0179]	3150–AJ64	Proposed Rule Stage
178	American Society of Mechanical Engineers 2015-	3150–AJ74	Proposed

	2017 Code Editions Incorporation by Reference [NRC-2016-0082]		Rule Stage
179	Approval of American Society of Mechanical Engineers Code Cases, Revision 38 [NRC-2017-0024]	3150–AJ93	Proposed Rule Stage
180	Revision of Fee Schedules: Fee Recovery for FY 2019 [NRC-2017-0032]	3150–AJ99	Proposed Rule Stage
181	Mitigation of Beyond Design Basis Events (MBDBE) [NRC-2014-0240]	3150–AJ49	Final Rule Stage
182	Advanced Power Reactor 1400 (APR-1400) Design Certification [NRC-2015-0224]	3150–AJ67	Final Rule Stage

[FR Doc. ??–????? Filed ??–??–??; 8:45 am]

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U.S. Department of Agriculture

Fall 2018 Statement of Regulatory Priorities

The Department of Agriculture's (USDA) ongoing regulatory reform strategy remains one of the cornerstones for creating a culture of consistent, efficient service to our customers, while reducing burdens and improving efficiency. Accordingly, USDA's fall 2018 Regulatory Agenda reflects these priorities, including those administrative efficiencies such as streamlining and one-stop shopping. Moreover, these USDA regulatory reform efforts, combined with other reform efforts, will make it easier to invest, produce, and build in rural America, which will lead to the creation of jobs and enhanced economic prosperity. To achieve results, USDA is guided by the following comprehensive set of priorities through which the Department, its employees, and external partners will work to identify and eliminate regulatory and administrative barriers and improve

business processes to enhance program delivery and reduce burdens on program participants. These priorities include:

- Regulatory Reform Task Force (RRTF): In response to Executive Order 13777 – Enforcing the Regulatory Reform Agenda and Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs, which set forth expectations for reducing the regulatory burden on the public, the Department has established an internal RRTF to identify outdated regulations for elimination and administrative processes for streamlining. The USDA RRTF is comprised of senior agency managers representing all the major missions of the Department. USDA is also soliciting public comments on recommended reforms through July 2019.
- Organizational Reform: To ensure that USDA's programs, agencies, and offices best serve the Department's customers, USDA is implementing organizational changes that are targeted at improving customer service like seeking direct public feedback through our *Tell Sonny* initiative. Through these reforms, USDA is breaking down organizational barriers that have impeded the Department's ability to most effectively and efficiently support its customers across the Nation. Moreover, reforms like the consolidation of administrative functions at the mission area level eliminate inefficiencies and allow the Department to best support the needs of our customers. Through the implementation of these improvements, USDA will be better positioned to remove obstacles, and give agricultural producers every opportunity to prosper and feed a growing world population. These improvements support the accomplishment of USDA's mission to provide leadership on agriculture, food, natural resources, rural prosperity, nutrition, and related issues through fact-based, data-driven, and customer-focused decisions.

Farm Bill Implementation: Legislation covering major commodity support programs and crop insurance, trade, conservation, rural development, nutrition assistance and other programs (the Farm Bill) expires at the end of fiscal year 2018. Plans for implementation to any new or modified programs reauthorized in the new Farm Bill will be considered upon enactment and regulatory agenda priorities adjusted accordingly. USDA notes that Farm Bill implementation will allow us

the opportunity to modify existing regulations while introducing program reforms to ease the burden on our customers and improve program outcomes.

Executive Order 13777 - Enforcing the Regulatory Reform Agenda

Executive Order 13777 establishes a Federal policy to lower regulatory burdens on the American people by implementing and enforcing regulatory reform. The RRTF reviewed proposed, pending and existing regulations to determine the deregulatory and regulatory actions to include in the 2018 fall Regulatory Agenda.

These actions were further evaluated to determine which rules should be made a priority based on the impact of their proposals and the Department's ability to finalize the action in FY 2019. Executive Order 13777 also directed the Department to seek input from entities significantly affected by Federal regulations. To satisfy this requirement, the Department published a Request for Information (RFI) in the Federal Register on July 17, 2017, seeking public input on identifying regulatory reform initiatives (82 FR 32649). The RFI asked the public to identify regulations, guidance documents, or any other policy documents or administrative processes that need reform, as well as ideas on how to modify, streamline, expand, or repeal such items. Through the end of June 2018, USDA had received and reviewed over 4,000 public comments on recommended reforms, including requests from stakeholders to extend the public comment period past its one-year time period. Accordingly, USDA has extended the public comment period through July 18, 2019. While comments to the notice do not bind USDA to any further actions, all submissions are reviewed and inform actions to repeal, replace, or modify existing regulations.

Executive Order 13771 - Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771 directs agencies to eliminate two existing regulations for every new regulation while limiting the total costs associated with an agency's regulations. Specifically, it requires a regulatory two-for-one wherein an agency must propose the elimination of two existing regulations for every new regulation it publishes. Moreover, the costs associated with the new regulation must be completely offset by cost savings brought about by deregulation.

The Department's 2018 fall Regulatory Agenda reflects the Department's commitment to regulatory reform and continues USDA's rigorous implementation of Executive Order 13771. The Regulatory Agenda identifies 72 rules, of which 34 rules are not subject to the offsetting or deregulatory requirements of Executive Order 13771. Of the remaining 38 rules, 32 are deregulatory and six are regulatory. Of the 32 deregulatory actions, USDA has identified 16 final rules that will be completed in FY 2019 resulting in either a cost savings or meeting the direction that an agency issue twice as many Executive Order 13771 deregulatory actions as Executive Order 13771 regulatory actions.

USDA's 2018 fall Statement of Regulatory Priorities was developed to lower regulatory burdens on the American people by implementing and enforcing regulatory reform. These regulatory priorities will contribute to the mission of the Department, and the achievement of the long-term goals the Department aims to accomplish. Highlights of how the Department's regulatory reform efforts contribute to the accomplishment of the Department's strategic goals include the following:

The Department will promote American agricultural products and exports that benefit and grow the U.S. agricultural economy and rural America: To achieve this, USDA will expand international marketing opportunities through promotion activities, development of international standards, removal of trade barriers to U.S. exports, and negotiation of new trade agreements. USDA will also partner with developing countries to assist them with movement along the agricultural market continuum from developing economies to developed economies with promising demand potential.

- Agricultural Trade Promotion Program: This action will assist U.S. agricultural industries to conduct market promotion activities that promote U.S. agricultural commodities in foreign markets, including activities that address existing or potential non-tariff barriers to trade. For more information about this rule, see RIN 0551-AA92.

The Department will ensure that programs are delivered efficiently, effectively, with integrity, and a focus on customer service: To achieve this, USDA is working to leverage the strength and talent of USDA employees with continued dedication to data-driven enterprise solutions through collaborative governance and human capital management strategies centered

on accountability and professional development. USDA will reduce regulatory and administrative burdens hindering agencies from reaching the greatest number of stakeholders. Improved customer service and employee engagement within USDA will create a more effective and accessible organization for all stakeholders**.**

- Implement the National Bioengineered Food Disclosure Standard: This action was mandated by the National Bioengineered Food Disclosure Standard (Law), which required USDA to develop a national standard and the procedures for its implementation within two years of the Law's enactment. Pursuant to the law, AMS has proposed requirements that, if finalized, will serve as a national mandatory bioengineered food disclosure standard for bioengineered food and food that may be bioengineered. The proposed rule published on May 4, 2018, and the deadline for public comment was July 3, 2018. AMS reviewed over 14,000 comments that will be analyzed and addressed in the final rule. For more information about this rule, see RIN 0581-AD54.
- Improve effectiveness and efficiency of helping individuals move into work: The Food and Nutrition Act of 2008 (FNA) establishes a time limit for participation in SNAP of three months in three years for able-bodied adults without children who are not working. FNA allows states to waive the time limit under certain circumstances. The proposed action would modify SNAP requirements and services for able-bodied adults without children in response to public input provided through an advance notice of proposed rulemaking published on February 23, 2018. For more information about this rule, see RIN 0584-AE57.
- Revision of categorical eligibility in the Supplemental Nutrition Assistance Program (SNAP): The Food and Nutrition Act of 2008 allows households in which all members receiving benefits under a State program funded by the Temporary Assistance for Needy Families (TANF) program are categorically eligible to participate in SNAP. States have the option of adopting a policy in which households may become categorically eligible for SNAP because they receive a non-cash or in-kind benefit or service funded by TANF. FNS will issue a proposed rule to amend the regulations pertaining to categorically eligible TANF households

by limiting categorical eligibility to households that received cash TANF or other substantial assistance from TANF. For more information about this rule, see RIN 0584-AE62.

- Reform provisions for the Supplemental Nutrition Assistance Program's Quality Control System: FNS will propose revisions to reform and strengthen its SNAP Quality Control system based on stakeholder input received from its June 1, 2018, request for State government and stakeholder input as to how to best proceed with reforming the SNAP Quality Control system. For more information about this rule, see RIN 0584-AE64.
- Simplifying Rural Development's Guaranteed Loan Regulations Combining Rural Development Guaranteed Loan Regulations into a single regulation: Rural Development proposes to combine its four existing guaranteed loan regulations: 1) Water and Waste Disposal; 2) Community Facilities; 3) Business and Industry; and 4) Rural Energy for America, into a single regulation. The proposed action will enable Rural Development to simplify, improve, and enhance the delivery of these four guaranteed loan programs, and better manage the risks inherent with making and servicing guaranteed loans and will result in an improved customer experience for lenders trying to access these programs. For more information about this rule, see RIN 0572-AC43.
- Servicing Regulation for the Rural Utilities Service (RUS) Telecommunications Programs: The RUS Telecommunications Programs provide loan funding to build and expand broadband service into unserved and underserved rural communities, along with limited funding to support the costs to acquire equipment to provide distance learning and telemedicine service. RUS will propose to modify the program to give RUS greater authority to address servicing actions associated with distressed loans employing only limited coordination with the Department of Justice. This will streamline and expedite servicing actions, improve the government's recovery on such loans, and improve overall customer service. For more information about this rule, see RIN 0572-AC41.
- Amendments to Rural Development (RD) environmental reviews for rural infrastructure projects: USDA's RD programs provide loans, grants and loan guarantees to support investment in rural infrastructure to spur economic development, create jobs, improve the

quality of life, and address the health and safety needs of rural residents. The current regulation requires that the environmental review under the National Environmental Policy Act (NEPA) be completed prior to the completion of the obligation of funds. The proposal will allow RD some flexibility with the authority to move forward with the obligation of funds *conditioned upon the completion of environmental review for infrastructure projects*. For more information about this rule, see RIN 0572-AC44.

- Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs: The Animal and Plant Health Inspection Service (APHIS) will issue a proposal that would amend the regulations governing the issuance and renewal of licenses under the Animal Welfare Act (AWA) to better promote sustained compliance under the AWA by (1) reducing licensing fees and (2) strengthening existing safeguards that prevent an individual whose license has been suspended or revoked, or who has a history of noncompliance, from obtaining a license or working with regulated animals. This rulemaking would also strengthen the veterinary care and watering standards for regulated dogs to better align the regulations with the humane care and treatment standards set by the Animal Welfare Act. The proposal follows an advance notice of proposed rulemaking published on August 24, 2017, that solicited comment from the public to aid in the development of these revisions. APHIS received and analyzed approximately 47,000 public comments. For more information about this rule, see RIN 0579-AE35.

The Department is making it a priority to maximize the ability of American agricultural producers to prosper by feeding and clothing the world: A strong and prosperous agricultural sector is essential to the well-being of the overall U.S. economy. America's farmers and ranchers ensure a safe and reliable food and fuel supply and support job growth and economic development. To maintain a strong agricultural economy, USDA will support farmers in starting and maintaining profitable farm and ranch businesses, as well as offer support to producers affected by natural disasters. The Department will continue to work to create new markets and support a competitive agricultural system by reducing barriers that inhibit agricultural opportunities and economic growth.

- Seed Cotton Changes to Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs: This final action, as authorized by the Bipartisan Budget Act of 2018, will revise the ARC and PLC Programs to add seed cotton to the list of covered commodities and establish a loan rate for the purposes of calculating an ARC or PLC payment. For more information about this rule, see RIN 560-AI40.
- Market Facilitation Program: This action will assist agricultural producers with respect to commodities, livestock, or livestock products that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. For more information about this rule, see RIN 0560-AI42.
- Importation, Interstate Movement, and Release Into the Environment of Certain Genetically Engineered Organisms (Part 340): APHIS is proposing to revise its regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms in order to update the regulations in response to advances in genetic engineering and APHIS' understanding of the plant health risk posed by genetically engineered organisms, thereby reducing burden for regulated entities whose organisms pose no plant health risks. For more information about this rule, see RIN 0579-AE47.
- National Organic Program; Strengthening Organic Enforcement: The Agricultural Marketing Service will propose changes to the USDA organic regulations to strengthen the oversight of organic products, improve enforcement of organic standards, and protect organic integrity. The proposal will address gaps in the organic standards to deter fraud, and enhance enforcement. In addition, this proposal will support consumer trust and continued industry growth. For more information about this rule, see RIN 0581-AD09.
- Establishing a performance standard for authorizing the importation and interstate movement of fruits and vegetables: APHIS would broaden the existing performance standard to provide for consideration of all new fruits and vegetables for importation into the United States using a notice-based process rather than through proposed and final rules. Likewise, APHIS would propose an equivalent revision of the performance standard governing the interstate movements of fruits and vegetables from Hawaii and the U.S. territories (Guam, Northern

Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) and the removal of commodity-specific phytosanitary requirements from those regulations. This action will allow APHIS to consider requests to authorize the importation or interstate movement of new fruits and vegetables in a manner that is more flexible and responsive to evolving pest situations in both the United States and exporting countries, while maintaining the science-based process for making risk evaluations. For more information about this rule, see RIN 0579-AD71.

Providing all Americans access to a safe, nutritious, and secure food supply is USDA's most important responsibility, and it is one undertaken with great seriousness. USDA has critical roles in preventing foodborne illness and protecting public health, while ensuring Americans have access to food and healthful diet. The Department will continue to prevent contamination and limit foodborne illness by expanding its modernization of food inspection systems, and USDA's research, education, and extension programs will continue to provide information, tools, and technologies about the causes of foodborne illness and its prevention. USDA will continue to develop partnerships that support best practices in implementing effective nutrition assistance programs that ensure eligible populations have access to programs that support their food needs.

- Increase flexibilities provided to school lunch program operators in meeting nutrition requirements: The Food and Nutrition Service (FNS) plans to issue a final rule that provides flexibilities to Program operators participating in the Child Nutrition Programs effective School Year 2019-2020. For more information about this rule, see RIN 0584-AE53
- Provide regulatory flexibility for retailers in the Supplemental Nutrition Assistance Program (SNAP): FNS will issue a proposed rule to provide retailers with more flexibility in meeting the enhanced SNAP eligibility requirements of the 2016 final rule and meet the requirements expressed in the Consolidated Appropriation Act of 2017. For more information about this rule, see

  RIN 0584-AE61.
- Modernize swine slaughter inspection: The Food Safety and Inspection Service (FSIS) plans to finalize a proposal published on February 1, 2018, to establish a voluntary New Swine

Inspection System (NSIS) for market-hog slaughter establishments, and mandatory provisions for all swine slaughtering establishments. NSIS will provide for increased offline inspection activities that are more directly related to food safety resulting in greater compliance with sanitation and Hazard Analysis and Critical Control Point (HACCP) regulations and reduce the risk of foodborne illness. FSIS received over 83,500 comments. Many of the comments requested that FSIS withdraw the proposal to remove limits on line speeds due to the negative effect on animal welfare and worker safety. These comments will be analyzed and further addressed in the final rule. For more information about this rule, see RIN 0583-AD62.

The Department will ensure productive and sustainable use of our National Forest System Lands: To ensure that America's forests and grasslands are healthy and sustainable, USDA manages approximately 193 million acres of public land, much of it rural and remote. Land management activities can influence rural economies, and USDA can help enable economic growth and recovery.

- Update and Clarification of the Locatable Mineral Regulations: The Forest Service plans to seek public input as it evaluates its management of the activities associated with mining "locatable minerals" that have an impact on the surface resources including expediting Forest Service review and approval of certain proposed mineral operations on National Forest System (NFS) lands. The Forest Service plans to seek public input to determine whether its assessment of the need for these changes is shared by the public. For more information about this rule, see RIN 0596-AD32.
- Oil and Gas Resource Revisions: The Forest Service plans to seek public input as it evaluates its regulations concerning its responsibility for authorizing and regulating access to federal oil and natural gas resources. Updating the regulations will afford an opportunity to modernize and streamline analytical and procedural requirements, reduce the paperwork burden on industry, reduce permitting times for leasing NFS lands, and help provide a more consistent approach to oil and gas management across the NFS. In addition, USDA recommended revising the regulation as part of the USDA Final Report Pursuant to Executive

Order 13783 on Promoting Energy Independence and Economic Growth. The regulation revision will also make updates in response to legislative actions such as the Energy Policy Act of 2005. For more information about this rule, see RIN 0596-AD33.

USDA—Agricultural Marketing Service(AMS)	PROPOSED RULE STAGE

1. NOP; STRENGTHENING ORGANIC ENFORCEMENT

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

7 U.S.C. 6501

CFR Citation:

7 CFR 205

Legal Deadline:

None

Abstract:

The rule supports a broader strategy to strengthen oversight of organic imports and the organic supply chain. AMS intends this rule to deter fraud, enhance enforcement and protect organic integrity.

Statement of Need:

The March 2010 Office of Inspector General (OIG) audit of the National Organic Program (NOP) raised issues related to the program's progress for imposing enforcement actions. One concern was that organic producers and handlers facing revocation or suspension of their certification are able to market their products as organic during what can be a lengthy appeals process. As a result, AMS expects to publish a proposed rule to revise language in section 205.681 of the NOP regulations, which pertains to adverse action appeals. It is expected that this rule will streamline the NOP appeals process such that appeals are reviewed and responded to in a more timely manner.

Summary of Legal Basis:

The Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. section 6501 et seq., requires that the Secretary establish an expedited administrative appeals procedure for appealing an action of the Secretary or certifying agent (section 6520). The NOP regulations describe how appeals of proposed adverse action concerning certification and accreditation are initiated and further contested (sections 205.680, 205.681).

Alternatives:

The program considered maintaining the status quo and hiring additional support for the NOP appeals team. This rulemaking was determined to be preferable because it will reduce redundancy in the appeals process, where an appellant can more quickly appeal the administrator's decision to an administrative law judge.

Anticipated Cost and Benefits:

This action will affect certified operations and accredited certifying agents. The primary impact is expected to be expedited enforcement action, which may benefit the organic community through deterrence and increased consumer confidence in the organic label. It is not expected to have a significant cost burden upon affected entities beyond any monetary penalty or suspension or revocation of certification or accreditation, to which these entities are already subject to under current regulations.

Risks:

No risks have been identified.

Timetable:

Action	Date	FR Cite
NPRM	03/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 0581–AD09

USDA—AMS	FINAL RULE STAGE

2. NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 114–216; 7 U.S.C. 1621 to 1627

CFR Citation:

7 CFR 1285

Legal Deadline:

Final, Statutory, July 29, 2018.

Abstract:

Abstract: On July 29, 2016, the Agricultural Marketing Act of 1946 was amended to establish a National Bioengineered Food Disclosure Standard (Law) (Pub. L. 114-216). The provisions of this rule, pursuant to the law, will serve as a national mandatory bioengineered food disclosure standard for bioengineered food and food that may be bioengineered.

Statement of Need:

This rule would establish a single, national standard to supersede a patchwork of similar standards implemented or planned by individual States. The rule may be considered a regulatory reduction in that affected entities would be regulated by a uniform standard recognized in both interstate commerce and international trade. Consumers would benefit from a single standard for consistent messaging about bioengineered food in the market.

Summary of Legal Basis:

The authority for this action is provided by the Agricultural Marketing Act of 1946 as amended by Pub. L. 114-216.

Alternatives:

The proposed rule evaluated alternative thresholds for which disclosure would be required and alternative definitions for the term "very small food manufacturer."

Anticipated Cost and Benefits:

Implementation of the standard is intended to coincide with that of the Food and Drug Administration's updated food labeling requirements. Such coordination would reduce expenses for affected food manufactures, who would otherwise bear twice the cost of changing food labels to comply with each regulation.

Risks:

No risks have been identified at this time.

Timetable:

Action	Date	FR Cite
NPRM	05/04/18	83 FR 19860
Comment Period End	07/03/18	
Final Action	11/00/18	

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.

International Impacts:

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

Agency Contact:

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Agricultural Marketing Service

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RIN: 0581–AD54

USDA—Animal and Plant Health Inspection Service(APHIS)	**PROPOSED RULE STAGE**

3. ANIMAL WELFARE; AMENDMENTS TO LICENSING PROVISIONS AND TO REQUIREMENTS FOR DOGS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

7 U.S.C. 2131 to 2159

CFR Citation:

9 CFR 1 to 3

Legal Deadline:

None

Abstract:

This rulemaking would amend the licensing requirements under the Animal Welfare Act regulations to promote compliance, reduce licensing fees, and strengthen existing safeguards that prevent individuals and businesses who have a history of noncompliance from obtaining a license or working with regulated animals. This action would reduce regulatory burden with respect to licensing and more efficiently ensure licensees' sustained compliance with the Act. This rulemaking would also strengthen the veterinary care and watering standards for regulated dogs to better align the regulations with the humane care and treatment standards set by the Animal Welfare Act . .

Statement of Need:

Although an applicant for a license renewal must also certify that he or she is in compliance with all regulations, the current regulations do not require the applicant to show compliance before APHIS renews his or her license. As a result, licensees can currently renew their licenses indefinitely without undergoing a thorough compliance inspection. This proposal would require persons to seek a new license every three years and demonstrate compliance with the AWA regulations as part of the application process. Further, the current regulations do not require a licensee to show compliance when the licensee makes any subsequent changes to his or her animals or facilities, including noteworthy changes in the number or type of animals used in regulated activity. Based on our experience with enforcing the AWA and regulations, we are concerned that many licensees struggle to achieve and maintain compliance after making such changes to their animals used in regulated activity.

Summary of Legal Basis:

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 et seq.), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane

handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, and carriers and intermediate handlers. Definitions, regulations, and standards established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties, including licensing requirements for dealers, exhibitors, and operators of auction sales.

Alternatives:

APHIS considered several alternatives in developing various aspects of the proposed rule. Regarding the types of animals that would trigger the need for a new license, APHIS considered requiring a new license for all exotic or wild animal changes, but rejected this in favor of requiring a new license for types of animals that are dangerous and have unique regulatory and care needs. With respect to license termination following two or more attempted inspections during the period of licensure, APHIS considered requiring immediate termination but decided in favor of allowing the licensee the opportunity to first present evidence in defense. APHIS also considered different time frames for the fixed-term license (e.g., four or five years) and settled on three years based on our experience administering the AWA.

Anticipated Cost and Benefits:

This rule would result in cost savings for both APHIS and licensees by simplifying the licensing process and reducing fees, while enhancing the protection of covered animals. Total cost reductions for affected entities are expected to range between $600,000 and $2.1 million per year. In accordance with guidance on complying with EO 13771, the single primary estimate of cost savings for this proposed rule is $1.37 million, the midpoint estimate of savings annualized in perpetuity using a 7 percent discount rate.

Risks:

This proposed rule would address two existing areas of concern. As noted, it is possible for licensees to renew their licenses without undergoing a thorough compliance inspection and for licensees to make noteworthy changes in the number or type of animals used in regulated activity. This rulemaking would address those concerns by requiring licensees to affirmatively demonstrate compliance with the AWA regulations and standards and to obtain a new license when making noteworthy changes subsequent to the issuance of a license in regard to the number, type, or location of animals used in regulated activities.

Timetable:

Action	**Date**	**FR Cite**
ANPRM	08/24/17	82 FR 40077
ANPRM Comment Period End	10/23/17	
ANPRM Comment Period Extended	10/23/17	82 FR 48938
ANPRM Comment Period Extended End	11/02/17	
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State

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. • IMPORTATION, INTERSTATE MOVEMENT, AND RELEASE INTO THE ENVIRONMENT OF CERTAIN GENETICALLY ENGINEERED ORGANISMS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

7 U.S.C. 7701 to 7772; 7 U.S.C. 7781– to 786

CFR Citation:

7 CFR 340

Legal Deadline:

None

Abstract:

APHIS is proposing to revise its regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms in order to update the regulations in response to advances in genetic engineering and APHIS' understanding of the plant health risk posed by genetically engineered organisms, thereby reducing the burden for regulated entities whose organisms pose no plant health risks.

Statement of Need:

This rule is necessary in order to respond to advances in genetic engineering and APHIS' understanding of the pest risks posed by genetically engineered (GE) organisms, to assess such organisms for plant pest risks in light of those advances and establish a process to determine whether APHIS has jurisdiction under the Plant Protection Act to regulate specific GE organisms under Part 340, and to respond to two Office of Inspector General audits regarding APHIS' regulation of genetically engineered organisms, as well as the requirements of the 2008 Farm Bill.

Summary of Legal Basis:

The Plant Protection Act, as amended (7 U.S.C. 7701 et seq.).

Alternatives:

Alternatives that we considered were (1) to leave the regulations unchanged and (2) to regulate all GE organisms as presenting a possible plant pest or noxious weed risk, without exception, and with no means of granting nonregulated status.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

Unless we issue this proposal, we will not be able to respond to the products of future technologies and not be able to provide appropriate oversight of GE organisms that pose a plant pest risk. Additionally, as noted above, the current regulations do not incorporate recommendations of two OIG audits, and do not respond to the requirements of the 2008 Farm Bill, particularly regarding APHIS oversight of field trials and environmental releases of genetically engineered organisms.

Timetable:

Action	Date	FR Cite
NPRM	04/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, State

International Impacts:

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

Additional Information:

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

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USDA—Food and Nutrition Service(FNS)	PROPOSED RULE STAGE

5. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: REQUIREMENTS FOR ABLE–BODIED ADULTS WITHOUT DEPENDENTS

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Regulatory

Legal Authority:

sec. 6(o)(4) of the Food and Nutrition Act of 2008, as amended, 7 U.S.C. 2011 to 2036

CFR Citation:

7 CFR 273.24(f)

Legal Deadline:

None

Abstract:

The Food and Nutrition Act of 2008, as amended (the Act), establishes a time limit for SNAP participation of three months in three years for able-bodied adults without dependents (ABAWDs) who are not working. The Act provides State flexibility by allowing State agencies to request to waive the time limit if an area that an individual resides in has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for individuals. This rule will propose modifications to the Supplemental Nutrition Assistance Program (SNAP) requirements and services for Able-Bodied Adults Without Dependents (ABAWDs) in response to public input provided through the advanced notice of proposed rulemaking (ANPRM).

Statement of Need:

SNAP offers nutrition assistance to millions of eligible, low-income individuals and families; this nutrition assistance also provides economic benefits to communities. It is important that SNAP support self-sufficiency and reduce the need for government assistance for its program participants. The Department recognizes that a well-paying job provides the best path to self-sufficiency for those who are able to work. To that end, the Department aims to create conditions that incentivize SNAP program participants to find employment.

Summary of Legal Basis:

Currently unavailable.

Alternatives:

Currently unavailable.

Anticipated Cost and Benefits:

Currently unavailable.

Risks:

Currently unavailable.

Timetable:

Action	Date	FR Cite
ANPRM	02/23/18	83 FR 8013
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Local, State

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RIN: 0584–AE57

USDA—FNS	

6. PROVIDING REGULATORY FLEXIBILITY FOR RETAILERS IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

Pub. L. 113–79; 7 U.S.C. 2011 to 2036

CFR Citation:

7 CFR 271.2; 7 CFR 278.1

Legal Deadline:

None

Abstract:

The Agricultural Act of 2014 amended the Food and Nutrition Act of 2008 to increase the requirement that certain Supplemental Nutrition Assistance Program (SNAP) authorized retail food stores have available on a continuous basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. The Food and Nutrition Service (FNS) codified these mandatory requirements. This change will provide some retailers participating in SNAP as authorized food stores with more flexibility in meeting the the enhanced SNAP eligibility requirements.

Statement of Need:

The United States Department of Agriculture (USDA, or the Department) Food and Nutrition Service (FNS, or the Agency) is proposing changes to regulations in Sections 271 and 278 which modify the definition of variety as it pertains to the stocking requirements that certain retail food stores must meet to be eligible to participate in the Supplemental Nutrition Assistance Program (SNAP). On December 15, 2016, FNS published a final rule that amended SNAP regulations at 7 CFR parts 271 and 278 to clarify and enhance current SNAP regulations governing the eligibility of certain firms to participate in SNAP. On May 5, 2017, appropriations legislation (the Consolidated Appropriation Act of 2017, or the Omnibus) suspended implementation of two provisions in the 2016 final rule: (1) the Definition of ‘Staple Food’ Acceptable Varieties in the Four Staple Food Categories provision and (2) the Definition of ‘Retail Food Store’ Breadth of

Stock provision (known as the Definition of "Variety" provision and the Breadth of Stock provision, respectively). In order to move forward with implementing these provisions of the 2016 final rule, the Omnibus required USDA to first amend the Definition of Variety provision so that the number of qualifying food varieties in each staple food category increased.

Summary of Legal Basis:

On May 5, 2017, the Consolidated Appropriation Act of 2017 (the Omnibus) was signed into law. Section 765 of the Omnibus prohibited the USDA from implementing the Definition of "Staple Food" Acceptable Varieties in the Four Staple Food Categories provision (7 CFR 271.2 and 7 CFR 278.1(b)(1)(ii)(C)) and variety as applied in the definition of the term staple food as defined at 7 CFR 271.2 to increase the number of items that qualify as acceptable varieties in each staple food category from the number of items that qualified as acceptable varieties under the 2016 final rule.

Alternatives:

Currently unavailable.

Anticipated Cost and Benefits:

The Department has estimated that the proposed rule will save approximately $16.1 million in fiscal year (FY) 2018 and approximately $22.5 million over five years, FY 2018 through FY 2022. Under the 2016 final rule, the cost to currently authorized small retailers was estimated to average approximately $245 per store in the first year and about $620 over five years (including ongoing costs of less than $100 per year for years after the first). The proposed rule would reduce those costs to about $160 per store in the first year and $500 over five years.

Risks:

NA

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN:

Related to 0584–AE27

RIN: 0584–AE61

USDA—FNS	

7. REVISION OF CATEGORICAL ELIGIBILITY IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Regulatory

Legal Authority:

42 U.S.C. 601; Pub. L. 113–79

CFR Citation:

7 CFR 273.2(j)(2)

Legal Deadline:

None

Abstract:

Under section 5(a) of the Food and Nutrition Act of 2008, households in which all members receive benefits under a State program funded by the Temporary Assistance to Needy Families (TANF) program are categorically eligible to participate in the Supplemental Nutrition Assistance Program (SNAP). This proposal would change the regulations at 7 CFR 273.2(j)(2) pertaining to

categorically eligible TANF households by limiting categorical eligibility to households that receive cash TANF or other substantial assistance from TANF. Categorical eligibility conferred by any non-cash assistance would be limited to substantial ongoing assistance or services, such as child care, that have an eligibility determination process similar to cash TANF. This rule would not alter categorical eligibility for Supplemental Security Income (SSI) households or General Assistance (GA) households.

Statement of Need:

This proposal would change current regulations by limiting categorical eligibility to households that receive cash assistance or other ongoing or substantial assistance from TANF, such as child care, and that have an eligibility determination process similar to cash TANF. These stricter requirements would ensure that categorical eligibility is appropriately targeted toward low-income households most in need while maintaining administrative streamlining across Federal benefits programs.

Summary of Legal Basis:

Currently unavailable.

Alternatives:

Currently unavailable.

Anticipated Cost and Benefits:

Currently unavailable.

Risks:

Currently unavailable.

Timetable:

Action	Date	FR Cite
NPRM	01/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

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USDA—FNS	

8. • REFORM PROVISIONS FOR THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM'S QUALITY CONTROL SYSTEM

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

7 U.S.C. 2011 to 2036

CFR Citation:

7 CFR 275

Legal Deadline:

None

Abstract:

The Department proposes to revise its regulations for various Quality Control (QC) provisions in subpart C of 7 CFR part 275 to reflect numerous changes to the Supplemental Nutrition Assistance Program's (SNAP) Quality Control system. There have been concerns about the SNAP QC process by not only its stakeholders, but FNS as well, primarily due to questions

regarding the integrity of State collected error rate data that is used to develop SNAP's national error rates. SNAP has been working diligently for several years to address these concerns and plans to move forward to reform components of its QC process to ensure the integrity of state-reported error rates.

Statement of Need:

The Department proposes to revise regulations for Quality Control (QC) provisions in subpart C of 7 CFR part 275 to reflect numerous changes to the Supplemental Nutrition Assistance Program (SNAP) QC system to improve QC integrity. OIG highlighted need for changes to SNAP QC procedures in a recent audit. These changes can only be made through regulation, not just policy. SNAP has issued an RFI to gather ideas from stakeholders on potential regulation changes to improve integrity and improper payment management.

Summary of Legal Basis:

FNA Section 16(c)

Alternatives:

None. Regulations needed to make significant change to SNAP quality control procedures.

Anticipated Cost and Benefits:

Costs: Currently unavailable. Benefits: improved integrity and accuracy of SNAP improper payment measurement.

Risks:

NA

Timetable:

Action	Date	FR Cite
NPRM	03/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—FNS	FINAL RULE STAGE

9. CHILD NUTRITION PROGRAMS: FLEXIBILITIES FOR MILK, WHOLE GRAINS, AND SODIUM REQUIREMENTS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 1758; 42 U.S.C. 1766; 42 U.S.C. 1772; 42 U.S.C. 1773; 42 U.S.C. 1779

CFR Citation:

7 CFR 210.10; 7 CFR 210.11; 7 CFR 215.7a; 7 CFR 220.8; 7 CFR 226.20

Legal Deadline:

None

Abstract:

This final rule will increase flexibility in the Child Nutrition Program requirements related to milk, grains, and sodium effective School Year (SY) 2019-2020, which begins July 1, 2019. This rule is the culmination of an efficient rulemaking process initiated by the Department of Agriculture (USDA) following the Secretary's May 1, 2017, Proclamation affirming USDA's commitment to assist schools in overcoming operational challenges related to the school meals regulations implemented in 2012.

Statement of Need:

This final rule will codify, with some modifications, three menu planning flexibilities established by the interim final rule of the same title published November 30, 2017. By codifying these changes, USDA acknowledges the persistent menu planning challenges experienced by some schools, and affirms its commitment to give schools more control over the food service decisions and greater ability to offer wholesome and appealing meals that reflect local preferences.

Summary of Legal Basis:

The authority for this action is provided by the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758(a)(4), requiring that school meals reflect the latest Dietary Guidelines for Americans.

Alternatives:

NA

Anticipated Cost and Benefits:

Currently unavailable.

Risks:

NA

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule	11/30/17	82 FR 56703
Interim Final Rule Comment Period End	01/29/18	
Interim Final Rule Effective	07/01/18	

Final Action	12/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

School Lunch – NSLA Section 9(a)(1) – 42 U.S.C. 1758(a)(1)

Child and Adult Care Food Program – NSLA Section 17(g) – 42 U.S.C. 1766(g) Special Milk Program – Child Nutrition Act Section 3(a)(1) – 42 U.S.C. 1772(a)(1)

School Breakfast Program – Child Nutrition Act Section 4(e)(1)(A) – 42 U.S.C. 1773(e)(1)(A)

Smart Snacks in Schools – Child Nutrition Act Section 10(b) – 42 U.S.C. 1779(b)

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USDA—Food Safety and Inspection Service(FSIS)	**FINAL RULE STAGE**

10. EGG PRODUCTS INSPECTION REGULATIONS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

21 U.S.C. 1031 et seq.

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 official egg products plants to develop and implement Hazard Analysis and Critical Control Point (HACCP) Systems and Sanitation Standard Operating Procedures (SOPs), consistent with HACCP and Sanitation

SOP requirements in the meat and poultry products inspection regulations. FSIS also is proposing to require egg products plants to produce egg products using a process that will eliminate detectable pathogens from the finished product. Plants would be expected to develop HACCP systems that ensure that pathogens cannot be detected in finished egg products.

In addition, FSIS is proposing to amend the egg products inspection regulations by removing the current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants; providing for the generic labeling of egg products; requiring safe handling labels on shell eggs and egg products; and changing the Agency's interpretation of the requirement for continuous inspection in official plants.

Statement of Need:

The actions being proposed are part of FSIS's regulatory reform effort to 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.

Summary of Legal Basis:

The authority for this action is provided by the Egg Product Inspection Act (21 U.S.C. 1031 et seq.).

Alternatives:

The Agency considered the following regulatory alternatives for the implementation of government standards (HACCP) and related requirements for the egg products industry: 1) status quo; 2) intensify present inspection; 3) voluntary HACCP regulatory program; 4) mandatory

HACCP regulation with exemption for small businesses; 5) modified HACCP recording deviations and responses only; 6) mandatory HACCP, Sanitation SOPs, and lethality performance standards adoption; and implementation of the sixth of these regulatory alternatives, mandatory HACCP, Sanitation SOPS, and lethality performance standards, should achieve immediate reductions in, and an eventual minimization of, foodborne hazards.

Anticipated Cost and Benefits:

Costs to the egg products industry come from the development of Sanitation SOPs and HACCP plans and compliance with the proposed HACCP requirements. FSIS will incur costs to train egg products inspectors (EPIs) to ensure that they can competently perform inspection duties associated with HACCP and Sanitation SOPs at the 77 federally-inspected egg products plants. While EPIs are in training, FSIS will also incur costs to pay for replacement inspectors so that egg products plants can continue to operate.

Potential industry cost reductions from the proposed rule come from generic labeling, and the elimination of certain regulations, waivers, and no objection letters. Under generic labeling, plants do not have to submit certain labels to FSIS for small changes, allowing plants to avoid a 60-day approval process and documentation of submissions for the approval of new labels. In addition, plants receive cost savings from the elimination of outdated regulations. The regulatory requirements in the current system may inefficiently use industry resources. HACCP gives egg products plants the flexibility to decide how they wish to produce product in the manner that is most efficient to them, so that no detectable pathogens remain in the finished product.

Under the current command-and-control based system, FSIS personnel must approve waivers and no objection letters for certain plant activities outside the current regulations and inspection program, personnel assume responsibility for "approving" production-associated decisions. Under HACCP, industry would assume full responsibility for production decisions and execution. FSIS would monitor plants' compliance with the requirement that finished egg

products not contain detectable pathogens and within HACCP requirements. This allows industry and the Agency to reduce costs for approving activities and allows for better use of resources.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	02/13/18	83 FR 6314
NPRM Comment Period End	06/13/18	
Final Action	05/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS	

11. MODERNIZATION OF SWINE SLAUGHTER INSPECTION

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

21 U.S.C. 601 et seq.

CFR Citation:

9 CFR 301; 9 CFR 309; 9 CFR 310; 9 CFR 314

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to establish a new inspection system for swine slaughter establishments demonstrated to provide greater public health protection than the existing inspection system. The Agency is also proposing several changes to the regulations that would affect all establishments that slaughter swine, regardless of the inspection system under which they operate.

Statement of Need:

The proposed action is necessary to improve food safety, improve compliance with the Humane Methods of Slaughter Act, improve the effectiveness of market hog slaughter inspection, make better use of the Agency's resources, and remove unnecessary regulatory obstacles to innovation.

Summary of Legal Basis:

The authority for this action is provided by the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

Alternatives:

The Agency is considering alternatives such as: (1) a mandatory New Swine Slaughter Inspection System (NSIS) for market hog slaughter establishments and (2) a voluntary NSIS for market hog establishments, under which FSIS would conduct the same offline inspection activities as traditional inspection.

Anticipated Cost and Benefits:

The proposed regulations are expected to benefit establishments by removing unnecessary regulatory obstacles to innovation and allowing establishments more flexibility in line configuration. The proposed changes are also expected to reduce establishments' sampling costs. Additionally, the proposed regulations are expected to improve the effectiveness of market hog slaughter inspection, leading to a reduction in the number of human illnesses attributed to products derived from market hogs. The proposed actions make better use of the Agency's resources, which is expected to reduce the Agency's personnel and training budgetary requirements. Establishments are expected to incur increased labor and recordkeeping costs.

Risks:

None.

Timetable:

Action	**Date**	**FR Cite**
NPRM	02/01/18	83 FR 4780
NPRM Comment Period End	04/02/18	
Final Rule	04/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—Forest Service(FS)	PRERULE STAGE

12. UPDATE AND CLARIFICATION OF THE LOCATABLE MINERALS REGULATIONS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

30 U.S.C. 612

CFR Citation:

36 CFR 228 (A)

Legal Deadline:

None

Abstract:

The Forest Service proposes the amendment of its locatable mineral regulations that better reflect the needs of both the Forest Service and mining industry. By addressing recent issues and remedying existing weakness in current regulations that have been identified, the Forest Service will be in a better position to better implement its mining regulations. The goals of the regulatory revision are 1) to expedite Forest Service review and approval of certain proposed mineral operations authorized by the United States mining laws; 2) to increase consistency with the United States Department of the Interior, Bureau of Land Management (BLM) surface management regulations governing operations authorized by the United States mining laws to assist those who conduct these operations on lands managed by each agency; and 3) to increase the Forest Service's nationwide consistency in regulating mineral operations authorized by the United States mining laws.

Statement of Need:

The Forest Service proposes the amendment of its locatable mineral regulations to better reflect the needs of both the Forest Service and mining industry. By addressing recent issues and remedying existing weakness in current regulations that have been identified, the Forest Service

will be in a better position to implement its mining regulations, thus reducing processing timelines and redundancies.

Summary of Legal Basis:

The Mining Law of 1872, as amended, confers a statutory right to enter upon certain National Forest System lands to search for locatable minerals. These rules govern prospecting, exploration, development, mining, and processing operations conducted on National Forest System lands.

Alternatives:

A no action alternative would leave the regulations unchanged, thus maintaining the status-quo.

Anticipated Cost and Benefits:

Not applicable.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
ANPRM	09/13/18	83 FR 46451
ANPRM Comment Period End	10/15/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal

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USDA—FS	

13. OIL AND GAS RESOURCE REVISION

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

30 U.S.C. 612; 30 U.S.C. 181; 30 U.S.C. 351; 30 U.S.C. 21; ...

CFR Citation:

36 CFR 228(E)

Legal Deadline:

None

Abstract:

The Forest Service plays a role in the leasing and development of Federally owned oil and natural gas found on National Forest System lands in partnership with the Bureau of Land Management. Updating the regulations will afford an opportunity to modernize and streamline analytical and procedural requirements and help provide a more consist approach to oil and gas management across the National Forest System. The potential changes to the existing regulation permitting sections include eliminating language that is redundant with the NEPA process, removing confusing options, and ensuring better alignment with the BLM regulations. The intent of these potential changes would be to decrease permitting times by removing regulatory burdens that unnecessarily encumber energy production.across the National Forest System.

Statement of Need:

The Forest Service plays a role in the leasing and development of federally owned oil and natural gas found on National Forest System lands in partnership with the Bureau of Land Management. Updating the regulations will afford an opportunity to modernize and streamline analytical and procedural requirements and help provide a more consist approach to oil and gas management across the National Forest System.

Summary of Legal Basis:

Forest Service 36 CFR 228(e) regulations are done as a result of the Onshore Oil and Gas Leasing Reform Act of 1987.

Alternatives:

Forest Service 36 CFR 228 (e) regulations are done as a result of Onshore Oil and Gas Leasing Reform Act of 1987.

Anticipated Cost and Benefits:

Not applicable.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
ANPRM	09/13/18	83 FR 46458
ANPRM Comment Period End	10/15/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal

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USDA—Rural Utilities Service(RUS)	**FINAL RULE STAGE**

14. SERVICING REGULATION FOR THE RURAL UTILITIES SERVICE (RUS) TELECOMMUNICATIONS PROGRAMS

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005

CFR Citation:

7 CFR 1782

Legal Deadline:

None

Abstract:

The regulation will cover servicing actions associated with the Telecommunications Infrastructure Loan Program, Broadband Access Loan and Loan Guarantee Program, Distance Learning and Telemedicine Program, and Broadband Initiatives Program (hereinafter collectively referred to as the "RUS Telecommunications Programs").

Statement of Need:

The RUS Telecommunications Programs provide loan funding to build and expand broadband service into unserved and underserved rural communities, along with very limited funding to support the costs to acquire equipment to provide distance learning and telemedicine service. This action will provide servicing actions available for the loan portofolio and will enable the Agency to quickly and consistently address servicing actions and improve customer service.

Summary of Legal Basis:

This action is required by statute, the Agricultural Act of 2014 amendment to section 601 of the Rural Electrification Act of 1936 (7 USC 950bb). This section requires the Secretary to establish written procedures for all broadband programs to recover funds from loan defaults.

Alternatives:

The agency considered using other existing RD agency regulations and decided upon combining Telecommunications servicing requirements with the Water Programs servicing regulation. These types of RUS loans are more similar than other RD loan programs.

Anticipated Cost and Benefits:

There are no anticipated costs. The rule will ensure recipients comply with the established objectives and requirements for loans, repaying loans on schedule and acting in accordance with any necessary agreements, ensure serving actions are handled consistently, and protect the financial interest of the Agency.

Risks:

N/A

Timetable:

Action	Date	FR Cite
Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 0572–AC41

USDA—RUS	

15. • ONERD GUARANTEED LOAN REGULATION

Priority:

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

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Rural Development proposes to combine into a single regulation its four guaranteed loan programs: 1) Water and Waste Disposal, 2) Community Facilities, 3) Business and Industry, and 4) Rural Energy for America. The new regulation will encompass the policies and procedures for

guaranteed loan making and servicing, lender reporting, and program monitoring. The proposed action will enable Rural Development to simplify, improve, and enhance the delivery of these four guaranteed loan programs, and better manage the risks inherent with making and servicing guaranteed loans and will result in an improved customer experience for lenders trying to access these programs. This new structure will also make it more efficient and faster to promulgate regulations associated with amending existing programs or incorporating newly authorized programs in the future.

Statement of Need:

Rural Development is combining its four guaranteed loan programs: 1) Water and Waste Disposal; 2) Community Facilities; 3) Business and Industry; and 4) Rural Energy for America into a single regulation. The new regulation will encompass the policies and procedures for guaranteed loan making and servicing, lender reporting, and program monitoring. The proposed action is expected to involve a few substantive policy changes in order to achieve consistency across the included programs and better customer experience for lenders trying to access these programs.

Summary of Legal Basis:

This regulatory action is not required by statute or court order; however, the underlying statutes authorizing these policies are the Consolidated Farm and Rural Development Act, 7 USC 1921 Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables (0579-AD71); Concluded 8/24/2018 and 9007 of the 2002 Farm Bill as amended, 7 USC 8107.

Alternatives:

The alternative is to continue operating under the current existing four regulations for these programs.

Anticipated Cost and Benefits:

At this time an estimated cost is not known. The proposed action is expected to reflect current program policy and produce the same policy results, but in a more effective manner. Anticipated benefits include:

- Improve quality customer experience by streamlining and consolidating similar guaranteed loan programs into a client-driven consolidated regulation.
- Advance economic development and access to capital by reducing regulatory complexities and redundancies.
- Improve operational efficiencies and cross-program coordination (oneRD) by enabling staff to learn all RD guaranteed loan programs using one regulation
- Enable RD to integrate innovation in the delivery of loan guarantees and align with industry lending practices
- Create a regulation that paves the way for modern processing and servicing to improve portfolio management

Risks:

N/A

Timetable:

Action	Date	FR Cite
Final Rule	05/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Agency Contact:

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DEPARTMENT OF COMMERCE (DOC)
Statement of Regulatory and Deregulatory Priorities

Established in 1903, the Department of Commerce (Commerce) is one of the oldest Cabinet-level agencies in the Federal Government. Commerce'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.

Commerce 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, Commerce 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**.

Commerce 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, as well as new efforts by the Department to remove unnecessary regulatory burdens on external stakeholders.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of Commerce's programs and activities do not involve regulation. Of Commerce's 12 primary operating units, only three bureaus will be planning actions that are considered the "most important" significant pre-regulatory or regulatory actions for FY 2019. During the next year, the National Oceanic and Atmospheric Administration (NOAA) plans to publish five rulemaking actions that are designated as Regulatory Plan actions. The Bureau of Industry and Security (BIS) and the United States Patent and Trademark Office will each publish one rulemaking action designated as Regulatory Plan actions. Further information on these actions is provided below.

Commerce 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 Commerce afford the public the maximum possible opportunity to participate in Departmental rulemakings, even where public participation is not required by law.

Commerce has implemented Executive Order 13771 working through its Regulatory Reform Task Force established under Executive Order 13777 to identify and prioritize

deregulatory actions that each bureau within the Department can take to reduce and remove regulatory burdens on stakeholders.

In Fiscal Year 2019, Commerce expects to publish [7] regulatory actions and [59] deregulatory actions, far exceeding the requirement under Executive Order 13771 to publish two deregulatory actions for every one regulatory action. To that end, Commerce may have other deregulatory actions to implement that do not currently appear in the agenda.

National Oceanic and Atmospheric Administration

Commerce, 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.

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 Commerce’s goal of promoting stewardship by providing assessments of the global environment.

Recognizing that economic growth must go hand-in-hand with environmental stewardship, Commerce, 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. Commerce is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a "win-win" situation for the environment and the economy.

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

NMFS oversees the management and conservation of the Nation's marine fisheries; protects marine mammals and Endangered Species Act-listed marine and anadromous species; 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 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.

In the environmental stewardship area, NOAA's goals include: rebuilding and maintaining strong U.S. fisheries by using market-based tools and ecosystem approaches to management; conserving, protecting, and recovering marine mammals and Endangered

Species Act-listed marine and anadromous species 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 the impacts of a changing climate 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 FY 2019, a number of the regulatory and deregulatory 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.

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.

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 shareholders 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.

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 intentional take of marine mammals. The MMPA allows, upon request, the incidental take of marine mammals by U.S. citizens who engage in a specified activity (e.g., oil and gas development, pile driving) within a specified geographic region. NMFS authorizes incidental take under the MMPA if we find that the taking would be of small numbers, have no more than a "negligible impact" on those marine mammal species or stock, and would not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. NMFS also initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. In addition, the MMPA allows NMFS to permit the collection of wild animals for scientific research or public display or to enhance the survival of a species or stock, and 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 ESA. 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 approximately 720 listed species found in part or entirely in the United States and its waters, NMFS has jurisdiction over nearly 100 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, Federal agencies consult with NMFS on any proposed action authorized, funded, or carried out by that agency that may affect listed species or designated critical habitat, or that may affect proposed species or critical habitat. These interagency consultations are designed to assist Federal agencies in fulfilling their duty to ensure Federal actions do not jeopardize the continued existence of a species or destroy or adversely modify critical habitat, while still allowing Federal agencies to fulfill their respective missions (e.g., permitting infrastructure projects or oil and gas exploration, conducting military readiness activities).

NOAA's Regulatory Plan Actions

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in Commerce's regulatory plan, NMFS is undertaking five actions that rise to the level of "most important" of Commerce's significant regulatory actions and thus are included in this year's regulatory plan. A description of the five regulatory plan actions is provided below.

Additionally, NMFS is undertaking a series of rulemakings that are considered deregulatory, as defined by Executive Order 13771. Such actions directly benefit the regulated community by increasing access, providing more economic opportunity, reducing costs, and/or increasing flexibility. Specific examples of such actions are the Commerce Trusted Trader Program and modifications to the Fisheries Finance Program, as described below. Other examples include rulemakings implementing regional Fishery Management Council actions that alleviate or reduce previous requirements.

1. Commerce Trusted Trader Program (0648-BG51): Under the Magnuson-Stevens Fishery Conservation and Management Act, importation of fish products taken in violation of foreign law and regulation is prohibited. To enforce this prohibition, NMFS has implemented the Seafood Import Monitoring Program (81 FR 88975, December 9, 2016) which requires U.S. importers to report on the origin of fish products and to keep supply chain records. The Commerce Trusted Trader Program will establish a voluntary program for certified seafood importers that provides benefits such as reduced targeting and inspections, and enhanced streamlined entry into the United States. The program will require that a Commerce Trusted Trader establish a secure supply chain and maintain the records necessary to verify the legality of all designated product entering into U.S.

commerce, but it will excuse the Commerce Trusted Trader from entering that data into the International Trade Data System prior to entry, as required by Seafood Import Monitoring Program. This program is deregulatory in nature because it reduces reporting costs at entry and reduces recordkeeping costs due to flexibility in archiving.

2. Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood (0648-BH87): Section 539 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 (2018 Appropriations Act) directed the Secretary of Commerce to "…establish a traceability program for United States inland, coastal, and marine aquaculture of shrimp and abalone…" and by December 31, 2018 to "…promulgate such regulations as are necessary and appropriate to establish and implement the program." The proposed Traceability Information Program for Seafood (TIPS) would establish registration, reporting and recordkeeping requirements for domestic, commercial aquaculture producers of shrimp and abalone species and products containing those species from the point of production to entry into U.S. commerce. TIPS would close the domestic reporting and recordkeeping gap and enable NOAA to add imported shrimp and abalone to the Seafood Import Monitoring Program (SIMP), which was mandated under the 2018 Appropriations Act and finalized under 50 CFR 300.324 in a Final Rule (0648-BH89; 83 FR 17762) published April 24, 2018.

3. Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (0648-BB38): The Marine Mammal Protection Act (MMPA) prohibits the "take" (e.g., behavioral harassment, injury, or mortality) of marine

mammals with certain exceptions, including through the issuance of incidental take authorizations. Where there is a reasonable likelihood of an activity resulting in the take of marine mammals—as is the case for certain methods of geophysical exploration, including the use of airgun arrays (i.e., "seismic surveys")—action proponents must ensure that take occurs in a lawful manner. However, there has not previously been any analysis of industry survey activities in the Gulf of Mexico conducted pursuant to requirements of MMPA, and industry operators have been, and currently are, conducting their work without MMPA incidental take authorizations. In support of the oil and gas industry, the Bureau of Ocean Energy Management has requested 5-year incidental take regulations, which would provide a regulatory framework under which individual companies could apply for project-specific Letters of Authorization. Providing for industry compliance with the MMPA through the requested regulatory framework, versus companies pursuing individual authorizations, would be the most efficient way to achieve such compliance for both industry and for NMFS, and would provide regulatory certainty for industry operators.

4. Modify the Fisheries Financing Program to Allow the Financing of New Replacement Fishing Vessel Construction in Limited Access Fisheries (0648-BH82): In 2016, Congress passed section 302 of the Coast Guard Authorization Act of 2015 which included specific authority for the Fisheries Finance Program to finance the construction of fishing vessels in a fishery that is federally managed under a limited access system. Replacement of aged fishing vessels in managed fisheries will result in more efficient use of fisheries, promote safety at sea, and improve environmental operations of the fishing industry. This rule will provide a

source of funding to recapitalize and modernize an aged fishing fleet that will help ensure the continuation of the economic benefits provided by the nation's commercial fishing fleet.

5. Magnuson-Stevens Act; Fishery Management Councils; Financial Disclosure and Recusal (0648-BH73): NMFS received input from regional Fishery Management Councils calling for further guidance and clarification of financial disclosure requirements of Council members and the regulatory procedures to make determinations on voting recusals of Council members. This rule proposes changes to the regulations that address disclosure of financial interests by, and voting recusal of, Council members appointed by the Secretary of Commerce. The regulatory changes are needed to provide the guidance for (1) consistency and transparency in the calculation of a Council member's financial interests; (2) determining whether a close causal link exists between a Council decision and a benefit to a Council member's financial interest; and (3) establishing regional procedures for preparing and issuing recusal determinations. This proposed rule is intended to improve regulations implementing the statutory requirements governing disclosure of financial interests and voting recusal at section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives by maintaining and strengthening adaptable, efficient, and effective export control and treaty compliance systems as well as by administering

programs to prioritize certain contracts to promote the national defense and to protect and enhance the defense industrial base.

Major Programs and Activities

BIS administers four sets of regulations. The Export Administration Regulations (EAR) regulate exports and reexports to protect national security, foreign policy, and short supply interests. The EAR also regulates U.S. persons' participation in certain boycotts administered by foreign governments. The National Security Industrial Base Regulations provide for prioritization of certain contracts and allocations of resources to promote the national defense, require reporting of foreign Government-imposed offsets in defense sales, provide for surveys to assess the capabilities of the industrial base to support the national defense and address the effect of imports on the defense industrial base. The Chemical Weapons Convention Regulations implement declaration, reporting, and on-site inspection requirements in the private sector necessary to meet United States treaty obligations under the Chemical Weapons Convention treaty. The Additional Protocol Regulations implement similar requirements with respect to an agreement between the United States and the International Atomic Energy Agency.

BIS also has an enforcement component with nine offices covering the United States. BIS export control officers are also stationed at several U.S. embassies and consulates abroad. BIS works with other U.S. Government agencies to promote coordinated U.S. Government efforts in export controls and other programs. BIS participates in U.S. Government efforts to strengthen multilateral export control regimes and to promote effective export controls through cooperation with other Governments

BIS' Regulatory Plan Action

BIS maintains the EAR, including the Commerce Control List (CCL). The CCL describes commodities, software, and technology that are subject to licensing requirements for specific reasons for control. The Department of State, Directorate of Defense Trade Controls (DDTC), maintains the International Traffic in Arms Regulations (ITAR), including the United States Munitions List (USML), which describes defense articles subject to State's licensing jurisdiction.

In Fiscal Year 2019, BIS plans to publish a final rule describing how articles the President has determined no longer warrant control under USML Category I (Firearms, Close Assault Weapons and Combat Shotguns), Category II (Guns and Armament), and Category III (Ammunition/Ordnance) would be controlled on the CCL and by the EAR. This final rule will be published in conjunction with a DDTC final rule that would amend the list of articles controlled by those USML Categories to describe more precisely items warranting continued control on that list.

The changes described in these final rules will be based on a review of those categories by the Department of Defense, which worked with the Departments of State and Commerce in preparing the amendments. As with the proposed rules that were published in Fiscal Year 2018, the review for the final rule will be focused on ensuring that the agencies have identified the types of articles that are now controlled on the USML that are either (i) inherently military and otherwise warrant control on the USML or (ii) if of a type common to non-military firearms applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies

one or both of those criteria, the article will remain on the USML. If an article does not satisfy either criterion, it will be identified in the new Export Control Classification Numbers (ECCNs) included in the BIS proposed rule. Thus, the scope of the items that will be described in the final rule will essentially be commercial items widely available in retail outlets and less sensitive military items.

The firearms and other items described in the proposed rule are widely used for sporting applications, and BIS will not “de-control” these items in the final rule. BIS would require licenses to export or reexport to any country a firearm or other weapon that would be added to the CCL. Rather than decontrolling firearms and other items, BIS, working with the Departments of Defense and State, is trying to reduce the procedural burdens and costs of export compliance on the U.S. firearms industry while allowing the U.S. Government to control firearms appropriately and to make better use of its export control resources.

United States Patent Trademark Office

The United States Patent and Trademark Office's (USPTO) mission is to foster innovation, competitiveness and economic growth, domestically and abroad by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide.

Major Programs and Activities

USPTO is the Federal agency for granting U.S. patents and registering trademarks. In doing this, the USPTO fulfills the mandate of Article I, Section 8, Clause 8, of the Constitution that the legislative branch "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The USPTO registers trademarks based on the commerce clause of the Constitution (Article I, Section 8, Clause 3). Under this system of protection, American industry has flourished. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The strength and vitality of the U.S. economy depends directly on effective mechanisms that protect new ideas and investments in innovation and creativity. The continued demand for patents and trademarks underscores the ingenuity of American inventors and entrepreneurs. The USPTO is at the cutting edge of the nation's technological progress and achievement.

The USPTO advises the President of the United States, the Secretary of Commerce, and U.S. government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes the stronger and more effective IP protection around the world. The USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements. It also provides training, education, and capacity building programs designed to foster respect for IP and encourage the development of strong IP enforcement regimes by U.S. trading partners. USPTO administers regulations located at title 37 of the Code of Federal Regulations concerning its patent and trademark services, and the other functions it performs.

USPTO's Regulatory Plan Action

NPRM: Setting and Adjusting Patent Fees (RIN 0651-AD31): The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO's fee setting authority. This fee review process involves public outreach, including, as required by the Act, public hearings held by the USPTO's Public Advisory Committees, as well as public comment and other outreach to the user community and public in general. In 2019, the USPTO anticipates publishing an NPRM proposing the setting and adjusting of patent fees. The USPTO will set and adjust Patent fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, improve quality, and upgrade the Office's business information technology capability and infrastructure.

DOC—Bureau of Industry and Security(BIS)	**FINAL RULE STAGE**

16. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS: CONTROL OF FIREARMS AND RELATED ARTICLES THE PRESIDENT DETERMINES NO LONGER WARRANT CONTROL UNDER THE UNITED STATES MUNITIONS LIST

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

10 U.S.C. 7420; 10 U.S.C. 7430(e); 15 U.S.C. 1824a; 22 U.S.C. 2151 note; 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; 30 U.S.C. 185(s); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 50 U.S.C. 1701 et seq.; 50 U.S.C. 4601 et seq.; 50 U.S.C. app 2401 et seq.; 50 U.S.C. app 5; E.O. 12058; E.O. 12851; E.O. 12854; E.O. 12918; E.O. 12938; E.O. 12947; E.O. 13020; E.O. 13026; E.O. 13099; E.O. 13222; E.O. 13224; E.O. 13338; E.O. 13637; Pub. L. 108–11

CFR Citation:

15 CFR 740; 15 CFR 742; 15 CFR 774; 15 CFR 736; 15 CFR 743; 15 CFR 744; 15 CFR 746; 15 CFR 748; 15 CFR 758; 15 CFR 762; 15 CFR 772

Legal Deadline:

None

Abstract:

This rule describes how articles the President determines no longer warrant control under United States Munitions List (USML) Category I-Firearms, Close Assault Weapons and Combat Shotguns; Category II-Guns and Armament; and Category III-Ammunition/Ordnance would be

controlled on the Commerce Control List (CCL). This rule will be published simultaneously with a proposed rule by the Department of State that would revise Categories I, II, and III of the USML to describe more precisely the articles warranting continued control on that list. This rule also would reorganize and renumber entries currently on the CCL that control shotguns and certain firearms related items to place all firearms related entries close to each other that list.

Statement of Need:

This final rule is needed to ensure appropriate controls would be in place on firearms and related items determined to no longer warrant control under the United States Munitions List that would be moved to the Commerce Control List (CCL). This final rule describes how articles the President determines no longer warrant control under United States Munitions List (USML) Category I Firearms, Close Assault Weapons and Combat Shotguns; Category II Guns and Armament; and Category III Ammunition/Ordnance, would be controlled on the Commerce Control List (CCL) and by the Export Administration Regulations (EAR). This rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category I (Firearms, Close Assault Weapons and Combat Shotguns), Category II (Guns and Armament), and Category III (Ammunition/Ordnance) of the USML to describe more precisely items warranting continued control on that list.

The changes described in this rule and in the State Department's companion rule on Categories I, II, and III of the USML are based on a review of those categories by the Department of Defense, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled on the USML that are either (i) inherently military and otherwise warrant control on the USML or (ii) if of a type common to non-military firearms applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies one or both of those criteria, the article

remains on the USML. If an article does not satisfy either criterion, it has been identified in the new Export Control Classification Numbers (ECCNs) included in this proposed rule. Thus, the scope of the items described in this proposed rule is essentially commercial items widely available in retail outlets and less sensitive military items.

Summary of Legal Basis:

This action is taken pursuant to BIS' authority under the Export Administration Regulations (EAR), which regulate exports and reexports to protect national security, foreign policy, and short supply interests. BIS maintains the EAR, which includes the Commerce Control List (CCL), which describes commodities, software, and technology that are subject to licensing requirements for specific reasons for control.

Alternatives:

Take no action in order to maintain the status quo by not revising USML Categories I, II, and III and not making the needed conforming changes under the EAR. This alternative was mentioned by some of the public commenters in response to the proposed rule published by BIS on May 24, 2018 (83 FR 24166). BIS will evaluate this (take no action) alternative suggested by some of the commenters, as well as all other comments received on the May 24 proposed rule, when drafting the final rule. The rationale provided in the May 24 proposed rule already addressed why maintaining the status quo was not warranted, but BIS will further address these comments in the final rule. BIS will also address the comments that were supportive of the May 24 proposed rule that agreed with the Departments of Commerce and State that the items described in the two rules reflected what items should be retained on the USML and what items should be moved to the CCL.

Anticipated Cost and Benefits:

This final rule involves four collections currently approved by OMB under these BIS collections and control numbers: Simplified Network Application Processing System (control number 0694-

0088), which includes, among other things, license applications; License Exceptions and Exclusions (control number 0694-0137); Import Certificates and End-User Certificates (control number 0694-0093); Five Year Records Retention Period (control number 0694-0096); and the U.S. Census Bureau collection for the Automated Export System (AES) Program (control number 0607-0152). This final rule would affect the information collection, under control number 0694-0088, associated with the multi-purpose application for export licenses. This collection carries a burden estimate of 43.8 minutes for a manual or electronic submission for a burden of 31,833 hours. BIS believes that the combined effect of all rules to be published adding items removed from the ITAR to the EAR that would increase the number of license applications to be submitted by approximately 30,000 annually, resulting in an increase in burden hours of 21,900 (30,000 transactions at 43.8 minutes each) under this control number. For those items in USML Categories I, II and III that would move by this rule to the CCL, the State Department estimates that 10,000 applicants annually will move from the USML to the CCL. BIS estimates that 6,000 of the 10,000 applicants would require licenses under the EAR, resulting in a burden of 4,380 hours under this control number. Those companies are currently using the State Department's forms associated with OMB Control No. 1405-0003 for which the burden estimate is 1 hour per submission, which for 10,000 applications results in a burden of 10,000 hours. Thus, subtracting the BIS burden hours of 4,380 from the State Department burden hours of 10,000, the burden would be reduced by 5,620 hours. For purposes of E.O. 13771 of January 30, 2017 (82 FR 9339), the Department of State and Department of Commerce final rules are expected to be net deregulatory actions. The Departments of State and Commerce for purposes of E.O. 13771 have agreed to equally share the cost burden reductions that would result from the publication of these two integral regulatory actions. The Department of State would receive 50% and the Department of Commerce would receive 50% for purposes of calculating the deregulatory benefit of these two integral regulatory actions. For purposes of the Department of Commerce, the net deregulatory actions would result in a permanent and recurring cost savings of $1,250,000 per year, and a reduction in burden hours by 2,810 hours. The reduction in burden hours by 2,810 would result in

an additional cost savings of $126,281 to the exporting public. Therefore, the total dollar cost savings would be $1,376,281 for purposes of E.O. 13771 for the Department of Commerce.

Risks:

This final rule must be published concurrently with the Department of State final rule that would revise USML Categories I, II, and II, to provide for appropriate controls on firearms and related items determined to no longer warrant control under the United States Munitions List (USML) that would be moved to the Commerce Control List (CCL) under the Export Administration Regulations (EAR). If this rule were not published, entities would not benefit from simpler license application procedures and reduced (or eliminated) registration fees based on the transfer of jurisdiction of the items described in the rule. Thus, entities would not benefit from reduced administrative costs associated with EAR jurisdiction.

Timetable:

Action	**Date**	**FR Cite**
NPRM	05/24/18	83 FR 24166
NPRM Comment Period End	07/09/18	83 FR 24166
Final Action	04/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN:

Related to 0694–AF17, Merged with 0694–AF48, Merged with 0694–AF49

RIN: 0694–AF47

DOC—National Oceanic and Atmospheric Administration(NOAA)	**PROPOSED RULE STAGE**

17. MAGNUSON–STEVENS ACT; FISHERY MANAGEMENT COUNCILS; FINANCIAL DISCLOSURE AND RECUSAL

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

16 U.S.C. 1801 et seq.

CFR Citation:

50 CFR 600

Legal Deadline:

None

Abstract:

Current regulations require that fishery management council members disclose any financial interest in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Fishery Management Council (Council) concerned has jurisdiction. Furthermore, current implementing regulations also require the voting recusal of an appointed Council member when a Council decision would have a significant and predictable effect on the member's financial interests. NMFS received input from the Fishery Management Council Coordination Committee, the North Pacific Fishery Management Council, the Western Pacific Fishery Management Council, and the New England Fishery Management Council all calling for further guidance and clarification of financial disclosure requirements of Council members and the regulatory procedures to make determinations on voting recusals of Council members. This proposed action would articulate the guidance necessary to: provide consistency and transparency in the calculation of a Council member's financial interests; provide clarity consistent with statutory language to ensure that any recusal is based on a close causal

link between a Council decision and a benefit to a Council member's financial interest; and establish regional procedures for preparing and issuing recusal determinations.

Statement of Need:

NMFS received input from regional Fishery Management Councils calling for further guidance and clarification of financial disclosure requirements of Council members and the regulatory procedures to make determinations on voting recusals of Council members. This proposed rule makes changes to the regulations that address disclosure of financial interests by, and voting recusal of, Council members appointed by the Secretary of Commerce. The regulatory changes are needed to provide the guidance for (1) consistency and transparency in the calculation of a Council member's financial interests; (2) determining whether a close causal link exists between a Council decision and a benefit to a Council members financial interest; and (3) establishing regional procedures for preparing and issuing recusal determinations. This proposed rule is intended to improve regulations implementing the statutory requirements governing disclosure of financial interests and voting recusal at section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act

Alternatives:

The alternatives are 1) the status quo (keep the regulatory scheme as it currently is) and 2) update the regulations to provide consistency, transparency, and clarity in the regulations and to establish regional procedures for preparing and issuing recusal determinations.

Anticipated Cost and Benefits:

This rule is administrative in nature. It does not directly regulate a particular fishery. Instead, it provides guidance and improved clarity about implementing existing requirements. Because the proposed rule will not directly alter the behavior of any entities that operate in federally managed

fisheries, no direct economic effects are expected to result from this action. This action may indirectly result in positive net economic benefits in the long-term by improving transparency and providing increased predictability about the voting procedures of the Councils. This increased transparency provides a net benefit to the nation.

Risks:

Because the regulations lack guidance on several key aspects of reaching a recusal determination, and provide little guidance on the procedures to be followed when preparing and issuing a recusal determination, designated officials have developed differing practices over time to fill in these regulatory gaps and to address new factual circumstances that have arisen. The risk in not updating the regulations would be a continuation of the lack of clarity and consistency in the implementation of the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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RIN: 0648–BH73

DOC—NOAA	

18. MAGNUSON–STEVENS FISHERIES CONSERVATION AND MANAGEMENT ACT; TRACEABILITY INFORMATION PROGRAM FOR SEAFOOD

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

16 U.S.C. 1801 et seq.; Pub. L. 115–141

CFR Citation:

50 CFR 698

Legal Deadline:

Final, Statutory, December 31, 2018, Sec 539 of H.R. 1625 – Consolidated Appropriations Act, 2018.

Abstract:

On December 9, 2016, NMFS issued a final rule that established a risk-based traceability program to track seafood from harvest to entry into U.S. commerce. The final rule included, for designated priority fish species, import permitting and reporting requirements to provide for traceability of seafood products offered for entry into the U.S. supply chain, and to ensure that these products were lawfully acquired and are properly represented. Shrimp and abalone products were included in the final rule to implement the Seafood Import Monitoring Program, but compliance with Seafood Import Monitoring Program requirements for those species was stayed indefinitely due to the disparity between Federal reporting programs for domestic aquaculture of shrimp and abalone products relative to the requirements that would apply to imports under Seafood Import Monitoring Program. In Section 539 of the Consolidated Appropriations Act, 2018, Congress mandated lifting the stay on inclusion of shrimp and abalone in Seafood Import Monitoring Program and authorized the Secretary of Commerce to require comparable reporting and recordkeeping requirements for domestic aquaculture of shrimp and abalone. This rulemaking would establish permitting, reporting and recordkeeping requirements for domestic producers of shrimp and abalone from the point of production to entry into commerce.

Statement of Need:

Section 539 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 (2018 Appropriations Act) directed the Secretary of Commerce to “establish a traceability program for United States inland, coastal, and marine aquaculture of shrimp and abalone” and by December 31, 2018 to “promulgate such regulations as are necessary and appropriate to establish and implement the program.” The proposed Traceability Information Program for Seafood (TIPS) would establish registration, reporting and recordkeeping requirements for domestic, commercial aquaculture producers of shrimp and abalone species and products containing those species from the point of production to entry into U.S. commerce. TIPS would close the domestic reporting and recordkeeping gap and enable NOAA to add imported shrimp and abalone to the Seafood Import Monitoring Program (SIMP), which was mandated under the 2018 Appropriations Act and finalized under 50 CFR 300.324 in a final rule (0648-BH89; 83 FR 17762) published April 24, 2018.

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act; Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018.

Alternatives:

Coextensive with the scope of SIMP, the Traceability Information Program for Seafood would establish a domestic traceability program for aquaculture shrimp and abalone traces fish and fish products from production to entry into U.S. commerce. NMFS will solicit public input on alternatives to the registration, reporting and recordkeeping requirements for U.S. shrimp and abalone aquaculture producers in the proposed rule.

Anticipated Cost and Benefits:

The costs of the Traceability Information Program for Seafood, as proposed, would include a small registration fee and labor associated with reporting harvest information to NMFS as well as compliance with any requests for audit or inspection. The Traceability Information Program for Seafood would enable NMFS to determine the origin of the domestic aquaculture shrimp and

abalone products and confirm that they were lawfully produced. The Traceability Information Program for Seafood will close the domestic reporting and recordkeeping gap and enable NMFS to add imported shrimp and abalone to the Seafood Import Monitoring Program, which will prevent illegally harvested or misrepresented seafood products from entering U.S. commerce, thereby leveling the playing field for law abiding shrimp and abalone producers in the U.S. and around the world.

Risks:

Failure to implement the Traceability Information Program for Seafood would violate Section 539 of the 2018 Appropriations Act and likely provoke challenges to the Seafood Import Monitoring Program in international trade fora.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

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.

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Related RIN:

Related to 0648–BF09

RIN: 0648–BH87

DOC—NOAA	FINAL RULE STAGE

19. TAKING AND IMPORTING MARINE MAMMALS: TAKING MARINE MAMMALS INCIDENTAL TO GEOPHYSICAL SURVEYS RELATED TO OIL AND GAS ACTIVITIES IN THE GULF OF MEXICO

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

16 U.S.C. 1361 et seq.

CFR Citation:

50 CFR 217

Legal Deadline:

None

Abstract:

The National Marine Fisheries Service is taking this action in response to an October 17, 2016 petition from the U.S. Department of Interior (DOI), Bureau of Ocean Energy Management (BOEM), to promulgate regulations governing the authorization of take of marine mammals incidental to oil and gas industry geophysical surveys conducted in support of hydrocarbon exploration and development on the Outer Continental Shelf in the Gulf of Mexico from approximately 2018 through 2023.

Statement of Need:

The Marine Mammal Protection Act (MMPA) prohibits the “take” (e.g., behavioral harassment, injury, or mortality) of marine mammals with certain exceptions, including through the issuance of incidental take authorizations. Where there is a reasonable likelihood of an activity resulting in the take of marine mammals - as is the case for certain methods of geophysical exploration, including the use of airgun arrays (i.e., “seismic surveys”) - action proponents must ensure that take occurs in a lawful manner. However, there has not previously been any analysis of industry survey activities in the Gulf of Mexico conducted pursuant to requirements of MMPA, and industry

operators have been, and currently are, conducting their work without MMPA incidental take authorizations. In support of the oil and gas industry, the Bureau of Ocean Energy Management has requested 5-year incidental take regulations, which would provide a regulatory framework under which individual companies could apply for project-specific Letters of Authorization. Providing for industry compliance with the MMPA through the requested regulatory framework, versus companies pursuing individual authorizations, would be the most efficient way to achieve such compliance for both industry and for NMFS, and would provide regulatory certainty for industry operators.

Summary of Legal Basis:

Marine Mammal Protection Act

Alternatives:

The regulatory impact analysis considers several alternatives with varying amounts of required mitigation by industry authorization-holders. The proposed rule seeks comment on the extent to which certain areas should be closed to geophysical activity, the distance at which operators must shut down upon detection of specified species of whales, and the mitigation requirements concerning large dolphins.

Anticipated Cost and Benefits:

The rule would include mitigation, monitoring, and reporting requirements, as required by the MMPA. The rule analyzes the impacts against two baselines - the current mitigation requirements as stipulated in a settlement agreement currently in effect until November 1, 2018, and the requirements prior to the settlement agreement. Compared to the settlement agreement, the annualized impacts of the proposed rule are estimated to achieve a cost savings of $11 million to $147 million. Compared to the pre-settlement agreement baseline the annualized costs are estimated to range from $49 million to $182 million. The rule would also result in certain non-monetized benefits. The lessened risk of harm to marine mammals afforded by this rule (pursuant to the requirements of the MMPA) would benefit the regional economic value of marine mammals

via tourism and recreation to some extent, as mitigation measures applied to geophysical survey activities in the Gulf of Mexico (GOM) region are expected to benefit the marine mammal populations that support this economic activity in the GOM. The rule would also afford significant benefit to the regulated industry by providing an efficient framework within which compliance with the MMPA, and the attendant regulatory certainty, may be achieved. Cost savings may be generated in particular by the reduced administrative effort required to obtain an LOA under the framework established by a rule compared to what would be required to obtain an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA. Absent the rule, survey operators in the GOM would likely be required to apply for an IHA. Although not monetized, NMFSs analysis indicates that the upfront work associated with the rule (e.g., analyses, modeling, process for obtaining LOA) would likely save significant time and money for operators.

Risks:

Absent the rule, oil and gas industry operators would face a highly uncertain regulatory environment due to the imminent threat of litigation. BOEM currently issues permits under a stay of ongoing litigation; in the absence of the rule, the litigation would continue. The IHA application process that would be available to companies would be more expensive and time-consuming.

Timetable:

Action	Date	FR Cite
NPRM	06/22/18	83 FR 29212
NPRM Comment Period End	08/21/18	
Final Action	02/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

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DOC—NOAA	

20. COMMERCE TRUSTED TRADER PROGRAM

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

16 U.S.C. 1801 et seq.

CFR Citation:

50 CFR 300

Legal Deadline:

None

Abstract:

This rule will establish a voluntary Commerce Trusted Trader Program for importers, aiming to provide benefits such as reduced targeting and inspections and enhanced streamlined entry into the United States for certified importers. Specifically, this rule would establish the criteria required of a Commerce Trusted Trader, and identify specifically how the program will be monitored and by whom. It will require that a Commerce Trusted Trader establish a secure supply chain and maintain the records necessary to verify the legality of all designated product entering into U.S. commerce, but will excuse the Commerce Trusted Trader from entering that data into the International Trade Data System prior to entry, as required by Seafood Import Monitoring Program (finalized on December 9, 2016). The rule will identify the benefits available to a Commerce Trusted Trader, detail the application process, and specify how the Commerce Trusted Trader will be audited by third-party entities while the overall program will be monitored by the National Marine Fisheries Service.

Statement of Need:

Under the Magnuson-Stevens Fishery Conservation and Management Act, importation of fish products taken in violation of foreign law and regulation is prohibited. To enforce this prohibition, NMFS has implemented the Seafood Import Monitoring Program (SIMP) (81 FR 88975, December 9, 2016) which requires U.S. importers to report on the origin of fish products and to keep supply chain records. The Commerce Trusted Trader Program was recommended by an interagency working group to reduce the burden of SIMP compliance for importers with secure supply chains by reducing reporting requirements for entry into U.S. commerce and allowing more flexible approaches to retaining supply chain records.

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act.

Alternatives:

SIMP is aimed at preventing the infiltration of illegal fish products into the U.S. market. Alternatives to reduce the reporting and recordkeeping burden for U.S. importers were considered during the course of that rulemaking. Collecting less information at import about the origin of products would increase the likelihood of illegal products entering the supply chain. However, working with individual traders to secure the supply chain will be an economical approach to ensure that illegal products are precluded and records will be kept as needed for post-entry audits. The Commerce Trusted Trader Program is designed to allow those entities who demonstrate a robust traceability and internal control system, and submit to annual third-party audits of their system, to benefit from reduced reporting requirements of SIMP species at the time of entry as well as flexibility in how they maintain the complete chain of custody records within their secure supply chain.

Anticipated Cost and Benefits:

The Commerce Trusted Trader Program, as proposed, will result in an estimated industry-wide savings between $0.50 and $1.21 million annually. Anticipated costs are minimal and include a one-time application fee of $30.00 and associated labor costs of developing application materials.

Commerce Trusted Traders will benefit from the reduced reporting costs at entry and reduced recordkeeping costs due to flexibility in archiving chain of custody records, but incur costs to perform an annual third-party audit of adherence to their Compliance Plan.

Risks:

While there is no risk of not implementing a Commerce Trusted Trader Program, not doing so would deprive industry of potentially significant cost savings for an existing regulatory program.

Timetable:

Action	Date	FR Cite
NPRM	01/17/18	83 FR 2412
NPRM Comment Period End	03/19/18	
Final Action	11/00/18	

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:

Related to 0648–BF09

RIN: 0648–BG51

DOC—Patent and Trademark Office(PTO)	PROPOSED RULE STAGE

21. SETTING AND ADJUSTING PATENT FEES

Priority:

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

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

Pub. L. 112–29

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The USPTO operates like a business in that it fulfills requests for intellectual property products and services that are paid for by users of those services. The USPTO takes this action to set and adjusts patent fee amounts to provide sufficient aggregate revenue to cover aggregate cost of operations.

Statement of Need:

The purpose of this rule is to set and adjust patent fee amounts to provide sufficient aggregate revenue to cover the agency's aggregate cost of operations. To this end, this rule creates new or changes existing fees for patent services, and does so without imposing any new costs.

Summary of Legal Basis:

The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO's fee setting authority. This fee review process involves public outreach, including, as required by the Act, public hearings held by the USPTO's Public Advisory Committees, as well as public comment and other outreach to the user community and public in general.

Alternatives:

This rulemaking action is currently in development and alternatives have not yet been determined.

Anticipated Cost and Benefits:

This rulemaking action is currently in development and aggregate annual economic impacts have not yet been determined. It is anticipated that the final rule would become effective with the new fee schedule in 2020.

Risks:

The USPTO will set and adjust Patent fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, improve quality, and upgrade the Office's business information technology capability and infrastructure. Therefore, one risk of taking no action could be that USPTO might not be able to recover its aggregate costs of operations in the long run.

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	
NPRM Comment Period End	11/00/19	
Final Action	08/00/20	
Final Action Effective	10/00/20	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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BILLING CODE 3510–12–P

DEPARTMENT OF DEFENSE

STATEMENT OF REGULATORY PRIORITIES

BACKGROUND

The Department of Defense (DoD) is the largest Federal department, employing over 1.3 million military personnel and 742,000 civilians with operations all over the world. DoD's enduring mission is to provide combat-credible military forces needed to deter war and protect the security

of our nation. In support of this mission, DoD adheres to a strategy where a more lethal force, strong alliances and partnerships, American technological innovation, and a culture of performance will generate a decisive and sustained United States military advantage. Because of this expansive and diversified mission and reach, DoD regulations can address a broad range of matters and have an impact on varied members of the public, as well as a multitude of other federal agencies.

The regulatory and deregulatory actions identified in this Regulatory Plan embody the core of DoD's regulatory priorities for Fiscal Year (FY) 2019 and help support or impact the Secretary's three lines of efforts to: 1) build a more lethal force; 2) strengthen alliances and attract new partners; and 3) reform the Department for greater performance and affordability. These actions originate within three of DoD's main regulatory components -- the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), which is responsible for contracting and procurement policy, the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), which supports troop readiness and health affairs, and the Department of the Army through the United States Army Corps of Engineers (USACE), which provides engineering services to support the national interest. The missions of these offices are discussed more fully below.

DoD'S REGULATORY PHILOSOPHY AND PRINCIPLES

The Department's regulatory program strives to be responsive, efficient, and transparent. DoD adheres to the general principles set forth in Executive Order (EO) 12866, "Regulatory Planning and Review," dated October 4, 1993, by promulgating only those regulations that are required by law, necessary to interpret the law, or are made necessary by compelling public need. By following this regulatory philosophy, the Department's regulatory program also compliments and advances the Secretary's third line of effort -- to reform the Department for greater performance and affordability

The Department is also fully committed to implementing and sustaining regulatory reform in accordance with Executive Order 13771, "Reducing Regulation and Controlling Regulatory

Costs," dated January 30, 2017, and Executive Order 13777, "Enforcing the Regulatory Reform Agenda," dated February 24, 2017. These reform efforts support DoD's goals to eliminate outdated, unnecessary, or ineffective regulations; account for the currency and legitimacy of each of the Department's regulations; and ultimately reduce regulatory burden and costs placed on the American people. Specifically in support of DoD's reform efforts, DoD appointed a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies. DoD also established a Regulatory Reform Task Force (Task Force) to review and evaluate existing regulations and make recommendations to the Agency head regarding their repeal, replacement, or modification, consistent with applicable law.

DoD is implementing its reform efforts in three general phases:

- Phase I: Utilizing the Task Force, assess all 716 existing, codified DoD regulations to include 350 solicitation provisions and contract clauses contained in the Defense Federal Acquisition Regulation Supplement (DFARS). The Task Force will present recommendations for the repeal, replacement, or modification to the Secretary of Defense on a quarterly basis through the end of December 2018.
- Phase II: Implementing the approved recommendations. Implementation requires drafting, internal coordination, review by the Office of Management and Budget, and providing for notice and comment, as required by law.
- Phase III: Incorporating into its policies a requirement for components to sustain review of both new regulatory actions and existing regulations.

In FY 2019, based primarily on the ongoing work of the Task Force, DoD expects to publish more deregulatory actions than regulatory actions. Exact figures are not yet available as the regulations reported in this edition of the Unified Agenda are still under evaluation for classification under Executive Order 13771. Additionally, the Task Force will continue working to execute directives under Executive Orders 13783 and 13807 to streamline its regulatory process and permitting reviews.

In addition to reform efforts, DoD is also mindful of the importance of international regulatory cooperation, consistent with domestic law and trade policy, as described in Executive Order 13609, "Promoting International Regulatory Cooperation" (May 1, 2012). For example, DoD, along with the Departments of State and Commerce, engages with other countries in the Wassenaar Arrangement, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime through which the international community develops a common list of items that should be subject to export controls. DoD has been a key participant in the Administration's Export Control Reform effort that resulted in a complete overhaul of the U.S. Munitions List and fundamental changes to the Commerce Control List. New controls have facilitated transfers of goods and technologies to allies and partners while helping prevent transfers to countries of national security and proliferation concern. In this context, DoD will continue to assess new and emerging technologies to ensure items that provide critical military and intelligence capabilities are properly controlled on international export control regime lists.

DoD Priority Regulatory Actions

As stated above, OUSD (A&S), OUSD (P&R), and the Department of the Army will be planning actions that are considered the most important significant DoD regulatory actions for FY 2019. During the next year, these DoD Components plan to publish 15 rulemaking actions that are designated as significant actions. Further information on these actions is provided below.

OUSD (A&S)/Defense Pricing and Contracting (DPC)

DPC is responsible for all contracting and procurement policy matters in the Department and uses the Defense Acquisition Regulations System (DARS) to develop and maintain acquisition rules and to facilitate the acquisition workforce as they acquire goods and services. For this component, DoD is highlighting the following rules:

Rulemakings that are expected to have high net benefits well in excess of costs.

Rulemakings that promote Open Government and use disclosure as a regulatory tool.

Brand Name or Equal (DFARS Case 2017-D040). RIN: 0750-AJ50.

This rule proposes to amend the DFARS to implement section 888 of the NDAA for FY 2017. Section 888 requires DoD to justify when a solicitation includes “brand name or equal” specifications, which could limit competition by unnecessarily restricting offerors to a limited set of specifications. Currently, if the Government intends to procure specific “brand name” products, the contracting officer must prepare a justification and obtain the appropriate approval based on the estimated dollar value of the contracts. However, a justification is not required to use “brand name or equal” descriptions in a solicitation. To implement section 888, this rule proposes to amend the DFARS to require contracting officers to obtain an approval of a justification for use of “brand name or equal” descriptions, which would then be posted with the covered solicitation. It is expected that this rule will both promote transparency with industry by disclosing the basis for the Government’s decision to limit competition and, in turn, present an opportunity to increase competition.

Rulemakings that streamline regulations and reduce unjustified burdens.

Contractor Purchasing System Review Threshold (DFARS Case 2017-D038). RIN: 0750-AJ48.

This rule proposes to amend the DFARS to raise the threshold for determining when a contractor purchasing system review (CPSR) is required. The Government will conduct a CPRS in order to evaluate the efficiency and effectiveness with which a prime contractor spends Government funds and complies with Government policy when subcontracting. Currently, if a prime contractor’s sales to the Government are expected to exceed $25 million during the next 12 months, then the administrative contracting officer (ACO) will determine whether there is a need for a CPSR. This rule proposes to amend the DFARS to raise the dollar threshold at which an ACO makes the determination to conduct a CPSR to $50 million for DoD contracts. It is expected that this rule may reduce the number of CPSRs conducted by DoD and, in turn, alleviate the burden on contractors associated with participating in the CPSR.

Rules modifying, streamlining, expanding, or repealing regulations making DOD’s regulatory program more effective or less burdensome in achieving regulatory objectives.

Submission of Summary Subcontract Reports (DFARS Case 2017-D005). RIN: 0750-AJ42.

This rule proposes to amend the DFARS to clarify the entity to which contractors submit Summary Subcontract Reports in the Electronic Subcontracting Reporting System (eSRS) and to clarify the entity that acknowledges receipt of, or rejects, the reports in eSRS. This rule streamlines the submission and review of Summary Subcontract Reports (SSRs) for DoD contractors and brings the DFARS into compliance with changes in the Federal Acquisition Regulation. Instead of submitting multiple SSRs to various departments and agencies within DoD, contractors with individual subcontracting plans will submit a single, consolidated SSR in eSRS at the DoD level. The consolidated SSR will be acknowledged or rejected in eSRS at the DoD level.

OUSD (P&R)/Assistance Secretary of Defense for Health Affairs

The mission of DoD's health program is to enhance the Department of Defense and our Nation's security by providing health support for the full range of military operations and sustaining the health of all those entrusted to our care by creating a world-class health care system that supports the military mission by fostering, protecting, sustaining and restoring health.

TRICARE is the health care program for uniformed service members including active duty and retired members of the U.S. Army, U.S. Air Force, U.S. Navy, U.S. Marine Corps, U.S. Coast Guard, the Commissioned Corps of the U.S. Public Health Service and the Commissioned Corps of the National Oceanic and Atmospheric Association and their families around the world. It serves 9.5 million individuals worldwide. It continues to offer an increasingly integrated and comprehensive health care plan, refining and enhancing both benefits and programs in a manner consistent with the law, industry standard of care, and best practices, to meet the changing needs of its beneficiaries. The program's goal is to increase access to health care services, improve health care quality, and control health care costs.

For this component, DoD is highlighting the following rule:

Establishment of TRICARE Select and Other TRICARE Reforms. RIN: 0720-AB70.

This final rule implements the primary features of section 701 and partially implements several other sections of the National Defense Authorization Act for Fiscal Year 2017 (NDAA-17). The rule makes significant changes to the TRICARE program, especially to the health maintenance organization (HMO)-like health plan known as TRICARE Prime; to the preferred provider organization (PPO) health plan previously known as TRICARE Extra and replaced by TRICARE Select; and to the third health care option known as TRICARE Standard, which was terminated December 31, 2017, and is also replaced by TRICARE Select.

The statute also adopts a new health plan enrollment system under TRICARE and new provisions for access to care, high value services, preventive care, and healthy lifestyles. In implementing section 701 and partially implementing several other sections of NDAA-17, this rule advances all four components of the Military Health System's quadruple aim of improved readiness, better care, better health, and lower cost. The aim of improved readiness is served by reinforcing the vital role of the TRICARE Prime health plan to refer patients, particularly those needing specialty care, to military medical treatment facilities (MTFs) in order to ensure that military health care providers maintain clinical currency and proficiency in their professional fields.

The objective of better care is enhanced by a number of improvements in beneficiary access to health care services, including increased geographical coverage for the TRICARE Select provider network, reduced administrative hurdles for TRICARE Prime enrollees to obtain urgent care services and specialty care referrals, and promotion of high value services and medications. The goal of better health is advanced by expanding TRICARE coverage of preventive care services, treatment of obesity, high-value care, and telehealth. Finally, the aim of lower cost is furthered by refining cost-benefit assessments for TRICARE plan specifications that remain under DoD's discretion and adding flexibilities to incentivize high-value health care services.

USACE

The United States Army Corps of Engineers (USACE), is a major Army command made up of some 37,000 civilian and military personnel, making it one of the world's largest public engineering, design, and construction management agencies. Although generally associated with

flood and coastal storm damage reduction, commercial navigation, and aquatic ecosystem restoration in the United States, USACE is involved in a wide range of public works throughout the world.

The USACE's mission is to "Deliver vital public and military engineering services; partnering in peace and war to strengthen our Nation's security, energize the economy and reduce risks from disasters." The most visible missions include:

- Water resources development activities including flood risk management, navigation, aquatic ecosystem restoration, recreation, emergency response, and environmental stewardship
- Design and construction management of military facilities for the Army, Air Force, Army Reserve and Air Force Reserve and other Defense and Federal agencies.

For this component, DoD is highlighting the following rules.

Waters of the United States. RINs: 0710-AA79, 0710-AA80.

In 2015, the Environmental Protection Agency and the Department of the Army ("the agencies") published the "Clean Water Rule: Definition of 'Waters of the United States" (80 FR 37054, June 29, 2015). On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 rule nationwide pending further action of the court. On February 28, 2017, the President signed Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" which instructed the agencies to review the 2015 rule and rescind or replace it as appropriate and consistent with law. On July 27, 2017, the agencies published a Federal Register notice proposing to repeal (STEP 1 of a comprehensive 2-STEP process) the 2015 Clean Water Rule (2015 Rule) and recodify the pre-existing regulations; the initial 30-day comment period was extended an additional 30 days to September 28, 2017. The agencies signed a supplemental notice of proposed rulemaking on June 29, 2018, clarifying and seeking additional comment on the proposal.

In Step 2 (Revised Definition of 'Waters of the United States'), the agencies plan to propose a new definition that would replace the prior regulations and the approach in the CWR2015 Rule. In determining the possible new approach, the agencies are considering defining "navigable waters" in a manner consistent with the plurality opinion of Justice Antonin Scalia in the Rapanos decision, as instructed by Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

On February 6, 2018, the agencies issued a final rule adding an applicability date to the CWR2015 Rule of February 6, 2020, to provide continuity and certainty for regulated entities, the States and Tribes, and the public while the agencies conduct STEP 2 of the rulemaking. Until the new definition is finalized, the agencies will continue to implement the regulatory definition in place prior to the CWR consistent with Supreme Court decisions and practice, and as informed by applicable agency guidance documents.

Regulatory Program of the Army Corps of Engineers Tribal Consultation and National Historic Preservation Act compliance. RIN: 0710-AA75.

The USACE recognizes the sovereign status of Indian tribes (as defined by Executive Order 13175) and our obligation for pre-decisional government-to-government consultation, as established through and confirmed by the U.S. Constitution, treaties, statutes, executive orders, judicial decisions, and Presidential documents and policies, on proposed regulatory actions (e.g., individual permit decisions and general permit verifications). The USACE Regulatory Program's regulations for considering the effects of its actions on historic properties as required under Section 106 of the National Historic Preservation Act (NHPA) are outlined at 33 CFR 325 Appendix C. Since these regulations were promulgated in 1990, there have been amendments to the NHPA and revisions to Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800 subpart B, addressing, among other things, tribal consultation requirements. In response, the USACE issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. The USACE seeks to revise its regulations to conform to these requirements.

Policy for Domestic, Municipal, and Industrial Water Supply Uses of Reservoir Projects Operated by the Department of the Army, U.S. Army Corps of Engineers. RIN: 0710-AA72.

The USACE is updating and clarifying its policies governing the use of its reservoir projects for domestic, municipal and industrial water supply pursuant to Section 6 of the Flood Control Act of 1944 and the Water Supply Act of 1958 (WSA). The USACE intends through this rulemaking to explain and improve its interpretations and practices under these statutes. The rule is intended to enhance the USACE's ability to cooperate with State and local interests in the development of water supplies in connection with the operation of its reservoirs for federal purposes as authorized by Congress, to facilitate water supply uses of USACE reservoirs by others as contemplated under applicable law, and to avoid interfering with lawful uses of water by any entity when the USACE exercises its discretionary authority under either section 6 or the WSA. The rule would apply only to reservoir projects operated by the USACE, not to projects operated by other federal or non-federal entities, and it would not impose requirements on any other entity, alter existing contractual arrangements at USACE reservoirs, or require operational changes at any Corps reservoir.

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers. RIN: 0710-AA78.

The USACE is proposing to update its regulations for USACE's natural disaster procedures pursuant to Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84-99. The revisions are necessary to incorporate elements of the Water Resources and Reform Development Act of 2014 (WRRDA 2014), and update procedures concerning USACE authority to address disaster preparedness, response, and recovery activities. The revisions relating to WRRDA 2014 include the authority to implement modifications to Flood Control Works (FCW) and Coastal Storm Risk Management Projects (formerly referred to as Hurricane and Shore Protection Projects); and the authority to implement nonstructural alternatives to rehabilitation, if requested by the non-federal sponsor. Other significant changes under consideration include revisions to the eligibility criteria for rehabilitation assistance for

FCW, an increase to the minimum repair cost for FCW projects, revised policies to address endangered species and vegetation management during rehabilitation, and a change in the cost share for emergency measures constructed using permanent construction standards.

Compensatory Mitigation for Losses of Aquatic Resources - Review and Approval of Mitigation Banks and In-Lieu Fee Programs. RIN: 0710-AA83.

This rule proposes to amend the regulations governing the review and approval process for mitigation banks and in-lieu fee programs, which are used to provide compensatory mitigation that offsets losses of jurisdictional waters and wetlands authorized by Department of the Army permits. Those regulations also include time frames for certain steps in the mitigation bank and in-lieu fee program review and approval process. The review and approval process for mitigation banks and in-lieu fee programs includes an opportunity for public and agency review and comment, as well as a second review by an interagency review team. The interagency review team consists of federal, tribal, state, and local agencies that review documentation and provide the United States Army Corps of Engineers (USACE) with advice on the establishment and management of mitigation banks and in-lieu fee programs. The USACE is reviewing the review and approval process and the interagency review team process in particular to determine whether and how it can enhance the efficiency of those processes. An increase in efficiency could result in savings to the public if it results in similar or improved outcomes with shorter review times and thereby reduce risk and uncertainty for mitigation bank and in-lieu fee program sponsors and the costs they incur in obtaining mitigation banking or in-lieu fee program instruments. An increase in review efficiency could also decrease the resources other federal, tribal, state, and local agencies expend in reviewing these activities, attending meetings, participating in site visits, and providing their comments to the USACE.

Modification of Nationwide Permits. RIN: 0710-AA84.

The USACE issues nationwide permits to authorize specific categories of activities in jurisdictional waters and wetlands that have no more than minimal individual and cumulative

adverse environmental effects. The issuance and reissuance of nationwide permits must be done every five years to continue the Nationwide Permit Program. The nationwide permits were last issued on December 21, 2016, and expire on March 18, 2022. On October 25, 2017, the USACE issued a report to meet the requirements of Executive Order 13783, Promoting Energy Independence and Economic Growth. In that report, the USACE recommended changes to nine nationwide permits that authorize activities related to domestic energy production and use, including oil, natural gas, coal, and nuclear energy sources, as well as renewable energy sources such as flowing water, wind, and solar energy. This rulemaking action would seek to review and, if appropriate, modify those nine nationwide permits in accordance with the opportunities identified in the report in order to reduce burdens on the public. In addition, the Corps is considering modifying an additional 23 nationwide permits to allow federal agencies to select and use nationwide permits without additional USACE review. This rulemaking action would help simplify the nationwide permit authorization process.

DOD—Defense Acquisition Regulations Council(DARC)	**PROPOSED RULE STAGE**

22. CONTRACTOR PURCHASING SYSTEM REVIEW THRESHOLD (DFARS CASE 2017–D038)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

41 U.S.C. 1303

CFR Citation:

48 CFR 244

Legal Deadline:

None

Abstract:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to establish a higher dollar threshold for conducting contractor purchasing system reviews. This rule proposes, in lieu of the threshold at Federal Acquisition Regulation 44.302(a) of $25 million, the administrative contracting officer shall determine the need for a contractors purchasing system review if a contractor's sales to the Government are expected to exceed $50 million during the next 12 months.

Statement of Need:

There is a need to increase the threshold for a contractor purchasing system review from $25 to $50 million to reduce the administrative burden on contractors and the Government for maintaining and reviewing an approved contractor purchasing system.

Summary of Legal Basis:

This rule is proposed under the authority at 41 U.S.C. 1303, Functions and authority, which provides the authority to issue and maintain the Federal Acquisition Regulation and executive agency implementing regulations.

Alternatives:

No alternatives to this action are being considered at this time.

Anticipated Cost and Benefits:

Implementing this rule provides a net annualized savings of approximately $12 million. This estimate is based on data available in the Federal Procurement Data System (FPDS) data for fiscal year 2016, which indicates that 958 unique vendors received awards valued at $25 million or more, but less than $50 million, that were subject to the purchasing system review. Removing this requirement would relieve these contractors from the time and cost burden required to establish, maintain, audit, document, and train for an approved purchasing system.

Risks:

If this rule is not finalized, the public will continue to experience additional costs to comply with this rule at the current threshold.

Timetable:

Action	Date	FR Cite
NPRM	01/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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RIN: 0750–AJ48

DOD—DARC	

23. BRAND NAME OR EQUAL (DFARS CASE 2017–D040)

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

41 U.S.C. 1303; Pub. L. 113–291, sec. 888; 10 U.S.C. 2304(f)

CFR Citation:

48 CFR 206; 48 CFR 211

Legal Deadline:

Final, Statutory, December 23, 2016, Effective upon enactment.

Abstract:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 888 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which requires that competition not be limited through the use of specifying brand names or brand name or equivalent descriptions, or proprietary specifications and standards, unless a justification for such specifications is provided and approved in accordance with 10 U.S.C. 2304(f).

Statement of Need:

This case is necessary to ensure contracting officers comply with section 888 of the NDAA for FY 2015 (Pub. L. 113-291). Specifically, it will ensure contracting officers properly justify for the use of brand name and brand name or equivalent descriptions, or proprietary specifications or standards.

Summary of Legal Basis:

This rule is proposed under the authority at 41 U.S.C. 1303, Functions and authority, which provides the authority to issue and maintain the Federal Acquisition Regulation and executive agency implementing regulations. In addition, this rule is necessary to implement the statutory amendments made by section 888 of the NDAA for FY 2017.

Alternatives:

There are no viable alternatives that are consistent with the stated objectives of the statute.

Anticipated Cost and Benefits:

The Department does not expect this proposed rule to have any cost impact on contractors or offerors. Rather, preparing a justification for the use of brand name descriptions or specifications

provides increased transparency into the acquisition planning and source selection strategy process for department goods and services

Risks:

If this rule is not finalized, the department will not be in compliance with section 888 of the NDAA for FY 2017, therefore losing an opportunity to increase competition, expand the defense industrial base and secure reduced pricing.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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RIN: 0750–AJ50

DOD—DARC	FINAL RULE STAGE

24. SUBMISSION OF SUMMARY SUBCONTRACT REPORT (DFARS CASE 2017–D005)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

41 U.S.C. 1303

CFR Citation:

48 CFR 252

Legal Deadline:

None

Abstract:

DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the entity to which Summary Subcontract Reports (SSRs) are to be submitted

and the entity that acknowledges receipt of, or rejects, SSRs in the Electronic Subcontracting Reporting System (eSRS). The SSR is used to collect prime contractors' and subcontractors' subcontract award data for a specific Federal Government agency when the prime or subcontractor: (a) holds one or more contracts over $700,000 (over $1,500,000 for construction of a public facility); and (b) is required to report subcontracts awarded to various types of small business under an individual subcontracting plan with the Federal Government. Currently, the contractors submit the SSR to the various individual DoD components (i.e., departments and agencies within DoD) with which they have contracts. As a result of this rule, contractors with individual subcontracting plans will submit a single, consolidated SSR in eSRS at the DoD-level, which will be acknowledged or rejected in eSRS at the DoD-level. These revisions will bring DFARS into compliance with the requirement for a consolidated SSR in the clause at Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan. This rule will also have a positive impact on contractors, because they will be able to submit a single consolidated SSR to DoD, instead of multiple SSRs to DoD components.

Statement of Need:

The purpose of the rule change is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a policy that streamlines the submission and review of Summary Subcontract Reports (SSRs) for DoD contractors. Instead of the current practice of submitting multiple SSRs to various departments or agencies within DoD, contractors with individual subcontracting plans will submit one consolidated SSR at the DoD level in the Electronic Subcontracting Reporting System (eSRS). The consolidated SSR will be acknowledged or rejected in eSRS at the DoD level. Large business contractors currently submit SSRs to the department or agency within DoD that administers the majority of the contractor's individual subcontracting plans, and these contractors frequently must submit SSRs to each department or agency within DoD with which they have contracts. This results in extra work for the contractors and creates problems with duplicate subcontracting data. By requiring submission and review of SSRs at the DoD level, this rule identifies a solution for these issues.

Summary of Legal Basis:

This rule is issued under the authority at 41 U.S.C. 1303, functions and authority, which provides the authority to issue and maintain the Federal Acquisition Regulation and executive agency implementing regulations.

Alternatives:

There are no known alternatives that would achieve the efficiencies expected from this rule. The current submission requirements result in extra work for contractors and create problems with duplicate subcontracting data being reported.

Anticipated Cost and Benefits:

By requiring submission and review of SSRs at the DoD level, this rule solves these issues. The following is a summary of the estimated anticipated public cost savings calculated in 2016 dollars at a 7-percent discount rate and in perpetuity:

Annualized Cost Savings: -$25,514

Present Value Cost Savings: -$364,492

Risks:

There are no identified risks associated with this rule. The rule should serve to eliminate the potential for duplicative reporting of subcontracting data to DoD.

Timetable:

Action	**Date**	**FR Cite**
NPRM	06/29/18	83 FR 30666

NPRM Comment Period End	08/28/18	
Final Action	12/00/18	
Final Action Effective	12/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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RIN: 0750–AJ42

DOD—U.S. Army Corps of Engineers(COE)	PRERULE STAGE

25. REGULATORY PROGRAM OF THE ARMY CORPS OF ENGINEERS TRIBAL CONSULTATION AND NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

33 USC 1344; 33 USC 401; 33 USC 403; 33 USC 1413

CFR Citation:

33 CFR 325

Legal Deadline:

None

Abstract:

The U.S. Army Corps of Engineers (USACE) recognizes the sovereign status of Indian tribes (as defined by Executive Order 13175) and our obligation for pre-decisional government-to-government consultation, as established through and confirmed by the U.S. Constitution, treaties, statutes, executive orders, judicial decisions, and Presidential documents and policies, on proposed regulatory actions (e.g., individual permit decisions and general permit verifications). In

addition, the USACE must also consider the effects of its actions on historic properties pursuant to section 106 of the National Historic Preservation Act. The USACE Regulatory Program's regulations for complying with the NHPA are outlined at 33 CFR 325 appendix C. Since these regulations were promulgated in 1990, there have been amendments to the NHPA and revisions to the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800 subpart B, addressing, among other things, tribal consultation requirements. In response, the USACE issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. The USACE seeks to revise its regulations to conform to these requirements. Consequently, the USACE intends to publish an advance notice of proposed rulemaking to solicit the public's input and inform its drafting of any future rulemaking

Statement of Need:

Since the USACE Regulatory Program's regulations for section 106 of the National Historic Preservation Act (NHPA) were promulgated in 1990, there have been amendments to the NHPA and revisions to Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800 subpart B. The ACHP's regulations address, among other things, tribal consultation requirements. The Corps seeks to revise its regulations to conform to these requirements, and to develop regulations governing consultation with Indian tribes.

Summary of Legal Basis:

For historic properties: Section 106 of the National Historic Preservation Act. The USACE's obligations to consult with Indian tribes are derived from the U.S. Constitution, treaties, statutes, executive orders, judicial decisions, and Presidential documents and policies.

Alternatives:

Various alternatives are expected to be developed from the input received from the advance notice of proposed rulemaking, and further explored during the development of the proposed and final rules.

Anticipated Cost and Benefits:

Anticipated costs and benefits will be estimated as rule options are developed after comments received in response to the advance notice of proposed rulemaking are evaluated.

Risks:

The regulation is expected to reduce risks to the environment, specifically historic properties, properties of traditional religious and cultural importance to tribes, and natural resources that are subject to tribal treaty rights. Other potential risks will likely be identified through the advance notice of proposed rulemaking and those risks will be evaluated during the rulemaking process.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/19	
ANPRM Comment Period End	05/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0710–AA75

DOD—COE	PROPOSED RULE STAGE

26. NATURAL DISASTER PROCEDURES: PREPAREDNESS, RESPONSE, AND RECOVERY ACTIVITIES OF THE CORPS OF ENGINEERS

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

33 U.S.C. 701n

CFR Citation:

33 CFR 203

Legal Deadline:

None

Abstract:

The Corps is proposing to update the Federal regulation for its natural disaster procedures currently promulgated in 33 CFR part 203. This proposed rule continues the rulemaking process to revise 33 CFR part 203, which implements section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n), commonly referred to as Public Law 84-99. The Corps initiated this process through advanced notice of proposed rulemaking (ANPR) on February 13, 2015. The revisions under consideration would respond to the comments to the ANPR. The revisions address statutory changes to the program enacted in section 3011 and 3029 of the Water Resources and Reform Development Act of 2014 (WRRDA 2014) regarding the System Wide Improvement Framework (SWIF), modifications to Flood Control Works (FCW) and Coastal Storm Risk Management Projects (formerly referred to as Hurricane and Shore Protection Projects); and nonstructural alternatives to rehabilitation, if requested by the non-Federal sponsor. Additional revisions address statutory changes from section 1176 of the Water Resources Development Act of 2016 (WRDA) which provided an express definition of nonstructural alternatives," as that term is used in Public Law 84-99, and authorized the Chief of Engineers, under certain circumstances, to increase the level of protection of flood control or hurricane or shore protection works when conducting repair or restoration activities to such works under Public Law 84-99. Other significant changes under consideration include revisions to the eligibility criteria for rehabilitation assistance for flood control works (FCW), an increase to the minimum repair cost for FCW projects, revised policies to address endangered species and vegetation management during rehabilitation, and a change in the cost share for emergency measures constructed using permanent construction standards.

Statement of Need:

Since the last revision in 2003, significant disasters, including Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma and Maria (2017) have provided a more detailed understanding of the nature and severity of risk associated with flood control projects. Additionally, the maturation of risk-informed decision making approaches and technological advancements have influenced the outlook on how Public Law 84-99 activities should be implemented, with a shift towards better alignment with Corps Levee Safety and National Flood Risk Management Programs, as well as the National Preparedness and Response Frameworks. Through these programs,the Corps works with non-federal sponsors and stakeholders to assess, communicate, and manage the risks to people, property, and the environment associated with levee systems and flood risks. Revisions to part 203 are necessary to implement statutes that amended or otherwise affected Public Law 84-99, as explained in the next section.

Summary of Legal Basis:

Public Law 84-99 authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for preparation for natural disasters, flood fighting, rescue operations, repairing or restoring flood control works, emergency protection of federally authorized hurricane or shore protection projects, and the repair and restoration of federally authorized hurricane and shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature.

1. Subsection 3029(a) of the Water Resources Reform and Development Act of 2014 (WRRDA) (Pub. L. 113-121) granted the Chief of Engineers authority, under certain circumstances, to make modifications to flood control and hurricane or shore protections works damaged during flood or coastal storms events, as well as the authority to implement nonstructural alternatives in the repair and restoration of hurricane or shore protection works.

2. Subsection 3029(b) of WRRDA 2014 directed the Secretary of the Army to undertake a review of implementation of Public Law 84-99 to ensure the safety of affected communities to future flooding and storm events; the resiliency of water resources development projects to future flooding and storm events; the long-term cost-effectiveness of water resources development projects that provide flood control and hurricane and storm damage reduction benefits; and the policy goals and objectives that were outlined by the President as a response to recent extreme weather events at that time are met.

3. Section 3011 of WRRDA 2014 mandated that a levee system shall remain eligible for rehabilitation assistance under Public Law 84-99 as long as the system sponsor continues to make satisfactory progress, as determined by the Secretary of the Army, on an approved system wide improvement framework or letter of intent.

4. Section 1176 of the Water Resources Development Act of 2016 (WRDA) (Pub. L. 114-322, title I) provided an express definition of nonstructural alternatives, as that term is used in Public Law 84-99, and authorized the Chief of Engineers, under certain circumstances, to increase the level of protection of flood control or hurricane or shore protection works when conducting repair or restoration activities to such works under PL 84-99.

Alternatives:

1. No rule update: Implement all changes through agency discretion. Alternative not selected because the Public Law 84-99 amendments are very prescriptive and it is inappropriate for those conflicts to exist.

2. Modify: Evaluate required changes and determine which require implementation via agency discretion and those requiring an update to the rule, thereby only updating the rule where necessary. Alternative not selected because of inconsistencies resulting from a lack of comprehensive consideration and a mix of policies. It would result in misunderstandings of program activities and inhibit transparency.

3. Repeal and replace (Selected Alternative): Incorporate and integrate the current state of the practice of flood risk management principles and concepts through the provision of agency policy codified in a federal rule. The intended benefit is to encourage broader community flood risk management activities, as enacted by non-federal project sponsors. The rule alternative also consolidates recent Public Law 84-99 amendments into one comprehensive rule, ensuring the Public has a clear understanding of the responsibilities and requirements.

Anticipated Cost and Benefits:

Overall, the changes to this regulation provide greater flexibility to the federal government and non-Federal sponsors and improve the effectiveness of federal and local investments in riverine and coastal projects. These proposed changes take advantage of our increased understanding of project risks, moving from an assessment of how the project is expected to perform to a focus on a broader set of actions to reduce risk to life, including operations, maintenance, planning, and execution actions to improve emergency warning and evacuation and other activities to improve the ability of communities and individuals to understand and manage project-related risks. Informed by more detailed understanding of risk for levee projects, the federal government and non-federal sponsors are able to apply limited resources to the risk management activities that most effectively reduce riverine flood risk and avoid expenditures that have little risk reduction benefit.

Risks:

The rule will is expected to reduce risks to public health and safety by improving the Corps' ability to prepare for national response framework missions that contribute to the restoration of critical lifelines that are necessary for life sustaining activities and economic recovery. The rule is also expected to encourage broader community flood risk management activities, as enacted by non-federal project sponsors.

Timetable:

Action	Date	FR Cite
ANPRM	02/13/15	80 FR 8014
ANPRM Comment Period End	04/14/15	
NPRM	12/00/18	
NPRM Comment Period End	02/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0710–AA78

DOD—COE	

27. DEFINITION OF "WATERS OF THE UNITED STATES"

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

33 U.S.C. 1251 et seq.

CFR Citation:

33 CFR 328

Legal Deadline:

None

Abstract:

In 2015, the Environmental Protection Agency and the Department of the Army (the agencies) published the "Clean Water Rule: Definition of Waters of the United States" (80 FR 37054, June 29, 2015). On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015

rule nationwide pending further action of the court. On February 28, 2017, the President signed Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States Rule’," which instructed the agencies to review the 2015 Rule and rescind or replace it as appropriate and consistent with law. The agencies are publishing this proposed rule to follow the first step, which sought to recodify the definition of "waters of the United States" that existed prior to the 2015 Rule. In this second step, the agencies are conducting a substantive reevaluation and revision of the definition of "waters of the United States" in accordance with the Executive order.

Statement of Need:

Please see EPA's statement of need for RIN 2040-AF75, because EPA is the lead for this rulemaking action.

Summary of Legal Basis:

The Clean Water Act (33 USC 1251 et seq.).

Alternatives:

Please see EPA's alternatives for RIN 2040-AF75, because EPA is the lead for this rulemaking action.

Anticipated Cost and Benefits:

Please see EPA's statement of anticipated costs and benefits for RIN 2040-AF75, because EPA is the lead for this rulemaking action.

Risks:

Please see EPA's statement of risks for RIN 2040-AF75, because EPA is the lead for this rulemaking action.

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN:

Related to 2040–AF75

RIN: 0710–AA80

DOD—COE	

28. COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES—REVIEW AND APPROVAL OF MITIGATION BANKS AND IN–LIEU FEE PROGRAMS

Priority:

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

EO 13771 Designation:

Deregulatory

Legal Authority:

33 U.S.C. 1344; 33 U.S.C. 403; 33 U.S.C. 1413

CFR Citation:

33 CFR 332

Legal Deadline:

None

Abstract:

In 2008, the U.S. Army Corps of Engineers (Corps) issued a final rule governing compensatory mitigation for losses of aquatic resources (73 FR 19593). The regulation prescribes a review and approval process for the establishment and management of mitigation banks and in-lieu fee programs. The regulation also includes time frames for certain steps in the mitigation bank and in-lieu fee program review and approval process. The review and approval process for mitigation banks and in-lieu fee programs includes an opportunity for public and agency review and comment, as well as a second review by an interagency review team. The interagency review

team consists of Federal, Tribal, State, and local agencies that review documentation and provide the USACE with advice on the establishment and management of mitigation banks and in-lieu fee programs. The Corps is reviewing the review and approval process and the interagency review team process in particular to enhance the efficiency of the mitigation bank and in-lieu fee program approval time frames. An increase in efficiency would likely result in savings to the public because it is expected to result in shorter review times for proposed mitigation banks, in-lieu fee programs, and instrument modifications, as well as credit release requests, and decreases in the resources other federal, state, and local agencies expend in reviewing these activities, attending meetings, participating in site visits, and providing their comments to the Corps.

Statement of Need:

This proposed rule would propose executing execute of one of the legislative principles in the Administration's framework for rebuilding infrastructure in the United States, by removing duplication in the review process for mitigation banks and in-lieu fee programs that offset losses of jurisdictional waters and wetlands authorized by Department of the Army permits issued under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. It could reduce duplication, increase efficiency, and lower costs by providing one review process for proposed mitigation banks and in-lieu fee programs, instead of two processes. Depending on the outcome of this rulemaking, Federal, tribal, state, and local agencies could end up using a different approach to provide input into the mitigation bank and in-lieu fee program review process by participating in the public notice and comment process along with the general public.

Summary of Legal Basis:

The Corps' legal authority for conducting this rulemaking is section 404 of the Clean Water Act (33 USC 1344) and section 10 of the Rivers and Harbors Act of 1899 (33 USC 403).

Alternatives:

Alternatives that may be considered during the rulemaking process might include, but are not limited to, conducting the rulemaking to remove the interagency review team process from the regulation, using other approaches to increase efficiency in the mitigation bank and in-lieu fee program review and approval process, or making no changes to the regulation.

Anticipated Cost and Benefits:

The proposed rule change is anticipated to reduce costs for sponsors of mitigation banks and in-lieu fee programs, by reducing the amount of time it takes to review and approve their mitigation banks and in-lieu fee programs, and oversee their operation. The proposed rule change is also anticipated to reduce costs to the Corps and other Federal, Tribal, State, and local government agencies by eliminating costs associated with the current interagency review team processes, including staff time for review of documentation for mitigation banks and in-lieu fee programs, site visits, travel, and participation in meetings. A regulatory impact analysis will be prepared for the proposed rule, to fully evaluate anticipated costs and benefits.

Risks:

The proposed rule is not anticipated to increase risks to public health, safety, or the environment because the Corps would retain its authority to review and approve mitigation banks and in-lieu fee programs, as well as modification of mitigation banking instruments and in-lieu fee program instruments. It might only alter how Federal, Tribal, State, and local government agencies provide their views on proposed mitigation banks and in-lieu fee programs, and modifications to approved mitigation banks and in-lieu fee programs. Mitigation banks and in-lieu fee programs would continue to be required to provide ecologically successful aquatic resource compensatory mitigation projects to offset permitted impacts to jurisdictional waters and wetlands.

Timetable:

Action	Date	FR Cite

NPRM	03/00/19	
NPRM Comment Period End	05/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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DOD—COE	

29. MODIFICATION OF NATIONWIDE PERMITS

Priority:

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

EO 13771 Designation:

Deregulatory

Legal Authority:

33 USC 1344(e); 33 USC 403

CFR Citation:

None

Legal Deadline:

None

Abstract:

The U.S. Army Corps of Engineers (Corps) issues nationwide permits to authorize specific categories of activities in jurisdictional waters and wetlands that have no more than minimal individual and cumulative adverse environmental effects. This action would be a deregulatory action because it proposes to remove specific terms of nationwide permits that impose costs on prospective permittees, and it would help simplify the nationwide permit authorization process. Since the submission and review of such nationwide permits can take significantly less time than individual permits, any changes to the program that increase the conditions under which the nationwide permits can be used could result in significant cost savings for the public. The issuance and reissuance of nationwide permits must be done every five years to continue the

Nationwide Permit Program. The nationwide permits were last issued on December 21, 2016, and expire on March 18, 2022. On October 25, 2017, the Corps issued a report to meet the requirements of Executive Order 13783, Promoting Energy Independence and Economic Growth. In that report, the Corps recommended changes to nine nationwide permits that authorize activities related to domestic energy production and use, including oil, natural gas, coal, and nuclear energy sources, as well as renewable energy sources such as flowing water, wind, and solar energy. This rulemaking action would seek to review and, if appropriate, modify those nine nationwide permits in accordance with the opportunities identified in the report in order to reduce burden on the public. In addition, the Corps is considering modifying an additional 23 nationwide permits to allow federal agencies to select and use nationwide permits without additional Corps review. This rulemaking action would help simplify the nationwide permit authorization process.

Statement of Need:

This proposed rule would propose executing the recommendations the Corps made in the report dated October 25, 2017, that it wrote in response to Executive Order 13783, Promoting Energy Independence and Economic Growth, as well as one of the legislative principles in the Administration's framework for rebuilding infrastructure in the United States. For Executive Order 13783, the Corps may propose to modify 9 nationwide permits that authorize activities association with energy production and distribution. For the framework for rebuilding infrastructure in the United States, the Corps may propose to modify an additional 23 nationwide permits so that federal agencies that want to use these nationwide permits do not have to submit pre-construction notifications.

Summary of Legal Basis:

The Corps has authority to issue nationwide permits under the following statutes: Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Alternatives:

Potential alternatives consist of: (1) conducting the rulemaking necessary to make the proposed modifications or other modifications to these 32 nationwide permits prior to the expiration of the current nationwide permits, (2) conducting rulemaking to modify a smaller number of the current nationwide permits prior to the expiration of the current nationwide permits, and (3) taking no action until the next scheduled rulemaking. The current nationwide permits went into effect on March 19, 2017, and expire on March 18, 2022. If the nationwide permits are not reissued before March 18, 2022, the nationwide permits will automatically expire and project proponents would be required to obtain individual permits to conduct regulated activities under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, unless the applicable Corps district has regional general permits available to authorize similar categories of activities.

Anticipated Cost and Benefits:

The proposed changes to these 32 nationwide permits would reduce compliance costs for regulated entities by removing or changing certain terms of those nationwide permits to make them easier to use. According to the regulatory impact analysis prepared for the 2017 nationwide permits, a typical nationwide permit verification costs $4,308 to $14,358 to obtain, whereas a typical individual permit costs $17,230 to $34,460 to obtain. A more detailed cost/benefit analysis will be prepared when the proposed rule is developed.

Risks:

The nationwide permits reduce risks to public health, safety, and the environment by providing streamlined authorization for categories of activities that require Department of the Army authorization and result in no more than minimal individual and cumulative adverse environmental

effects. The nationwide permits authorize the construction and maintenance of infrastructure that supports public health and safety. The streamlined authorization process provided by the nationwide permits reduces risks to the environment by giving incentives to project proponents to design their projects to reduce adverse environmental effects so that they are no more than minimal. Many of the nationwide permits have acreage and other terms that help regulated entities design their projects to qualify for nationwide permit authorization.

Timetable:

Action	Date	FR Cite
NPRM	06/00/19	
NPRM Comment Period End	08/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOD—COE	FINAL RULE STAGE

30. POLICY FOR DOMESTIC, MUNICIPAL, AND INDUSTRIAL WATER SUPPLY USES OF RESERVOIR PROJECTS OPERATED BY THE DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

33 U.S.C. 708; 43 U.S.C. 390b

CFR Citation:

33 CFR 209

Legal Deadline:

None

Abstract:

The Department of the Army, U.S. Army Corps of Engineers (Corps) is updating and clarifying the policies governing the use of its reservoir projects for domestic, municipal, and industrial water supply pursuant to the Flood Control Act of 1944 section 6, 33 U.S.C. section 708 (section 6), and the Water Supply Act of 1958, 43 U.S.C. section 390(b)(WSA). The proposed rules for the use of storage space in Corps reservoir projects for water supply are being developed to implement section 6 of the Flood Control Act of 1944 and the Water Supply Act of 1958.

Statement of Need:

The Corps is updating and clarifying its policies governing the use of its reservoir projects for domestic, municipal and industrial water supply pursuant to Section 6 of the Flood Control Act of 1944 and the Water Supply Act of 1958. The Corps intends through this rulemaking to explain and improve its interpretations and practices under these statutes. The rule is intended to enhance the Corps' ability to cooperate with state and local interests in the development of water supplies in connection with the operation of its reservoirs for federal purposes as authorized by Congress, to facilitate water supply uses of Corps reservoirs by others as contemplated under applicable law, and to avoid interfering with lawful uses of water by any entity when the Corps exercises its discretionary authority under either Section 6 or the Water Supply Act.

Summary of Legal Basis:

Section 6 of the Flood Control Act of 1944 authorizes the Secretary of the Army to make contracts with states, municipalities, private concerns, or individuals, at such prices and on such terms as [the Secretary] may deem reasonable, for domestic and industrial uses for surplus water that may be available at any reservoir under the control of the [Department of the Army]. 33 U.S.C. 708. The Water Supply Act provides that storage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps to

impound water for present or anticipated future demand or need for municipal or industrial water, 43 U.S.C. 390b(b).

Alternatives:

The Army anticipates considering two alternatives: (1) a no action alternative and (2) revising the Corps' policies implementing section 6 and the Water Supply Act.

Anticipated Cost and Benefits:

The proposed rule is not expected to have a significant economic impact. It would not change the methodology by which the cost of Water Supply Act storage agreements is determined. It would establish a new pricing methodology for surplus water contracts, under which users would be charged only for costs, if any, incurred by the Corps in making surplus water available. The costs incurred by the Government and the costs charged to users for surplus water withdrawals are not expected to be significant.

Risks:

This rule is expected to reduce risks to public health and the environment by facilitating water supply uses of Corps reservoirs by others as contemplated under applicable law, and to avoid interfering with lawful uses of water by any entity. This rule is also expected to reduce risk by clarifying existing policies of non-interference with water rights issued by the states or other permitting authorities.

Timetable:

Action	**Date**	**FR Cite**
NPRM	12/16/16	81 FR 91556
NPRM Comment Period End	11/16/17	

Final Action	08/00/19	
Final Action Effective	10/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOD—Office of Assistant Secretary for	**FINAL RULE STAGE**

Health Affairs(DODOASHA)	

31. ESTABLISHMENT OF TRICARE SELECT AND OTHER TRICARE REFORMS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

10 U.S.C. ch. 55; NDAA–17 sec. 701; NDAA–17 sec. 706; NDAA–17 sec. 715; NDAA–17 sec. 718; NDAA–17 sec. 729

CFR Citation:

32 CFR 199

Legal Deadline:

Other, Statutory, June 23, 2017, NDAA 17 section 718.

Other, Statutory, January 1, 2018, NDAA 17 section 729.

Abstract:

This final rule implements the primary features of section 701 and partially implements several other sections of the National Defense Authorization Act for Fiscal Year 2017 (NDAA-17). The law makes significant changes to the TRICARE program, especially to the health maintenance organization (HMO)like health plan, known as TRICARE Prime; to the preferred provider organization health plan, previously called TRICARE Extra and now to be called TRICARE Select; and to the third health care option, known as TRICARE Standard, which was terminated as of December 31, 2017, and replaced by TRICARE Select. The statute also adopts a new

health plan enrollment system under TRICARE and new provisions for access to care, high value services, preventive care, and healthy lifestyles. In implementing the statutory changes, this finalizes a number of improvements to TRICARE. Specifically, this rule will enhance beneficiary access to health care services, including increased geographic coverage for the TRICARE Select provider network, reduced administrative hurdles for TRICARE Prime enrollees to obtain urgent care services and specialty care referrals, and promotes high value services and medications and telehealth services. It also expanded TRICARE coverage of preventive care services and prevention and treatment of obesity and refining cost-benefit assessments for TRICARE plan specifications that remain under DoD's discretion.

Statement of Need:

This rule implements the primary features of section 701 and partially implements several other sections of the National Defense Authorization Act for Fiscal Year 2017 (NDAA-17). The law makes significant changes to the TRICARE program, especially to the health maintenance organization (HMO)-like health plan, known as TRICARE Prime; to the preferred provider organization health plan, previously called TRICARE Extra and now to be called TRICARE Select; and to the third health care option, known as TRICARE Standard, which will be terminated as of December 31, 2017, and replaced by TRICARE Select. The statute also adopts a new health plan enrollment system under TRICARE and new provisions for access to care, high-value services, preventive care, and healthy lifestyles. In implementing the statutory changes, this rule makes a number of improvements to TRICARE.

In implementing section 701 and partially implementing several other sections of NDAA-17, this interim final rule advances all four components of the Military Health System's quadruple aim of stronger readiness, better care, healthier people, and smarter spending. The aim of stronger readiness is served by reinforcing the vital role of the TRICARE Prime health plan to refer patients, particularly those needing specialty care, to military medical treatment facilities in order to ensure that military health care providers maintain clinical currency and proficiency in their

professional fields. The objective of better care is enhanced by a number of improvements in beneficiary access to health care services, including geographical coverage for the TRICARE Select provider network, reduced administrative hurdles for TRICARE Prime enrollees to obtain urgent care services and specialty care referrals, and promotion of high-value services and medications and telehealth services. The goal of healthier people is advanced by expanding TRICARE coverage of preventive care services and prevention and treatment of obesity. And the aim of smarter spending is furthered by sharpening cost-benefit assessments for TRICARE plan specifications that remain under the DoD's discretion.

Summary of Legal Basis:

This rule is required to implement or partially implement several sections of NDAA-17, including 701, 706, 715, 718, and 729. The legal authority for this rule also includes chapter 55 of title 10, United States Code.

Alternatives:

None.

Anticipated Cost and Benefits:

This rule is not anticipated to have an annual effect on the economy of $100M or more, thus it is not an economically significant rule under the Executive Order and the Congressional Review Act. The rule includes estimated program costs associated with implementation that include administrative startup costs ($11M) information systems changes ($10M). Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A-4, this rule does not involve regulatory costs subject to Executive Order 13771.

Risks:

The rule does not impose any risks. The risks lie in not implementing statutorily required changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/29/17	82 FR 45438
Interim Final Rule Comment Period End	11/28/17	
Final Action	01/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Statement of Regulatory Priorities

I. Introduction

The U.S. Department of Education (Department) supports States, local communities, institutions of higher education, and families in improving education and other services nationwide in order to ensure that all Americans, including those with disabilities, receive a high-quality education and are prepared for high-quality employment. We provide leadership and financial assistance pertaining to education and related services at all levels to a wide range of stakeholders and individuals, including State educational and other agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, postsecondary students, members of the public, families, and many others. These efforts are helping to ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education or employment, and that students attending postsecondary institutions are prepared for a profession or career.

We also vigorously monitor and enforce the implementation of Federal civil rights laws in educational

programs and activities that receive Federal financial assistance, and support innovative programs,

research and evaluation activities, technical assistance, and the dissemination of data, research, and

evaluation findings to improve the quality of education.

Overall, the laws, regulations, and programs that the Department administers will affect nearly every

American during his or her life. Indeed, in the 2018-19 school year, about 57 million students will attend

an estimated 133,000 elementary and secondary schools in approximately 13,600 districts, and about

20 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, evaluations, data

gathering and reporting, and monitoring related to our programs, we are committed to working closely

with affected persons and groups. We know that improving education starts with allowing greater

decision-making authority at the State and local levels while also recognizing that the ultimate form of

local control occurs when parents and students are empowered to choose their own educational paths

forward. Our core mission includes this empowerment of local education, serving the most vulnerable,

and facilitating equal access for all, to ensure all students receive a high-quality education, and complete

it with a well-considered and attainable path to a sustainable career.

Toward these ends, we work with a broad range of interested parties and the general public, including

families, students, and educators; State, local, and Tribal governments; other Federal agencies; and

neighborhood groups, community-based early learning programs, elementary and secondary schools,

colleges, rehabilitation service providers, adult education providers, professional associations, advocacy

organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we seek public participation at the key

stages in the rulemaking process. We invite the public to submit comments on all proposed regulations

through the internet or by regular mail. We also continue to seek greater public participation in our

rulemaking activities through the use of transparent and interactive rulemaking procedures and new

technologies.

To facilitate the public's involvement, we participate in the Federal Docket Management System

(FDMS), an electronic single Government-wide 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 with the opportunity to submit comments 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 committed to reducing burden with regard to regulations, guidance, and information

collections, reducing the burden on information providers involved in our programs, and making

information easily accessible to the public. To that end and consistent with Executive Order 13777

("Enforcing the Regulatory Reform Agenda"), we are in the process of reviewing all of our regulations and

guidance to modify and rescind items that: (1) eliminate jobs, or inhibit job creation; (2) are outdated,

unnecessary, or ineffective; (3) impose costs that exceed benefits; (4) create a serious inconsistency or

otherwise interfere with regulatory reform initiatives and policies; (5) are inconsistent with the

requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44

U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that

rely in whole or in part on data, information, or methods that are not publicly available or that are

insufficiently transparent to meet the standard for reproducibility; or (6) derive from or implement

Executive orders or other Presidential directives that have been subsequently rescinded or substantially

modified.

II. Regulatory and Deregulatory Priorities

Proposed Rulemakings

The following are the key regulatory and deregulatory rulemaking actions the Department is planning

for the coming year. We provide below information about the potential costs and benefits for several of

these rulemaking actions, including whether they would be considered regulatory or deregulatory actions

under Executive Order 13771. For rulemakings that we are just beginning now, we have limited

information about their potential costs and benefits and cannot estimate at this time whether they would

be considered regulatory or deregulatory actions.

Postsecondary Education/Federal Student Aid

The Department will continue its work to complete two rulemakings in the area of higher education and

Federal Student Aid under the Higher Education Act of 1965, as amended (HEA). The Department has

completed negotiated rulemaking for these two rulemakings, described below, and we are revisiting these

regulations with the goals of alleviating unnecessary regulatory burdens and ensuring appropriate

protections for students, institutions, taxpayers, and the Federal government. Through the use of the

negotiated rulemaking process, we have received input from a diverse range of interests and affected

parties.

The Department recently published new proposed regulations that would govern the William D. Ford

Federal Direct Loan (Direct Loan) Program regarding the standard and the process for determining

whether a borrower has a defense to repayment on a loan based on an act or omission of a school. We

also have proposed to amend other sections of the Direct Loan Program regulations, including those that

codify our current policy regarding the impact that discharges have on the 150 percent Direct Subsidized

Loan Limit and the Student Assistance General Provisions regulations providing the financial

responsibility standards and disclosure requirements for schools. In addition, we proposed to amend the

discharge provisions in the Federal Perkins Loan, Direct Loan, and Federal Family Education Loan

programs. These proposed regulations would replace those promulgated by the Department in 2016.

The Department recently proposed regulations that would rescind the Gainful Employment (GE)

regulations and remove them from subparts Q and R of the Student Assistance and General Provisions in

34 CFR part 668. Under the proposed rescission, the Department would remove the provisions providing

for a debt-to-earnings (D/E) rates measure to determine a gainful employment program's continuing

eligibility for participation in the programs authorized by title IV of the HEA as well as certain disclosure

and reporting requirements.

Additionally, the Secretary plans to initiate a new rulemaking to revise regulations related to the

Secretary's recognition of accrediting agencies, including specific topics such as: the requirements of

accrediting agencies in their oversight of member institutions; requirements for accrediting agencies to

honor institutional mission; criteria used by the Secretary to recognize accrediting agencies, emphasizing

criteria that focus on educational quality; developing a single definition for purposes of measuring and

reporting job placement rates; and simplifying the process for recognition and review of accrediting

agencies. The rulemaking will also cover issues such as: State authorization, **to address the**

requirements related to programs offered through distance education or correspondence courses,

including disclosures about such programs to enrolled and prospective students, and other State

authorization issues; the definitions of a number of terms in the regulations governing institutional and

programmatic eligibility; requirements of the Teacher Education Assistance for College and Higher

Education Grant (TEACH Grant) program, in an effort to minimize inadvertent grant-to-loan conversions

and improve outcomes for TEACH Grant recipients; direct assessment programs and competency-based

education; and regulations regarding the eligibility of faith-based entities to participate in the Title IV, HEA

programs.

Civil Rights/Title IX

The Secretary is planning a new rulemaking to address issues under Title IX of the Education Amendments of 1972, as amended. In this action, we seek to clarify schools' obligations in redressing sex discrimination, including complaints of sexual misconduct, and the procedures by which they must do so.

Special Education

The Department will continue its work to complete its rulemaking in the area of significant disproportionality under section 618(d) of the Individuals with Disabilities Education Act (IDEA). In July 2018, the Department published a final rule extending the compliance date for States until July 1, 2020. We are revisiting the significant disproportionality regulations with the goal of better serving children with disabilities.

Deregulatory Actions

The Department anticipates issuing a number of deregulatory actions in the upcoming fiscal year. We have thus far been focusing our deregulatory efforts on eliminating outdated regulations. In many instances, our deregulatory actions are being taken because legislation has superseded our regulations. For example, we are planning to rescind a number of sections from our Office of Career, Technical, and Adult Education regulations to remove outdated, superseded regulations for programs no longer

administered by the Department. This deregulatory action will clarify for our stakeholders and the general

public which of our regulations are still in effect. The unified agenda identifies other deregulatory actions

that will provide cost savings and clarity.

Additionally, during the course of its Executive Order 13777 review, the Department's Regulatory

Reform Task Force has identified a number of information collections (ICRs) as being outdated,

unnecessary, or ineffective. We are currently working to discontinue these.

III. Regulatory Review

As stated previously, the Department is continuing its comprehensive regulatory reform efforts

pursuant to Executive Order 13777, focusing on rescinding and modifying all outdated, unnecessary, or

ineffective regulations, guidance, and information collections. Section 3(e) of the Executive order

requires the Department, as part of this effort, to "seek input and other assistance, as permitted by law,

from entities significantly affected by Federal regulations, including State, local, and tribal governments,

small businesses, consumers, non-governmental organizations, and trade associations" on regulations

that meet some or all of the criteria above. The Department will continue to consider public input and

feedback as part of these efforts.

IV. Principles for Regulating

Over the next year, we may need to issue other regulations because of new legislation or

programmatic changes. In doing so, we will follow the Principles for Regulating, which determine when

and how we will regulate. Through consistent application of those 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 the following:

- 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 similar enough that a uniform approach

  through regulation would be meaningful and do more good than harm.
- 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 if possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that the benefits justify the costs of regulating.
- To the extent possible, establish performance objectives rather than specify the behavior or

  manner of compliance a regulated entity must adopt.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to

  achieve desired results.

ED—Office for Civil Rights(OCR)	PROPOSED RULE STAGE

32. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 1681 et seq.

CFR Citation:

34 CFR 106

Legal Deadline:

None

Abstract:

The Secretary plans to issue a notice of proposed rulemaking to clarify the obligations of recipients of Federal financial assistance in redressing sex discrimination, including complaints of sexual misconduct, and the procedures by which they must do so.

Statement of Need:

Based on its extensive review of the critical issues addressed in this rulemaking, the Department has determined that current regulations and subregulatory guidance do not provide a sufficiently clear definition of what conduct constitutes sexual harassment or sufficiently clear standards for how recipients must respond to incidents of sexual harassment. To address this concern, we propose this regulatory action to address sexual harassment under Title IX for the central purpose of ensuring that Federal financial recipients understand their legal obligations under title IX.

Summary of Legal Basis:

We are issuing a notice of proposed rulemaking, and subsequently final regulations, to implement Title IX.

Alternatives:

This will be discussed in the notice of proposed rulemaking (NPRM) and final regulations.

Anticipated Cost and Benefits:

This will be discussed in the notice of proposed rulemaking (NPRM) and final regulations.

Risks:

This will be discussed in the notice of proposed rulemaking (NPRM) and final regulations.

Timetable:

Action	**Date**	**FR Cite**
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For Public Comments:

www.regulations.gov

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ED—Office of Postsecondary Education(OPE)	PROPOSED RULE STAGE

33. STATE AUTHORIZATION AND RELATED ISSUES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 3474; 20 U.S.C. 1221e–3; 20 U.S.C. 1011 et seq.

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Department is proposing to amend, through negotiated rulemaking, the regulations governing the legal authorization of institutions by States. The Department is also proposing to amend regulations for the State authorization of distance education providers and correspondence education providers as a component of institutional eligibility for participation in Federal student financial aid under title IV of the Higher Education Act of 1965, as amended.

Statement of Need:

As required by Executive Order 13771 and 13777, the Department must identify regulations that are among other things outdated, unnecessary, or ineffective and create a serious inconsistency or otherwise interfere with regulatory reform initiative and policies.

Update and revision to the regulations on State Authorization is necessary so that the Department does not inhibit innovation and competition in postsecondary education. Institutions need the regulatory flexibility to innovate and the Department is committed to ensuring program integrity with appropriate guardrails to protect students and taxpayer dollars. The focus of this rulemaking is on breaking down barriers to innovation and reducing regulatory burden while protecting students and taxpayers from unreasonable risk.

Summary of Legal Basis:

The Department has the authority to establish a negotiated rulemaking committee with the purpose of creating, amending or rescinding regulations in the Code of Federal Regulations.

Alternatives:

One alternative is not to negotiate on the proposed topic and instead work on sub-regulatory guidance to ease burden and clarify current regulations for postsecondary institutions and accreditors.

Note that, the intent to establish a negotiated rulemaking committee has already been published; the topics proposed for negotiation have been added to the *Agency Agenda Report/Unified Agenda* . Further, the Department has already conducted one of three public hearings inviting comment on our Federal Register notice outlining our intent to negotiate. After reviewing feedback from comments received, the Department may choose to modify the topics proposed for negotiation and at that time we can more thoughtfully provide alternatives.

Anticipated Cost and Benefits:

We have limited information about the potential cost and benefits and cannot estimate at this time

Risks:

By negotiating on a wide range of topics in one negotiated rulemaking panel there is an increased risk on not reaching consensus. To account for this, the Department will provide draft language prior to the first session of three sessions (each session is three days long) of negotiated rulemaking. Historically, the first session has been used as a listening session to get feedback from the rulemaking committee and the Department provides more specific proposals to the rulemaking committee between the first and second session.

Further, there is no prohibition in the rulemaking process for the main committee to break-off before, during or after a session to discussion topics within their areas of expertise to propose language to the main committee

Timetable:

Action	**Date**	**FR Cite**
Notice of Intention to Commence Negotiated Rulemaking	07/31/18	83 FR 36814
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Agency Contact:

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Office of Postsecondary Education

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ED—OPE	

34. ACCREDITATION AND RELATED ISSUES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 3474; 20 U.S.C. 1221e–3; 20 U.S.C. 1011 et seq.

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Department is proposing to amend, through negotiated rulemaking, the regulations relating to the Secretary's recognition of accrediting agencies and accreditation procedures as a component of institutional eligibility for participation in Federal student financial aid under title IV of the Higher Education Act of 1965, as amended.

Statement of Need:

As required by Executive Order 13771 and 13777, the Department must identify regulations that are among other things outdated, unnecessary, or ineffective and create a serious inconsistency or otherwise interfere with regulatory reform initiative and policies.

We believe that a revision to the accreditation regulations is necessary to restore the separation of duties in responsibilities in the triad: the State Authorization, Accreditation, and the U.S. Department of Education. We believe that the accreditation regulations may contain redundancy, unnecessary duplication of oversight, and pose broad Federal overreach in measuring program quality. We also want to ensure that accreditors while measuring institutional quality do not infringe on autonomy of institutions in their missions.

Summary of Legal Basis:

The Department has the authority to establish a negotiated rulemaking committee with the purpose of creating, amending or rescinding regulations in the Code of Federal Regulations.

Alternatives:

One alternative is not to negotiate on the proposed topic and instead work on sub-regulatory guidance to ease burden and clarify current regulations for postsecondary institutions and accreditors.

Note that, the intent to establish a negotiated rulemaking committee has already been published; the topics proposed for negotiation have been added to the *Agency Agenda Report/Unified Agenda* . Further, the Department has already conducted one of three public hearings inviting comment on our Federal Register notice outlining our intent to negotiate. After reviewing feedback from comments received, the Department may choose to modify the topics proposed for negotiation and at that time we can more thoughtfully provide alternatives.

Anticipated Cost and Benefits:

We have limited information about the potential cost and benefits and cannot estimate at this time.

Risks:

By negotiating on a wide range of topics in one negotiated rulemaking panel there is an increased risk on not reaching consensus. To account for this, the Department will provide draft language prior to the first session of three sessions (each session is three days long) of negotiated rulemaking. Historically, the first session has been used as a listening session to get feedback from the rulemaking committee and the Department provides more specific proposals to the rulemaking committee between the first and second session.

Timetable:

Action	Date	FR Cite
Notice of Intention to Commence Negotiated Rulemaking	07/31/18	83 FR 36814
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1840–AD37

ED—OPE	

35. ENSURING STUDENT ACCESS TO HIGH QUALITY AND INNOVATIVE POSTSECONDARY EDUCATIONAL PROGRAMS

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 3474; 20 U.S.C. 1221e–3; 20 U.S.C. 1011 et seq.

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Department proposes to create and amend, through negotiated rulemaking, regulations relating to institutional eligibility and operations for participation in Federal student financial aid under title IV of the Higher Education Act of 1965, as amended, including those relating to credit hour, competency-based education, direct assessment programs, and regular and substantive interaction between faculty and students in the delivery of distance education programs, in order to promote greater access for students to high-quality, innovative programs of postsecondary education.

Statement of Need:

As required by Executive Order 13771 and 13777, the Department must identify regulations that are among other things outdated, unnecessary, or ineffective and create a serious inconsistency or otherwise interfere with regulatory reform initiative and policies.

Update and revision to the outlined regulations is necessary so that the Department does not inhibit innovation and competition in postsecondary education. For example, regulations implemented regarding the credit-hour, regular and substantive interaction and institutional partnerships in instructional programs may limit innovation and inhibit student completion and graduation in the rapidly evolving postsecondary education landscape. Institutions need the regulatory flexibility to innovate and the Department is committed to ensuring program integrity with appropriate guardrails to protect students and taxpayer dollars. The focus of this rulemaking is on breaking down barriers to innovation and reducing regulatory burden while protecting students and taxpayers from unreasonable risk.

Summary of Legal Basis:

The Department has the authority to establish a negotiated rulemaking committee with the purpose of creating, amending or rescinding regulations in the Code of Federal Regulations.

Alternatives:

One alternative is not to negotiate on the proposed topics and instead work on sub-regulatory guidance to ease burden and clarify current regulations for postsecondary institutions and accreditors. Another alternative is to only negotiate on one or a smaller number of the topics the Department has proposed.

Note that, the intent to establish a negotiated rulemaking committee has already been published; the topics proposed for negotiation have been added to the *Agency Agenda Report/Unified Agenda* . Further, the Department has already conducted one of three public hearings inviting

comment on our FR Notice outlining our intent to negotiate. After reviewing feedback from comments received, the Department may choose to modify the topics proposed for negotiation and at that time we can more thoughtfully provide alternatives.

Anticipated Cost and Benefits:

We have limited information about the potential cost and benefits and cannot estimate at this time.

Risks:

By negotiating on a wide range of topics in one negotiated rulemaking panel there is an increased risk on not reaching consensus. To account for this, the Department will provide draft language prior to the first session of three sessions (each session is three days long) of negotiated rulemaking. Historically, the first session has been used as a listening session to get feedback from the rulemaking committee and the Department provides more specific proposals to the rulemaking committee between the first and second session.

Also, by negotiating a wide range of topics the Department risks not having the expertise necessary on the rulemaking committee to fully explore the nuances of each of the proposed topics. To account for this the Department will form two subcommittees, one directly related to direct assessment programs and competency-based education. These committees will report back to the main rulemaking committee with their reports.

Further, there is no prohibition in the rulemaking process for the main committee to break-off before, during or after a session to discussion topics within their areas of expertise to propose language to the main committee.

Timetable:

Action	Date	FR Cite

Notice of Intention to Commence Negotiated Rulemaking	07/31/18	83 FR 36814
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1840–AD38

ED—OPE	

36. ELIGIBILITY OF FAITH–BASED ENTITIES AND ACTIVITIES–TITLE IV PROGRAMS

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 1001 and 1002; 20 U.S.C. 1099b; 20 U.S.C. 1087aa, 1087dd, and 1091; ...

CFR Citation:

34 CFR 600.9; 34 CFR 600.11; 34 CFR 674.9; ...

Legal Deadline:

None

Abstract:

Various provisions of the Department's regulations regarding the eligibility of faith-based entities to participate in the Department's higher education and student aid programs, and the eligibility of students to participate in student aid programs and obtain certain benefits under those programs, unnecessarily restrict participation by religious entities. For example, some provisions may be overly broad in their prohibition of activities or services that relate to sectarian instruction or religious worship. Other provisions may be overly broad in prohibiting the benefits a borrower may receive based on faith-based activity. The Department is proposing to review and amend, through negotiated rulemaking, such regulations in order to be consistent with current law, and to reduce or eliminate unnecessary burdens and restrictions on religious entities and activities.

Statement of Need:

Rulemaking is necessary in light of the recent United States Supreme Court decision in Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017), and the October 6, 2017, Memorandum for All Executive Agencies issued by the Attorney General of the United States pursuant to Executive Order No. 13798.

Summary of Legal Basis:

The Department has the authority to establish a negotiated rulemaking committee with the purpose of creating, amending or rescinding regulations in the Code of Federal Regulations.

Alternatives:

One alternative is not to negotiate on the proposed topic and instead work on sub-regulatory guidance to ease burden and clarify current regulations for postsecondary institutions and accreditors.

Note that, the intent to establish a negotiated rulemaking committee has already been published; the topics proposed for negotiation have been added to the *Agency Agenda Report/Unified Agenda* . Further, the Department has already conducted one of three public hearings inviting comment on our Federal Register notice outlining our intent to negotiate. After reviewing feedback from comments received, the Department may choose to modify the topics proposed for negotiation and at that time we can more thoughtfully provide alternatives.

Anticipated Cost and Benefits:

We have limited information about the potential cost and benefits and cannot estimate at this time.

Risks:

By negotiating on a wide range of topics in one negotiated rulemaking panel there is an increased risk on not reaching consensus. To account for this the Department will provide draft language prior to the first session of three sessions (each session is three days long) of negotiated rulemaking. Historically, the first session has been used as a listening session to get feedback from the rulemaking committee and the Department provides more specific proposals to the rulemaking committee between the first and second session.

Also, the Department will form two subcommittees, one specifically for faith-based entities. These committees will report back to the main rulemaking committee with their reports.

Timetable:

Action	**Date**	**FR Cite**
Notice of Intention to Commence Negotiated Rulemaking	07/31/18	83 FR 36814
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1840–AD40

ED—OPE	

37. • TEACH GRANTS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 1070g, et seq

CFR Citation:

34 CFR 686

Legal Deadline:

None

Abstract:

The Department is proposing to amend, through negotiated rulemaking, the regulations relating to the Teacher Education Assistance for College and Higher Education (TEACH) Grant. Our goal is to simplify and clarify program requirements, minimize inadvertent grant-to-loan conversions, and improve outcomes for TEACH Grant recipients.

Statement of Need:

As required by Executive Order 13771 and 13777, the Department must identify regulations that are among other things outdated, unnecessary, or ineffective and create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies. Our goal is to simplify and clarify program requirements, minimize inadvertent grant-to-loan conversions, and improve outcomes for TEACH Grant recipients.

Summary of Legal Basis:

The Department has the authority to establish a negotiated rulemaking committee with the purpose of creating, amending or rescinding regulations in the Code of Federal Regulations.

Alternatives:

One alternative is not to negotiate on the proposed topic and instead work on sub-regulatory guidance to ease burden and clarify current regulations to the loan servicer that overseas TEACH grant servicing.

Note that, the intent to establish a negotiated rulemaking committee has already been published; the topics proposed for negotiation have been added to the *Agency Agenda Report/Unified Agenda* . Further, the Department has already conducted one of three public hearings inviting comment on our Federal Register notice outlining our intent to negotiate. After reviewing feedback from comments received, the Department may choose to modify the topics proposed for negotiation and at that time we can more thoughtfully provide alternatives.

Anticipated Cost and Benefits:

We have limited information about the potential cost and benefits and cannot estimate at this time.

Risks:

By negotiating on a wide range of topics in one negotiated rulemaking panel there is an increased risk on not reaching consensus. To account for this, the Department will provide draft language prior to the first session of three sessions (each session is three days long) of negotiated rulemaking. Historically, the first session has been used as a listening session to get feedback from the rulemaking committee and the Department provides more specific proposals to the rulemaking committee between the first and second session.

Further, there is no prohibition in the rulemaking process for the main committee to break-off before, during or after a session to discussion topics within their areas of expertise to propose language to the main committee.

Timetable:

Action	Date	FR Cite
Notice of Intention to Commence Negotiated Rulemaking	07/31/18	83 FR 36814
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1840–AD44

ED—OPE	FINAL RULE STAGE

38. INSTITUTIONAL ACCOUNTABILITY

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 1082(a)(5), (a)(6); 20 U.S.C.1087(a); 20 U.S.C. 1087e(h); 20 U.S.C. 1221e–3; 20 U.S.C. 1226a–1; 20 U.S.C. 1234(a); 31 U.S.C. 3711

CFR Citation:

34 CFR 668; 34 CFR 674; 34 CFR 682; 34 CFR 685; and other sections as applicable

Legal Deadline:

None

Abstract:

The Secretary plans to establish new regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program regarding the standard and the process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of a school. We also may amend other sections of the Direct Loan Program regulations, including those that codify our current policy regarding the impact that discharges have on the 150 percent Direct Subsidized Loan Limit; and the Student Assistance General Provisions regulations providing the financial responsibility standards and disclosure requirements for schools. In addition, we may amend the discharge provisions in the Federal Perkins Loan, Direct Loan and Federal Family Education Loan program regulations.

Statement of Need:

The Secretary initiated negotiated rulemaking to revise current regulations governing borrower defenses to loan repayment.

Summary of Legal Basis:

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. Section 431 of the Department of Education Organization Act provides authority to the Secretary, in relevant part, to inform the public regarding federally supported education programs; and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs. 20 U.S.C. 1231a.

Alternatives:

These are identified through the negotiated rulemaking process and presented in the Notice of Proposed Rulemaking.

Anticipated Cost and Benefits:

These are identified through the negotiated rulemaking process and presented in the Notice of Proposed Rulemaking.

Risks:

These are identified through the negotiated rulemaking process and presented in the Notice of Proposed Rulemaking.

Timetable:

Action	**Date**	**FR Cite**
Notice of Intention to Commence Negotiated Rulemaking	06/16/17	82 FR 27640
NPRM	07/31/18	83 FR 37242
NPRM Comment Period End	08/30/18	
Final Action	01/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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ED—OPE	

39. PROGRAM INTEGRITY; GAINFUL EMPLOYMENT

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

20 U.S.C. 3474; 20 U.S.C. 1221e–3

CFR Citation:

34 CFR 668

Legal Deadline:

None

Abstract:

The Secretary plans to amend regulations on institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions, including the regulations governing whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation, and the conditions under which these educational programs remain eligible under the Federal Student Aid programs authorized under title IV of the HEA.

Statement of Need:

The Secretary initiated negotiated rulemaking to revise the gainful employment regulations published by the Department on October 31, 2014 (79 FR 64889). The negotiated rulemaking committee did not reach consensus and the Department proposed new regulations to rescind the gainful employment regulations.

Summary of Legal Basis:

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. Section 431 of the Department of Education Organization Act provides authority to the Secretary, in relevant part, to inform the public regarding federally supported education programs; and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs. 20 U.S.C. 1231a.

Alternatives:

These are identified through the negotiated rulemaking process and presented in the Notice of Proposed Rulemaking.

Anticipated Cost and Benefits:

These are identified through the negotiated rulemaking process and presented in the Notice of Proposed Rulemaking.

Risks:

These are identified through the negotiated rulemaking process and presented in the Notice of Proposed Rulemaking.

Timetable:

Action	Date	FR Cite

Notice of Intention to Commence Negotiated Rulemaking	06/16/17	82 FR 27640
NPRM	08/14/18	83 FR 40167
NPRM Comment Period End	09/13/18	
Final Action	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

URL For Public Comments:

www.regulations.gov

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BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Statement of Regulatory and Deregulatory Priorities

The Department of Energy (DOE or the Department) 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 ensure America's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions.

Through its regulatory and deregulatory activities, the Department works to ensure it both achieves its critical mission, and implements the administration's initiative to reduce regulation and control regulatory costs as outlined in Executive Order (E.O.) 13771, "Reducing Regulation and Controlling Regulatory Costs." As such, the Department strives to act in a prudent and financially responsible manner in the expenditure of funds, from both public and private sources, and manages appropriately the costs associated with private expenditures required for compliance with DOE regulations. Ultimately, DOE aims to promote meaningful regulatory burden reduction, while also achieving its regulatory objectives and meeting its statutory obligations.

Regulatory and Deregulatory Priorities

DOE's regulatory and deregulatory priorities reflect the Department's efforts to achieve meaningful burden reduction while continuing to achieve the Department's statutory obligations.

DOE is engaged in a number of deregulatory activities aimed at reducing regulatory costs and burdens. These activities include amending regulations to expedite the preparation of and simplify the content of Notices of Sale for the price competitive sale of petroleum from the

Strategic Petroleum Reserve (SPR), which in turn will reduce the administrative burden placed on prospective bidders. Another important deregulatory action concerns modernizing the procedures for establishing energy conservation standards and test procedures as part of DOE's Appliance Program. Also, DOE published a final rule that will provide for faster approval of applications for small-scale exports of natural gas, including liquefied natural gas (LNG), from U.S. export facilities.

Retrospective Analyses of Existing Rules

On January 30, 2017, the President issued E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, E.O. 13771 requires, among other things, that whenever an agency proposes for notice and comment or otherwise promulgates a new regulation, the agency must identify at least two existing regulations to be repealed. E.O. 13771 also provides for the establishment of agency regulatory cost budgets, as identified by the Office of Management and Budget.

Additionally, on February 24, 2017, the President issued E.O. 13777, "Enforcing the Regulatory Reform Agenda." That Order required that the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 required the establishment of a regulatory reform task force at each agency. The regulatory reform task force makes recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law.

In implementation of both Orders, on May 30, 2017, DOE published in the Federal Register a Request for Information (RFI), seeking input and other assistance from entities significantly affected by regulations of the DOE, including State, local, and Tribal governments, small businesses, consumers, non-governmental organizations, and manufacturers and their

trade associations. DOE's goal in publishing the RFI was to "create a systematic method for identifying those existing DOE rules that are obsolete, unnecessary, unjustified, or simply no longer make sense." DOE solicited views on: a) how DOE could best conduct its analysis of existing agency actions, and b) insights on specific rules or Department-imposed obligations that should be altered or eliminated. DOE received 132 separate public comments from decision-makers, stakeholders, and the public on rules promulgated by DOE and the burdens some of those rules have imposed.

In response to the May 30, 2017, RFI, DOE received many comments recommending that DOE update and modernize its procedures for establishing energy conservation standards and test procedures for the DOE Appliance Program, otherwise known as the "Process Rule." The current Process Rule can be found in Appendix A to Subpart C of part 430 of the Code of Federal Regulations, published on July 15, 1996. In response to stakeholder input, DOE published a RFI on December 18, 2017 (82 FR 59992), seeking comments and information from interested parties to assist DOE in identifying potential modifications to its "Process Rule." DOE conducted a public meeting and webinar on January 9, 2018, that was widely attended by a broad spectrum of stakeholders. DOE is currently preparing a Notice of Proposed Rulemaking (NOPR), taking into account the many suggestions from stakeholders, and is including this proposed rule as part of its 2018 Regulatory Plan. DOE has characterized this action as deregulatory.

The second deregulatory action that is part of DOE's 2018 Regulatory Plan is a rule that proposes to withdraw the revised definitions of general service lamps (GSL) and general service incandescent lamps (GSIL) that would otherwise take effect on January 1, 2020. This proposal would maintain the existing statutory definitions of GSL and GSIL currently found in the Department's regulations.

Lastly, DOE is placing one action in its Regulatory Plan: Energy Conservation Standards for Residential Conventional Cooking Products (1904-AD15), even though it does not meet the Regulatory Plan criterion of "most important significant regulatory actions" of the agency. DOE has included this regulatory action for the purpose of transparency and due to the non-trivial costs

of the proposed action. At the 7% and 3% discount rate the primary annualized cost of this rule could be as much as 42.6 million and 42.3 million dollars, respectively. The primary annualized benefits at the 7% and 3% discount rate have been projected to be 126 million and 178 million dollars, respectively.

DOE—Energy Efficiency and Renewable Energy(EE)	PROPOSED RULE STAGE

40. ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CONVENTIONAL COOKING PRODUCTS

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

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

EO 13771 Designation:

Regulatory

Legal Authority:

42 U.S.C. 6295(m)(1); 42 U.S.C. 6292 (a)(10); 42 U.S.C. 6295(h)

CFR Citation:

10 CFR 429; 10 CFR 430

Legal Deadline:

Other, Statutory, Subject to 6–year–look–back at 6295(m).

Abstract:

EPCA, as amended by EISA 2007, requires the Secretary to determine whether updating the statutory energy conservation standards for residential conventional cooking products would yield a significant savings in energy use and is technically feasible and economically justified. DOE is reviewing to make such determination.

Statement of Need:

The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential conventional cooking products. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. DOE is proposing new and amended energy conservation standards for residential conventional cooking products, specifically conventional cooking tops and conventional ovens.

Summary of Legal Basis:

EPCA provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (42 U.S.C. 6295(m)(1)).

Alternatives:

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard (42 U.S.C. 6295(t)). Additionally, section 504 of the Department of Energy Organization Act, 42 U.S.C.

7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent special hardship, inequity, or unfair distribution of burdens that may be imposed on that manufacturer.

Anticipated Cost and Benefits:

Using a 7-percent discount rate for benefits and costs, the estimated cost of the proposed standards for consumer conventional cooking products is $42.6 million per year in increased equipment costs, while the estimated annual benefits are $120.3 million in reduced equipment operating costs.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for consumer conventional cooking products is $42.3 million per year in increased equipment costs, while the estimated annual benefits are $163.3 million in reduced operating costs.

In determining whether a standard is economically justified, DOE must consider whether the benefits of the standard exceed the burdens by, to the greatest extent practicable, considering 7 enumerated factors, including the economic impact of the standard on manufacturers. DOE uses industry net present value (INPV) is the sum of the discounted cash flows to the industry from the reference year through the end of the analysis period (2017 to 2049), to determine manufacturer impact. Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of consumer conventional cooking products is $1,241.6 million in 2016 dollars. Under the proposed standards, DOE expects that manufacturers may experience a reduction of up to 4.7 percent of their INPV, which is approximately $58.4 million in 2016.

The cumulative net present value (NPV) of total consumer benefits of the standards for consumer conventional cooking products ranges from $1.08 billion (at a 7-percent discount rate) to $2.63 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future

operating-cost savings minus the estimated increased product costs for consumer conventional cooking products purchased in 2020-2049.

Risks:

Timetable:

Action	**Date**	**FR Cite**
Request for Information (RFI)	02/12/14	79 FR 8337
RFI Comment Period End	03/14/14	
RFI Comment Period Extended	03/03/14	79 FR 11714
RFI Comment Period Extended End	04/14/14	
NPRM and Public Meeting	06/10/15	80 FR 33030
NPRM Comment Period Extended	07/30/15	80 FR 45452
NPRM Comment Period Extended End	09/09/15	
Supplemental NPRM	09/02/16	81 FR 60784
SNPRM Comment Period Extended	09/30/16	81 FR 67219
SNPRM Comment Period Extended End	11/02/16	

Supplemental NPRM	02/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

URL For More Information:

www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=85

URL For Public Comments:

www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0005

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RIN: 1904–AD15

DOE—EE	

41. PROCEDURES, INTERPRETATIONS, AND POLICIES FOR CONSIDERATION OF NEW OR REVISED ENERGY CONSERVATION STANDARDS FOR CONSUMER PRODUCTS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

5 U.S.C. 553(d)

CFR Citation:

10 CFR 430

Legal Deadline:

None

Abstract:

DOE is considering a notice-and-comment rulemaking to amend its Process Improvement Rule ("Process Rule") to reflect statutory changes as well as innovative, collaborative approaches that DOE has been using to reflect more efficient appliance standards rulemaking.

Statement of Need:

DOE is proposing to update and modernize its procedures for establishing energy conservation standards and test procedures for the DOE Appliance Program, otherwise known as the "Process Rule." This proposed rule would reduce burdens on all stakeholders when engaging in the rulemaking process.

Summary of Legal Basis:

On July 15, 1996, DOE published a final rule titled, "Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products." This document was codified at 10 CFR part 430, subpart C, appendix A. As explained in the final rule for the Process Rule, this rule came within the scope of the Administrative Procedure Act's exemption from notice-and-comment rulemaking for procedural rules at 5 U.S.C. 553(b)(A). Although DOE's current rulemaking to consider potential revisions to the Process Rule might similarly warrant exemption from notice-and-comment requirements, DOE nonetheless seeks input from interested parties regarding potential avenues to improve DOE's procedures.

Alternatives:

Anticipated Cost and Benefits:

Risks:

Timetable:

Action	Date	FR Cite

Request for Information (RFI)	10/31/14	79 FR 64705
RFI Comment Period End	12/30/14	
Request for Information (RFI) and Notice of Public Meeting	12/18/17	82 FR 59992
RFI Comment Period Extended	02/07/18	83 FR 5374
RFI Comment Period Extended End	03/02/18	
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

energy.gov/eere/buildings/standards-and-test-procedures

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DOE—EE	

42. • ENERGY CONSERVATION PROGRAM: DEFINITION FOR GENERAL SERVICE LAMPS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 6295(i)(6)(A)

CFR Citation:

10 CFR 430

Legal Deadline:

None

Abstract:

The Department proposes to withdraw the revised definitions of general service lamp (GSL) and general service incandescent lamp (GSIL) that take effect on January 1, 2020. This proposal would maintain the existing statutory definitions of GSL and GSIL currently found in the Department's regulations.

Statement of Need:

DOE is proposing to withdraw the revised definitions of General Service Lamps (GSL) and general service incandescent lamps (GSIL) that would otherwise take effect on January 1, 2020, to reduce the regulatory burdens on stakeholders.

Summary of Legal Basis:

On August 15, 2017, DOE published a notice of data availability and request for information (NODA) seeking data for GSILs and other incandescent lamps. The purpose of this NODA was to assist DOE in making a determination regarding amending standards for GSILs. Comments submitted in response to the NODA lead DOE to re-consider the decisions it had already made with respect to the definitions for GSLs and GSILs.

Alternatives:

Anticipated Cost and Benefits:

Risks:

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Regulatory Priorities for Fiscal Year 2019

The Department of Health and Human Services (HHS) carries out a wide array of activities in order to fulfill its mission of protecting and promoting the health and well-being of the American people. From supporting cutting-edge research and disease surveillance, to regulating products and facilities, to administering programs that help our citizens most in need of access to healthcare and social services, HHS's work has a clear impact on the daily life of all Americans.

As the federal agency most deeply involved in more than one-sixth of the US economy, it is imperative that HHS be attentive to the costs of over-regulation. Building on the progress that HHS has made in Fiscal Year 2018, the Department will continue to find ways to clarify its regulations to ease the burden of public compliance, or to remove them where feasible to avoid unnecessarily diverting resources from the private sector while simultaneously ensuring the integrity of HHS programs.

HHS is committed to a regulatory agenda that is focused on better meeting the needs of the individuals served by its programs, informed by an understanding that excess and unclear federal regulation not only imposes serious burdens on job creation and the economy as a whole, but also that the opportunity costs from overregulation dampen provider productivity and medical product innovation, which undermines HHS's own ultimate core mission. Through its rulemakings in the coming fiscal year, HHS will take concrete steps towards reducing and streamlining its regulations and improving the transparency, flexibility, and accountability of its regulatory processes.

I. Advancing Secretary Azar's Priorities through Rulemaking

Since his confirmation as the twenty-fourth Secretary of Health and Human Services in January 2018, Secretary Alex Azar has focused the Department's efforts on four priorities. These initiatives—combatting the opioid crisis; increasing the affordability and accessibility of individual health insurance; tackling the high cost of prescription drugs; and moving to a value-based healthcare system—renew the substantial efforts made by the Department in these areas over the past year and a half and have the potential to deliver lasting change across America's healthcare system.

Combatting the Opioid Crisis

One of the most pressing public health problems of our time, the opioid crisis has steadily grown over the past several decades and is now impacting communities across the country. In addition to providing unprecedented levels of support for states, local governments, and community organizations working to combat this crisis, HHS is exploring ways to enhance our nation's response through critically examining its regulations. To reduce opioid misuse without restricting

access to legitimate services, Medicaid programs can utilize several medical management techniques, including quantity limits of short-acting and long-acting opioids. The President's FY 2019 Budget includes a proposal that would establish minimum standards for Medicaid Drug Utilization Review programs. Currently, CMS does not set minimum requirements for these programs, and there is substantial variation in how states approach this issue. Establishing minimum standards would not only help increase oversight of opioid prescriptions and dispensing in Medicaid, but would save the program an estimated $245 million over 10 years.

Additionally, the Substance Abuse and Mental Health Services Administration (SAMHSA) is considering updating its regulations governing medication-assisted treatment for opioid use disorders (OUD) by deleting outdated provisions and revising reporting requirements for providers with waivers to treat up to 275 patients with OUD. SAMHSA will also provide guidance and consider additional changes to 42 CFR Part 2 that can foster further alignment with the Health Insurance Portability and Accountability Act (HIPAA). Furthermore, although many covered entities believe that the HIPAA Privacy Rule precludes such disclosures, the Office for Civil Rights (OCR) plans to propose a rule clarifying the Privacy Rule provisions most applicable to information sharing with family members or others when patients are incapacitated. This would reduce uncertainties about the ability of covered entities to disclose patient information to family members, friends, or others best positioned to help individuals suffering with a substance use disorder or serious mental illness.

Strengthening Individual Health Insurance Programs

In addition, strengthening program integrity with respect to subsidy payments in the individual markets is a top priority of this Administration. In furtherance of that goal, the Centers for Medicare & Medicaid Services (CMS) will publish an Exchange Program Integrity rule focusing on ensuring that eligible enrollees receive the correct advanced payments of the premium tax credit, conducting effective and efficient oversight of State-Based Exchanges, and protecting the interests of taxpayers, consumers, and the financial integrity of Federally Facilitated Exchanges. CMS, through its annual Payment Notice for the Exchanges, will also emphasize deregulation and increasing flexibility for states and issuers. CMS will continue to work with the Tri-

Departments to explore allowing more flexibility in the availability of health plans in the individual and small group markets, as well as carrying out the instructions in the President's October 12, 2017, Executive Order to consider expanding the use of health reimbursement arrangements (HRAs).

HHS' forthcoming report on promoting competition and choice will also inform HHS' efforts in this area and help drive positive change.

These initiatives will help restore market forces to ensure consumers have plans to choose from that meet their needs.

Tackling the High Cost of Prescription Drugs

In May 2018, Secretary Azar unveiled the President's blueprint to tackle the high cost of prescription drugs, *American Patients First*. HHS is aggressively working on actions the President may direct HHS to take immediately as well as the consideration of actions on which feedback was solicited in the blueprint. As a part of this ongoing effort, the Food and Drug Administration (FDA) plans to propose regulations to facilitate access to more treatments for common conditions and potentially some chronic conditions by using innovative approaches, including new technologies, to assist consumers in self-selection and use of drug products that have previously been available only by prescription. If finalized, FDA believes this rule will improve public health and lower costs by increasing the number and types of medications that are available without a prescription. Changes CMS plans to make in its annual Part C and D rules, and potentially other mechanisms, are likewise seeking to improve health and lower costs for American patients.

Transforming Our Healthcare System into One that Pays for Value

Over the years, it has become increasingly apparent that the United States' fee-for-service payment system does not incentivize innovative therapies and intelligent treatment plans for patients. Previous Congresses and administrations have attempted to alleviate these problems through patchwork attempts at introducing innovative payment models. Now, under Secretary Azar's leadership, HHS will undertake efforts to comprehensively address this issue and attempt to rebuild our healthcare system into one that truly incentivizes effective, efficient patient care by paying for value. As an early step in this effort, CMS plans to propose regulatory revisions to

address the impact of the physician self-referral (commonly known as “Stark”) law and encourage coordinated care. Additionally, OCR will be examining the HIPAA rules for obstacles that may limit or discourage coordinated care or otherwise impose regulatory burdens that may impede the transformation to value-based healthcare, without providing commensurate privacy or security protections for patients’ protected health information (PHI). HHS’ forthcoming report on promoting competition and choice will also inform HHS’ efforts in this area and help drive positive change.

II. Empowering the American People through Reducing Regulatory Burden and Clarifying Regulation

In addition to these four priorities, HHS has been comprehensively reviewing its regulations to find ways to reduce burdens on states, grantees, industries, and individuals. Regulatory burden can result from a variety of sources, including reporting requirements, outdated restrictions, requirements and/or conditions not required by the authorizing statutes, and a lack of clear regulatory guidelines. HHS is committed to streamlining and clarifying its regulations to reduce unnecessary burden while continuing to protect the public health and to meet the human services needs of the American people.

Minimizing Duplicative Requirements and Eliminating Obsolete Regulations

The Department recognizes the burden that requirements for many of its programs place on states, territories, tribes, local governments, industry, providers and facilities, caseworkers, grant recipients, and individuals. HHS plans to actively engage stakeholders in transparent, deliberative processes to ensure that the Department reduces burden while continuing to administer high-quality programs. For example, the Administration for Children and Families (ACF) plans to issue a Notice of Proposed Rulemaking seeking public comment on its proposal to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS), which doubled reporting requirements for states and tribes. Through careful consideration of all comments submitted by the public to its Advanced Notice of Proposed Rulemaking issued in March 2018, ACF believes it can streamline the 2016 Rule so that state and tribal IV-E agencies are able to devote less time and fewer resources to administrative work and to redirect those efforts to the children they serve.

In addition to minimizing regulatory burden, HHS realizes that many of its regulations may contain provisions that are outdated, obsolete, or otherwise not applicable to the current environment. HHS has resolved to reform its processes so that those providing care and other services to Americans are able to thrive within the state and federal regulatory environment. As an early step in this broader effort, CMS plans to issue a proposed rule that will remove unnecessary and outdated requirements from the conditions of participation for the Medicare and Medicaid programs for Long-Term Care facilities. Currently, these requirements often impede the delivery of quality care and divert resources away from facility residents.

Providing Necessary Regulatory Clarity to Industry Stakeholders

As part of efforts to streamline regulation, in some cases, regulation is necessary in order to make HHS's processes transparent and predictable. This year, FDA plans to continue work on needed implementing regulations for its tobacco program. Rulemaking is needed to clarify for industry the submission and review processes for various review pathways as part of a comprehensive framework to regulate nicotine and tobacco and advance the public health. In addition, FDA is updating important rules for medical device applications so the rules reflect risk-based and least burdensome pathways to market for devices, including new and innovative devices. These rules will fill gaps to ensure that manufacturers in these sectors know how to bring innovative products to market that may save lives or reduce health risks. FDA intends to continue rulemaking this fiscal year to fill these regulatory gaps so that these processes become more fair, efficient, and predictable.

Protecting the Exercise of Conscience Rights

Religious and faith-based organizations and individuals have historically played an important role in providing needed health care and human services. However, regulatory and other burdens on religious freedom and conscience that discourage such organizations and individuals from participating in HHS programs have been often overlooked in recent years. HHS has taken a number of steps to rectify the situation in the past year and plans to continue work to ensure that HHS's programs respect religious liberty and conscience—and to relieve burden on the exercise of religion and conscience. In order to adequately protect these First Amendment and statutory

rights, HHS plans to complete a rulemaking to implement and enforce a number of HHS-specific conscience laws and protections, in order to help ensure that individuals participating in HHS-funded health programs are aware of their conscience rights, that recipients of HHS funds comply with their obligations to respect such rights, and that there are enforcement procedures for such conscience protections that are comparable to other civil rights. Additionally, in finalizing its update to the Title X family planning regulations, HHS plans to ensure that the conscience rights of Title X providers are respected.

III. Harnessing Regulatory Reform to Encourage Innovation

In addition to reducing burden, an important outcome of regulatory reform efforts is the proliferation of innovative solutions and programs structured to suit the needs of unique problems and populations. HHS is committed to promoting innovation through a variety of mechanisms, including deregulatory actions.

Promoting Flexibility for States, Grantees, and Regulated Entities

HHS intends to enhance regulatory flexibility so that its state and community partners are able to better tailor their programs to meet the needs of the people they serve. Over the past year and a half, the Department has been looking seriously at its programs to see how it can maximize the number of people reached through amending its regulations to remove or change regulatory limitations on grantees and regulated entities. For example, ACF plans to consider revising minimum service duration requirements for Head Start center-based programs to allow these programs to serve more children or better meet the needs and daily schedules of local families. Rulemaking carried out in 2016 nearly doubled the current minimum.

Keeping Pace with 21st Century Science

In order to best respond to the needs of patients, it is crucial that HHS regulations and programs reflect current science. HHS is fulfilling this need by updating regulations so that the Department can utilize the full spectrum of current scientific thinking when carrying out program activities. Specifically, HRSA plans to revise the Vaccine Injury Table to include vaccines that the Centers for Disease Control and Prevention (CDC) recommends for administration to pregnant women. This revision will allow injuries related to these vaccines to be eligible for the National Vaccine

Injury Compensation Program. Additionally, FDA intends to propose a new rule that will modernize mammography quality by recognizing new technologies, making improvements in facility processes, and updating reporting requirements. FDA believes that these changes will improve the delivery of mammography services and allow for more informed decision-making by strengthening the communication of health care information.

FDA is also taking action to facilitate food innovations that can give consumers more choices and enable better nutrition. Diet is a powerful tool for reducing chronic disease and its impact on the healthcare system. Modernizing the outdated framework for food standards will allow industry flexibility for innovation to produce more healthful foods while maintaining the basic nature and nutritional integrity of key food products. FDA will reopen the comment period on its earlier proposed rule soliciting updated information to guide development of a modern approach to regulating food standards and related labeling.

Summary

In the coming fiscal year, HHS plans to consider a number of deregulatory actions, accompanied by regulatory changes intended to make its processes more flexible, efficient, and transparent. In order to fully realize the potential of these efforts, HHS recognizes the need for a collaborative rulemaking process where the concerns of patients, providers, States, tribes, faith-based and community organizations, and other stakeholders are appropriately considered. By working with its partners in bringing better healthcare and human services to the American people, and understanding the challenges that they face under HHS's current regulatory structures, the Department will continue to modernize its role in this critical sector of the national economy, assuring its vitality and the increased wellbeing of those it serves.

HHS—Office for Civil Rights(OCR)	**PRERULE STAGE**

43. HIPAA PRIVACY: REQUEST FOR INFORMATION ON CHANGES TO SUPPORT, AND REMOVE BARRIERS TO, COORDINATED CARE

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 115–5, sec. 13405(c)

CFR Citation:

45 CFR 164

Legal Deadline:

Final, Statutory, June 1, 2010, The statutory deadline to issue a rule on accounting of disclosures was 06/01/2010.

Required by the HITECH Act. Statutory deadline contingent on further regulatory action.

Abstract:

This Request for Information (RFI) would solicit the public's views on whether there are provisions of the HIPAA Rules which present barriers that limit or discourage coordinated care and case management among hospitals, physicians (and other providers), payors, and patients, or otherwise impose regulatory burdens that may impede the transformation to value-based health care without providing commensurate privacy or security protections for patients' protected health information and while maintaining patients' ability to control the use or disclosure of their PHI and to access PHI. In addition to a general request for information, the RFI would specifically seek

comment on a number of particular issues, including: (1) Methods of accounting of all disclosures of a patient's protected health information; (2) patients' acknowledgment of receipt of a providers' notice of privacy practices; (3) creation of a safeharbor for good faith disclosures of PHI for purposes of care coordination or case management; (4) disclosures of protected health information without a patient's authorization for treatment, payment, and health care operations; (5) the minimum necessary standard/requirement. This RFI would subsume the previous 0945-AA08 entry in the Regulatory Agenda.

Statement of Need:

The HHS Deputy Secretary recently launched an initiative called the Regulatory Sprint to Coordinated Care. The goal of the Regulatory Sprint is to remove regulatory barriers that impede coordinated, value-based health care. This RFI is being produced to support the Regulatory Sprint.

Summary of Legal Basis:

The HIPAA statute and its amendments.

Alternatives:

None were considered as this RFI is intended to solicit various policies for improving HIPAA.

Anticipated Cost and Benefits:

No anticipated costs as this is not regulatory. Benefits include receiving public feedback on potential policies to pursue in rulemaking.

Risks:

None known.

Timetable:

Action	Date	FR Cite
NPRM	05/31/11	76 FR 31426
NPRM Comment Period End	08/01/11	
NPRM Withdrawal	11/00/18	
RFI	11/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

URL For More Information:

www.hhs.gov/ocr/privacy

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RIN: 0945–AA00

HHS—OCR	PROPOSED RULE STAGE

44. HIPAA PRIVACY RULE: PRESUMPTION OF GOOD FAITH OF HEALTH CARE PROVIDERS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

Health Insurance Portability and Accountability (HIPAA) Act of 1996, Pub. L. 104–191

CFR Citation:

45 CFR 164.510

Legal Deadline:

None

Abstract:

In an effort to address the opioid epidemic, the proposed rule would make a number of changes to provisions of the HIPAA Privacy Rule regarding uses and disclosures of protected health information to ease the burden on and potential risks to covered entities that may want to disclose PHI in such circumstances.

Statement of Need:

With over 60,000 individuals dying of opioid overdoses in 2016 and others suffering from addiction to the opiates, HHS issued a declaration of emergency to recognize a nationwide opioid epidemic. HIPAA permits providers and other covered entities to disclose protected health information about an individual to families, caregivers and other relevant parties in circumstances related to opioid overdose and addiction. Despite this permission and HHS guidance clarifying HIPAA, HHS continues to receive anecdotal evidence that providers and other covered entities are reluctant to share an opioid patient's health information with family or other caregivers.

This proposal seeks to encourage covered entities to share protected health information with family members, caregivers, and others in a position to avert threats of harm to health and safety when necessary to promote the health and recovery of those struggling with opioid addiction.

Summary of Legal Basis:

OCR has broad authority under the HIPAA statute to make modifications to the Privacy Rule, within the statutory constraints of HIPAA, the HITECH Act, and other applicable law (e.g., the Administrative Procedures Act).

OCR, by delegation from the Secretary, has broad authority under HIPAA to make modifications to the Privacy Rule, as provided by section 264 of HIPAA (codified at 42 U.S.C. 1320d-2(note)).

Alternatives:

OCR may issue additional guidance as an alternative to the proposed rule. However, HIPAA continues to be cited as a barrier to sharing protected health information in crisis situations, despite extensive existing guidance and outreach efforts. Without regulatory changes, it is not clear that additional guidance would be effective in clarifying the ability to share protected health information in such situations. Revising the Privacy Rule would be a more effective and permanent vehicle for achieving the desired policy, and would provide additional Good Samaritan safe harbor protections to health care providers who share protected health information when trying to help patients.

Anticipated Cost and Benefits:

The proposed rule will not create any new requirements or costs for regulated entities or the public. It will benefit patients and families by helping to ensure that family members and others involved in the patients' care can get the information they need to help their loved ones obtain appropriate care and support. It will also provide additional protections to health care providers exercising their professional judgment when making disclosures of protected health information to further the interests of patients.

Risks:

While we do not anticipate significant risks to privacy associated with this proposal, the NPRM requests public input on whether the impact of these amendments, taken together, could be expected to discourage individuals from seeking care based on concerns that their PHI may be disclosed against their wishes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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HHS—OCR	FINAL RULE STAGE

45. PROTECTING STATUTORY CONSCIENCE RIGHTS IN HEALTH CARE; DELEGATIONS OF AUTHORITY

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Regulatory

Legal Authority:

Pub. L. 115–31; 22 U.S.C. 7631(d); 26 U.S.C. 5000A(d)(2); 29 U.S.C. 669(a)(5); 42 U.S.C. 300a–7; 42 U.S.C. 238n; secs. 1553, 280g–1(d), 290bb–36(f), 1320a–1, 1320c–11, 1395cc(f), 1395i–5, 1395w–22(j)(3)(B), 1395x(e), 1395x(y)(1); 1396a(a), 1396a(w)(3), 1396f, 1396s(c)(2)(B)(ii), 1396u–2(b)(3)(B), 1397j–1(b), 1553, 5106i(a); 18113s, 18023(c)(2)(A)(i)–(iii),18023(b)(1)(A), 18023(b)(4), 18113; ...

CFR Citation:

45 CFR 88

Legal Deadline:

None

Abstract:

This final rule would provide for the implementation and enforcement of the Federal health care conscience and associated anti-discrimination laws.

Statement of Need:

Revision of the current conscience rule is necessary to provide proper enforcement tools to address unlawful discrimination, coercion and hostility, which has been the subject of a rising number of complaints before OCR and in Federal courts and raised questions from Congressional oversight. Clarity about existing conscience protections is needed to reduce confusion about the law. Furthermore, the Department lacks strategic coordination across its

components and enforcement tools that are available to remedy invidious discrimination under other protected bases.

Summary of Legal Basis:

The rule would enforce and implement health care conscience and associated anti-discrimination statutes that protect health care providers and patients in these areas as prescribed by Congress: (1) conscience protections related to abortion, sterilization, and certain other health services to participants in programs and their personnel funded by the Department; (2) conscience protections for health care entities related to abortion provision or training, referral for such abortion or training, or accreditation standards related to abortion; (3) protections from discrimination for health care entities and individuals who object to furthering or participating in abortion under programs funded by the Department's yearly appropriations acts; (4) conscience protections under the Patient Protection and Affordable Care Act related to assisted suicide, individual mandate, and other matters of conscience; (5) conscience protections for objections to counseling and referral for certain services in Medicaid or Medicare Advantage; (6) conscience protections related to the performance of advanced directives; (7) conscience protections related to Global Health Programs to the extent administered by the Secretary; (8) exemptions from compulsory health care or services generally and under specific programs for hearing screenings, occupational illness testing, vaccination, and mental health treatment; and (9) protections for religious nonmedical health care.

Alternatives:

Maintaining the status quo by enforcing 45 CFR part 88 as it currently exists creates a significant risk of unaddressed violations of conscience laws, and leaves few remedies available due to OCR's administrative enforcement scheme and court decisions holding that Congress did not incorporate into its conscience statutes for parties to file private rights of action in the courts.

Anticipated Cost and Benefits:

Protection of religious beliefs and moral convictions is a broad qualitative benefit that serves individual rights and society as a whole, and protection of conscience reduces barriers to entry, combats attrition, and increases diversity of providers in the health care field. Costs of $311 million in the first year and $124.6 million per year in years 2 through 5 are estimated to be incurred for familiarization with the law, preparation of notices and assurances of compliance, compliance procedures and voluntary remedial efforts. Costs for OCR enforcement are $1 million in the first year and $1 million per year in years 2 through 5.

Risks:

Enforcement of these conscience laws could risk reduction in access to health care services in low provider populated areas.

Timetable:

Action	Date	FR Cite
NPRM	01/26/18	83 FR 3880
NPRM Comment Period End	03/27/18	
Final Action	11/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

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HHS—Substance Abuse and Mental Health Services Administration(SAMHSA)	PROPOSED RULE STAGE

46. REVISING OUTDATED REQUIREMENTS FOR OPIOID TREATMENT PROVIDERS (OTPS)

Priority:

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

EO 13771 Designation:

Deregulatory

Legal Authority:

sec. 303(g) of the Controlled Substances Act (CSA); 21 U.S.C. 823(g)

CFR Citation:

42 CFR 8

Legal Deadline:

None

Abstract:

This planned deregulatory action would revise 42 CFR part 8 to reduce outmoded requirements. First, SAMSHA may streamline the regulation by deleting now outdated requirements pertaining to transitional certification for opioid treatment programs (OTPs). This change will help make the regulation less confusing by removing a provision that no longer applies.

Second, SAMSHA may alter requirements pertaining to interim maintenance treatment program approval.

Statement of Need:

SAMHSA plans to promulgate a rule to remove the transitional certification provisions that are now outdated. Additionally, updating language to permit private, for-profit entities to serve as opioid treatment programs could improve patient access to this treatment.

This planned deregulatory action would revise 42 CFR Part 8 to reduce outmoded requirements. First, SAMSHA may streamline the regulation by deleting now outdated requirements pertaining to transitional certification for opioid treatment programs (OTPs). This

change will help make the regulation less confusing by removing a provision that no longer applies.

Second, SAMSHA may alter requirements pertaining to interim maintenance treatment program approval

Summary of Legal Basis:

Section 303(g) of the Controlled Substances Act (CSA) (21 U.S.C. 823(g) establishes procedures for determining whether a healthcare practitioner can dispense opioid drugs for the purpose of treating opioid use disorders. HHS has adopted regulations at 42 CFR Part 8 to provide additional details. These regulations were most recently substantively revised in July 2016 (81 FR 44712).

Alternatives:

The alternatives include not making these changes or making only one of the above changes rather than both.

Anticipated Cost and Benefits:

Eliminating outmoded transition regulations will make the regulations less confusing. In addition, permitting private, for-profit entities to qualify for certification potentially will broaden access to opioid treatment programs. SAMHSA is unsure how to quantify costs and benefits for these changes.

Risks:

The transition provisions are outdated and no longer apply. SAMSHA anticipates most stakeholders will support permitting private, for-profit entities to serve as OTPs but some may be skeptical of these entities as compared to nonprofits. Rescinding the reporting requirements for providers treating up to 275 patients should hold minimal risk since these providers still are bound

by other certification requirements such as recordkeeping, etc. These reporting requirements initially were added in July 2016 (81 FR 66191).

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State, Tribal

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HHS—SAMHSA	

47. • COORDINATING CARE AND INFORMATION SHARING IN THE TREATMENT OF SUBSTANCE USE DISORDERS

Priority:

Other Significant. Major under 5 USC 801.

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 290dd–2

CFR Citation:

42 CFR 2

Legal Deadline:

None

Abstract:

SAMHSA is proposing broad changes to Confidentiality of Alcohol and Drug Abuse Patient Records, 42 Code of Federal Regulations (CFR) 2, also known as 42 CFR part 2 to remove barriers to coordinated care and permit additional sharing of information among providers and part 2 programs assisting patients with substance use disorders (SUDs).

Statement of Need:

SAMHSA is proposing broad changes to Confidentiality of Alcohol and Drug Abuse Patient Records, 42 Code of Federal Regulations (CFR) 2, also known as 42 CFR part 2 to remove barriers to coordinated care and permit additional sharing of information among providers and part 2 programs assisting patients with substance use disorders (SUDs).

Summary of Legal Basis:

To be determined

Alternatives:

The alternatives include not making these changes or making changes to part 2 more limited in scope (i.e., only in one or two sections).

Anticipated Cost and Benefits:

The rule is not expected to be economically significant. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

Risks:

SAMHSA believes the many stakeholders will support efforts to make it easier for patients and providers to share information under part 2. However, some commenters may believe these changes will further undermine privacy protection under part 2 and lead individuals who may seek treatment to not seek treatment for fear of disclosure of their SUD.

Timetable:

Action	Date	FR Cite

NPRM	03/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State, Tribal

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HHS—Food and Drug Administration(FDA)	**PROPOSED RULE STAGE**

48. FOOD STANDARDS: GENERAL PRINCIPLES AND FOOD STANDARDS MODERNIZATION (REOPENING OF COMMENT PERIOD)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

21 U.S.C. 321; 21 U.S.C. 336; 21 U.S.C. 341; 21 U.S.C. 343; 21 U.S.C. 371

CFR Citation:

21 CFR 130.5

Legal Deadline:

None

Abstract:

FDA is reopening the comment period on a proposed rule, issued jointly with USDA/FSIS in 2005, that proposed to establish general principles that would be the first step in modernizing and updating the framework for food standards (also known as standards of identity). We are reopening the comment period because of the time that has elapsed since the publication of the proposed rule during which time there have been additional technological advances and other changes in the food industry which could help inform the development of a modernized food standards framework.

Statement of Need:

Standards of identity for foods are regulations Congress authorized FDA to issue to promote honesty and fair dealing in the interest of consumers. FDA's standards of identity have proved valuable in assuring that food products are consistent across different manufacturers. They are

important for international trade as well as domestic trade and are critical to government expenditures on food for the military, for WIC (women, infants, and children) programs, and in school feeding programs. However, questions have been raised about whether the regulations concerning standards of identity should be revised in light of changing consumer expectations and subsequent developments in food technology, and global trade. In 1996, FDA and USDA established a task force to discuss the current and future role of food standards. The task force determined there were several regulatory options including making no change to the food standards, eliminating all food standards, or using resources to review and revise the food standards to protect consumers without inhibiting technological advances in food preparation and marketing. FDA and FSIS ultimately decided to propose amending the petition process so the standards of identity would be more internally consistent, flexible for manufacturers, and easier to administer while ensuring product quality and uniformity to consumers, and did so in 2005.

Summary of Legal Basis:

FDA has established over 280 food standards of identity, in addition to standards of quality and fill of container, under the authority set forth in section 401 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 341). This section provides in part:

Whenever in the judgment of the Secretary (of Health and Human Services) such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, or reasonable standards of fill of container.

The standards of identity, quality, and fill of container for foods regulated by FDA are codified in title 21, parts 130 to 169 (21 CFR parts 130 to 169). FDA food standards are established under the common or usual name of a food and often specify the content of the food, generally in terms of the types of ingredients that it must contain (i.e., mandatory ingredients), and that it may contain (i.e., optional ingredients). FDA food standards may specify minimum and maximum

levels of constituents. They also may describe the manufacturing process when that process has a bearing on the identity of the finished food. Finally, FDA food standards may also include provisions related to label declaration of ingredients and nomenclature of the food depending on the form, packing medium, and optional ingredients used.

Alternatives:

FDA is proposing to reopen the comment period on the 2005 proposal, to allow for us to update the record and inform decisionmaking on standards of identity. The only alternative would be to open a docket and request comments and data on the issue generally, which would be a step backward. FDA does not believe it is in a position to develop a new proposed rule without affording stakeholders and the public a chance to comment and provide new data and information. After we have reviewed this information, we will be in a position to either publish a new proposed rule or to issue a final rule based on the full record.

Anticipated Cost and Benefits:

There is no cost/benefit analysis associated with reopening a proposed rule to solicit updated comments and information. The preliminary regulatory impact analysis in the proposed rule evaluated various options and concluded that taking the action covered in the proposed rule will generate net social benefits, and concluded that the social costs of taking the proposed action are likely to be small. The analysis found that most of the other options were likely to have lower net benefits because they had lower benefits, higher costs, or both.

Risks:

Timetable:

Action	**Date**	**FR Cite**
ANPRM	12/29/95	60 FR 67492

ANPRM Comment Period End	04/29/96	
NPRM	05/20/05	70 FR 29214
NPRM Comment Period End	08/18/05	
NPRM Comment Period Reopened	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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Related RIN:

Related to 0583–AC72

RIN: 0910–AC54

HHS—FDA	

49. MAMMOGRAPHY QUALITY STANDARDS ACT; AMENDMENTS TO PART 900 REGULATIONS

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Regulatory

Legal Authority:

21 U.S.C. 360i; 21 U.S.C. 360nn; 21 U.S.C. 374(e); 42 U.S.C. 263b

CFR Citation:

21 CFR 900

Legal Deadline:

None

Abstract:

FDA is proposing to amend its regulations governing mammography. The amendments would update the regulations issued under the Mammography Quality Standards Act of 1992 (MQSA). FDA is taking this action to address changes in mammography technology and mammography processes that have occurred since the regulations were published in 1997 and to address breast density reporting to patient and health care providers.

Statement of Need:

FDA is proposing to update the mammography regulations that were issued under the Mammography Quality Standards Act of 1992 (MQSA) and the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA is taking this action to address changes in mammography technology and mammography processes.

FDA is also proposing updates to modernize the regulations by incorporating current science and mammography best practices, including addressing breast density reporting to patients and health care providers. These updates are intended to improve the delivery of mammography services.

Summary of Legal Basis:

Mammography is an X-ray imaging examination device that is regulated under the authority of the FD&C Act. FDA is proposing these amendments to the mammography regulations (set forth in 21 CFR part 900) under section 354 of the Public Health Service Act (42 U.S.C. 263b), and sections 519, 537, and 704(e) of the FD&C Act (21 U.S.C. 360i, 360nn, and 374(e)).

Alternatives:

The Agency will consider different options so that the health benefits to patients are maximized and the economic burdens to mammography facilities are minimized.

Anticipated Cost and Benefits:

The primary public health benefits of the rule will come from the potential for earlier breast cancer detection, improved morbidity and mortality, resulting in reductions in cancer treatment costs. The primary costs of the rule will come from industry labor costs and costs associated with supplemental testing and biopsies.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—FDA	

50. MEDICAL DEVICE DE NOVO CLASSIFICATION PROCESS

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

21 U.S.C. 321(h); 21 U.S.C. 360c, 360i–360j; 21 USC 371; 21 USC 374

CFR Citation:

21 CFR 860

Legal Deadline:

None

Abstract:

De novo classification decreases regulatory burdens because manufacturers can use a less burdensome application pathway under the FD&C Act to market their devices. The proposed rule would establish procedures and criteria for the de novo process and would make it more transparent and predictable for manufacturers.

Statement of Need:

FDA is taking this action to implement amendments to the De Novo classification process in the FD&C Act that were enacted by the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Food and Drug Administration Safety and Innovation Act of 2012 (FDASIA), and the 21st Century Cures Act of 2016 (Cures).

Summary of Legal Basis:

The FD&C Act (21 U.S.C. 301 et seq.), as amended, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act established three categories (classes) of medical devices based on the regulatory controls sufficient to provide reasonable assurance of safety and effectiveness of the device. In 1997, Congress enacted section 513()(2) to include a De Novo classification process for some devices for which reasonable assurance of safety and effectiveness could be established through the De Novo process. FDASIA and cures expanded and modified this process.

Alternatives:

The De Novo classification process is based on authority from the FD&C Act. The De Novo classification program must continue because it is required by statute. If the proposed rule is not

finalized, then procedures and details about the application process and handling of De Novo applications might be unclear to potential applicants, and the program may not be as efficient as it might be.

Anticipated Cost and Benefits:

By clarifying the requirements for the De Novo classification process. FDA expects that the rule would reduce the time and costs associated with preparing and reviewing De Novo requests, and would generate net benefits in the form of cost savings for both private and government sectors.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HHS—FDA	

51. NONPRESCRIPTION DRUG PRODUCT WITH AN ADDITIONAL CONDITION FOR NONPRESCRIPTION USE

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

21 U.S.C. 321; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 371; 42 U.S.C. 262; 42 U.S.C. 264; ...

CFR Citation:

21 CFR 314.56; 21 CFR 201.67

Legal Deadline:

None

Abstract:

The proposed rule is intended to increase access to nonprescription drug products. The proposed rule would establish requirements for a drug product that could be marketed as a nonprescription drug product with an additional condition that an applicant must implement to ensure appropriate self-selection, appropriate actual use, or both by consumers.

Statement of Need:

Nonprescription products have traditionally been limited to drugs that can be labeled with information for consumers to safely and appropriately self-select and use the drug product without supervision of a health care provider. There are certain prescription medications that may have comparable risk-benefit profiles to over-the-counter medications in selected populations. However, appropriate consumer selection and use may be difficult to achieve in the nonprescription setting based solely on information included in labeling. FDA is proposing regulations that would establish the requirement for a drug product could be marketed as a nonprescription drug product with an additional condition that an applicant must implement to ensure appropriate self-selection or appropriate actual use or both for consumers.

Summary of Legal Basis:

FDA's proposed revisions to the regulations regarding labeling and applications for nonprescription drug products labeling are authorized by the FD&C Act (21 U.S.C. 321 et seq.) and by the Public Health Service Act (42 U.S.C. 262 and 264).

Alternatives:

FDA evaluated various requirements for new drug applications to assess flexibility of nonprescription drug product design through drug labeling for appropriate self-selection and appropriate use.

Anticipated Cost and Benefits:

The benefits of the proposed rule would include increased consumer access to drug products which could translate to a reduction in under treatment of certain diseases and conditions. Benefits to industry would arise from the flexibility in drug product approval. The proposed rule would impose costs arising from the development of an innovative approach to assist consumers with nonprescription drug product self-selection or use.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—FDA	

52. FORMAT AND CONTENT OF REPORTS INTENDED TO DEMONSTRATE SUBSTANTIAL EQUIVALENCE

Priority:

Other Significant

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 387; 42 U.S.C. 4332

CFR Citation:

21 CFR 1107

Legal Deadline:

None

Abstract:

This proposed rule would establish the format and content of reports intended to demonstrate substantial equivalence (SE) in tobacco products and would provide information as to how the Agency will review and act on these submissions.

Statement of Need:

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), requires premarket submissions for new tobacco products. Substantial equivalence reports are one type of premarket submission that manufacturers of new tobacco products may use to obtain marketing authorization for a new

tobacco product. This regulation is necessary to provide information to manufacturers to aid them in preparing and submitting substantial equivalence reports.

Summary of Legal Basis:

Section 905(j) of the FD&C Act, as amended by the Tobacco Control Act, provides for the submission of substantial equivalence reports and authorizes FDA to prescribe the form and manner of these reports. Section 910 of the FD&C Act mandates the premarket review of new tobacco products, establishes definitions of substantial equivalence and characteristics, and requires health information as part of a submission under section 905(j) of the FD&C Act. Section 909 establishes record and report requirements for tobacco products. Sections 701 and 704 of the FD&C Act authorize the promulgation of regulations to implement the FD&C Act and inspections.

Alternatives:

In addition to the benefits and costs of the proposed rule, FDA assessed the benefits and costs of several alternatives to the proposed rule: 1) Extending the effective date of the rule, 2) allowing for more deficiency letters and review cycles, and 3) allowing for only one review cycle.

Anticipated Cost and Benefits:

The costs of the rule are compliance costs on affected entities, e.g., to read and understand the rule, to revise internal procedures, and fill out a form for substantial equivalence reports. The quantified benefits of the proposed rule are cost-savings resulting from shorter FDA review times and fewer staff to review substantial equivalence reports. The cost savings to the government is expected to be larger than the compliance cost for industry and the net result is an overall net positive benefit from this proposed rule. The qualitative benefits of the rule include additional clarity to industry about the requirements for the content and format of substantial equivalence reports, as well as the establishment of procedures for substantial equivalence report review and

communication with applicants. These changes make the substantial equivalence marketing pathway clearer for both FDA and applicants.

Risks:

Premarket submissions for new tobacco products are required by the FD&C Act. But to prepare premarket submissions such as substantial equivalence reports intended to meet those requirements, manufacturers need more information about content and format requirements. This rule provides more information on content and format requirements and describes possible FDA actions on the substantial equivalence report.

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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HHS—FDA	

53. • NUTRIENT CONTENT CLAIMS, DEFINITION OF TERM: HEALTHY

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Regulatory

Legal Authority:

21 U.S.C. 321, 331, 343, and 371

CFR Citation:

10 CFR 101.65 (revision)

Legal Deadline:

None

Abstract:

The proposed rule would update the definition for the implied nutrient content claim "healthy" to be consistent with current nutrition science and federal dietary guidelines. The proposed rule would revise the requirements for when the claim "healthy" can be voluntarily used in the labeling of human food products so that the claim reflects current science and dietary guidelines and help consumers maintain healthy dietary practices.

Statement of Need:

FDA is proposing to redefine healthy to make it more consistent with current public health recommendations, including those captured in recent changes to the Nutrition Facts label. The existing definition for healthy is based on nutrition recommendations regarding intake of fat, saturated fat, and cholesterol, and specific nutrients Americans were not getting enough of in the early 1990s. Nutrition recommendations have evolved since that time; recommended diets now focus on dietary patterns, which includes getting enough of certain food groups such as fruits, vegetables, low-fat dairy, and whole grains. Chronic diseases, such as heart disease, cancer, and stroke, are the leading causes of death and disability in the United States and diet is a contributing factor to these diseases. Claims on food packages such as healthy can provide quick signals to consumers about the healthfulness of a food or beverage, thereby making it easier for busy consumers to make healthy choices.

FDA is proposing to update the existing nutrient content claim definition of Healthy based on the food groups recommended by the Dietary Guidelines for Americans and also include nutrients to limit to ensure that foods bearing the claim can help consumers build more healthful diets to reduce their risk of diet-related chronic diseases.

Summary of Legal Basis:

FDA is issuing this proposed rule under sections 201(n), 301(a), 403(a), 403(r), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(n), 331(a), 343(a), 343(r), and 371(a)). These sections authorize the agency to adopt regulations that prohibit labeling that bears claims that characterize the level of a nutrient which is of a type required to be declared in nutrition labeling unless the claim is made in accordance with a regulatory definition established by FDA. Pursuant to this authority, FDA issued a regulation defining the healthy implied nutrient content claim, which is codified at 21 CFR 101.65. This proposed rule would update the existing definition to be consistent with current federal dietary guidance.

Alternatives:

Alternative 1: Codify the policy in the current enforcement discretion guidance.

In 2016, FDA published Use of the Term 'Healthy' in the Labeling of Human Food Products: Guidance for Industry. This guidance was intended to advise food manufacturers of FDA's intent to exercise enforcement discretion relative to foods that use the implied nutrient content claim healthy on their labels which: (1) Are not low in total fat, but have a fat profile makeup of predominantly mono and polyunsaturated fats; or (2) contain at least 10 percent of the Daily Value (DV) per reference amount customarily consumed (RACC) of potassium or vitamin D.

One alternative is to codify the policy in the current enforcement discretion. Although guidance is non-binding, we assume that most packaged food manufacturers are aware of the guidance and, over the past 2 years, have already made any adjustments to their products or product

packaging. Therefore, we assume that this alternative would have no costs to industry and no benefits to consumers.

Alternative 2: Extend the compliance date by 1 year.

Extending the anticipated proposed compliance date on the rule updating the definition by 1 year would reduce costs to industry as they would have more time to change products that may be affected by the rule or potentially coordinate label changes with already scheduled label changes. On the other hand, a longer compliance date runs the risk of confusing consumers that may not understand whether a packaged food product labeled healthy follows the old definition or the updated one.

Anticipated Cost and Benefits:

Food products bearing the healthy claim currently make up a small percentage (5%) of total packaged foods. Relabeling and reformulating costs can range from about $2,000/UPC to relabel, $800,000/formula to reformulate. We currently anticipate that total cost to industry will be about $15 million, annualized at 7% in perpetuity.

Updating the definition of healthy to align with current dietary recommendations help consumers build more healthful diets to reduce their risk of diet-related chronic diseases. We currently anticipate the monetized benefits to be around $100 million, annualized at 7% in perpetuity.

There are no cost savings.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	03/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—Office of Assistant Secretary for Health(OASH)	FINAL RULE STAGE

54. • COMPLIANCE WITH STATUTORY PROGRAM INTEGRITY REQUIREMENTS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 300–300a–6

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This action would finalize revisions to the Title X regulations to ensure compliance with, and enhance the implementation of, various statutory program integrity requirements, including the statutory requirement that none of the funds appropriated for Title X may be used in programs where abortion is a method of family planning.

Statement of Need:

This action should enhance compliance with the statutory program integrity requirements applicable to, and purpose and goals of, the Title X program (especially those related to section 1008), the appropriations provisos and riders addressing the Title X program, and other obligations and requirements established under other Federal law. The action should also enhance programmatic transparency regarding the provision of Title X services (with respect to both the identity of the providers and the services being provided by such entities).

Summary of Legal Basis:

The Department has legal authority to issue and amend regulations to implement Title X of the Public Health Service (PHS) Act (42 U.S.C. 300 300a-6), in order to establish the requirements applicable to projects for family planning services, pursuant to section 1006 of the Public Health Service Act, 42 U.S.C. 300a-4; section 1006 also provides priority for low-income families. Section 1001 of the PHS Act establishes certain parameters for voluntary Title X family planning projects/programs, including the offering of a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents) and the encouragement, to the extent practical, of familyâ€¯participation. Section 1008 of the PHS Act, 42 U.S.C. 300a-6, establishes the prohibition on the use of the funds appropriated for Title X "in programs where abortion is a method of family planning."

In addition, the annual Labor-HHS appropriations act imposes, on an annual basis, certain additional requirements with respect to the Title X program, including that all pregnancy counseling be nondirective; that Title X funds not be expended for any activity that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office; that Title X grant applicants certify to the Secretary that they encourage family participation in the decision of minors to seek family planning services and provide counseling to minors on how to resist attempts to coerce them into engaging in sexual activities; and that Title X

providers comply with State laws requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest. See, e.g., Consolidated Appropriations Act, 2018, Pub. L. 115-141, Div. H, 207-208, Title II, 132 Stat. 348, 716-17.

Finally, the action would ensure that the Title X program and Title X providers comply with laws that protect the conscience rights of individuals and entities who decline to perform, participate in, or refer for abortions, including the Church Amendments (42 U.S.C. 300a-7), the Coats-Snowe Amendment (42 U.S.C. 238n), and the Weldon Amendment, see, e.g., Consolidated Appropriations Act, 2018, Public Law 115-141, Div. H, 507(d), 132 Stat. 348, 764 (2018).

The Department has legal authority to issue and amend regulations to implement Title X of the Public Health Service (PHS) Act (42 U.S.C. 300 300a-6), in order to establish the requirements applicable to projects for family planning services, pursuant to section 1006 of the Public Health Service Act, 42 U.S.C. 300a-4; section 1006 also provides priority for low-income families. Section 1001 of the PHS Act establishes certain parameters for voluntary Title X family planning projects/programs, including the offering of a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents) and the encouragement, to the extent practical, of familyâ€¯participation. Section 1008 of the PHS Act, 42 U.S.C. 300a-6, establishes the prohibition on the use of the funds appropriated for Title X "in programs where abortion is a method of family planning."

In addition, the annual Labor-HHS appropriations act imposes, on an annual basis, certain additional requirements with respect to the Title X program, including that all pregnancy counseling be nondirective; that Title X funds not be expended for any activity that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office; that Title X grant applicants certify to the Secretary that they encourage family participation in the decision of minors to seek family planning services and provide counseling to minors on how to resist attempts to coerce them into engaging in sexual activities; and that Title X

providers comply with State laws requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest. See, e.g., Consolidated Appropriations Act, 2018, Pub. L. 115-141, Div. H, 207-208, Title II, 132 Stat. 348, 716-17.

Finally, the action would ensure that the Title X program and Title X providers comply with laws that protect the conscience rights of individuals and entities who decline to perform, participate in, or refer for abortions, including the Church Amendments (42 U.S.C. 300a-7), the Coats-Snowe Amendment (42 U.S.C. 238n), and the Weldon Amendment, see, e.g., Consolidated Appropriations Act, 2018, Public Law 115-141, Div. H, 507(d), 132 Stat. 348, 764 (2018).

Alternatives:

The Department continues to consider alternative approaches that would ensure (1) sufficient compliance with the statutory program integrity requirements and purpose and goals of the Title X program, the appropriations provisos and riders addressing the Title X program, and other obligations and requirements established under other Federal law, and (2) transparency regarding the provision of services (with respect to both the identity of the providers and the services being provided by such entities).

Anticipated Cost and Benefits:

The changes proposed will improve the integrity of Title X program, especially with respect to ensuring that projects and providers do not fund, support, or promote abortion as a method of family planning, and enhance compliance with statutory requirements and appropriations riders and provisos. In addition, it is expected that the changes will facilitate the ability of an expanded number of entities to participate in Title X, including by removal of abortion counseling and referral requirements that potentially violate Federal health care conscience protections; this should serve to expand and enhance patient service and care. The proposed rule estimated $13.6 million in annualized costs at a 7% discount rate.

Risks:

None known.

Timetable:

Action	Date	FR Cite
NPRM	06/01/18	83 FR 25502
NPRM Comment Period End	07/31/18	
Final Action	10/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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Related RIN:

Related to 0937–ZA00

RIN: 0937–AA07

HHS—Centers for Medicare & Medicaid Services(CMS)	PROPOSED RULE STAGE

55. REQUIREMENTS FOR LONG–TERM CARE FACILITIES: REGULATORY PROVISIONS TO PROMOTE PROGRAM EFFICIENCY, TRANSPARENCY, AND BURDEN REDUCTION (CMS–3347–P) (SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Deregulatory

Legal Authority:

secs.1819 and 1919 of the Social Security Act; sec.1819(d)(4)(B) and 1919(d)(4)(B) of the Social Security Act; sec. 1819(b)(1)(A) and 1919 (b)(1)(A) of the Social Security Act

CFR Citation:

42 CFR 483; 42 CFR 488

Legal Deadline:

None

Abstract:

This proposed rule would reform the requirements that long-term care facilities must meet to participate in the Medicare and Medicaid programs, that CMS has identified as unnecessary, obsolete, or excessively burdensome on facilities. This rule would increase the ability of healthcare professionals to devote resources to improving resident care by eliminating or reducing requirements that impede quality care or that divert resources away from providing high quality care.

Statement of Need:

CMS is committed to transforming the healthcare delivery system, and the Medicare program, by putting an additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes. We seek to reduce burdens for long-term care facilities; healthcare professionals and residents; improve the quality of care; decrease costs; and, ensure that residents and their providers are making the best healthcare choices possible.

We are therefore proposing revisions to the requirements that long-term care facilities must meet to participate in the Medicare and Medicaid programs that would increase the ability of healthcare professionals to devote resources to improving resident care by eliminating or reducing requirements that impede quality care or that divert resources away from providing high quality care.

Summary of Legal Basis:

The Secretary has statutory authority to issue these rules under the Nursing Home Reform Act, (part of the Omnibus Budget Reconciliation Act of 1987 (OBRA ‘87), Public Law No. 100-203, 101 Stat. 1330 (1987)), which added sections 1819 and 1919 to the Act; those provisions authorize the Secretary to promulgate regulations that are "adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys." (Sections 1819(f)(1) and 1919(f)(1) of the Act). In addition, the Act authorizes the

Secretary to impose "such other requirements relating to the health and safety [and well-being] of residents as [he] may find necessary." (Sections 1819(d)(4)(B), 1919(d)(4)(B) of the Act). Under Sections 1819(c)(1)(A)(xi) and 1919 (c)(1)(A)(xi) of the Act, the Secretary may also establish "other right[s]" for residents, in addition to those expressly set forth in the statutes and regulations, to "protect and promote the rights of each resident."

Alternatives:

For all of the proposed provisions, we considered not making these changes. Specifically, we considered the impact that any revisions would have on the health and safety of residents in long-term care facilities and if such revisions would realistically be burden reducing for facilities. Ultimately, we believe that the proposed revisions will be burden reducing and do not impede on the health and safety of residents.

Anticipated Cost and Benefits:

This proposed rule would create ongoing cost savings to long-term care facilities in many areas. In addition, various proposals would clarify existing policy and relieve some administrative burdens.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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HHS—CMS	

56. CY 2020 NOTICE OF BENEFIT AND PAYMENT PARAMETERS (CMS–9926–P)

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 111–148, title I

CFR Citation:

45 CFR 149; 45 CFR 153; 45 CFR 155; 45 CFR 156

Legal Deadline:

None

Abstract:

This annual proposed rule would set forth payment parameters and provisions related to the risk adjustment programs; cost-sharing parameters; and user fees for issuers offering plans on Federally-facilitated Exchanges and State-based Exchanges using the Federal platform. It would also provide additional standards for several other Affordable Care Act programs.

Statement of Need:

This rule will propose standards related to the risk adjustment program for the 2020 benefit year, as well as certain modifications that will promote state flexibility and control over their insurance markets, reduce burden on stakeholders, and improve program integrity.

Summary of Legal Basis:

This rule addresses multiple sections of the Patient Protection and Affordable Care Act (Pub. L. 111148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111152), which amended and revised several provisions of the Patient Protection and Affordable Care Act.

Alternatives:

We considered slight variants of the proposed policies related to the risk adjustment program and standards related to the Exchanges.

Anticipated Cost and Benefits:

We anticipate that the proposed changes will include some initial costs on stakeholders, but generate savings over the long term. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

Risks:

If this regulation is not published timely, issuers in the individual and small group market will not have important information for rate setting for the 2020 plan year, and changes applicable to qualified health plans will not be in place in time for the 2020 plan year .

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—CMS	

57. EXCHANGE PROGRAM INTEGRITY (CMS–9922–P)

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

Pub. L. 111–148

CFR Citation:

45 CFR 155; 45 CFR 156

Legal Deadline:

None

Abstract:

This rule proposes improvements to Exchange program integrity, ensuring that eligible enrollees receive the correct advanced payments of the premium tax credit, and conducting effective and efficient oversight of State-Based Exchanges.

Statement of Need:

This proposed rule would propose changes to strengthen program integrity related to oversight of State Exchanges, and the operation of Exchanges.

Summary of Legal Basis:

This rule addresses multiple sections of the Patient Protection and Affordable Care Act (Pub. L. 111148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111152), which amended and revised several provisions of the Patient Protection and Affordable Care Act.

Alternatives:

The proposed policies are important for program integrity reasons. We considered variations on the proposed policies.

Anticipated Cost and Benefits:

We do not anticipate the proposed rule to be a significant regulatory action, but do anticipate it would generate costs on stakeholders. We believes these costs will be offset by improvements in program integrity.

Risks:

If this regulation is not published timely, important program integrity improvements will be delayed.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State

Federalism:

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

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HHS—CMS	

58. POLICY AND TECHNICAL CHANGES TO THE MEDICARE ADVANTAGE AND THE MEDICARE PRESCRIPTION DRUG BENEFIT PROGRAMS FOR CONTRACT YEAR 2020 (CMS–4185–P)

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 1302; 42 U.S.C. 1395hh

CFR Citation:

42 CFR 417; 42 CFR 422; 42 CFR 423

Legal Deadline:

None

Abstract:

This proposed rule would set forth programmatic and operational changes to the Medicare Advantage (MA) and prescription drug benefit programs for contract year 2020.

Statement of Need:

This rule is necessary to make revisions to the Medicare Advantage (MA) and Prescription Drug Benefit programs to implement applicable provisions of the Bipartisan Budget Act of 2018 and based on our continued experience in the administration of the programs.

Summary of Legal Basis:

This rule addresses multiple sections of the Social Security Act. It also implements sections 50323, 50311, and 50354 of the Bipartisan Budget Act of 2018.

Alternatives:

This rule implements provisions that require public notice and comment and are necessary for the upcoming contract year. We will continue to explore additional alternatives as we develop the rule.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits of this proposed rule indicate savings and burden reduction for the government, MA organizations, prescription drug plan sponsors, and providers. We expect some savings will also be passed onto beneficiaries in the form of increased benefit offerings and reduced premiums or cost sharing. Numerical estimates are pending and as we move toward publication, estimates of costs and benefits will be included in the proposed rule.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal

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HHS—CMS	

59. • MODERNIZING AND CLARIFYING THE PHYSICIAN SELF–REFERRAL REGULATIONS (CMS–1720–P)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 1395nn

CFR Citation:

42 CFR 411

Legal Deadline:

None

Abstract:

This rule proposes to address any undue regulatory impact and burden of the physician self-referral law.

Statement of Need:

This rule is necessary to facilitate the successful transition from volume-based to value-based payment for health care services and promote care coordination among health care providers and suppliers who furnish care to Medicare beneficiaries and other patients. This rule is also necessary to bring needed clarity and flexibility for parties subject to the physician self-referral law's prohibitions on referrals and Medicare claims submission.

Summary of Legal Basis:

This rule interprets section 1877 of the Social Security Act.

Alternatives:

We will continue to explore alternatives as we develop the rule.

Anticipated Cost and Benefits:

We believe that this rule could have a positive impact on health outcomes of beneficiaries and other American patients because providers, suppliers and physicians will be able to better coordinate patient care without running afoul of the physician self-referral law's referral and

Medicare claims submission prohibitions. We also believe the proposed regulatory reforms may make compliance with the physician self-referral law more straightforward.

Risks:

Timetable:

Action	Date	FR Cite
RFI Notice With Comment Period	06/25/18	83 FR 29524
RFI Comment Period End	08/28/18	
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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HHS—Administration for Children and Families(ACF)	PROPOSED RULE STAGE

60. ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

secs. 474(f), 479 and 1102 of the Social Security Act

CFR Citation:

45 CFR 1355

Legal Deadline:

None

Abstract:

This notice of proposed rulemaking (NPRM) seeks public suggestions in particular from State and Tribal title IV-E agencies and Indian tribes, Tribal organizations and consortiums, for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and removing any undue burden related to reporting AFCARS.

Statement of Need:

The reporting requirements for the Adoption and Foster Care Analysis and Reporting System (AFCARS) have doubled in the past year. In an effort to ensure that an appropriate balance is achieved between reporting burden and administering high-quality programs that provide services to children and families. By engaging in this rulemaking process, the public and stakeholders will be afforded an opportunity to provide input on what data collections are most useful to the administration of child welfare programs.

Summary of Legal Basis:

Section 479 of the Social Security Act requires HHS regulate a national data collection system which provides comprehensive information on adopted and foster children and their parents.

Alternatives:

None. This rule implements statutory requirements.

Anticipated Cost and Benefits:

An estimate of costs to States to modify their existing data systems is not available at this time.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	03/15/18	83 FR 11449
ANPRM Comment Period End	06/13/18	
NPRM	05/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE: 4150-03-P

DEPARTMENT OF HOMELAND SECURITY (DHS)
Fall 2018 Statement of Regulatory Priorities

The Department of Homeland Security (DHS or Department) was established in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107-296. The DHS mission statement provides the following: "With honor and integrity, we will safeguard the American people, our homeland, and our values."

Fulfilling that mission requires the dedication of more than 240,000 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.

Leading a unified national effort, DHS has five core missions: (1) prevent terrorism and enhance security; (2) secure and manage our borders; (3) enforce and administer our immigration laws; (4) safeguard and secure cyberspace; and (5) ensure resilience to disasters. In addition, we must specifically focus on maturing and strengthening the homeland security enterprise itself.

In achieving those goals, we are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the Federal, State, local, tribal, 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 mission, see the DHS website at http://www.dhs.gov/our-mission.

The regulations we have summarized below in the Department's Fall 2018 regulatory plan and agenda support the Department's authorities. These regulations will improve the Department's ability to accomplish its mission. Also, the regulations we have identified in this year's regulatory plan continue to address legislative initiatives such as the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110-53 (Aug. 3, 2007).

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 agenda and regulatory plan. In addition, DHS senior leadership reviews each significant regulatory project in order to ensure that the project fosters and supports the Department's mission.

The Department 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.

Executive Order 13771 Requirements

In fiscal year 2019, DHS plans to finalize the following actions:

- 0 Executive Order 13771 regulatory actions;
- 18 Executive Order 13771 deregulatory actions (including information collections);
- 4 Executive Order 13771-exempt regulations; and
- 10 regulations for which we are unsure of their Executive Order 13771 designation. (Note: These are regulations that we designated as "other" in the newly-created Executive Order 13771 designation data field in the Unified Agenda entries).

We provide further information about those actions in the DHS Regulatory Plan and Unified Agenda.

DHS is also committed to the principles described in Executive Orders 13563 and 12866 (as amended). Both Executive Orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Finally, the Department values public involvement in the development of its regulatory plan, agenda, and regulations, and is particularly concerned with the impact its regulations have on small businesses. DHS and its components continue to emphasize the use of plain language in our regulatory documents to promote a better understanding of regulations and to promote increased public participation in the Department's regulations.

The Fall 2018 regulatory plan for DHS includes regulations from several DHS components, including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (the Coast Guard), U.S. Customs and Border Protection (CBP), the U.S. Immigration and Customs

Enforcement (ICE), the Federal Emergency Management Agency (FEMA), and the Transportation Security Administration (TSA). Below is a discussion of the regulations that comprise the DHS fall 2018 regulatory plan.

United States Citizenship and Immigration Services

USCIS is the government agency that administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values. In the coming year, USCIS will promulgate several regulatory actions to support that mission.

Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization. USCIS will propose to rescind the final rule published in the Federal Register on February 25, 2015. The 2015 final rule amended DHS regulations by extending eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident status.

H-1B Nonimmigrant Program and Petitioning Process Regulations. In order to improve U.S. worker protections as well as to address the requirements of Executive Order 13788, *Buy American and Hire American*, USCIS will propose to issue regulations with the focus of improving the H-1B nonimmigrant program and petitioning process. Such initiatives will include a proposed rule that would establish an electronic registration program for H-1B petitions subject to annual numerical limitations and would improve the H-1B numerical limitation allocation process (*Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to Numerical Limitations)*; and a proposed rule that would revise the definition of specialty occupation to increase focus on truly obtaining the best and brightest foreign nationals via the H-1B program and would revise the definition of employment and employer-employee relationship to help better protect U.S. workers and wages. (*Strengthening the H-1B Nonimmigrant Visa Classification Program*).

Heightened Screening and Vetting of Immigration Program Regulations. USCIS will propose regulations guiding the inadmissibility determination whether an alien is likely at any time to become a public charge under section 212(a)(4) of the Immigration and Nationality Act. (*Inadmissibility on Public Charge Grounds*). Additionally, USCIS will propose to update its biometrics regulations to eliminate multiple references to specific biometric types, and to allow for the expansion of the types of biometrics required to establish and verify an identity. The goal of

this proposal will be to establish consistent identity enrollment and verification policies and processes, and to provide clear proposals on how biometrics will be used in the immigration process. (*USCIS Biometrics Collection for Collection for Consistent, Efficient and Effective Operations*).

Employment Creation Immigrant Regulations. USCIS will amend its regulations modernizing the employment-based, fifth preference (EB-5) immigrant investor category based on current economic realities and to reflect statutory changes made to the program. (*EB-5 Immigrant Investor Program Modernization*). USCIS will also propose to update its regulations for the EB-5 Immigrant Investor Regional Center Program to better reflect realities for regional centers and EB-5 immigrant investors, to increase predictability and transparency in the adjudication process, to improve operational efficiency, and to enhance program integrity. (*EB-5 Immigrant Investor Regional Center Program*). Lastly, USCIS will publish an advanced notice of proposed rulemaking to solicit public input on proposals that would increase monitoring and oversight of EB-5 projects, and encourage investment in rural areas. (*EB-5 Immigrant Investor Program Realignment*.)

Asylum Reforms. USCIS will propose regulations aimed at deterring the fraudulent filing of asylum applications for the purpose of obtaining Employment Authorization Documents. (*Employment Authorization Documents for Asylum Applicants*). USCIS will also propose to amend its regulations to streamline credible fear screening determinations in response to the Southwest Border crises. (*Credible Fear Reform Regulation*).

Adjustment of Status Process Improvements. USCIS will propose to update regulatory provisions to improve the efficiency in the processing of adjustment of status applications, to reduce processing times, to improve data quality provided to partner agencies, to reduce the potential for visa retrogression, to promote efficient usage of available immigrant visas, and to discourage fraudulent and frivolous filings. (*Updating Adjustment of Status Procedures for More Efficient Processing and Immigrant Visa Usage*). USCIS will also propose updates to its regulations to improve the efficiency of USCIS processing of the Medical Certification for Disability Exceptions. (*Improvements to the Medical Certification for Disability Exceptions*).

Electronic Processing of Immigration Benefit Requests. USCIS will propose to amend its regulations to mandate electronic submission for all immigration benefit requests, explain the requirements associated with electronic processing, and allow end-to-end digital processing. This proposal would enhance efficiency and efficacy in USCIS operations, and improve the experience for those applying for immigration benefits.

United States 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 the $4.5 trillion maritime transportation system, including maritime safety, security, and stewardship. The Coast Guard 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 with maritime stakeholders. Consistent standards of universal application and enforcement, which encourage safe, efficient, and responsible maritime commerce, are vital to the success of the maritime industry. The Coast Guard's ability to field versatile capabilities and highly-trained personnel is one of the U.S. Government's most significant and important strengths 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 modern maritime environment. 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 fiscal year 2019, the Coast Guard plans to finalize 0 regulatory actions and 11 deregulatory actions. The Coast Guard is highlighting the following Executive Order 13771 deregulatory actions:

Amendments to the Marine Radar Observer Refresher Training Regulations. The Coast Guard will propose removing obsolete portions of the radar observer endorsement requirements and harmonizing the endorsement with the merchant mariner credential. Active mariners with radar observer endorsements having one year of relevant sea service within the previous five years and having served in a position using radar for navigation and collision avoidance purposes on board a radar-equipped vessel, or who have met certain instructor requirements, would be able to renew their radar observer endorsement without completing a radar course. This proposed rule would eliminate the requirement for mariners to carry a certificate of training if the radar observer endorsement is on the MMC, and would allow the endorsement and MMC to expire at the same time. Elimination of the requirement to take a radar refresher or re-certification course every five years would reduce burden on affected mariners without affecting safety. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

TWIC Reader Requirements; Delay of Effective Date. The Coast Guard has proposed to partially delay the effective date of the final rule entitled "Transportation Worker Identification Credential (TWIC) Reader Requirements," published in the Federal Register on August 23, 2016. The rule would delay the requirements for facilities that handle bulk CDC, but do not transfer it to or from vessels, as well as facilities that receive vessels that carry CDC, but do not transfer it to the facility. The Coast Guard is considering this delay to allow time to re-evaluate the "asset categorization" methodology used to determine which facilities were considered high risk. Currently, the rule is scheduled to be implemented after the Department of Homeland Security submits the report to Congress on the effectiveness of the TWIC program, required by the Transportation Worker Identification Credential Security Card Program Improvements and Assessment Act (Pub. L. 114-278). This rule would delay the effective date for the affected facilities until August 23, 2021.

Removal of Certain International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended (STCW) Training Requirements. The Coast Guard will propose to remove three Coast Guard merchant mariner training requirements related to STCW officer and rating endorsements from its regulations in 46 CFR parts 11 and 12. The Coast Guard has determined these training requirements exceed current international certification and training standards of the STCW and cause a misalignment between the training of U.S. mariners and the mariners of other countries. The proposed rule would remove the following training requirements: leadership and managerial skills training to qualify as master of vessels of less than 500 gross tons limited to near-coastal waters; bridge resource management training to qualify as officer in charge of a navigational watch on vessels of less than 500 gross tons limited

to near-coastal waters; and computer systems and maintenance training to qualify as electro-technical rating on vessels powered by main propulsion machinery of 750 kW/1,000 HP or more. Removal of these training requirements would reduce the burden on affected mariners without affecting safety.

Person in Charge of Fuel Transfers. The Coast Guard will propose an alternative to the existing regulatory requirement that a person in charge (PIC) of a fuel transfer on an inspected vessel hold a Merchant Mariner Credential with either an officer endorsement or Tankerman-PIC endorsement. The proposed rule would add the option of designating the PIC using a letter of designation (LOD), which is currently an option for uninspected vessels but not inspected vessels. The LOD designates the holder as a PIC of the transfer of fuel oil and states that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC. Our decades of experience with LODs on uninspected vessels indicates we can safely provide this option to persons on inspected vessels. Allowing the PIC to hold an LOD instead of an Merchant Mariner Credential would relieve certain personnel from the burden of obtaining and renewing an Merchant Mariner Credential every 5 years, and would create flexibility as to who may serve as a PIC of fuel transfers on inspected vessels. This option would be available only for transfers of fuel; the PIC requirements for vessels transferring cargo would remain unchanged. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

United States Customs and Border Protection

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

CBP is also responsible for administering laws concerning the importation into the United States of goods, and enforcing the laws concerning the entry of persons into the United States. This includes regulating and facilitating international trade; collecting import duties; enforcing U.S.

trade, immigration and other laws of the United States at our borders; inspecting imports, overseeing the activities of persons and businesses engaged in importing; enforcing the laws concerning smuggling and trafficking in contraband; apprehending individuals attempting to enter the United States illegally; protecting our agriculture and economic interests from harmful pests and diseases; servicing all people, vehicles, and cargo entering the United States; maintaining export controls; and protecting U.S. businesses from theft of their intellectual property.

In carrying out its 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 intends to issue several regulations during the next fiscal year that are intended to improve security at our borders and ports of entry. During the upcoming year, CBP will also be working on various projects to streamline CBP processing, reduce duplicative processes, reduce various burdens on the public, and automate various paper forms. Below are descriptions of CBP's planned regulatory and deregulatory actions for fiscal year 2019.

Collection of Biometric Data from Aliens Upon Entry to and Departure from the United States. DHS is required by statute to develop and implement an integrated, automated entry and exit data system to match records, including biographic data and biometric identifiers, of aliens entering and departing the United States. In addition, Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United* States, states that DHS is to expedite the completion and implementation of a biometric entry-exit tracking system. Although the current regulations provide that DHS may require certain aliens to provide biometrics when entering and departing the United States, they only authorize DHS to collect biometrics from certain aliens upon departure under pilot programs at land ports and at up to 15 airports and seaports. In order to provide the legal framework for DHS to begin a seamless biometric entry-exit system, DHS intends to issue an interim final rule to amend the regulations to remove the references to pilot programs and the port limitation. In addition, to enable CBP to make the process for verifying the identity of alien's more efficient, accurate, and secure by using facial recognition technology, this rule would also provide that alien travelers may be required to provide photographs upon entry and/or departure.

Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders – Automation of CBP Form I-94W. CBP intends to amend DHS regulations to implement the ESTA requirements under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, for aliens who intend to enter the United States under the Visa Waiver Program (VWP) at land ports of entry. Currently, aliens from VWP countries must provide certain biographic information to U.S. CBP officers at land ports of entry on a paper I-94W Nonimmigrant

Visa Waiver Arrival/Departure Record (Form I-94W). Under this rule, these VWP travelers would instead provide this information to CBP electronically through ESTA prior to application for admission to the United States.

Technical Corrections to Reflect the Consolidation of Vessel Repair Unit Locations. CBP intends to issue a final rule to update provisions relating to the declaration, entry and dutiable status of repair expenditures made abroad for certain vessels to reflect the port of New Orleans, Louisiana as the only Vessel Repair Unit (VRU) location. The amendment will improve the efficiency of vessel repair entry processing, ensure the proper assessment and collection of duties, and make the regulations more transparent. This rule is a deregulatory action under Executive Order 13771. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

Modernization of the Customs Brokers Regulations. CBP intends to issue a proposed rule to amend the requirements for customs brokers. Specifically, CBP will propose to expand the scope of the national permit authority to allow national permit holders to conduct any type of customs business throughout the customs territory of the United States. To accomplish this, CBP will propose to eliminate broker districts and district permits, which also eliminates the need for district permit waivers and for brokers to maintain district offices. Additionally, CBP will propose to update the responsible supervision and control oversight framework to better reflect the modern business environment. This rule is a deregulatory action under Executive Order 13771. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

Automation of CBP Form I-418 for Vessels. CBP intends to issue a rule amending the regulations regarding the submission of Form I-418, *Passenger List - Crew List*. Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit a paper Form I-418, along with certain information regarding longshore work, to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I-418 to CBP at the final U.S. port prior to departing for a foreign port. Under this rule, most vessel operators would be required to electronically submit the data elements on Form I-418 to CBP through the National Vessel Movement Center in lieu of submitting a paper form. This rule would eliminate the need to file the paper Form I-418 in most cases. This rule is a deregulatory action under Executive Order 13771. (Note: There is no associated Regulatory Plan entry for this rule, because this rule is not significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

In addition to the regulations that CBP issues to promote DHS's mission, CBP also issues regulations related to the mission of the Department of the Treasury. 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. The Department of the Treasury retained certain regulatory authority of the U.S. Customs Service relating to customs revenue function. In addition to its plans to continue issuing regulations to enhance border security, in the coming year, CBP expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. For a discussion of CBP regulations regarding the customs revenue function, see the regulatory plan of the Department of the Treasury.

Federal Emergency Management Agency

FEMA's mission is helping people before, during, and after disasters.

FEMA is working on a deregulatory action titled *Update to FEMA's Regulations on Rulemaking Procedures.* That rule would revise FEMA regulations pertaining to rulemaking by removing sections that are outdated or do not affect the public and update provisions that affect the public's participation in the rulemaking process.

FEMA is also working on a regulatory action titled *Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster*. This regulation would address the Sandy Recovery Improvement Act of 2013's requirement that FEMA review, update, and revise through rulemaking the individual assistance factors FEMA uses to measure the severity, magnitude, and impact of a disaster. FEMA published a proposed rule on November 12, 2015, and now plans to issue a final rule.

Federal Law Enforcement Training Center

The Federal Law Enforcement Training Center (FLETC) does not have any significant regulations planned for fiscal year 2019.

United States Immigration and Customs Enforcement

ICE is the principal criminal investigative arm of DHS and one of the three Department components charged with the criminal and civil enforcement of the Nation's immigration laws. Its primary mission is to protect national security, public safety, and the integrity of our borders through the criminal and civil enforcement of Federal law governing border control, customs, trade, and immigration. During fiscal year 2019, ICE will focus rulemaking efforts on three priority regulations: (1) a final rule to address the detention, processing, and release of alien children; (2) a final rule to increase the fees paid to the Student and Exchange Visitor Program (SEVP) to recover costs for services; and (3) a proposed rule to replace “duration of status” with a maximum period of stay for certain classes of nonimmigrants..

Below are ICE’s significant regulatory actions for the coming fiscal year:

Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children. ICE, in concert with CBP and the Department of Health and Human Services, will finalize a rule related to the detention, processing, and release of alien children. In 1985, a class-action suit challenged the policies of the former Immigration and Naturalization Service (INS) relating to the detention, processing, and release of alien children; the case eventually reached the U.S. Supreme Court. The Court upheld the constitutionality of the challenged INS regulations on their face and remanded the case for further proceedings consistent with its opinion. In January 1997, the parties reached a comprehensive settlement agreement, referred to as the *Flores* Settlement Agreement (FSA). The FSA was to terminate five years after the date of final court approval; however, the termination provisions were modified in 2001, such that the FSA does not terminate until forty-five days after publication of regulations implementing the agreement. Since 1997, intervening statutory changes, including passage of the Homeland Security Act and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), have significantly changed the applicability of certain provisions of the FSA. The proposed rule will codify the relevant and substantive terms of the FSA and enable the U.S. Government to seek termination of the FSA and the litigation concerning its enforcement. Through this rule, DHS will create a pathway to ensure the humane detention of family units while satisfying the goals of the FSA. The rule will also implement related provisions of the TVPRA.

Adjusting Program Fees for the Student and Exchange Visitor Program. ICE will finalize a rule to adjust the fees that the Student and Exchange Visitor Program (SEVP) charges individuals and organizations. In 2016, SEVP conducted a comprehensive fee study and determined that current fees do not recover the full costs of the services provided. ICE has determined that adjusting fees is necessary to fully recover the increased costs of SEVP operations, program requirements, and to provide the necessary funding to sustain initiatives critical to supporting national security. The rule

will adjust DHS's fees for individuals and organizations. The SEVP fee schedule was last adjusted in a rule published on September 26, 2008.

Establishing a Maximum Period of Authorized Stay for F-1 and Other Nonimmigrants. ICE will publish a proposed rule that modifies the period of authorized stay for certain categories of nonimmigrants traveling to the United States. The rule would change the authorized stay from "duration of status" and replace it with a maximum period of authorized stay, and options for extensions, for each applicable visa category. This change will help eliminate confusion over the length of authorized period of stay for nonimmigrants to lawfully remain in the United States and will assist efforts to reduce overstay rates.

National Protection and Programs Directorate

The National Protection and Programs Directorate's (NPPD) vision is a safe, secure, and resilient infrastructure where the American way of life can thrive. NPPD leads the national effort to protect and enhance the resilience of the Nation's physical and cyber infrastructure. Although NPPD does not plan to finalize any significant regulations within the next fiscal year, NPPD will undertake reviews of its existing regulations in accordance with Executive Order 13771. NPPD is also working on several future rulemaking projects, as reflected in the Unified Agenda.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA applies an intelligence-driven, risk-based approach to all aspects of TSA's mission. This approach results in layers of security to mitigate risks effectively and efficiently. TSA uses established processes, working with stakeholders, to review programs, requirements, and procedures for appropriate modifications based upon changes in the environment, whether those changes result from an evolving threat or enhancements available through new technologies.

For the coming fiscal year, TSA is prioritizing deregulatory actions and regulatory actions that are required to meet statutory mandates and that are necessary for national security. Below are planned TSA actions for fiscal year (FY) 2019.

Security Training for Surface Transportation Employees. TSA will finalize a rule requiring higher-risk public transportation agencies (including rail mass transit and bus systems), railroad carriers (freight and passenger), and over-the-road bus owner/operators to conduct security training for frontline employees. This regulation will implement mandates of the *Implementing Regulations of*

the 9/11 Commission Act of 2007, (9/11 Act), which addressed recommendations of the 9/11 Commission for enhancing the nation's security based upon vulnerabilities identified in the aftermath of September 11, 2001. In compliance with the definition of frontline employees in pertinent provisions of the 9/11 Act, the rule will include identification of which employees are required to receive security training and the content of that training. The final rule will also propose definitions for transportation security-sensitive materials, as required by section 1501 of the 9/11 Act.

Vetting of Certain Surface Transportation Employees. TSA will propose a rule requiring security threat assessments for security coordinators and other frontline employees of certain public transportation agencies (including rail mass transit and bus systems), railroads (freight and passenger), and over-the-road bus owner/operators. The NPRM will also propose provisions to implement TSA's statutory requirement to recover its cost of vetting through user fees. While many stakeholders conduct background checks on their employees, their actions are limited based upon the data they can access. Through this rule, TSA will be able to conduct a more thorough check against terrorist watch-lists of individuals in security-sensitive positions.

Amending Vetting Requirements for Employees with Access to a Security Identification Display Area. The FAA Extension, Safety, and Security Act of 2016 mandates that TSA consider modifications to the list of disqualifying criminal offenses and criteria, develop a waiver process for approving the issuance of credentials for unescorted access, and propose an extension of the look back period for disqualifying crimes. Based on these requirements, and current intelligence pertaining to the "insider threat," TSA will propose revisions that enhance the eligibility requirements and disqualifying criminal offenses for individuals seeking or having unescorted access to any Security Identification Display Area of an airport.

Protection of Sensitive Security Information. Through a joint rulemaking with the Department of Transportation (DOT), TSA will streamline existing requirements to protect sensitive security information. This action finalizes an Interim Final Rule for a statutorily-required regulation related to national security. The rule amends TSA's and DOT's regulations to provide three options for the sensitive security information distribution statement, one significantly abbreviated, to address comments on the IFR that the current marking requirements are unduly burdensome. TSA is considering further deregulatory actions, including aligning the requirement for the handling of Federal Flight Deck Officer names consistent with the handling of Federal Air Marshal names (two names listed together would be sensitive security information, not a single Federal Flight Deck Officer name).

Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees. This rule will streamline regulations and reduce burden for the alien flight student program. This action finalizes an IFR for rule that implements a statutory requirement, as well as addresses comments received in response to a reopening of the comment period on the IFR. The alien flight student program requires security threat assessments for aliens seeking flight training in the United States and imposes additional security measures on the flight schools training these individuals. In response to recommendations from industry through the Aviation Security Advisory Committee, TSA is considering revising these requirements to reduce costs and industry burden. For example, reporting and recordkeeping requirements for the program are estimated to be overly burdensome due to the requirement for paper records. TSA is considering an electronic recordkeeping platform where all flight providers would upload required student information to a TSA-managed website. Also at industry's request, TSA is considering changing the interval for security threat assessments of alien flight students, eliminating the requirement for a new security threat assessment for each "training event." A related change to the current information collection request pertaining to the alien flight student program will be part of this deregulatory action.

United States Secret Service

The United States Secret Service does not have any significant regulations planned for fiscal year 2019.

DHS Regulatory Plan for Fiscal Year 2019

A more detailed description of the priority regulations that comprise the DHS Fall 2018 regulatory plan follows.

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

61. • EB–5 IMMIGRANT INVESTOR PROGRAM REALIGNMENT

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1153(b)(5); 8 U.S.C. 1186(a); 8 U.S.C. 1153

CFR Citation:

8 CFR 204.6; 8 CFR 216.6

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) plans to publish an advanced notice of proposed rulemaking to solicit public input on proposals that would increase monitoring and oversight of the EB-5 program as well as encourage investment in rural areas. DHS would solicit feedback on proposals associated with redefining components of the job creation requirement, and defining conditions for regional center designations and operations.

Statement of Need:

DHS will solicit public input on proposals that would increase monitoring and oversight, encourage investment in rural areas, redefine components of the job creation requirement, and define conditions for regional center designations and operations.

Summary of Legal Basis:

This rule is based on the authority of DHS to designate regional centers and to permit investors to establish reasonable methodologies to demonstrate job creation under 8 U.S.C. 1153 note (Public Law 102-395, sec. 610 (as amended)), for admission to the United States as lawful permanent residents on a conditional basis. In addition, 8 U.S.C. 1153(b)(5) provides eligibility to aliens who invest in new commercial enterprises which will create jobs and 8 U.S.C. 1186a provides requirements for removal of conditions on permanent resident status, the administration and interpretation of which is left to DHS.

Alternatives:

Anticipated Cost and Benefits:

DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Risks:

Timetable:

Action	Date	FR Cite
ANPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State, Tribal

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RIN: 1615–AC26

DHS—USCIS	PROPOSED RULE STAGE

62. INADMISSIBILITY ON PUBLIC CHARGE GROUNDS

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1101 to 1103; 8 U.S.C. 1182 and 1183; ...

CFR Citation:

8 CFR 103; 8 CFR 212 to 214; 8 CFR 248

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose regulatory provisions guiding the inadmissibility determination on whether an alien is likely at any time to become a public charge under section 212(a)(4) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(4). DHS proposes to add a regulatory provision, which would define the term public charge and would outline DHS's public charge considerations.

Statement of Need:

To ensure that foreign nationals coming to the United States or adjusting status to permanent residence, either temporarily or permanently, have adequate means of support while in the United States, and that foreign nationals do not become dependent on public benefits for support.

Summary of Legal Basis:

INA 212(a)(4)

Alternatives:

Anticipated Cost and Benefits:

DHS is currently considering the specific cost and benefit impacts of the proposed provisions. In general, DHS anticipates that by clarifying the meaning of public charge some stakeholders would incur costs in terms of potentially not being able to adjust status. Other anticipated costs to

individuals requesting immigration benefits are associated with the opportunity cost of time to complete and file required forms and documentation, possible costs associated with any additional background checks, and unintended and indirect costs associated with the loss of public assistance due to disenrollment or foregone enrollment in public benefits programs for those who are otherwise eligible. DHS anticipates there will be benefits associated with ensuring that foreign nationals coming to the United States have adequate means of support and do not become dependent on public assistance.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28676
NPRM Comment Period End	07/26/99	
NPRM	10/10/18	83 FR 51114
NPRM Comment Period End	12/10/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

CIS No. 2499-10

Transferred from RIN 1115-AF45

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DHS—USCIS	

63. REGISTRATION REQUIREMENT FOR PETITIONERS SEEKING TO FILE H–1B PETITIONS ON BEHALF OF CAP SUBJECT ALIENS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1184(g)

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

The Department of Homeland Security proposes to amend its regulations governing petitions filed on behalf of H-1B beneficiaries who may be counted under section 214(g)(1)(A) of the Immigration and Nationality Act (INA) ("H-1B regular cap") or under section 214(g)(5)(C) of the INA ("H-1B master's cap"). This rule proposes to establish an electronic registration program for petitions subject to numerical limitations for the H-1B nonimmigrant classification. This action is being considered because the demand for H-1B specialty occupation workers by U.S. employers has often exceeded the numerical limitation. This rule is intended to allow U.S. Citizenship and Immigration Services (USCIS) to more efficiently manage the intake and selection process for these H-1B petitions. The Department published a proposed rule on this topic in 2011. The Department intends to publish an additional proposed rule in 2018. The proposal may include a modified selection process, as outlined in section 5(b) of Executive Order 13788, Buy American and Hire American.

Statement of Need:

Consistent with the Buy American and Hire American, EO 13788's direction to suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries, this regulation would help to streamline the process for administering the H-1B cap and increase the probability of the total number of petitions selected under the cap filed for H-1B beneficiaries who possess a master's or higher degree from a U.S. institution of higher education each fiscal year.

Summary of Legal Basis:

The Secretary of Homeland Security's authority for these proposed regulatory amendments is found in various sections of the INA, 8 U.S.C. 1101 et seq., and the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq. General authority for issuing the proposed rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. Further authority for the regulatory amendments in the proposed rule is found in section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe by regulation the terms and conditions of the admission of nonimmigrants; section 214(c) of the INA, 8 U.S.C. 1184(c), which authorizes the Secretary to prescribe how an importing employer may petition for an H-1B nonimmigrant worker, and the information that an importing employer must provide in the petition; and section 214(g) of the INA, 8 U.S.C. 1184(g), which provides the H-1B numerical limitations and various exceptions to those limitations.

Alternatives:

Anticipated Cost and Benefits:

The proposed rule would aim to result in better resource management and predictability for both USCIS and petitioning H-1B employers. An electronic registration process could benefit most of the regulated public by potentially reducing the overall cost and time involved in petitioning for H-1B nonimmigrant workers. However, some additional costs may be incurred from the electronic registration process to some petitioners.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	03/03/11	76 FR 11686
NPRM Comment Period End	05/02/11	
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

USCIS 2443-08. Includes Retrospective Review under EO 13563.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DHS—USCIS	

64. EB–5 IMMIGRANT INVESTOR REGIONAL CENTER PROGRAM

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1153(b)(5); Pub. L. 102–395, secs. 610 and 601(a); Pub. L. 107–273, sec. 11037; Pub. L. 101–649, sec. 121(a); Pub. L. 105–119, sec. 116; Pub. L. 106–396, sec. 402; Pub. L. 108–156, sec. 4; Pub. L. 112–176, sec. 1; Pub. L. 114–113, sec. 575; Pub. L. 114–53, sec. 131; Pub. L. 107–273

CFR Citation:

8 CFR 204; 8 CFR 216

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) is considering making regulatory changes to the EB-5 Immigrant Investor Regional Center Program. DHS issued an Advance Notice of Proposed Rulemaking (ANPRM) to seek comment from all interested stakeholders on several topics, including: (1) The process for initially designating entities as regional centers, (2) a potential requirement for regional centers to utilize an exemplar filing process, (3) continued participation requirements for maintaining regional center designation, and (4) the process for terminating regional center designation. While DHS has gathered some information related to these topics, the ANPRM sought additional information that can help the Department make operational and security updates to the Regional Center Program while minimizing the impact of such changes on regional center operations and EB-5 investors.

Statement of Need:

Based on decades of experience operating the program, DHS has determined that program changes are needed to better reflect business realities for regional centers and EB-5 immigrant investors, to increase predictability and transparency in the adjudication process for stakeholders, to improve operational efficiency for the agency, and to enhance program integrity.

Summary of Legal Basis:

The Immigration and Nationality Act (INA) authorizes the Secretary of Homeland Security (Secretary) to administer and enforce the immigration and nationality laws including establishing regulations deemed necessary to carry out his authority, and section 102 of the Homeland Security Act, 6 U.S.C.112, authorizes the Secretary to issue regulations. 8 U.S.C. 1103(a), INA section 103(a). INA section 203(b)(5), 8 U.S.C.1153(b)(5), also provides the Secretary with authority to make visas available to immigrants seeking to engage in a new commercial enterprise in which the immigrant has invested and which will benefit the United States economy and create full-time employment for not fewer than 10 U.S. workers. Further, section 610 of Public Law 102-395 (8 U.S.C.1153 note) created the Immigrant Investor Pilot Program and authorized the Secretary to set aside visas for individuals who invest in regional centers created for the purpose of concentrating pooled investment in defined economic zones, and was last amended by Public Law 107-296.

Alternatives:

Anticipated Cost and Benefits:

DHS is still in the process of reviewing potential changes it would propose to the regional center process. DHS may propose to implement an exemplar filing requirement for all designated regional centers that would require regional centers to file exemplar project requests. An exemplar filing requirement could cause some projects to not go forward, but DHS is still in the process of assessing the impacts on the number of projects that may be affected. DHS

anticipates that any proposed changes to the regional center program would increase overall program efficiency, transparency, and predictability for both USCIS and EB-5 stakeholders.

Risks:

Timetable:

Action	Date	FR Cite
ANPRM	01/11/17	82 FR 3211
ANPRM Comment Period End	04/11/17	
NPRM	03/00/19	

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: 1615–AC11

DHS—USCIS	

65. STRENGTHENING THE H–1B NONIMMIGRANT VISA CLASSIFICATION PROGRAM

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1184

CFR Citation:

8 CFR 214.2(h)(4)

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose to revise the definition of specialty occupation to increase focus on obtaining the best and the brightest foreign nationals via the H-1B program, and revise the definition of employment and employer-employee relationship to better protect U.S. workers and wages. In addition, DHS will propose additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.

Statement of Need:

The purpose of these changes is to ensure that H-1B visas are awarded only to individuals who will be working in a job which meets the statutory definition of specialty occupation. In addition, these changes are intended to ensure that the H-1B program supplements the U.S. workforce and strengthens U.S. worker protections.

Summary of Legal Basis:

The Homeland Security Act of 2002, Public Law 107-296, section 102, 116 Stat. 2135 (Nov. 25, 2002), 6 U.S.C.112, and the Immigration and Nationality Act of 1952 (INA), charge the Secretary of Homeland Security (Secretary) with administration and enforcement of the immigration and nationality laws. See INA section 103, 8 U.S.C.1103. This rule will significantly enhance the ability of USCIS to effectively manage and monitor the H-1B program.

Alternatives:

Anticipated Cost and Benefits:

DHS is still considering the cost and benefit impacts of the proposed provisions.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	08/00/19	

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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DHS—USCIS	

66. U.S. CITIZENSHIP AND IMMIGRATION SERVICES BIOMETRICS COLLECTION FOR CONSISTENT, EFFICIENT, AND EFFECTIVE OPERATIONS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1103(a); 8. U.S.C. 1444 and 1446; 8 U.S.C. 1365a and 1365b; 8 U.S.C. 1304(a); Pub. L. 107–56; Pub. L. 107–173; Pub. L. 109–248, sec. 402(a) and 402(b)

CFR Citation:

8 CFR 103.2(b)(9); 8 CFR 103.7(b)(1)(i)(C); 8 CFR 103.16; 8 CFR 204.2(d)(2)(vi); 8 CFR 204.3(c)(3); 8 CFR 204.5(p)(4); 8 CFR 208.10; 8 CFR 210.2(c)(2)(i); 8 CFR 210.5(b)(2); 8 CFR 214.1(f); 8 CFR 214.11(a); 8 CFR 214.11(m)(2); 8 CFR 236.5; 8 CFR 240.68(b); 8 CFR 245.21(b); 8 CFR 245a.2(d); 8 CFR 245a.4(b)(4); 8 CFR 214.2(w)(15); 8 CFR 215.8; 8 CFR 244.17; 8 CFR 245a.12(d); 8 CFR 264.1(g); 8 CFR 264.2(d); 8 CFR 333.1(a) to (b); 8 CFR 316.4(a)

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose to update its regulations to eliminate multiple references to specific biometric types, and to allow for the expansion of the types of biometrics required to establish and verify an identity. DHS will also propose to modify age

restrictions where they exist to detect, deter, or prevent human trafficking of children; establish consistent identity enrollment and verification policies and processes; and align U.S. Citizenship and Immigration Services (USCIS) biometric collection with other immigration operations. The DHS proposal will provide a definition to the public on the term biometric and how biometrics will be used in the immigration process.

Statement of Need:

As DHS seeks to better secure the immigration process by confirming the identity of individuals encountered, the use of biometrics needs to be expanded to account for different methods of biometric collection beyond fingerprints and to remove age restrictions.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

DHS is still considering the exact cost and benefit impacts of the proposed provisions. In general, DHS anticipates that stakeholders will incur costs due to the increased collection of biometrics and the expansion of the types of biometrics required to establish and verify an identity. The anticipated costs to individuals submitting biometrics are associated with biometric fees and travel costs, and the opportunity cost of time in completing and filing required forms and the time associated with travel. DHS anticipates benefits of those individuals seeking immigration benefits and to the government.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	02/00/19	

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: 1615–AC14

DHS—USCIS	

67. REMOVING H–4 DEPENDENT SPOUSES FROM THE CLASS OF ALIENS ELIGIBLE FOR EMPLOYMENT AUTHORIZATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

EO 13771 Designation:

Other

Legal Authority:

6 U.S.C. 112; 8 U.S.C. 1103(a); 8 U.S.C. 1184(a)(1); 8 U.S.C. 1324a(H)(3)(B)

CFR Citation:

8 CFR 214; 8 CFR 274a

Legal Deadline:

None

Abstract:

On February 25, 2015, DHS published a final rule extending eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident (LPR) status. DHS is publishing this notice of proposed rulemaking to amend that 2015 final rule. DHS is proposing to remove from its regulations certain H-4 spouses of H-1B nonimmigrants as a class of aliens eligible for employment authorization.

Statement of Need:

DHS is reviewing the 2015 final rule in light of issuance of Executive Order 13788, Buy American and Hire American.

Summary of Legal Basis:

The Secretary of Homeland Security (Secretary) has the authority to amend this regulation under section 102 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 112, and section 103(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103(a), which authorize the Secretary to administer and enforce the immigration and nationality laws. In addition, section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), provides the Secretary with authority to prescribe the time and conditions of nonimmigrants' admissions to the United States.

Alternatives:

Anticipated Cost and Benefits:

DHS anticipates that there would be two primary impacts that DHS can estimate and quantify: the cost-savings accruing to forgone future filings by certain H-4 dependent spouses, and labor turnover costs that employers of H-4 workers could incur when their employees' EADs are terminated. Some U.S. workers would benefit from this proposed rule by having a better chance

at obtaining jobs that some of the population of the H-4 workers currently hold, as the proposed rule would no longer allow H-4 workers to enter the labor market early.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

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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Related RIN:

Related to 1615–AB92

RIN: 1615–AC15

DHS—USCIS	

68. ELECTRONIC PROCESSING OF IMMIGRATION BENEFIT REQUESTS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

6 U.S.C. 112; 8 U.S.C. 1103; 44 U.S.C. 3504

CFR Citation:

8 CFR 103; 8 CFR 104; 8 CFR 204

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose to: (1) Mandate electronic submission for all immigration benefit requests and explain the requirements associated with electronic processing; and (2) make changes to existing regulations to allow end-to-end digital processing.

Statement of Need:

To address the inefficiency of relying on paper, U. S. Citizenship and Immigration Services is fully transitioning to a digital environment for processing immigration benefit requests. Agency experience demonstrates that the electronic processing of benefit requests is more efficient and effective than the traditional paper processes, during the immediate request, throughout the immigration life cycle, and beyond. eProcessing will largely eliminate the enormous cost of paper intake, shipping and storage, strengthen information security, and reduce redundancy and the potential for error in adjudication processes. For applicants, electronic processing will improve the experience of applying for immigration benefits at each stage of the process.

Summary of Legal Basis:

Authority for this proposed regulatory amendment can be found in the Homeland Security Act of 2002, Public Law 107-296, section 102, 116 Stat. 2135, 6 U.S.C. 112, and the Immigration and

Nationality Act (INA) section 103, 8 U.S.C. 1103, which give the Secretary the authority to administer and enforce the immigration and nationality laws, as well as the Government Paperwork Elimination Act (GPEA), Public Law 105-277, tit. XVII, section 1703, 112 Stat. 2681, 2681-749, 44 U.S.C. 3504, which provides that, when practicable, federal agencies use electronic forms, electronic filing, and electronic submissions to conduct agency business with the public.

Alternatives:

Anticipated Cost and Benefits:

DHS is currently considering the specific cost and benefit impacts of the proposed provisions. In general, DHS anticipates that by mandating electronic submission for all immigration benefit requests and making changes to existing regulations to allow end-to-end digital processing, stakeholders will incur some costs associated with transitioning current practices to an electronic process. DHS anticipates there will be benefits and cost savings associated with mandating electronic submission for all immigration benefit requests and end-to-end digital processing.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	04/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1615–AC20

DHS—USCIS	

69. • UPDATING ADJUSTMENT OF STATUS PROCEDURES FOR MORE EFFICIENT PROCESSING AND IMMIGRANT VISA USAGE

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1153 to 1155; 8 U.S.C. 1255; 8 U.S.C. 1324a

CFR Citation:

8 CFR 204.5; 8 CFR 245.2; 8 CFR 245.18; 8 CFR 245.1; 8 CFR 274a.12; 8 CFR 205.1

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose regulatory provisions designed to: improve the efficiency in the processing of Application to Register Permanent Residence or Adjust Status (Form I-485), reduce processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, promote efficient usage of available immigrant visas, and discourage fraudulent or frivolous filings. DHS proposes to eliminate the concurrent filing of visa petitions and Form I-485 for all applicants seeking an immigrant visa in a preference category, and proposes to make further changes to the appropriate dates when applicants can file Form I-485 and for ancillary benefits.

Statement of Need:

The purpose of these changes is to reduce Form I-485 processing times, discourage frivolous filings, ensure that ancillary benefits are connected to the potential for visa allocation, provide

steady Form I-485 receipts throughout the fiscal year, and improve the quality of USCIS Form I-485 inventory data. Reduced processing times, steady receipts, and better data quality will ensure more efficient usage of the available immigrant visas and reduce visa retrogression.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1615–AC22

DHS—USCIS	

70. • IMPROVEMENTS TO THE MEDICAL CERTIFICATION FOR DISABILITY EXCEPTIONS PROCESSING

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1103; 8 U.S.C. 1423; 8 U.S.C. 1443; 8 U.S.C. 1448

CFR Citation:

8 CFR 312.3

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose updates to regulatory provisions designed to improve the efficiency of U.S.Citizenship and Immigration Service processing of Medical Certification for Disability Exceptions (Form N-648) by improving customer service and responding to concerns of possible fraud and abuse.

Statement of Need:

The purpose of these changes is to ensure operational efficiency and integrity by addressing issues of potential fraud and other irregularities in the N-648 process.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1615–AC23

DHS—USCIS	

71. • CREDIBLE FEAR REFORM

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1158(b)(2); 8 U.S.C. 1224(b)(1)(A)(ii); 8 U.S.C. 1224(b)(1)(B)

CFR Citation:

8 CFR 208.2(b); 8 CFR 208.2(c); 8 CFR 208.30(e)(2); 8 CFR 208.30(e)(4); 8 CFR 208.30(e)(5); 8 CFR 208.30(f); 8 CFR 208.30(g); 8 CFR 235.6(a)

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) will propose to amend regulatory provisions to streamline credible fear screening determinations, in response to the Southwest Border crisis. DHS plans to establish various measures, such as applying the mandatory bars to asylum

eligibility to certain credible fear screening determinations, and removing provisions related to novel or unique issues that merit consideration in a full hearing before an immigration judge.

Statement of Need:

The reforms that will be proposed by DHS aim to respond to the national emergency caused by the influx of inadmissible aliens along the Southwest Border and reduce the threat to U.S. national security and public safety. Additionally, these provisions will make the adjudication of credible fear claims more efficient while upholding U.S. treaty obligations and law that prevent the return of aliens to a country in which they would be persecuted or tortured. In combination with other policy, operational, and legal reforms, the proposed changes will reduce the strain on DHS resources by deterring illegal migration to the United States, thereby addressing the Southwest Border crisis and protecting U.S. national security and public safety.

Summary of Legal Basis:

The Immigration and Nationality Act (INA) section 235(b), 8 U.S.C. 1225(b), defines the term credible fear of persecution as a significant possibility, taking into the account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 8 U.S.C. 1158. Currently, U.S.Citizenship and Immigration Services flags any potential bars for the consideration of the immigration judge making a final determination on asylum eligibility. Since eligibility for asylum includes an applicability of any bars at 208(b)(2) or 241(b)(3) of the INA, DHS proposes modifications to the regulation to enable USCIS itself to apply the bars when making a credible fear of persecution determination.

Alternatives:

The alternative to this rule would be to continue under the current process without change.

Anticipated Cost and Benefits:

DHS is still considering the exact cost and benefit impacts of the proposed provisions. In general, DHS anticipates that there may be some impacts to the adjudication of some credible fear applications.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1615–AC24

DHS—USCIS	

72. • EMPLOYMENT AUTHORIZATION DOCUMENTS FOR ASYLUM APPLICANTS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1158(d)(2)

CFR Citation:

8 CFR 208.7; 8 CFR 274a

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) plans to propose regulatory amendments intended to promote greater accountability in the application process for requesting employment authorization and to deter the fraudulent filing of asylum applications for the purpose of obtaining Employment Authorization Documents (EADs).

Statement of Need:

This rule aims to make changes that strengthen eligibility and application requirements for asylum applicants who seek employment eligibility in the United States.

Summary of Legal Basis:

The Immigration and Nationality Act section 208(d)(2), 8 U.S.C. 1158(d)(2), provides the Attorney General with authority to provide employment authorization to applicants for asylum by establishing regulations. The statute also states such applicants may not be granted asylum application-based employment authorization prior to 180 days after filing of the application for asylum. DHS has created regulations codifying employment authorization application procedures and eligibility, as well as renewal procedures, and is proposing modifications.

Alternatives:

Anticipated Cost and Benefits:

DHS is still considering the qualitative and quantitative impacts of the proposed provisions.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1615–AC27

DHS—USCIS	FINAL RULE STAGE

73. EB–5 IMMIGRANT INVESTOR PROGRAM MODERNIZATION

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1153(b)(5)

CFR Citation:

8 CFR 204.6; 8 CFR 216.6

Legal Deadline:

None

Abstract:

In January 2017, the Department of Homeland Security (DHS) proposed to amend its regulations governing the employment-based, fifth preference (EB-5) immigrant investor classification. In general, under the EB-5 program, individuals are eligible to apply for lawful permanent residence in the United States if they make the necessary investment in a commercial enterprise in the United States and create or, in certain circumstances, preserve 10 permanent full-time jobs for qualified U.S. workers. This rule sought public comment on a number of proposed changes to the EB-5 program regulations. Such proposed changes included: raising the minimum investment amount; allowing certain EB-5 petitioners to retain their original priority date; changing the designation process for targeted employment areas; and other miscellaneous changes to filing and interview processes.

Statement of Need:

The proposed regulatory changes are necessary to reflect statutory changes and codify existing policies, more accurately reflect existing and future economic realities, improve operational efficiencies to provide stakeholders with a higher level of predictability and transparency in the

adjudication process, and enhance program integrity by clarifying key eligibility requirements for program participation and further detailing the processes required. Given the complexities involved in adjudicating benefit requests in the EB-5 program, along with continued program integrity concerns and increasing adjudication processing times, DHS has decided to revise the existing regulations to modernize key areas of the program.

Summary of Legal Basis:

The Immigration Act (INA) authorizes the Secretary of Homeland Security (Secretary) to administer and enforce the immigration and nationality laws including establishing regulations deemed necessary to carry out her authority, and section 102 of the Homeland Security Act, 6 U.S.C. 112, authorizes the Secretary to issue regulations. 8 U.S.C. 1103(a), INA section 103(a). INA section 203(b)(5), 8 U.S.C. 1153(b)(5), also provides the Secretary with authority to make visas available to immigrants seeking to engage in a new commercial enterprise in which the immigrant has invested and which will benefit the United States economy and create full-time employment for not fewer than 10 U.S. workers. Further, section 610 of Public Law 102-395 (8 U.S.C. 1153 note) created the Immigrant Investor Pilot Program and authorized the Secretary to set aside visas for individuals who invest in regional centers created for the purpose of concentrating pooled investment in defined economic zones, and was last amended by Public Law 107-296.

Alternatives:

Anticipated Cost and Benefits:

Due to data limitations and the complexity of EB-5 investment structures, it is difficult to quantify and monetize the costs and benefits of the provisions, with the exception of application costs for dependents who would file the Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (Form I-829) separately from principal investors, and familiarization costs to review the rule.

The raise in the investment amounts and reform of the targeted employment area (TEA) geography could deter some investors from participating in the EB-5 program. The increase in investment could reduce the number of investors as they may be unable or unwilling to invest at the higher proposed levels of investment. On the other hand, raising the investment amounts increases the amount invested by each investor and thereby potentially increases the total economic benefits of U.S. investment under this program. The proposed TEA provision would rule out TEA configurations that rely on a large number of census tracts indirectly linked to the actual project tract by numerous degrees of separation, and may better target investment capital to areas where unemployment rates are the highest.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	01/13/17	82 FR 4738
NPRM Comment Period End	04/11/17	
Final Rule	11/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN:

Related to 1205–AB69

RIN: 1615–AC07

DHS—U.S. Coast Guard(USCG)	PROPOSED RULE STAGE

74. • REMOVAL OF CERTAIN INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED (STCW) TRAINING REQUIREMENTS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

46 U.S.C. 7101(c)

CFR Citation:

46 CFR 11.317(a)(3)(iv); 46 CFR 11.321(a)(3)(iv); 46 CFR 12.611(a)(4)(i)

Legal Deadline:

None

Abstract:

The Coast Guard proposes to remove three Coast Guard merchant mariner training requirements related to STCW officer and rating endorsements from its regulations in 46 CFR parts 11 and 12. The Coast Guard has determined these training requirements exceed current international certification and training standards of the STCW and cause a misalignment between the training of U.S. mariners and the mariners of other countries. These training requirements are not necessary for the safety of life and property at sea. The rule would remove: leadership and managerial skills training to qualify as master of vessels of less than 500 gross tons limited to near-coastal waters; bridge resource management training to qualify as officer in charge of a navigational watch on vessels of less than 500 gross tons limited to near-coastal waters; and computer systems and maintenance training to qualify as electro- technical rating on vessels powered by main propulsion machinery of 750 kW/1,000 HP or more.

Statement of Need:

The Coast Guard determined the three training requirements exceed current international certification and training standards of the STCW and cause a misalignment between the training of U.S. mariners and the mariners of other countries. These training requirements are not necessary for the safety of life and property at sea.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The total 10-year discounted cost savings of this proposed rule would be $20,321,360, discounted at 7 percent and 3 percent, respectively. The annualized total cost savings would be $2,032,136, discounted at 7 percent and 3 percent, respectively. Using a perpetual period of analysis, we estimate total annualized discounted cost savings of the rule would be approximately $1,658,828 in 2016 dollars, discounted at 7 percent.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1625–AC48

DHS—USCG	FINAL RULE STAGE

75. TWIC READER REQUIREMENTS; DELAY OF EFFECTIVE DATE

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

46 U.S.C. 70105

CFR Citation:

33 CFR 105

Legal Deadline:

None

Abstract:

This proposed rule would partially delay the effective date for the final rule entitled "Transportation Worker Identification Credential (TWIC) Reader Requirements," published in the Federal Register on August 23, 2016. Currently, the final rule is scheduled to be implemented after the Department of Homeland Security submits the report to Congress on the effectiveness of the TWIC program, required by the Transportation Worker Identification Credential Security Card Program Improvements and Assessment Act (Pub. L. 114-278). This proposed rule would further delay the effective date for certain facilities that handle certain dangerous cargoes (CDCs) in bulk or receive vessels carrying CDC in bulk.

Statement of Need:

After the publication of the Final Rule, the Coast Guard received inquiries from owners of facilities and vessels concerning the rule's requirements regarding the facilities affected by the final rule and several questions related to how the final rule addressed Certain Dangerous Cargoes. This proposed rule would provide the Coast Guard time to update its security-related databases and consider policy options relating to implementation of TWIC readers while addressing the inquiries.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The NPRM estimated annualized cost savings to both industry and government as $1.15 million, using a seven percent discount rate and a 10-year period of analysis. Using a perpetual period of analysis, we estimated total annualized discounted cost savings of the rule would be approximately $0.552 million in 2016 dollars, discounted at 7 percent. The benefits for partially delaying the effective date of the final rule for an additional 3 years are that it would allow the Coast Guard time to conduct additional analysis of the potential effects of the rule.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	06/22/18	83 FR 29067
NPRM Comment Period End	07/23/18	
Final Rule	10/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1625–AC47

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

76. COLLECTION OF BIOMETRIC DATA FROM ALIENS UPON ENTRY TO AND EXIT FROM THE UNITED STATES

Priority:

Other Significant

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1365a; 8 U.S.C. 1365b

CFR Citation:

19 CFR 215.8; 19 CFR 235.1

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) is required by statute to develop and implement an integrated, automated entry and exit data system to match records, including biographic data and biometrics of aliens entering and departing the United States. In addition, Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States, published in the Federal Register at 82 FR 13209, states that DHS is to expedite the completion and implementation of a biometric entry-exit tracking system. Although the current regulations provide that DHS may require certain aliens to provide biometrics when entering and departing the United States, they only authorize DHS to collect biometrics from certain aliens upon departure under pilot programs at land ports and at up to 15 airports and seaports. To provide the legal framework for CBP to begin a comprehensive biometric entry-exit system, DHS is amending the regulations to remove the references to pilot programs and the port limitation. In addition, to enable CBP to make the process for verifying the identity of aliens more efficient, accurate, and secure by using facial recognition technology, DHS is amending the regulations to provide that all aliens may be required to be photographed upon entry and/or departure.

Statement of Need:

This rule is necessary to provide the legal framework for DHS to begin implementing a comprehensive biometric entry-exit system. Collecting biometrics at departure will allow CBP and DHS to know with better accuracy whether aliens are departing the country when they are required to depart, reduce visa fraud, and improve CBP's ability to identify criminals and known or suspected terrorists before they depart the United States.

Summary of Legal Basis:

Numerous Federal statutes require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens, compares the biometric data of aliens to verify their identity, and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. *See, e.g.* , Immigration and Naturalization Service Data Management Improvement Act of 2002, the Intelligence Reform and Terrorism Prevention Act of 2004, and the 2016 Consolidated Appropriations Act. In addition, Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States, states that DHS is to expedite the completion and implementation of a biometric entry-exit tracking system.

Alternatives:

Anticipated Cost and Benefits:

This rule will allow CBP to know with greater certainty whether foreign visa holders depart the country when required. It will also prevent visa fraud and allow CBP to more easily identify criminals or terrorists when they attempt to leave the country. The technology used to implement this rule could also eventually be used to modify entry and exit procedures to reduce processing and wait times. This rule imposes opportunity and technology acquisition and maintenance costs on CBP and opportunity costs on the traveling public.

Risks:

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1651–AB12

DHS—USCBP	

77. IMPLEMENTATION OF THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) AT U.S. LAND BORDERS—AUTOMATION OF CBP FORM I–94W

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 110–53

CFR Citation:

8 CFR 212.1; 8 CFR 217.2; 8 CFR 217.3; 8 CFR 217.5; 8 CFR 286.9

Legal Deadline:

None

Abstract:

This rule amends Department of Homeland Security (DHS) regulations to implement the Electronic System for Travel Authorization (ESTA) requirements under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, for aliens who intend to enter the United States under the Visa Waiver Program (VWP) at land ports of entry. Currently, aliens from VWP countries must provide certain biographic information to U.S. Customs and Border Protection (CBP) officers at land ports of entry on a paper I-94W Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W). Under this rule, these VWP travelers will instead provide this information to CBP electronically through ESTA prior to application for admission to the United States. DHS has already implemented the ESTA requirements for aliens who intend to enter the United States under the VWP at air or sea ports of entry.

Statement of Need:

This rule is necessary to implement the Electronic System for Travel Authorization (ESTA) under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 for aliens who intend to enter the United States under the Visa Waiver Program at land ports of entry. ESTA was implemented at air and sea ports of entry in 2008. At that time, however, CBP did not have the ability to implement the program at land ports of entry. This rule will ensure that ESTA is now implemented at all ports of entry.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

In addition to fulfilling a statutory mandate, the ESTA land rule will strengthen national security through enhanced traveler vetting, streamline entry processing through Form I-94W automation, reduce inadmissible traveler arrivals, and produce a consistent, modern VWP admission policy in all U.S. travel environments, which will benefit VWP travelers, CBP, and the public. The rule will also introduce time and fee costs to VWP travelers required to complete an ESTA application.

Risks:

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1651–AB14

DHS—Transportation Security Administration(TSA)	PROPOSED RULE STAGE

78. VETTING OF CERTAIN SURFACE TRANSPORTATION EMPLOYEES

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

49 U.S.C. 114; Pub. L. 110–53, secs. 1411, 1414, 1512, 1520, 1522, and 1531

CFR Citation:

Not Yet Determined

Legal Deadline:

Other, Statutory, August 3, 2008, Background and immigration status check for all public transportation frontline employees is due no later than 12 months after date of enactment. .

Other, Statutory, August 3, 2008, Background and immigration status check for all railroad frontline employees is due no later than 12 months after date of enactment.

Sections 1411 and 1520 of Pub. L. 110–53, Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (121 Stat. 266, Aug. 3, 2007), require background checks of frontline public transportation and railroad employees not later than one year from the date of enactment. Requirement will be met through regulatory action.

Abstract:

The 9/11 Act requires vetting of certain railroad, public transportation, and over-the-road bus employees. Through this rulemaking, the Transportation Security Administration (TSA) intends to propose the mechanisms and procedures to conduct the required vetting. This regulation is related to 1652-AA55, Security Training for Surface Transportation Employees.

Statement of Need:

Employee vetting is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who may target surface transportation and plan or perpetrate actions that may cause significant injuries, loss of life, or economic disruption.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

TSA is in the process of determining the costs and benefits of this rulemaking.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	03/00/19	

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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Related RIN:

Related to 1652–AA55

RIN: 1652–AA69

DHS—TSA	

79. AMENDING VETTING REQUIREMENTS FOR EMPLOYEES WITH ACCESS TO A SECURITY IDENTIFICATION DISPLAY AREA (SIDA)

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 114–190, sec. 3405

CFR Citation:

49 CFR 1542.209; 49 CFR 1544.229

Legal Deadline:

Final, Statutory, January 11, 2017, Rule for individuals with unescorted access to any Security Identification Display Area (SIDA) due 180 days after date of enactment.

According to section 3405 of title III of the FAA Extension, Safety, and Security Act of 2016 (FAA Extension Act), Pub. L. 114–190 (130 Stat. 615, July 15, 2016), a final rule revising the regulations under 49 U.S.C. 44936 is due 180 days after the date of enactment.

Abstract:

As required by the FAA Extension Act, the Transportation Security Administration (TSA) will propose a rule to revise its regulations, with current knowledge of insider threat and intelligence, to enhance the eligibility requirements and disqualifying criminal offenses for individuals seeking or having unescorted access to any SIDA of an airport. Consistent with the statutory mandate, TSA will consider adding to the list of disqualifying criminal offenses and criteria, develop a waiver process for approving the issuance of credentials for unescorted access, and propose an extension of the look back period for disqualifying crimes.

Statement of Need:

Employee vetting is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who wish to target aviation and plan or perpetrate actions that may

cause significant injuries, loss of life, or economic disruption. Enhancing eligibility standards for airport workers will improve transportation and national security.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

TSA is in the process of determining the costs and benefits of this rulemaking.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	08/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN:

Related to 1652–AA11

RIN: 1652–AA70

DHS—TSA	FINAL RULE STAGE

80. PROTECTION OF SENSITIVE SECURITY INFORMATION

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

49 U.S.C. 114; 49 U.S.C. 40119; 49 U.S.C. 44905; 49 U.S.C. 46105

CFR Citation:

49 CFR 15; 49 CFR 1520

Legal Deadline:

None

Abstract:

In 2004, the Transportation Security Administration (TSA) and Office of the Secretary of Transportation (OST) published an interim final rule (IFR) governing the protection of sensitive security information (SSI). *See* 49 CFR parts 15 (OST) and 1520 (TSA). Since that time, requirements for the protection of SSI have been modified by a subsequent IFR (2005) and regulations promulgated by the Department of Transportation (DOT), TSA, and Department of Homeland Security. These modifications have resulted in inconsistencies between TSA and OST regulations. TSA and OST are issuing a final rule that will harmonize the regulations and reduce regulatory burden through streamlining certain requirements and eliminating others.

Statement of Need:

TSA's SSI regulations were promulgated to meet a statutory requirement to protect information obtained or developed to meet TSA's security requirements. *See* 49 U.S.C. 114(r). DOT has a corresponding requirement under 49 U.S.C. 40119(b). Due to amendments made since the joint IFR was published in 2004, regulated parties must often consult multiple regulatory provisions to determine their responsibilities. Harmonizing these regulations and creating consistency between them will ease the burden of compliance and ensure consistent application of the SSI regulations by TSA and DOT. Further, TSA, in consultation with OST, is considering aligning the SSI requirements related to the names of persons identified as current, past, or applicants to be Federal Flight Deck Officers (FFDOs) with the handling of Federal Air Marshals (FAMs). The modification to TSA's SSI regulations would protect lists of FFDO names, rather than a single FFDO name, and reduce the overall number of documents that are labeled SSI.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The final rule does not impose any new requirements. In addition to clarifying and harmonizing requirements, the rule reduces regulatory burden by providing options for the SSI distribution statement. In addition, should TSA modify the regulations to handle FFDO names consistent with FAM names, it would result in a time savings and corresponding reduction in regulatory burden: eliminating time that would otherwise be spent marking these documents SSI (industry) and reviewing these documents to ensure they are appropriately marked (TSA).

Risks:

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule; Request for Comments	05/18/04	69 FR 28066
Interim Final Rule Effective	06/17/04	
Interim Final Rule; Comment Period End	07/19/04	
Final Rule; Technical Amendment	01/07/05	70 FR 1379
Final Rule; Technical Amdt Effective	01/07/05	

Notice-Information Collection; Emergency Approval	11/01/06	71 FR 64288
Notice-Information Collection; 60-Day Renewal	02/04/07	72 FR 7059
Notice-Information Collection; 30-Day Renewal	06/18/07	72 FR 33511
Notice-Information Collection; 60-Day Renewal	08/03/10	75 FR 44974
Notice-Information Collection; 30-Day Renewal	10/15/10	75 FR 63499
Notice-Information Collection; 60-Day Renewal	08/16/13	78 FR 50076
Notice-Information Collection; 30-Day Renewal	01/15/14	79 FR 2679
Notice-Information Collection; 60-Day Revision	11/25/16	81 FR 85243
Notice-Information Collection; 30-Day Revision	06/16/17	82 FR 27852
Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

Additional Information:

Joint rulemaking with Department of Transportation, Office of the Secretary (RIN No. 2105-AD59)

Transferred from RIN 2110-AA10

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN:

Related to 1652–AA05, Related to 1652–AA49

RIN: 1652–AA08

DHS—TSA	

81. FLIGHT TRAINING FOR ALIENS AND OTHER DESIGNATED INDIVIDUALS; SECURITY AWARENESS TRAINING FOR FLIGHT SCHOOL EMPLOYEES

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

6 U.S.C. 469(b); 49 U.S.C. 114; 49 U.S.C. 44939; 49 U.S.C. 46105

CFR Citation:

49 CFR 1552

Legal Deadline:

Final, Statutory, February 10, 2004, sec. 612(a) of Vision 100 requires TSA to issue an interim final rule within 60 days of enactment of Vision 100.

Requires the Transportation Security Administration (TSA) to establish a process to implement the requirements of section 612(a) of Vision 100–Century of Aviation Reauthorization Act (Pub. L. 108–176, 117 Stat. 2490, Dec. 12, 2003), including the fee provisions, not later than 60 days after the enactment of the Act.

Abstract:

The interim final rule (IFR) was published and effective on September 20, 2004. The IFR created a new part 1552, Flight Schools, in title 49 of the Code of Federal Regulations (CFR). This IFR applies to flight schools and to individuals who apply for or receive flight training. TSA subsequently issued exemptions and interpretations in response to comments on the IFR and questions raised during operation of the program since 2004. TSA also issued a fee notice on April 13, 2009. This regulation requires flight schools to notify TSA when aliens, and other individuals designated by TSA, apply for flight training or recurrent training. TSA is considering a final rule that would change the frequency of security threat assessments from a high-frequency event-based interval to a time-based interval, clarify the definitions and other provisions of the rule, and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule.

Statement of Need:

In the years since TSA published the IFR, members of the aviation industry, the public, and Federal oversight organizations have identified areas where the Alien Flight Student Program (AFSP) could be improved. TSA's internal procedures and processes for vetting applicants also have improved and advanced. Publishing a final rule that addresses external recommendations and aligns with modern TSA vetting practices would streamline the AFSP application, vetting, and recordkeeping process for all parties involved.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

TSA is considering revising the requirements of the AFSP to reduce costs and industry burden. One action TSA is considering is an electronic recordkeeping platform where all flight providers

would upload certain information to a TSA-managed website. Also at industry's request, TSA is considering changing the interval for a security threat assessment of each alien flight student, eliminating the requirement for a security threat assessment for each separate training event. This change would result in an annual savings, although there may be additional start-up and record retention costs for the agency as a result of these revisions. The benefits of these deregulatory actions would be immediate cost savings to flight schools and alien students without compromising the security profile.

Risks:

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule; Request for Comments	09/20/04	69 FR 56324
Interim Final Rule Effective	09/20/04	
Interim Final Rule; Comment Period End	10/20/04	
Notice-Information Collection; 60-Day Renewal	11/26/04	69 FR 68952
Notice-Information Collection; 30-Day Renewal	03/30/05	70 FR 16298
Notice-Information Collection; 60-Day Renewal	06/06/08	73 FR 32346
Notice-Information Collection;	08/13/08	73 FR 47203

30-Day Renewal		
Notice-Alien Flight Student Program Recurrent Training Fees	04/13/09	74 FR 16880
Notice-Information Collection; 60-Day Renewal	09/21/11	76 FR 58531
Notice-Information Collection; 30-Day Renewal	01/31/12	77 FR 4822
Notice-Information Collection; 60-Day Renewal	03/10/15	80 FR 12647
Notice-Information Collection; 30-Day Renewal	06/18/15	80 FR 34927
IFR; Comment Period Reopened	05/18/18	83 FR 23238
IFR; Comment Period Reopened End	06/18/18	
Notice-Information Collection; 60-Day Renewal	07/06/18	83 FR 31561
Final Rule	02/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN:

Related to 1652–AA61

RIN: 1652–AA35

DHS—TSA	

82. SECURITY TRAINING FOR SURFACE TRANSPORTATION EMPLOYEES

Priority:

Other Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

49 U.S.C. 114; Pub. L. 110–53, secs. 1405, 1408, 1501, 1512, 1517, 1531, and 1534

CFR Citation:

49 CFR 1500; 49 CFR 1520; 49 CFR 1570; 49 CFR 1580; 49 CFR 1582 (new); 49 CFR 1584 (new)

Legal Deadline:

Final, Statutory, November 1, 2007, Interim Rule for public transportation agencies is due 90 days after date of enactment.

Final, Statutory, August 3, 2008, Rule for public transportation agencies is due one year after date of enactment.

Final, Statutory, February 3, 2008, Rule for railroads and over–the–road buses is due 6 months after date of enactment.

According to sec. 1408 of Pub. L. 110–53, Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (121 Stat. 266, Aug. 3, 2007), interim final regulations for public transportation agencies are due 90 days after the date of enactment (Nov. 1, 2007), and final regulations are due one year after the date of enactment. According to sec. 1517 of the 9/11 Act, final regulations for railroads and over–the–road buses are due no later than 6 months after the date of enactment.

Abstract:

The 9/11 Act requires security training for employees of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus (OTRB) companies. This final rule implements the regulatory mandate. Owner/operators of these higher-risk railroads, systems, and companies will be required to train employees performing security-sensitive functions, using a curriculum addressing preparedness and how to observe, assess, and respond to terrorist-related threats and/or incidents. As part of this rulemaking, the Transportation Security Administration (TSA) is expanding its current requirements for rail security coordinators and reporting of significant security concerns (currently limited to freight railroads, passenger railroads, and the rail operations of public transportation systems) to include the bus components of higher-risk public transportation systems and higher-risk OTRB companies. TSA is also adding a definition for Transportation Security-Sensitive Materials (TSSM). Other provisions are being amended or added, as necessary, to implement these additional requirements.

Statement of Need:

Employee training is an important and effective tool for averting or mitigating potential attacks by those with malicious intent who may target surface transportation and plan or perpetrate actions that may cause significant injuries, loss of life, or economic disruption.

Summary of Legal Basis:

49 U.S.C. 114; sections 1402, 1408, 1501, 1517, 1531, and 1534 of Pub. L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (121 Stat. 266, Aug. 3, 2007).

Alternatives:

TSA is required by statute to publish regulations requiring security training programs for these owner/operators. As part of its notice of proposed rulemaking, TSA sought public comment on alternatives in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

Owner/operators will incur costs for training their employees, developing a training plan, maintaining training records, and participating in inspections for compliance. Some owner/operators will also incur additional costs associated with assigning security coordinators and reporting significant security incidents to TSA. TSA will incur costs associated with reviewing owner/operators' training plans, registering owner/operators' security coordinators, responding to owner/operators' reported significant security incidents, and conducting inspections for compliance with this rule. In the NPRM, TSA estimated the annualized cost from this regulation to be approximately $22 million, discounted at 7 percent. As part of TSA's risk-based security, benefits include mitigating potential attacks by heightening awareness of employees on the frontline. In addition, by designating security coordinators and reporting significant security concerns to TSA, TSA has a direct line for communicating threats and receiving information necessary to analyze trends and potential threats across all modes of transportation.

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

Notice; Request for Comment	06/14/13	78 FR 35945
Notice; Comment Period End	07/15/13	
NPRM	12/16/16	81 FR 91336
NPRM Comment Period End	03/16/17	
Final Rule	11/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Local

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN:

Related to 1652–AA56, Merged with 1652–AA57, Merged with 1652–AA59

RIN: 1652–AA55

DHS—U.S. Immigration and Customs Enforcement(USICE)	PROPOSED RULE STAGE

83. APPREHENSION, PROCESSING, CARE AND CUSTODY OF ALIEN MINORS AND UNACCOMPANIED ALIEN CHILDREN

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1103; 8 U.S.C. 1182; 8 U.S.C. 1225 to 1227; 8 U.S.C. 1362

CFR Citation:

8 CFR 236; 8 CFR 208

Legal Deadline:

None

Abstract:

In 1985, a class-action suit challenged the policies of the former Immigration and Naturalization Service (INS) relating to the detention, processing, and release of alien children; the case eventually reached the U.S. Supreme Court. The Court upheld the constitutionality of the challenged INS regulations on their face and remanded the case for further proceedings consistent with its opinion. In January 1997, the parties reached a comprehensive settlement agreement, referred to as the Flores Settlement Agreement (FSA). The FSA was to terminate five years after the date of final court approval; however, the termination provisions were modified in 2001, such that the FSA does not terminate until 45 days after publication of regulations implementing the agreement.

Since 1997, intervening statutory changes, including passage of the Homeland Security Act (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), have significantly changed the applicability of certain provisions of the FSA. The rule would codify the relevant and substantive terms of the FSA and enable the U.S. Government to seek termination of the FSA and litigation concerning its enforcement. Through this rule, DHS, HHS, and DOJ will create a pathway to ensure the humane detention of family units while satisfying the goals of the FSA. The rule will also implement related provisions of the TVPRA.

Statement of Need:

In 1985, a class-action suit challenged the policies of the former INS relating to the detention, processing, and release of alien children; the case eventually reached the U.S. Supreme Court. The Court upheld the constitutionality of the challenged INS regulations on their face and remanded the case for further proceedings consistent with its opinion. In January 1997, the parties reached a comprehensive settlement agreement, referred to as the FSA. The FSA was to

terminate 5 years after the date of final court approval; however, the termination provisions were modified in 2001, such that the FSA does not terminate until 45 days after publication of regulations implementing the agreement.

Since 1997, intervening legal changes including passage of the HSA and TVPRA have significantly changed the applicability of certain provisions of the FSA. The rule will codify the relevant and substantive terms of the FSA and enable the U.S. Government to seek termination of the FSA and litigation concerning its enforcement. Through this rule, DHS, HHS, and DOJ will create a pathway to ensure the humane detention of family units while satisfying the goals of the FSA. The rule will also implement related provisions of the TVPRA.

Summary of Legal Basis:

Alternatives:

Prior to proposing this rule, DHS considered the alternative to publishing this rule, which was not to promulgate regulations. This has required the Government to adhere to the terms of the FSA, as interpreted by the courts, which also rejected the Government's efforts to amend the FSA to help it better conform to existing legal and operational realities.

The primary source of new costs for the proposed rule would be a result of the proposed alternative licensing process, which ICE expects to extend detention of some minors and their accompanying parent or legal guardian in FRCs. This may increase variable annual FRC costs paid by ICE. The primary benefit of the proposed rule would be to ensure that applicable regulations reflect the Departments' current operations with respect to minors and UACs in accordance with the relevant and substantive terms of the FSA and the TVPRA. Further, by departing from the FSA in limited cases to reflect the intervening statutory and operational changes, ICE will ensure that it retains discretion to detain families, as appropriate, to meet its enforcement needs.

Anticipated Cost and Benefits:

The primary source of new costs for the proposed rule would be a result of the proposed alternative licensing process which ICE expects to extend detention of some minors and their accompanying parent or legal guardian in Family Residential Centers (FRCs). This may increase variable annual FRC costs paid by ICE. The primary benefit of the rule would be to ensure that applicable regulations reflect the Department's current operations with respect to minors and Unaccompanied Minor Children (UACs) in accordance with the relevant and substantive terms of the Flores Settlement Agreement (FSA) and the Trafficking Victims Protection Reauthorization Act (TVPRA). Further, by departing from the FSA in limited cases to reflect the intervening statutory and operational changes, ICE will ensure that it retains discretion to detain families, as appropriate, to meet its enforcement needs.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/07/18	83 FR 45486
NPRM Comment Period End	11/06/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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Related RIN:

Related to 0970–AC42

RIN: 1653–AA75

DHS—USICE	

84. • ESTABLISHING A MAXIMUM PERIOD OF AUTHORIZED STAY FOR F–1 AND OTHER NONIMMIGRANTS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1182; 8 U.S.C. 1184

CFR Citation:

8 CFR 214; 8 CFR 274a

Legal Deadline:

None

Abstract:

U.S. Immigration and Customs Enforcement (ICE) will propose to modify the period of authorized stay for certain categories of nonimmigrants traveling to the United States from "duration of status" (D/S) and to replace such with a maximum period of authorized stay, and options for extensions, for each applicable visa category.

Statement of Need:

The failure to provide certain categories of nonimmigrants with specific dates for their authorized periods of stay can cause confusion over how long they may lawfully remain in the United States and has complicated the efforts to reduce overstay rates for nonimmigrant students. The clarity created by date-certain admissions will help reduce the overstay rate.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

ICE is in the process of assessing the costs and benefits that would be incurred by regulated entities and individuals, as well as the costs and benefits to the public at large. ICE, SEVP certified schools, nonimmigrant students, and the employers of nonimmigrant students who participate in practical training would incur costs for increased requirements. This rule is intended to decrease the incidence of nonimmigrant student overstays and improve the integrity of the nonimmigrant student visa.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1653–AA78

DHS—USICE	FINAL RULE STAGE

85. ADJUSTING PROGRAM FEES FOR THE STUDENT AND EXCHANGE VISITOR PROGRAM

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1372; 8 U.S.C. 1762; 8 U.S.C. 1101; 8 U.S.C. 1356; 31 U.S.C 901 to 903; 31 U.S.C. 902; ...

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

ICE will publish a final rule to adjust fees that the Student and Exchange Visitor Program (SEVP) charges individuals and organizations. In 2017, SEVP conducted a comprehensive fee study and determined that current fees do not recover the full costs of the services provided. ICE has determined that adjusting fees is necessary to fully recover the increased costs of SEVP operations, program requirements, and to provide the necessary funding to sustain initiatives critical to supporting national security. The final rule will adjust fees for individuals and organizations. The SEVP fee schedule was last adjusted in a rule published on September 26, 2008.

Statement of Need:

The Student and Exchange Visitor Program (SEVP) conducted a comprehensive fee study in 2017 and determined that current fees, most recently adjusted in 2008, do not recover the full costs of the services provided. ICE has determined that adjusting fees is necessary to fully recover the increased costs of SEVP operations, program requirements, and to provide the necessary funding to implement and sustain initiatives critical to supporting national security. ICE will publish a final rule to adjust its fees for individuals and organizations.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

To recover the full cost of its budget for the services it provides, SEVP has proposed to increase the amounts of its fees for SEVP certified schools and for those schools that will seek SEVP certification, for F and M nonimmigrant students, and for J nonimmigrant exchange visitors. The fee adjustment would allow SEVP to continue to maintain and improve SEVIS in order to uphold the integrity of the U.S. immigration laws regarding student and exchange visitors.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	07/17/18	83 FR 33762
NPRM Comment Period End	09/17/18	
Final Rule	03/00/19	

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: 1653–AA74

DHS—Federal Emergency Management Agency(FEMA)	FINAL RULE STAGE

86. FACTORS CONSIDERED WHEN EVALUATING A GOVERNOR'S REQUEST FOR INDIVIDUAL ASSISTANCE FOR A MAJOR DISASTER

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

42 U.S.C. 5121 to 5207

CFR Citation:

44 CFR 206.48(b)

Legal Deadline:

Final, Statutory, January 29, 2014, sec. 1109 of the Sandy Recovery Improvement Act of 2013, Pub. L. 113–2.

The Sandy Recovery Improvement Act of 2013 (SRIA) requires the Administrator of the Federal Emergency Management Agency (FEMA), in cooperation with representatives of State, Tribal, and local emergency management agencies, to review, update, and revise through rulemaking the individual assistance factors FEMA uses to measure the severity, magnitude, and impact of a disaster (not later than 1 year after enactment).

Abstract:

FEMA is issuing a final rule to revise its regulations to comply with section 1109 of SRIA. SRIA requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the Individual Assistance (IA) factors FEMA uses to measure the severity, magnitude, and impact of a disaster. FEMA published a Notice of Proposed Rulemaking on the matter on November 12, 2015.

Statement of Need:

On January 29, 2013, SRIA was enacted into law (Pub. L. 113-2). Section 1109 of SRIA requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance (IA) during a major

disaster. These factors help FEMA measure the severity, magnitude, and impact of a disaster, as well as the capabilities of the affected jurisdictions.

FEMA is issuing this final rule to comply with SRIA and to provide clarity on the IA factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. The additional clarity may reduce delays in the declaration process by decreasing the back and forth between States and FEMA during the declaration process.

Summary of Legal Basis:

FEMA has authority for this final rule pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). 42 U.S.C. 5121 *et seq.* Section 401 of the Stafford Act lays out the procedures for a declaration for FEMA's major disaster assistance programs when a catastrophe occurs in a State. The specific changes in this final rule comply with section 1109 of SRIA, Pub. L. 113-2.

Alternatives:

Anticipated Cost and Benefits:

The 2015 NPRM proposed to codify current declaration considerations and introduced new factors that FEMA would use when reviewing and recommending a major disaster declaration request that includes IA. Codifying the factors that capture FEMA's current declaration practice and considerations would not result in additional costs. However, the new factors would have small burden increases associated with obtaining the additional information. FEMA does not anticipate the rule would impact the number of major disaster declaration requests received that include IA or the amount of IA assistance provided, and therefore there would be no impact to transfer payments.

FEMA estimated the 10-year present value total cost of the proposed rule would be $15,806 and $13,302 if discounted at 3 and 7 percent, respectively. The annualized cost of the proposed rule would be $1,853 at 3 percent and $1,894 at 7 percent. (All amounts in the NPRM are presented in 2013 dollars.) Benefits of the proposed rule include clarifying FEMA's existing practices, reducing processing time for requests due to clarifications, and providing States with notice of the new information FEMA is proposing to consider as part of the IA declarations process.

Risks:

Timetable:

Action	**Date**	**FR Cite**
NPRM	11/12/15	80 FR 70116
NPRM Comment Period End	01/11/16	
Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

Additional Information:

Docket ID FEMA-2014-0005

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1660–AA83

DHS—FEMA	

87. UPDATE TO FEMA'S REGULATIONS ON RULEMAKING PROCEDURES

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

5 U.S.C. 553

CFR Citation:

44 CFR 1

Legal Deadline:

None

Abstract:

The Federal Emergency Management Agency (FEMA) proposed to revise its regulations pertaining to rulemaking. It removes sections that are outdated or do not affect the public, and it updates provisions that affect the public's participation in the rulemaking process, such as the submission of public comments, hearings, ex parte communications, the public rulemaking docket, and petitions for rulemaking. FEMA also modifies its waiver of the Administrative Procedure Act exemption for matters relating to public property, loans, grants, benefits, and contracts.

Statement of Need:

This final rule removes sections of FEMA’s rulemaking provisions that are outdated or that do not affect the public, and updates provisions that affect the public’s participation in the rulemaking process.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

This rule does not impose additional direct costs on the public or government.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	06/07/17	82 FR 26411
NPRM Comment Period End	08/07/17	
Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Docket ID FEMA-2017-0016

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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BILLING CODE: 9110-9B-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FALL 2018 STATEMENT OF REGULATORY PRIORITIES

FOR FISCAL YEAR 2019

Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2019 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, HUD is committed to addressing the housing needs of all Americans by creating strong, sustainable, inclusive

communities, and quality affordable homes. As a result, HUD plays a significant role in the lives of families and in communities throughout America.

HUD is currently working to develop an innovative approach that anticipates the housing needs of the future while addressing current needs. HUD's 2018-2022 strategic plan focuses on rethinking American communities by refocusing on HUD's core mission and modernizing HUD's approach, leveraging private-sector partnerships, supporting sustainable homeownership, encouraging affordable housing investments, and redesigning HUD's internal processes. HUD's regulatory plan for FY2019 reflects Secretary Carson's strategic plan and HUD's mission.

In addition to the highlighted rule in this plan, Secretary Carson directed HUD, consistent with Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs," to identify and eliminate or streamline regulations that are wasteful, inefficient or unnecessary. The Secretary has also led HUD's implementation of Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda." Executive Order 13777 supplements and reaffirms the rulemaking principles of Executive Order 13771 by directing each agency to establish a Regulatory Reform Task Force to evaluate existing regulations to identify those that merit repeal, replacement, or modification; are outdated, unnecessary, or ineffective; eliminate or inhibit job creation; impose costs that exceed benefits; or derive from or implement Executive Orders that have been rescinded or significantly modified. As a result of Secretary's Carson's direction, HUD's Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions lists two anticipated regulatory actions and twelve deregulatory actions.

The rules highlighted in HUD's regulatory plan for FY2019 reflects HUD's efforts to develop innovative approaches that anticipate the housing needs of the future, including the removal or revision of regulations that HUD has determined are outdated, unnecessary, or ineffective.

Streamlining the "Section 3" Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses: Deregulation

The purpose of Section 3 is to ensure that employment, training, contracting, and other economic opportunities generated by certain HUD financial assistance are directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that

provide economic opportunities to low- and very low-income persons. HUD's current regulations for Section 3 have not been updated in over 20 years. HUD's experience in administering Section 3 over time has provided insight as to how HUD could improve the effectiveness of its Section 3 regulations. Additionally, HUD has heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD concluded that regulatory changes are needed to streamline Section 3 and more effectively help recipients of HUD funds achieve the purposes of the Section 3 statute. HUD's proposed rule would update the regulations implementing Section 3 by aligning the reporting with standard business practice; amending the applicability section; updating reporting and adding new outcome benchmarks; and integrating Section 3 into program enforcement.

The new rule generally proposes the tracking and reporting of labor hours, rather than new hires. HUD believes that this is more consistent with the business practices of most HUD recipients, which already track labor hours in their payroll systems because they are subject to prevailing wage rates under the Davis-Bacon Act of 1931, or HUD prevailing wage requirements. A labor-hours frame-work focuses on the outcome that Section 3 requirements are intended to promote, i.e., increasing the amount of paid employment and work experience for low-income persons. Tracking labor hours creates incentives for employers to retain and invest in their low-income workers by removing the opportunity for employers to manipulate HUD's current regulations by hiring the same employee for several short, temporary jobs over the course of a reporting period.

This proposed rule would maintain the statutory scope of applicability while providing separate subparts relating to the different types of funding sources that have associated Section 3 requirements: (1) public housing financial assistance, which covers development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act) and operating and capital fund assistance provided pursuant to section 9 of the 1937 Act; and (2) Section 3 projects, which covers (a) housing rehabilitation, housing construction and other public construction projects funded with HUD program assistance, when such cumulative assistance to a jurisdiction exceeds a $200,000 threshold; and (b) housing rehabilitation or construction projects that include multiple funding sources, one or more of which is associated with Section 3 requirements. HUD would also update the $200,000 cumulative assistance threshold for Section 3

projects applicability to encompass a narrower scope. HUD believes that this change would reduce the burden on smaller projects.

In addition, HUD's proposed rule would change the process for meeting a safe harbor for compliance with the Section 3 requirements and reporting of Section 3 data. HUD's current regulations provide for a safe harbor where recipients demonstrate compliance with Section 3 by meeting numerical goals for the percentage of their new hires that qualify as Section 3 residents. In addition to hiring Section 3 workers generally, the Section 3 statute directs for recipients of Section 3 covered assistance to target their efforts to provide employment and economic opportunities to specific groups of low-income individuals. HUD's proposed rule would create two "Targeted Section 3 Worker" definitions that would track, according to the type of funding source, the numbers of Section 3 workers who are (a) reported by Section 3 business concerns, or (b) represent the priority categories included in the statute and selected by HUD, i.e., housing project residents. The proposed new rule would also require that recipients report the labor hours performed by Section 3 Workers as a percentage of the total labor hours, and labor hours performed by Targeted Section 3 Workers as a percentage of the total labor hours.

Using the new reporting metrics, HUD would set benchmarks for the safe harbor through Federal Register notice, so HUD can update the metrics in response to additional data. It would also ensure that recipients hire workers from the priority groups, consistent with the statute. As HUD gathers data under the new rule, HUD can more easily revise benchmark figures or tailor different benchmarks for different geographies and different funding types. If a recipient is complying with the statutory priorities and meeting the outcome benchmarks, HUD would presume they are exerting the statutorily prescribed level of effort. Otherwise, the recipients would be required to submit qualitative reports on their efforts, as they are required to do under the current rule when they do not meet the safe harbor, and HUD may do more in-depth compliance reviews. PHAs with fewer than 250 units would only be required to report on Section 3 qualitative efforts and would not be required to report on whether they have met the reporting benchmarks.

Lastly, HUD's proposal would provide that program staff would incorporate Section 3 compliance and oversight into regular program oversight and make Section 3 a more integral part of the program office's work. As a result, this proposed rule would streamline the extensive complaint and compliance review procedures in the current rule. Relatedly, it would remove the delegation of authority in the current

regulations, as Section 3 requirements, reporting, and compliance activities would be aligned with those of the applicable HUD program office or offices.

HUD envisions this rule being completed in FY 2019.

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 pursued in FY 2019. HUD expects that the neither the total economic costs nor the total efficiency gains will exceed $100 million.

Project Approval for Single- Family Condominiums

This rule would codify HUD's program to approve condominium projects for FHA insurance pursuant to 12 U.S.C. 1707(a), as amended by section 2117 of the Housing and Economic Recovery Act of 2008 (HERA), which defines a mortgage eligible for FHA insurance as a first lien on a one-family unit along with an undivided interest in the common areas and facilities which serve the project. This codification would make current requirements for the program less strict and prescriptive, giving the condominium industry greater flexibility.

The FHA Condominium program is currently administered under the Condominium Approval and Processing Guide (the Guide). The Guide has a number of "bright line" requirements. This final rule would, on the other hand, establish more flexible and less costly requirements. The rule retains those requirements that are necessary to fulfill HUD's duty to avoid excessive risk to the insurance fund but does so in a less prescriptive way. This should result in increasing FHA participation in the condominium market and make condominiums more widely available. Condominium units are a valuable source of homeownership for moderate and lower-income families.

To provide for flexibility the rule would remove strict numeric requirements in favor of provisions that permit HUD to act within ranges. Specifically, where the Guide currently has strict numerical requirements regarding the allowable percentage of FHA-insured projects, the percentage of owner occupants, and the amount of space that can be used for commercial or nonresidential purposes, the final rule would make these percentages flexible and efficient to change, so that HUD can adjust to changing market conditions. HUD anticipates providing for the ability to change these threshold percentages by notice, rather than regulation, the rule would allow HUD to quickly adjust these percentages to be responsive to the market.

There is also a provision for HUD to grant exceptions to these percentages on a case-by-case basis, considering factors relating to the economy for the locality in which the project is located or specific to the project. The percentage range limits themselves may be changed by publishing a notice for a brief period of public comment.

The final rule would also allow for single units to be approved for mortgage insurance outside of the project approval process. Unlike the Guide that does not provide a provision for insuring mortgages on units other than in an approved project, this rule recognizes that there may be situations where a project may not be approved, not because of any significant inherent problem with the project that creates risk to the insurance fund (e.g., the Homeowners' Association does not want to go to the expense of applying for approval). In such cases, the rule would allow for a percentage of single units to be approved for mortgage insurance outside of the project approval process, under certain guidelines designed to reduce unacceptable risk to the insurance fund.

The rule would institute front-end standards for mortgagees to qualify to participate as Direct Endorsement lenders in the DELRAP, or Direct Endorsement Review and Approval Program. Once qualified, these lenders have the ability to review and approve condominium loans, with HUD having the authority to intervene in the case of misconduct or unacceptable performance. Ensuring that Direct Endorsement mortgagees have staff members with relevant condominium experience helps to mitigate risks to the insurance fund.

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 pursued in FY 2018. HUD expects that the neither the total economic costs nor the total efficiency gains will exceed $100 million.

Affirmatively Furthering Fair Housing: Streamlining and Enhancements

On July 16, 2015, HUD published in the Federal Register its Affirmatively Furthering Fair Housing (AFFH) final rule. The goal of the regulation was to provide HUD program participants with a revised planning approach to assist them in meeting their statutory obligation to affirmatively further the purposes and policies of the Fair Housing Act. The principal AFFH regulations are codified in 24 CFR part 5,

subpart A, with other AFFH related regulations codified in 24 CFR parts 91, 92, 570, 574, 576, and 903. HUD is committed to its mission of achieving fair housing opportunity for all, regardless of race, color, religion, national origin, sex, disability, or familial status. However, HUD's experience over the three years since the newly-specified approach was promulgated demonstrates that the rule is not fulfilling its purpose to be an efficient means for guiding meaningful action by program participants.

Under the AFFH rule, HUD program participants are required to use an Assessment Tool to conduct and submit an Assessment of Fair Housing (AFH) to HUD. Because of the variations in the HUD program participants subject to the AFFH rule, HUD went through a process to develop three separate assessment tools: one for local governments, one for public housing agencies, and one for States and Insular Areas. Due to varying technical and other issues, only the Assessment Tool for local governments was ever made available for use. However, HUD withdrew the Local Government Assessment Tool in a Federal Register notice published on May 23, 2018 as a result of its review of the initial round of AFH submissions that were developed using the tool. This review led HUD to conclude that the tool was unworkable based upon: (1) the high failure rate from the initial round of submissions; and (2) the level of technical assistance HUD provided to this initial round of 49 AFHs, which cannot be scaled up to accommodate the increase in the number of local government program participants with AFH submission deadlines in 2018 and 2019.

On May 15, 2017, HUD published a Federal Register notice consistent with Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda," inviting public comments to assist HUD in identifying existing regulations that may be outdated, ineffective, or excessively burdensome. HUD received 299 comments in response to the Notice, and 136 (45% of the total) discussed the AFFH rule. Most of these comments were critical of the AFFH rule and cited its complexity and the costs associated with completing an AFH.

As HUD begins the process of developing a new proposed rule, HUD issued an advance notice of proposed rulemaking (ANPR) on August 16, 2018, at 83 FR 40713, which invites public comment on amendments to the AFFH regulations. HUD is also reviewing comments submitted in response to the withdrawal of the Local Government Assessment Tool and will consider those comments during HUD's consideration of potential changes to the AFFH regulations. HUD will use these sets of comments in drafting future rulemaking.

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 pursued in FY 2018. At this pre-rule stage, HUD expects that the neither the total economic costs nor the total efficiency gains will exceed $100 million.

HUD—Office of the Secretary(HUDSEC)	PROPOSED RULE STAGE

88. ENHANCING AND STREAMLINING THE IMPLEMENTATION OF "SECTION 3" REQUIREMENTS FOR CREATING ECONOMIC OPPORTUNITIES FOR LOW– AND VERY LOW–INCOME PERSONS AND ELIGIBLE BUSINESSES

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

12 U.S.C. 1701u; 42 U.S.C. 1450; 42 U.S.C. 3301; 42 U.S.C. 3535(d)

CFR Citation:

24 CFR 5, 14, 75, 91, 92, 93, 135, 266,; 570, 576, 578, 905, 964, 983, and 1000

Legal Deadline:

None

Abstract:

This rule revises HUD's regulations for Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), which ensures that employment, training, and contracting opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of Government assistance for housing and to business concerns that provide economic opportunities to these persons. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective at promoting economic opportunity for low-income persons as HUD believes they could be. This proposed rule would update HUD's Section 3 regulations to streamline reporting requirements by aligning the reporting with standard business practice; amending the applicability section; updating reporting and adding new outcome benchmarks; and integrating Section 3 into program enforcement. The purpose of these changes is to reduce regulatory burden, increase compliance with Section 3 requirements, and increase Section 3 opportunities for low-income persons.

Statement of Need:

Over 24 years ago, HUD's Section 3 regulations were promulgated through an interim rule published on June 30, 1994, at 59 FR 33880. Since HUD promulgated the current set of Section 3 regulations, significant legislation has been enacted that affects HUD programs that are subject to the requirements of Section 3. HUD has also heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD concluded that regulatory changes are needed to streamline Section 3 and more effectively help recipients of HUD funds achieve the purposes of the Section 3 statute.

Summary of Legal Basis:

12 U.S.C. 1701u; 42 U.S.C. 1450; 42 U.S.C. 3301; 42 U.S.C. 3535(d).

Alternatives:

None.

Anticipated Cost and Benefits:

The purpose of Section 3 is to provide jobs, including apprenticeship opportunities, to public housing residents and other specific low- and very low-income residents of a local area, and contracting opportunities for businesses that substantially employ these persons. However, the Section 3 requirement itself does not create additional jobs or contracts. Instead, Section 3 redirects local jobs and contracts created as a result of the expenditure of HUD funds to Section 3 residents and businesses residing and operating in the area in which the HUD funds are expended. Currently, Section 3 rules require that a certain percent of new hires are Section 3 residents. HUD has determined that this measure has led to churning, where employers create a series of short-term jobs and hire and fire an employee in order to meet their Section 3 numeric goals. The proposed rule will curb these practices by changing the metric to a percentage of hours worked. HUD anticipates that the change will incentivize employers to create long-term employment opportunities as employers shift their focus to reporting hours worked, a factor that aligns with business practices, rather than on providing employment for a specific number of new hires. HUD also anticipates that the rule's streamlined reporting requirements will contribute to an increase in the number of employment opportunities provided to Section 3 residents and more funds for Section 3 businesses. HUD estimates that proposed rule would result in an estimated reporting and recordkeeping burden reduction of 25,910 hours or $1.2 million a year. These figures are preliminary estimates and may be updated pending OMB review.

Initial compliance costs are expected to be minimal and one-time as recipients shift their practices to meet the new requirements. For example, some recipients may have difficulty determining whether employees live in a Qualified Census Tract, or whether they live within a certain distance of a worksite. However, HUD plans to create tools to assist recipients in making these determinations. HUD will pay attention to public comment on this issue to ensure that compliance costs are indeed reduced by this rule change.

Benefits to low-income and very low-income persons are difficult to quantify. As described below, the change from measuring new hires to measuring labor hours could not only reduce churn but, depending on the initial benchmarks established, could also result in employers not needing to add new Section 3 workers in the short-term. However, tracking the amount of work performed by Targeted Section 3 workers would help ensure that the priorities of Section 3 are being considered, consistent with the statutory requirement, when recipients hire and distribute hours to low-income workers. As HUD tracks the new data reported by recipients, HUD expects to move the benchmarks to ensure that recipients are driven to increase their Section 3 opportunities, consistent with the Section 3 statutory intent that Federal financial assistance is, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. The goal is that those recipients of government assistance for housing will find Section 3 employment and a path to financial security that removes the need for long-term government assistance.

The initial benefit of this rule is the reduction in administrative costs to both HUD and recipients of HUD financing, which results from aligning the Section 3 requirements with what businesses already track. HUD believes this change would improve compliance by recipients.

Risks:

A potential risk in switching from reporting and tracking new hires to labor hours is that the number of Section 3 workers being hired might decrease or remain flat. However, this would be because employers have a financial incentive to retain current Section 3 workers rather than hire new Section 3 workers under this rule. This would be due, in part, to employers losing the existing incentive to churn workers in order to count new hires. Additionally, if data shows that this rule is not increasing employment opportunities for Section 3 workers over time, HUD can adjust the new Section 3 benchmarks to increase the number of labor hours performed by Section 3 workers that employers would need to meet in order to demonstrate compliance with this requirement.

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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HUD—Office of Housing(OH)	FINAL RULE STAGE

89. PROJECT APPROVAL FOR SINGLE FAMILY CONDOMINIUM (FR–5715)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

12 U.S.C. 1707,1709 and 1710; 12 U.S.C. 1715b; 12 U.S.C. 1715y; 12 U.S.C. 1715z–16; 12 U.S.C. 1715u; 42 U.S.C. 3535(d)

CFR Citation:

24 CFR 203

Legal Deadline:

None

Abstract:

This final rule implements HUD's authority under the single-family mortgage insurance provisions of the National Housing Act to insure one-family units in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project. The rule provides for requirements for lenders to obtain approval under the Direct Endorsement Lender Review and Approval Process (DELRAP) authority for condominiums, and for standards that projects must meet to be approved for mortgage insurance on individual units. The rule provides for flexibility with respect to the concentration of FHA-insured units, owner-occupied units, and the amount that can be set aside for commercial and non-residential space. This will enable HUD to vary these standards, within parameters, to meet market needs.

Statement of Need:

The Housing Opportunities through Modernization Act of 2016 requires HUD to issue regulations on the commercial space requirements for condominium projects; these regulations would be codified in HUD's Code of Federal Regulations (CFR) volume. Having one portion of the basic program rules codified in the CFR and others not codified would be confusing and unfriendly to the public. Additionally, the current program rules are overly rigid. The rule will add needed

flexibility and logically codify the basic rules of the program, similar to HUD's other single-family programs.

Summary of Legal Basis:

The legal basis (in addition to HUD's general rulemaking authority under 42 U.S.C. 3535(d)) is the definition of mortgage in section 201 of the Act (12 U.S.C. 1707), which definition also applies to section 203 of the Act (12 U.S.C. 1709). The definition was revised by the Housing and Economic Recovery Act of 2008 (Public Law 110-289, approved July 30, 2008) to include a mortgages on a one-family unit in a multifamily project, and an undivided interest in the common areas and facilities which serve the project (this is the arrangement that characterizes the large majority of condo projects). More recently, the Housing Opportunity Through Modernization Act (Public Law 114-201, approved July 29, 2016), requires HUD to: streamline the condominium recertification process; issue regulations to amend the limitations on commercial space to allow such requests to be processed under either HUD or lender review; and to consider factors relating to the economy for the locality in which such project is located or specific to project, including the total number of family units in the project. HUD will be addressing these issues through the regulation.

Alternatives:

None.

Anticipated Cost and Benefits:

The rule will produce cost savings of $1 million per year by reducing the paperwork required for recertification of an approved project. There are some costs associated with qualifying to participate in the Direct Endorsement Lender Review and Approval Process (DELRAP). However, HUD anticipates that many provisions of the rule, such as single-unit approvals, and flexible standards, would reduce or eliminate the compliance costs of the rule.

Risks:

The DELRAP process (which gives underwriting responsibility to qualified lenders) and single unit approvals (which allow HUD to insure mortgages in unapproved condominium projects) could increase the risk of defaults. However, the rule would add safeguards to fully mitigate these risks. The participating DELRAP lenders would have to meet qualification standards, and HUD would monitor their performance on an ongoing basis, and would have authority to take corrective actions if a lender's performance is deficient. In addition, single unit approvals would require that HUD not insure mortgages in an unapproved project if the percentage of such mortgages exceeds an amount determined by the Commissioner to be necessary for the protection of the insurance fund.

Timetable:

Action	Date	FR Cite
NPRM	09/28/16	81 FR 66565
NPRM Comment Period End	11/28/16	
Final Action	01/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov/searchResults?rpp=25&po=0&s=FR-5715&fp=true&ns=true

Agency Contact:

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HUD—Office of Fair Housing and Equal Opportunity(FHEO)	PRERULE STAGE

90. • AFFIRMATIVELY FURTHERING FAIR HOUSING STREAMLINING AND ENHANCEMENT (FR–6123)

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 3535(d) and 3601 to 3619

CFR Citation:

24 CFR 5, 91, 92, 570, 574, 576, and 903

Legal Deadline:

None

Abstract:

This advance notice of proposed rulemaking invites public comment on amendments to HUD's affirmatively furthering fair housing (AFFH) regulations. The goal of the regulations is to provide HUD program participants with a specific planning approach to assist them in meeting their statutory obligation to affirmatively further the purposes and policies of the Fair Housing Act. HUD is committed to its mission of achieving fair housing opportunity for all, regardless of race, color, religion, national origin, sex, disability, or familial status. fair housing. However, HUD's experience over the three years since the newly-specified approach was promulgated demonstrates that it is not fulfilling its purpose to be an efficient means for guiding meaningful action by program participants. As HUD begins the process of developing a proposed rule to amend the existing AFFH regulations, it is soliciting public comment on changes that will: (1) minimize regulatory burden while more effectively aiding program participants to plan for fulfilling their obligation to affirmatively further the purposes and policies of the Fair Housing Act; (2) create a process that is focused primarily on accomplishing positive results, rather than on performing analysis of community characteristics; (3) provide for greater local control and innovation; (4) seek to encourage actions that increase housing choice, including through greater housing supply; and (5) more efficiently utilize HUD resources. HUD is also reviewing comments submitted in response to the withdrawal of the Local Government Assessment Tool and will consider those comments during HUD's consideration of potential changes to the AFFH regulations.

Statement of Need:

The stated purpose of the AFFH regulations is to provide HUD program participants with a planning approach to assist them in meeting their legal obligation to affirmatively further the purposes and policies of the Fair Housing Act. However, HUD has concluded that the current regulations are ineffective. The highly prescriptive regulations give participants inadequate autonomy in developing fair housing goals as suggested by principles of federalism. Additionally, the current regulations do not address the lack of adequate housing supply, which has a particular adverse impact on protected classes under the Fair Housing Act. Finally, some peer-reviewed literature indicates that outcomes of policies focused on deconcentrating poverty may vary across different ages and demographic groups, and suggests that such policies are difficult to implement at scale and without disrupting local decision making.

Summary of Legal Basis:

Alternatives:

None.

Anticipated Cost and Benefits:

At this pre-rule stage, HUD expects that the neither the total economic costs nor the total efficiency gains will exceed $100 million.

Risks:

Program participants are reminded that the legal obligation to affirmatively further fair housing remains in effect. The withdrawal of the Local Government Assessment Tool means that a program participant that has not yet submitted an AFH using that device that has been accepted by HUD must continue to carry out its duty to affirmatively further fair housing by, inter alia, continuing to assess fair housing issues as part of planning for use of housing and community development block grants in accordance with pre-existing requirements. The pre-existing requirements referred to the fair housing assessment as an analysis of impediments to fair

housing choice (AI). HUD places a high priority upon the responsibility of program participants to ensure that their AIs serve as effective fair housing planning tools.

Timetable:

Action	Date	FR Cite
ANPRM	08/16/18	83 FR 40713
Comment Period End	10/15/18	
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DEPARTMENT OF THE INTERIOR REGULATORY PLAN
FALL 2018

Introduction

The U.S. Department of the Interior ("Interior" or "the Department") serves the American public by managing the Nation's natural resources for the benefit and enjoyment of the American people, and it honors the United States' trust responsibilities or special commitments to Federally recognized tribes, American Indians, Alaska Natives, and affiliated insular areas. This includes managing approximately 500 million surface acres of Federal land or about twenty percent of the Nation's land area, approximately 700 million subsurface acres of Federal mineral estate, and over a billion acres of submerged lands on the Outer Continental Shelf.

Hundreds of millions of people visit Interior-managed lands each year in order to engage in camping, hiking, hunting, fishing and various other forms of outdoor recreation, which supports local communities and their economies. Interior provides access to Federal lands and offshore areas for the development of energy, minerals and other natural resources, which generates revenue for all levels of government, creates jobs and supports the Nation's energy and mineral security by promoting the identification and development of domestic sources of energy, minerals and the associated infrastructure needs. Interior manages these resources under a legal framework that includes regulations that ultimately affect the lives and livelihoods of many Americans.

America's lands and natural resources hold tremendous job-creating assets. As the steward for a substantial portion of this public trust, Interior manages the Nation's lands and natural resources for multiple uses. Through this balanced stewardship of public resources, which recognizes the value of both conservation and development, Interior helps drive job opportunities and economic growth. Interior supports $254 billion in estimated economic benefit, while direct grants and payments to states, tribes, and local communities provide an estimated $10 billion in economic benefit. In 2017, Interior collected approximately $9.6 billion from energy, mineral, grazing, and forestry activities on behalf of the American people. Interior also supports the economy by eliminating unnecessary and burdensome Federal regulatory requirements.

Regulatory Reform

President Trump has made it a priority of his administration to reform regulatory requirements that negatively impact our economy while maintaining environmental standards. Since day one, Secretary Zinke has been committed to regulatory reform.

Interior is playing a key role in regulatory reform and, pursuant to Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda" (signed Feb. 24, 2017), has established a Regulatory Reform Task Force to help make Interior's regulations work better for the American people. In accordance with E.O. 13777, as well as E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs" (signed Jan. 30, 2017), Interior will continue its efforts to identify and repeal, replace or modify regulations that are unnecessary, ineffective or that impose costs, which are not adequately justified by benefits. Interior will also continue to encourage and seek public input on these regulatory reform efforts. *See 82 FR 28429 (June 22, 2017) and https://www.doi.gov/regulatory-reform.*

In fiscal year 2019, Interior's regulatory agenda will continue to reflect a strong commitment to a conservation ethic that also recognizes that unnecessary regulations create harmful economic consequences on the U.S. economy. In doing this, the Department will continue to protect human health and the environment in a responsible and cost-effective manner, but in a way that avoids imposing undue process or unnecessary economic burdens on the American public.

Regulatory and Deregulatory Priorities

Interior's regulatory and deregulatory priorities focus on:

- Promoting American energy and critical mineral development
- Improving the effectiveness, transparency and timeliness of environmental review and permitting processes for infrastructure projects
- Expanding outdoor recreation opportunities for all Americans
- Enhancing conservation stewardship
- Improving management of species and their habitats
- Upholding trust responsibilities to the Federally recognized American Indian and Alaska Native tribes and addressing the challenges of economic development

<u>Promoting American Energy and Critical Mineral Development</u>

On March 28, 2017, President Trump signed E.O. 13783, "Promoting Energy Independence and Economic Growth," which states that "[i]t is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." In accordance with E.O. 13783, Interior strives to promote the responsible development of Federal and Indian energy resources, while seeking to identify and eliminate regulatory requirements that unnecessarily burden the development or use of domestic sources of energy beyond the degree necessary to protect the public interest or otherwise comply with the law. In addition to reducing unnecessary regulatory burdens, Interior is committed to improving

its management of Federal and Indian energy resources by developing more efficient and streamlined permitting and review procedures.

The Department also recognizes that the public lands under its stewardship are an important source of the Nation's non-energy mineral resources, some of which are critical and strategic, and it is committed to ensuring appropriate access to public lands for the orderly and efficient development of important mineral resources. On December 20, 2017, President Trump signed E.O. 13817, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals," which prioritizes the need to reduce America's dependence on foreign sources for critical mineral supplies, which the U.S. relies upon to manufacture everything from batteries and computer chips to the equipment used by our military. Within this framework, on December 21, 2017, Secretary Zinke signed Secretary's Order (S.O.) No. 3351, "Critical Mineral Independence and Security," which directed Interior bureaus to identify a list of critical minerals and streamline permitting to encourage domestic production of those critical minerals.

In furtherance of these goals, Interior completed the following regulatory actions during fiscal year 2018:

- BLM published the final rule entitled, "Oil and Gas: Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule" (82 FR 61924, Dec. 29, 2017);
- BLM publish the final rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation: Rescission or Revision of Certain Requirements" (83 FR 49184, Sept. 28, 2018); and
- BSEE published the final rule entitled, "Oil and Gas and Sulphur Operations on the Outer Continental Shelf - Oil and Gas Production Safety Systems" (83 FR 49216, Sept. 28, 2018).

In fiscal year 2019, Interior will continue to pursue a regulatory agenda that seeks to eliminate or minimize regulatory burdens that unnecessarily encumber energy and mineral development, and that promotes efficient, effective and timely processing of energy and mineral permits and other authorizations on Interior-administered lands and waters. Some of the regulatory actions that Interior is planning to prioritize in fiscal year 2019 include the following:

- BSEE is considering a potential regulatory action to revise the final rule entitled, "Oil and Gas and Sulfur Operations on the Outer Continental Shelf - Blowout Preventer Systems and Well Control" (81 FR 25887, Apr. 29, 2016);
- BOEM is reviewing and considering a potential regulatory action related to its Notice to Lessees No. 2016-N01, "Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-of-Way and Right-of-Use and Easement Grants in the Outer Continental Shelf" (Sep. 12, 2016);
- BOEM is reconsidering the provisions of the proposed rule entitled, "Air Quality Control, Reporting, and Compliance," (81 FR 19718, Apr. 5, 2016);

- BSEE and BOEM are reviewing and considering a potential regulatory action related to the final rule entitled, "Oil and Gas and Sulfur Operations on the Outer Continental Shelf – Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf" (81 FR 46478, Jul. 15, 2016); and
- BLM is reviewing and considering a potential regulatory action related to the final rules entitled, "Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security" (81 FR 81356, Nov. 17, 2016), "Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil" (81 FR 81462, Nov. 17, 2016), and "Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas" (81 FR 81516, Nov. 17, 2016).

Improving the Efficiency, Transparency and Timeliness of Environmental Review and Permitting Processes for Infrastructure Projects

As outlined in E.O. 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects" (signed Aug. 15, 2017), inefficiencies in permitting processes, including environmental review processes, can delay or prevent infrastructure investments, increase project costs, and prevent the American people from experiencing infrastructure improvements that would benefit our economy, society and environment. With this in mind, E.O. 13807 directs Federal agencies to undertake actions in order to improve the effectiveness, efficiency, transparency and accountability of their environmental review and permitting processes for infrastructure projects.

The Department is responsible for reviewing and approving permits and other authorizations for various public and private infrastructure projects on and across Interior-managed lands nationwide, including various forms of surface transportation, such as roadways and railroads, pipelines, transmission lines, water resource projects, and energy production and generation. As such, Interior has an important role in the overall objective of improving the Nation's infrastructure.

In recognition of the important role that it plays in the overall efforts to improve and strengthen the Nation's infrastructure, Interior has initiated actions in order to identify and address potential impediments to its efficient and effective review of infrastructure projects. For example, on August 31, 2017, Interior issued S.O. 3355, "Streamlining the National Environmental Policy Act Reviews and Implementation of Executive Order 13807, 'Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,'" in order to enhance, modernize and improve the efficiencies of the Department's National Environmental Policy Act (NEPA) review processes.

In order to ensure that the objectives of E.O. 13807 and S.O. 3355 are effectively implemented, the Department has issued numerous guidance documents, including Environmental Review Memorandum No. ERM 10-11, "Determining the Applicable Environmental Review Framework for Infrastructure Projects" (August 9, 2018), and the following memoranda from the Deputy Secretary of the Interior:

- “Additional Direction for Implementing Secretary's Order 3355” (April 27, 2018);
- “NEPA Document Clearance Process” (April 27, 2018);
- “Compiling Contemporaneous Decision Files” (April 27, 2018);
- “Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies” (June 11, 2018);
- “Questions and Answers Related to Deputy Secretary Memorandums (Memos) dated April 27, 2018” (June 22, 2018);
- “Reporting Costs Associated with Developing Environmental Impact Statements” (July 23, 2018); and
- “Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments” (August 6, 2018).

In addition, pursuant to S.O. 3358, “Executive Committee for Expedited Permitting” (signed Oct. 25, 2017), Interior established an Executive Committee for Expedited Permitting to help improve the Department’s permitting processes for energy projects. This will involve improving the permitting processes for energy-related projects, as well as the harmonization of appurtenant environmental reviews.

In fiscal year 2019, Interior will pursue a regulatory agenda that continues its efforts to improve the Department’s permitting processes, including interagency coordination and environmental review processes, for various types of infrastructure projects. Some of the regulatory actions planned for 2019 that will help to support those objectives include:

- A Departmental rule that is being developed to update and streamline Interior’s NEPA processes - “Implementation of the National Environmental Policy Act of 1969”; and
- The following U.S. Fish and Wildlife Service regulatory actions:
    - “Conservation of Endangered and Threatened Species; Revision of Regulations to Address Interagency Cooperation”;
    - “Endangered and Threatened Species of Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat”;
    - “Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants; Removal of Blanket Section 4(d) Rule”; and
    - “Endangered Species Act Section 10 Regulations; Exceptions Regarding the Conservation of Endangered and Threatened Species of Wildlife and Plants.”

<u>Increasing Outdoor Recreation for All Americans, Enhancing Conservation Stewardship, and Improving Management of Species and Their Habitat</u>

On March 2, 2017, Secretary Zinke signed S.O. 3347, "Conservation Stewardship and Outdoor Recreation," which established a goal to enhance conservation stewardship, increase outdoor recreation, and improve the management of game species and their habitat.

With S.O. 3356, "Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories," which was signed on September 15, 2017, Interior announced continued efforts to enhance conservation stewardship; increase outdoor recreation opportunities for all Americans, including opportunities to hunt and fish; and improve the management of game species and their habitats for this generation and beyond.

On April 18, 2018, Secretary Zinke signed S.O. 3365, "Establishment of a Senior National Adviser for Recreation," and S.O. 3366, "Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior." Those Secretary's Orders provide additional support for Interior's continuing efforts to increase access to outdoor recreation on public lands for all American.

In fiscal year 2019, Interior will pursue a regulatory agenda that will help to achieve its goals of expanding opportunities for outdoor recreation, including hunting and fishing, for all Americans; enhancing conservation stewardship; and improving the management of species and their habitat. The regulatory actions that Interior is planning to pursue in accordance with the aforementioned goals include:

- A regulatory action that would align Federal regulations regarding sport hunting and trapping in national preserves in Alaska with State of Alaska laws and regulations; and
- Regulatory actions that would authorize certain recreational activities, such as off-road vehicle use, snowmobiling and bicycling, within designated areas of certain National Park System units.

<u>Upholding Trust Responsibilities to the Federally Recognized American Indian and Alaska Native Tribes and Addressing the Challenges of Economic Development</u>

The Department of the Interior and the Bureau of Indian Affairs (BIA) are committed to identifying opportunities to promote economic growth and the welfare of the people BIA serves by removing barriers to the development of energy and other resources in Indian country. In fiscal year 2019, Interior will continue to pursue a regulatory agenda that supports that commitment.

Aggregate Deregulatory and Significant Regulatory Actions

Interior made substantial progress in reducing regulatory burdens upon the American public. Since the issuance of E.O. 13771 in January 2017, Interior has finalized deregulatory actions that provide a total of over $200 million in annualized costs savings. In fiscal year 2019, Interior expects to complete deregulatory actions that will provide approximately $50 million in annualized costs savings. Interior does not currently expect

to publish any significant regulatory actions during the next year that will be subject to the offset requirements of E.O. 13771. Throughout this document, the terms "deregulatory action" and "significant regulatory action" refer to actions that are subject to E.O. 13771.

Bureaus and Offices within the Department of the Interior

The following sections give an overview of some of the major deregulatory and regulatory priorities of Interior bureaus and offices.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) enhances the quality of life, promotes economic opportunity, and protects and improves the trust assets of approximately 1.9 million American Indians, Indian tribes, and Alaska Natives. BIA also provides quality education opportunities to students in Indian schools. BIA maintains a government-to-government relationship with the 573 federally recognized Indian tribes. The Bureau also administers and manages 55 million acres of surface land and 57 million acres of subsurface minerals held in trust by the United States for American Indians and Indian tribes.

Deregulatory and Regulatory Actions

In the coming year, BIA's regulatory agenda will continue to focus on priorities that ease regulatory burdens on tribes, American Indians and Alaska Natives, and others subject to BIA regulations, in accordance with E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," and E.O. 13777, "Enforcing the Regulatory Reform Agenda." In accordance with this focus, BIA has identified a provision in the Tribal Transportation Program regulation that may be appropriate for revision because it imposes data collection and reporting requirements that are potentially unnecessary under current law. BIA also plans to finalize a regulation that would streamline the right-of-way process for governmental entities seeking a waiver of the requirement to obtain a bond in certain cases. To reduce documentary burden, BIA is planning to finalize a rule that would allow for the recording in land title records of a memorandum of lease, rather than requiring recording of all the lease documents.

Because many of its existing regulations require compliance with the NEPA, BIA is also working on parallel efforts to streamline NEPA implementation, in accordance with E.O. 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," and S.O. 3355, "Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807."

The BIA has one potentially significant regulatory action on its agenda that would revise the existing regulations governing off-reservation trust acquisitions to establish new items that must be included in an application and threshold criteria that must be met for off-reservation acquisitions before NEPA compliance will be required. The rule would also reinstate the 30-day delay for taking land into trust following a decision by the Secretary or Assistant Secretary. This rule is expected to have de minimis economic impacts and therefore likely exempt from the offset requirements under E.O. 13771.

Bureau of Land Management

The Bureau of Land Management (BLM) manages more than 245 million acres of public land, known as the National System of Public Lands, primarily located in 12 Western states, including Alaska. The Bureau also administers 700 million acres of sub-surface mineral estate throughout the nation. As stewards, the BLM pursues its multiple-use mission, providing opportunities for economic growth through uses such as energy development, ranching, mining and logging, as well as outdoor recreation activities such as camping, hunting and fishing, while also supporting conservation efforts. Public lands provide valuable, tangible goods and materials that we use every day to heat our homes, build our roads, and feed our families. The BLM strives to be a good neighbor in the communities it serves, and is committed to keeping public landscapes healthy and productive.

Deregulatory and Regulatory actions

BLM has identified the following deregulatory actions for the coming year:

- Non-Energy Solid Leasable Minerals Royalty Rate Reductions (RIN 1004-AE58); and
- Revisions to Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations (RIN 1004-AE59).

BLM has no significant regulatory actions subject to E.O. 13771 planned in 2019.

Non-Energy Solid Leasable Minerals Royalty Rate Reductions

The BLM is considering a proposed rule to streamline the royalty rate reduction process for non-energy solid leasable minerals. The proposed rule would address shortcomings with the existing royalty rate reduction regulations for non-energy solid leasable minerals at 43 CFR subpart 3513 - Waiver, Suspension or Reduction of Rental and Minimum Royalties.

The current regulations establish the royalty rate reduction process. However, that process is believed to be unnecessarily burdensome and the standards are higher than the applicable statute requires for approval of a royalty rate reduction. The proposed rule would streamline the royalty rate reduction process and align the BLM regulations more closely with the standards of the Mineral Leasing Act of 1920.

Revisions to Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations

On November 17, 2016, the BLM issued three final rules that updated and replaced the BLM's existing Onshore Oil and Gas Orders (Onshore Orders) for site security (Onshore Order 3), measurement of oil (Onshore Order 4), and measurement of gas (Onshore

Order 5). The three rules were codified in Title 43 of the Code of Federal Regulations at subparts 3170 (Onshore Oil and Gas Production: General), 3173 (Requirements for Site Security and Production Handling), 3174 (Measurement of Oil), and 3175 (Measurement of Gas). These rules were prompted by external and internal oversight reviews, which found that many of the BLM's production measurement and accountability policies were outdated and inconsistently applied. The rules addressed some of the Government Accountability Office's concerns for areas of high risk with regard to the Department's production accountability. The rulemakings also provide a process for approving new measurement technology that meets defined performance goals.

In accordance with E.O. 13783, "Promoting Energy Independence and Economic Growth" (March 28, 2017), and S.O. 3349, "American Energy Independence" (March 29, 2017), the BLM has undertaken a review of the rules to determine if certain provisions may have added regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. As a result of this review, the BLM is considering a proposed rulemaking action that will propose to modify certain provisions of 43 CFR subparts 3170, 3173, 3174, and 3175 in order to reduce unnecessary and overly burdensome regulatory requirements.

Bureau of Ocean Energy Management

The Bureau of Ocean Energy Management (BOEM) is committed to the Administration proposition that "A brighter future depends on energy policies that stimulate our economy, ensure our security, and protect our health." In accordance with E.O. 13783, "Promoting Energy Independence and Economic Growth," BOEM is committed to the safe and orderly development of our offshore energy and mineral resources, with the goal of avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. BOEM is committed to identifying regulatory and deregulatory opportunities and policies that lower costs and stimulate development. BOEM continues to strengthen U.S. energy security and energy independence. BOEM creates jobs, benefits local communities, and strengthens the economy by offering opportunities to develop the conventional and renewable energy and mineral resources of the Outer Continental Shelf (OCS).

<u>Deregulatory and Regulatory Actions</u>

E.O. 13795, "Implementing an America-First Offshore Energy Strategy," specifically addressed certain Interior rules related to offshore energy. To implement E.O.13795, Interior issued S.O. 3350, "America-First Offshore Energy Strategy," which enhances opportunities for energy exploration, leasing, and development on the OCS; establishes

regulatory certainty for OCS activities; and enhances conservation stewardship, thereby providing jobs, energy security, and revenue for the American people. In accordance with S.O. 3350, BOEM has:

- Reconsidered its financial assurance policies expressed in Notice to Lessees No. 2016-N01 related to offshore oil and gas activities. BOEM is currently working on a proposed rule to protect taxpayers from unnecessary liabilities while minimizing unnecessary regulatory burdens on industry.
- Ceased activities to promulgate the "Offshore Air Quality Control, Reporting, and Compliance" proposed rule, which was published on April 5, 2016 (81 FR 19717). Following extensive review, BOEM is now completing a more limited final rule that will implement BOEM's statutory responsibility to ensure that OCS operations conducted under a BOEM approved plan are in compliance with statutory mandates.
- Reviewed, in consultation with the Bureau of Safety and Environmental Enforcement (BSEE), the final rule "Oil and Gas and Sulfur Operations on the Outer Continental Shelf - Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," which was published on July 15, 2016 (81 FR 46478), for consistency with the policy set forth in section 2 of E.O. 13795. As a result of that review, BOEM and BSEE are considering deregulatory options for the rule.

BOEM has no economically significant regulatory actions planned for fiscal year 2019.

Streamlining Renewable Energy Regulations

BOEM's renewable energy program has matured over the past 8 years as it has conducted 7 auctions and issued 13 commercial leases for offshore wind. Through that experience and stakeholder engagement, BOEM has identified deregulatory opportunities for reforming, streamlining, and clarifying its renewable energy regulations. This proposed rulemaking contains reforms that are intended to facilitate offshore renewable energy development, while not decreasing environmental safeguards. The rulemaking advances, and is consistent with, the Administration's deregulatory and energy security policies.

<u>Compliance with Executive and Secretary's Orders, and Statutory Mandates</u>

BOEM will continue to be responsive to the various regulatory reform initiatives, including identifying and acting upon any regulations, orders, guidance, policies or any similar actions that could potentially burden the development or utilization of domestically produced energy sources.

Bureau of Safety and Environmental Enforcement

The Bureau of Safety and Environmental Enforcement's (BSEE) mission is to promote offshore conservation, development and production of offshore energy resources while ensuring that offshore operations are safe and environmentally responsible. BSEE's priorities in fulfillment of its mission are to: (1) promote and regulate offshore energy development using the full range of authorities, policies, and tools to ensure safety and environmental responsibility; and (2) build and sustain the organizational, technical, and intellectual capacity within and across BSEE's key functions in order to keep pace with offshore industry technology improvements, innovate in economically sound regulation and enforcement, and reduce risk through appropriate risk assessment and regulatory and enforcement actions.

Consistent with the direction in E.O. 13783, "Promoting Energy Independence and Economic Growth," E.O. 13795, "Implementing an America-First Offshore Energy Strategy," as well as E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," BSEE has reviewed and will continue to review its existing regulations to determine whether they may unnecessarily burden the development or use of domestically produced energy resources, constrain economic growth, or prevent job creation. BSEE is a well-positioned partner ready to help all stakeholders maintain the Nation's position as a global energy leader and foster energy independence for the benefit of the American people, while ensuring that offshore oil and gas activity in the Outer Continental Shelf is performed in a safe and environmentally responsible manner.

In the coming year, BSEE plans to finalize two deregulatory actions and three regulatory actions. BSEE has no significant regulatory actions that are expected to be subject to E.O. 13771 planned for the coming year.

Deregulatory Actions

BSEE has identified the following deregulatory actions under E.O. 13771 as high priorities for fiscal year 2019:

Well Control and Blowout Prevention Systems Rule Revision

In the immediate aftermath of the *Deepwater Horizon* incident in 2010, 14 external organizations made a total of 424 recommendations, which were expressed through 26 separate reports, in order to improve the safety of offshore oil and gas operations. BSEE subsequently issued four rules that addressed those recommendations, which included the April 2016 final rule entitled, "Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Blowout Preventer Systems and Well Control" (81 FR 25888) ("2016 Well Control Rule" or "2016 rule"). The 2016 Well Control Rule consolidated the equipment and operational requirements for well control into one part of BSEE's regulations; enhanced blowout preventer (BOP), well design, and modified well-control requirements; and incorporated certain industry technical standards.

Consistent with the policy direction of E.O.s 13771 and 13795 and S.O. 3350, BSEE undertook a review of the 2016 Well Control Rule with a view toward encouraging energy exploration and production and reducing unnecessary regulatory burdens while

ensuring that any such activity is safe and environmentally responsible. After thoroughly reexamining the 2016 Well Control Rule, on May 11, 2018, BSEE published a proposed rule entitled, "Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions" (83 FR 22128) ("proposed rule"), to reduce regulatory burdens and encourage job-creating development, while still ensuring safe and environmentally responsible offshore oil and gas operations.

In developing the proposed rule, BSEE carefully analyzed all 342 provisions of the 2016 Well Control Rule, and identified 59 of those provisions—or less than 18% of the 2016 Rule— as appropriate for revision or deletion.[1] During this process, BSEE also compared each of the proposed changes to the 424 recommendations arising from the 26 separate reports developed in the wake of and in response to the *Deepwater Horizon* incident, and determined that none of the proposed changes contradicts or ignores any of those recommendations, or would alter any provision of the 2016 Well Control Rule in a way that would make the result inconsistent with any of the recommendations. Among the potential changes included in the proposed rule are:

- Revising the accumulator system requirements and accumulator bottle requirements for Blowout Preventers (BOPs) to better align with industry standards, particularly API Standard 53—Blowout Prevention Equipment Systems for Drilling Wells;
- Revising the requirement to shut in platforms when a lift boat approaches;
- Revising the BOP control station and pod testing schedules to ensure component functionality without inadvertently requiring duplicative testing;
- Removing certain prescriptive requirements for real-time monitoring; and
- Replacing the required use of a BSEE-approved verification of organization (BAVO) with the use of an independent third-party for certain certifications and verifications of BOP systems and components, and removing the requirement to have a BAVO submit a Mechanical Integrity Assessment report for the BOP stack and system.

Exploratory Drilling on the Arctic Outer Continental Shelf Rule

BSEE has reviewed, in consultation with BOEM, the final rule "Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," published on July 15, 2016 (81 FR 46478), for consistency with the policy set forth in section 2 of E.O. 13795. As a result of that review, BSEE and BOEM are considering deregulatory options for the rule.

In addition to the deregulatory actions previously identified, BSEE will continue to review the remainder of its regulations to identify other requirements that could be

[1] A provision represents a requirement of the operator that may be comprised of a single citation or multiple citations.

modified to increase efficiency, streamline processes, reduce industry burden, and maximize energy resources while ensuring offshore operations are performed in a safe and environmentally sustainable manner.

Regulatory Actions

BSEE has no significant regulatory actions subject to E.O. 13771 planned for fiscal year 2019. However, BSEE plans to complete the following three, non-significant rulemakings before the end of that fiscal year that are either statutorily required or are minor in nature:

Outer Continental Shelf Lands Act; 2019 Inflation Adjustments for Civil Penalties

This rulemaking would adjust the level of civil monetary penalties contained in BSEE's regulations that are pursuant to the Outer Continental Shelf Lands Act. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIA) requires Federal agencies to make annual adjustments for inflation to civil penalties contained in its regulations.

Federal Oil and Gas Royalty Management Act; 2019 Inflation Adjustments for Civil Penalties

To provide for a more cohesive and streamlined approach for making annual inflation adjustments to BSEE's FOGRMA-related civil penalties under the FCPIA, this rulemaking would remove the civil monetary amounts contained in BSEE's regulations and replace them with a cross-reference to the Office of Natural Resource Revenue's (ONRR) FOGRMA civil penalty regulations. Pursuant to the FCPIA, ONRR makes inflation adjustments to its FOGRMA civil penalties on an annual basis pursuant to the FCPIA.

Privacy Act Regulations; Exemption for the Investigations Case Management System

Interior will amend its regulations to exempt certain records from particular provisions of the Privacy Act, which BSEE maintains to conduct and document incident investigations related to operations on the Outer Continental Shelf (OCS).

Office of Natural Resources Revenue

The Office of Natural Resources Revenue (ONRR) will continue to collect, account for, and disburse revenues from Federal offshore energy and mineral leases and from onshore mineral leases on Federal and Indian lands. The program operates nationwide and is primarily responsible for timely and accurate collection, distribution, and accounting for revenues associated with mineral and energy production. ONRR's regulatory plan for October 1, 2018 through September 30, 2019 is as follows:

By January 15, 2019, ONRR will draft and publish in the Federal Register a final rule (1012-AA24) to adjust for inflation ONRR's daily maximum civil penalty rates, to be

effective for calendar year 2019. This adjustment is required by law (28 U.S.C. § 2461) and OMB Guidance.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSMRE) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Under SMCRA, OSMRE has two principal functions - the regulation of surface coal mining and reclamation operations, and the reclamation and restoration of abandoned coal mine lands. In enacting SMCRA, Congress directed OSMRE 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." OSMRE seeks to develop and maintain a regulatory program that provides a safe, cost-effective, and environmentally sound supply of coal to help support the Nation's economy and local communities.

Deregulatory and Regulatory Actions

OSMRE is continuing to review additional actions to reduce burdens on energy production, including, for example, reviewing the state program amendment process to reduce the time it takes to formally amend an approved regulatory program.

OSMRE has no significant regulatory actions planned for fiscal year 2019.

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. The FWS also provides opportunities for Americans to enjoy the outdoors and our shared natural heritage.

The FWS fulfills its responsibilities through a diverse array of programs that:

- Protect and recover endangered and threatened species;
- Monitor and manage migratory birds;
- 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 more than 150 million acres of land and water from the Caribbean to the remote Pacific in the National Wildlife Refuge System, which protects and conserves fish and wildlife and their habitats, and allows the public to engage in outdoor recreational activities.

Deregulatory and Regulatory Actions

During the next year, the regulatory priorities of FWS will include:

Regulations under the Endangered Species Act (ESA)

The FWS, jointly with the National Marine Fisheries Service (NMFS), will propose regulatory actions to improve the administration of the ESA, and reduce unnecessary administrative burdens. The FWS and NMFS are developing regulatory reforms that will create efficiencies and streamline the ESA consultation process, as well as the processes for listing and delisting threatened and endangered species. In addition, FWS is developing a regulatory action that would remove the blanket section 4(d) rule applying to species listed as threatened. This change will align FWS's process with NMFS and result in regulations and prohibitions tailored to the conservation needs of specific species.

The FWS is also considering a rulemaking action that would improve and clarify its regulations that implement section 10 of the ESA and pertain to the issuance of permits for the take of threatened and endangered species.

The FWS also plans to take multiple regulatory actions under the ESA in order to prevent the extinction and facilitate the recovery of both domestic and foreign animal and plant species. Accordingly, FWS will add species to, remove species from, and reclassify species on the Lists of Endangered and Threatened Wildlife and Plants, and designate critical habitat, in accordance with the National Listing Workplan and 3-Year Downlisting and Delisting Workplan. These Workplans enable FWS to prioritize its workload based on the needs of species, while providing greater clarity and predictability about the timing of ESA classification determinations to State wildlife agencies, nonprofit organizations, and various other diverse stakeholders and partners. The goals of the Workplans are to encourage proactive conservation so that Federal protections are not needed in the first place and to remove regulatory burdens once a listed species' status is improved or the species is recovered.

Regulations under the Migratory Bird Treaty Act (MBTA)

In carrying out its responsibility to manage migratory bird populations, FWS plans to issue annual migratory bird hunting regulations, which establish the frameworks (outside limits) for States to establish season lengths, bag limits, and areas for migratory game bird hunting. FWS is considering and plans to propose a regulatory action to revise and improve the administration of the MBTA.

Regulations to administer the National Wildlife Refuge System (NWRS)

In carrying out its statutory responsibility to provide wildlife-dependent recreational opportunities on NWRS lands, FWS issues an annual rule to update the hunting and fishing regulations on specific refuges.

Regulations to carry out the Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts (Acts)

Under the Acts, FWS distributes annual apportionments to States from trust funds derived from excise tax revenues and fuel taxes. FWS continues to work closely with State fish and wildlife agencies on how to use these funds to implement conservation projects. To strengthen its partnership with State conservation organizations, FWS is working on several rules to update and clarify its regulations. Planned regulatory revisions will help to reflect several new decisions agreed upon by State conservation organizations.

Regulations to carry out the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Lacey Act

In accordance with section 3(a) of E.O. 13609, "Promoting International Regulatory Cooperation," FWS will update its CITES regulations to incorporate provisions resulting from the 16th and 17th Conference of the Parties to CITES. The revisions will help FWS more effectively promote species conservation and help U.S. importers and exporters of wildlife products understand how to conduct lawful international trade.

The FWS has no significant regulatory actions that are subject to E.O. 13771 planned for fiscal year 2019.

National Park Service

The National Park Service (NPS) preserves the natural and cultural resources and values within 417 units of the National Park System encompassing nearly 84 million acres of lands and waters for the enjoyment, education, and inspiration of this and future generations. The NPS also cooperates with partners to extend the benefits of resource conservation and outdoor recreation throughout the United States and the world.

The NPS intends to issue a number of deregulatory actions and no significant regulatory actions during the upcoming year.

<u>Deregulatory Actions</u>

The NPS will undertake deregulatory actions under E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," that will reduce regulatory costs. Several of these actions also comply with section 6 of E.O. 13563, "Improving Regulation and Regulatory Review," because they will remove or modify outdated, unnecessarily complicated and burdensome regulations.

The NPS intends to:

- Issue a final rule to align sport hunting regulations in national preserves in Alaska with State of Alaska regulations and to enhance consistency with harvest regulations on surrounding non-federal lands and waters.

- Issue a proposed rule that would revise existing regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA) to streamline requirements for museums and Federal agencies. The rule would describe the NAGPRA process in accessible language with clear time parameters, eliminate ambiguity, clarify terms, and improve efficiency.

NPS Response to Secretarial Order 3366: Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior

Enabling regulations are considered deregulatory under guidance to E.O. 13771. The NPS will undertake several enabling regulatory actions in the coming year that will provide new opportunities for the public to enjoy and experience certain areas within the National Park System. These include regulations authorizing:

- Off-road vehicle use at Cape Lookout National Seashore (final rule), Glen Canyon National Recreation Area (final rule), Big Cypress National Preserve (proposed rule), and Fire Island National Seashore (proposed rule);
- Bicycling at Pea Ridge National Military Park (final rule), Hot Springs National Park (proposed rule), Buffalo National River (proposed rule), and Whiskeytown National Recreation Area (proposed rule);
- Launching of non-motorized vessels from Colonial National Historic Park (proposed rule);
- Snowmobiles within Pictured Rocks National Lakeshore (proposed rule);
- Personal watercraft within Gulf Islands National Seashore (proposed rule); and
- Recreational flying within Death Valley National Park (proposed rule).

These actions will allow the public to use NPS-administered lands and waters in a manner that protects the resources and values of the National Park System. As outdoor recreation technology, uses, and patterns evolve, the NPS regulations and management policies will also need to evolve. The NPS is working to address emerging forms of recreation such as electric bicycles (e-bikes).

Other Priority Rulemakings of Particular Interest to Small Business

The NPS intends to issue a proposed rule to implement the Visitor Experience Improvements Authority (VEIA) given to the NPS by Congress in Title VII of the National Park Service Centennial Act. This authority allows the NPS to award and administer commercial services contracts (and related professional services contracts) for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System.

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 employ 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. In addition, we continue to provide increased security at our facilities.

Deregulatory and Regulatory Actions

The Bureau of Reclamation intends to publish no deregulatory or significant regulatory actions in fiscal year 2019.

Other Regulatory Actions of the Department of the Interior

Natural Resource Damages and Restoration--Hazardous Substances (RIN: 1090-AB17)

The existing regulation (43 CFR 11) provides procedures that Natural Resource Trustees may use to evaluate the need for and means of restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances. The Department is considering a potential rulemaking action that would provide an opportunity for others (Federal agencies, States, Indian Tribes, and interested public) to provide input on areas of the existing regulations that could be revised to increase effectiveness, efficiency, and restoration of the injured resources.

Implementation of the National Environmental Policy Act of 1969 (RIN: 1090-AB18)

The Department is developing regulations to streamline its National Environmental Policy Act (NEPA) process by increasing the number of categorical exclusions and updating its NEPA regulations.

DOI—Assistant Secretary for Land and Minerals Management(ASLM)	**PROPOSED RULE STAGE**

91. REVISIONS TO THE REQUIREMENTS FOR EXPLORATORY DRILLING ON THE ARCTIC OUTER CONTINENTAL SHELF

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Deregulatory

Legal Authority:

43 U.S.C. 1331 to 1356a; 33 U.S.C. 2701

CFR Citation:

30 CFR 250; 30 CFR 254; 30 CFR 550

Legal Deadline:

None

Abstract:

This proposed rule would revise specific provisions of the regulations published in the final Arctic Exploratory Drilling Rule, 81 FR 46478 (July 15, 2016), which established a regulatory framework for exploratory drilling and related operations within the Beaufort Sea and Chukchi Sea Planning Areas on the Outer Continental Shelf of Alaska. The rulemaking for this RIN replaces the Bureau of Safety and Environmental Enforcement's RIN 1014-AA40.

Timetable:

Action	Date	FR Cite
NPRM	01/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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BILLING CODE: 4334-63-P

DEPARTMENT OF JUSTICE (DOJ) -- FALL 2018
Statement of Regulatory Priorities

The solemn duty of the Department of Justice is to uphold the Constitution and laws of the United States so that all Americans can live in peace and security. As the chief law enforcement agency of the United States government, the Department of Justice's fundamental mission is to protect people by enforcing the rule of law. To fulfill this mission, the Department is devoting resources and utilizing the legal authorities available to combat violent crime and terrorism, prosecute drug traffickers, and enforce immigration laws. Because the Department of Justice is primarily a law enforcement agency and not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

This year, the Department of Justice continues to revise and improve its procedures for evaluating new regulatory actions and analyzing the costs that would be imposed. Executive Order 13771 (EO 13771), titled "Reducing Regulation and Controlling Regulatory Costs," 82 Fed. Reg. 9339 (Feb. 3, 2017), requires an agency, unless prohibited by law, that for every one new regulation issued, at least two prior regulations be identified for elimination. In furtherance of this requirement, section 2(c) of EO 13771 requires the new incremental costs associated with new regulations, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Section 3(a) states that starting with fiscal year 2018, "the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of [EO 13771], and provide the agency's best approximation of the totals costs or savings associated with each new regulation or repealed regulation."

In addition to the new cost analyses being conducted pursuant to EO 13771, the Department is actively carrying out the provisions of EO 13777, "Enforcing the Regulatory Reform Agenda," 82 Fed. Reg. 12285 (Mar. 1, 2017). The Department's Regulatory Reform Task Force continues actively working to evaluate existing Department regulatory actions and to make recommendations regarding their repeal, replacement, or modification in order to reduce unnecessary burdens.

The regulatory priorities of the Department include initiatives in the areas of federal grant programs, criminal law enforcement, immigration, and civil rights. These initiatives are summarized below. In addition, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not separately discussed in this overview of the regulatory priorities, those components have key roles in implementing the Department's anti-terrorism and law enforcement priorities.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

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, among other objectives, (1) to curb illegal traffic in, and criminal use of, firearms and explosives, and (2) to assist State, local, and other Federal law enforcement agencies in reducing crime and violence. ATF will continue, as a priority during fiscal year 2019, to seek modifications to its regulations governing commerce in firearms and explosives to fulfill these objectives.

As its key regulatory initiative, ATF plans to amend its regulations to clarify that "bump fire" stocks, slide-fire devices, and devices with certain similar characteristics (bump-stock-type devices) are "machineguns" as defined by the National Firearms Act of 1934, and the Gun Control Act of 1968, because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. This is one of the Department's Regulatory Plan entries.

In addition, ATF plans to update its regulations requiring notification of stored explosive materials to require annual reporting (RIN 1140-AA51). This regulatory action is intended to increase safety for

emergency first responders and the public.

ATF also plans to issue regulations to finalize the current interim rules implementing the provisions of the Safe Explosives Act (RIN 1140-AA00). The Department is also planning to finalize a proposed rule to codify regulations (27 CFR part 771) governing the procedure and practice for proposed denial of applications for explosives licenses or permits and proposed revocation of such licenses and permits (RIN 1140-AA38). As proposed, this rule is a regulatory action that clarifies the administrative hearing processes for explosives licenses and permits. This rule promotes open government and disclosure of ATF's procedures and practices for administrative actions involving explosive licensees or permittees.

ATF also has begun a rulemaking process that amends 27 CFR part 447 to update the terminology in the ATF regulations based on similar terminology amendments made by the Department of State on the U.S. Munitions List in the International Traffic in Arms Regulations, and the Department of Commerce on the Commerce Control List in the Export Administration Regulations (RIN 1140-AA49).

Drug Enforcement Administration (DEA)

DEA is the primary agency responsible for coordinating the drug law enforcement activities of the United States and also assists in the implementation of the President's National Drug Control Strategy. DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended, collectively referred to as the Controlled Substances Act (CSA). DEA's mission is to enforce the CSA and its regulations and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

Pursuant to its statutory authority, DEA plans to update its regulations to implement provisions of the Comprehensive Addiction and Recovery Act of 2016 (RIN 1117-AB45) relating to the partial filling of prescriptions for Schedule II controlled substances. This is one of the Department's Regulatory Plan initiatives.

In fiscal year 2019, DEA anticipates issuing a rulemaking action addressing suspicious orders of controlled substances (RIN 1117-AB47) . This proposed rule would remedy the inadequacies of the existing reporting requirements by defining the term "suspicious order" and specifying the procedures registrants must follow upon receiving such orders. In addition, DEA plans to publish six deregulatory actions (RINs 1117-AB37, 1117-AB40, 1117-AB43, 1117-AB44, 1117-AB45, and 1117-AB46). Consistent with EO 13771 and EO 13777, DEA is continuing to review existing regulations to identify those that are outdated, unnecessary, or ineffective. DEA will solicit public comments during such reviews, as appropriate, to engage with the affected DEA registrant community and members of the public.

Executive Office for Immigration Review (EOIR)

EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. The immigration judges adjudicate approximately 150,000 cases each year to determine whether aliens should be ordered removed from the United States or should be granted some form of protection or relief from removal. The Board of Immigration Appeals (BIA) has jurisdiction over appeals from the decisions of immigration judges, as well as other matters. Accordingly, the Attorney General has a continued role in the conduct of immigration proceedings, including removal proceedings and custody determinations regarding the detention 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 particular, EOIR intends to propose revisions to the existing asylum regulations, pursuant to the Attorney General's statutory authority, to ensure the faithful and efficient execution of asylum processes (RIN 1125-AA87). This is one of the Department's Regulatory Plan initiatives.

In other pending rulemaking actions, the Department is working to revise and update the regulations relating to immigration proceedings to increase efficiencies and productivity, while also safeguarding due process. In particular, EOIR is working to expand upon its Public Notice of June 25, 2018, by publishing

a proposed rule regarding its new EOIR Case and Appeals System, which provides for greatly expanded electronic filing and calendaring for cases before EOIR's immigration courts and BIA (RIN 1125-AA81). In
addition, EOIR is planning to publish a regulation to finalize an interim final rule from 2005 regarding background and security investigation checks (RIN 1125-AA44), and is working to finalize a jurisdiction and venue rule that will provide clarification regarding an immigration judge's authority to conduct proceedings, how venue is determined, and what circuit court law EOIR adjudicators will apply (RIN 1125-AA52). In particular, EOIR is developing mechanisms in this rule intended to streamline certain venue changes to achieve cost savings to the agency and increase due process to the parties. In addition, in response to Executive Order 13563, the Department is retrospectively reviewing EOIR's regulations to eliminate regulations that unnecessarily duplicate Department of Homeland Security regulations and update outdated references to the pre-2003 immigration system (RIN 1125-AA71). The Department also continues to work toward rulemaking that will assist in identifying and sanctioning those defraud the system itself and the individuals who appear before EOIR (RIN 1125-AA82).

Civil Rights (CRT)

CRT regulations implement Federal laws relating to discrimination in employment-related immigration practices, the coordination of enforcement of non-discrimination in federally assisted programs, and Federal laws relating to disability discrimination.

Pursuant to the regulatory reform provisions of Executive Orders 13771 and 13777, CRT is undertaking a review of its guidance documents to determine whether any of those documents may be outdated, inconsistent, or duplicative, and to ensure compliance with the Attorney General's November 16, 2017 Memorandum entitled Prohibition on Improper Guidance Documents.

Office of Justice Programs (OJP)

OJP provides innovative leadership to federal, state, local, and tribal justice systems by disseminating state-of-the-art knowledge and practices and providing financial assistance for the implementation of crime fighting strategies. OJP will continue to review its existing regulations to streamline them, where possible.

OJP published a notice of proposed rulemaking for the OJJDP Formula Grant Program on August 8, 2016, and in early 2017 published a final rule addressing some of those provisions. OJP anticipates publishing a second final OJJDP Formula Grant Program rule to remove certain provisions of the regulations that are no longer legally supported (deleting text that unnecessarily repeats statutory provisions or has been rendered obsolete by statutory changes) and to make technical corrections. After publishing the second final rule, OJJDP anticipates publishing a third final rule to finalize the remaining substantive aspects of the proposed rule, and to further streamline and improve the existing regulation by providing or revising definitions for clarity, and by deleting text that addresses matters already (or better) addressed in other places (e.g., other rules or the program solicitation).

Bureau of Prisons (BOP)

BOP issues regulations to enforce the Federal laws relating to its mission of protecting 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, BOP will continue its ongoing efforts to develop regulatory actions aimed at: (1) streamlining regulations, eliminating unnecessary language and improving readability; (2) improving inmate disciplinary procedures and sanctions, improving safety in facilities through the use of less-than-lethal force instead of traditional weapons; and (3) providing effective literacy programming which serves both general and specialized inmate needs.

Federal Bureau of Investigation (FBI)

The Federal Bureau of Investigation 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 limited contexts does the FBI rely on rulemaking. For example, the FBI is currently drafting a rule that establishes the criteria for use by a designated entity(ies) in making a determination of fitness as described under the Child Protection Improvements Act (CPIA), 34 United States Code § 40102, Public Law 115-141. The CPIA requires that the Attorney General shall,

by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4) of the Act concerning whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity. Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 USC 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 USC 9858f).

DOJ—Bureau of Alcohol, Tobacco, Firearms, and Explosives(ATF)	**FINAL RULE STAGE**

92. BUMP–STOCK–TYPE DEVICES

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Regulatory

Legal Authority:

18 U.S.C. 921 et seq.; 26 U.S.C. 5841 et seq.

CFR Citation:

27 CFR 478; 27 CFR 479

Legal Deadline:

None

Abstract:

The Department of Justice is issuing a rulemaking that would interpret the statutory definition of machinegun in the National Firearms Act of 1934 and Gun Control Act of 1968 to clarify whether certain devices, commonly known as bump-fire stocks, fall within that definition.

Statement of Need:

This rule is intended to clarify that the statutory definition of machinegun includes certain devices (i.e., bump-stock-type devices) that, when affixed to a firearm, allow that firearm to fire automatically with a single function of the trigger, such that they are subject to regulation under the National Firearms Act (NFA) and the Gun Control Act (GCA). The rule will amend 27 CFR 447.11, 478.11, and 479.11 to clarify that bump-stock-type devices are machineguns as defined by the NFA and GCA because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. Specifically, these devices convert an otherwise semiautomatic firearm into a machinegun by functioning as a self-acting or self-regulating mechanism that harnesses the recoil energy of the semiautomatic firearm in a manner that allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter.

Summary of Legal Basis:

The Attorney General has express authority pursuant to 18 U.S.C. 926 to prescribe rules and regulations necessary to carry out the provisions of Chapter 44, Title 18, United States Code. The detailed legal analysis supporting the definition of machinegun proposed for adoption in this rule is expressed in the abstract for the rule itself.

Alternatives:

There are no feasible alternatives to the proposed rule that would allow ATF to regulate bump-stock-type devices. Absent congressional action, the only feasible alternative is to maintain the *status quo.*

Anticipated Cost and Benefits:

The rule will be "economically significant," that is, the rule will have an annual effect on the economy of $100 million, or adversely affect in a material way the economy, a sector of the economy, the environment, public health or safety or State, local or tribal governments or communities. ATF estimates the total cost of this rule at $320.9 million over 10 years. The total 7% discount cost is estimated at $234.1 million, and the discounted costs would be $39.6 million and $39.2 million annualized at 3% and 7% respectively. The estimate includes costs to the public for loss of property ($102,470,977); costs of forgone future production and sales ($213,031,753); and costs for disposal ($5,448,330). Unquantified costs include lost employment, notification to bump-stock-type device owners of the need to destroy the bump-stock-type devices, and loss of future usage by the owners of bump-stock-type devices. ATF did not calculate any cost savings for this final rule. It is anticipated that the rule will cost $129,222,483 million in the first year (the year with the highest costs). This cost includes the first-year cost to destroy or modify all existing bump-stock-type devices, including unsellable inventory and opportunity cost of time.

This rule provides significant non-quantifiable benefits to public safety. Among other things, it clarifies that a bump-stock-type device is a machinegun and limits access to them; prevents usage of bump-stock-type devices for criminal purposes; reduces casualties in mass shootings, such as the Las Vegas shooting; and helps protect first responders by preventing shooters from using a device that allows them to shoot a semiautomatic firearm automatically.

Risks:

Without this rule, public safety will continue to be threatened by the widespread availability to the public of bump-stock-devices.

Timetable:

Action	Date	FR Cite
ANPRM	12/26/17	82 FR 60929
ANPRM Comment Period End	01/25/18	
NPRM	03/29/18	83 FR 13442
NPRM Comment Period End	06/27/18	
Final Action	12/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOJ—Drug Enforcement Administration(DEA)	PROPOSED RULE STAGE

93. IMPLEMENTATION OF THE PROVISION OF THE COMPREHENSIVE ADDICTION AND RECOVERY ACT OF 2016 RELATING TO THE PARTIAL FILLING OF PRESCRIPTIONS FOR SCHEDULE II CONTROLLED SUBSTANCES

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

21 U.S.C. 821; 21 U.S.C. 829; 21 U.S.C. 831; 21 U.S.C. 871; Pub. L. 114–198, sec. 702

CFR Citation:

21 CFR 1306

Legal Deadline:

None

Abstract:

On July 22, 2016, the Comprehensive Addiction and Recovery Act (CARA) of 2016 became law. One section of the CARA amended the Controlled Substances Act to allow a pharmacist, if certain conditions are met, to partially fill a prescription for a schedule II controlled substance when requested by the prescribing practitioner or the patient. The Drug Enforcement Administration is proposing to amend its regulations to implement this statutory change.

Statement of Need:

This rule is needed to implement the partial fill provisions of the CARA. The CARA amended the CSA to allow for the partial filling of prescriptions for schedule II controlled substances under certain conditions. Specifically, the CARA amended 21 U.S.C. 829 by adding new subsection (f), which allows a pharmacist to partially fill a prescription for a schedule II controlled substance where requested by the prescribing practitioner or the patient. However, the CARA does not state how the prescribing practitioner should indicate that a prescription for a schedule II controlled substance be partially filled, nor how a pharmacist should record the partial filling of such a prescription. This rule proposes prescribing and recordkeeping requirements to provide clear direction to practitioners and patients.

The changes in this rule are also important in helping address the ongoing opioid epidemic, by allowing practitioners and patients to limit the amount of schedule II opioids left unused after a course of treatment.

Summary of Legal Basis:

While the CARA laid out the framework for partial filling of prescriptions for schedule II controlled substances, there were a number of issues left unresolved. Congress granted the DEA authority to fill in any gaps in the regulatory scheme not addressed by the statute itself; the CARA provides that partial filling of schedule II prescriptions is permitted if the prescription is written and filled in accordance with, among other things, regulations issued by DEA.

Additionally, under 21 U.S.C. 871(b), the Attorney General 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 CSA. Consistent with 21 U.S.C. 871(a), the Attorney General has delegated that authority to the DEA.

Alternatives:

This rule would only amend the DEA's regulations to the extent necessary to fully implement the partial fill provisions of the CARA, and would be in addition to the existing regulations of 21 CFR 1306.13. Consistent with 21 U.S.C. 829(f)(3), any circumstances allowing a lawful partial fill prior to the implementation of the statute would still be allowed under the new rules.

The proposed rule will include provisions aimed at giving patients and practitioners a simple and low-cost way to request and record partial fills that also ensures accountability and prevents diversion of controlled substances. The DEA will request comment on the proposed rule and will consider all alternatives. Special consideration will be given to flexible approaches that reduce burdens and maintain freedom of choice for the public.

Some of the provisions in this proposed rule merely restate the general requirements of the CARA for partial filling of prescriptions for schedule II controlled substances. Since these provisions are mandated by Congress, the DEA is obligated to incorporate them into its regulations, and has no discretion to consider alternatives.

Anticipated Cost and Benefits:

In order to ensure accountability and maintain the closed system of distribution, the proposed rule will likely impose certain costs on DEA registrants. Current projections indicate the primary cost would be the additional time needed to be spent by pharmacies to fill the remaining portions of partially filled prescriptions. Whereas before the CARA, a pharmacy would fill all of a schedule II prescription during a single visit by a patient, if the practitioner or the patient requests a partial fill, the pharmacy will only fill part of the prescription on the patient's first visit, and will need to fill the

remainder of the prescription if the patient returns for a second visit. The DEA currently estimates the total cost of the proposed rule to be approximately $12 million annually.

The provisions of this rule may also require prescribers to take additional time writing prescriptions, since they would need to include partial fill instructions on the prescriptions, and pharmacists to take additional time tracking the status of partially filled prescriptions, in order to ensure that the proper amount of medication is dispensed if a patient returns to fill the remainder of a prescription, but the DEA believes this additional time required would be minimal, and that the cost of such additional time would be minimal.

There is also the potential for benefits to patients and society as a result of this proposed rule. Patients could request a partial fill of a prescription if they are unlikely to use the full amount, and save money by not paying for pills they would not use. Furthermore, reducing the quantity of leftover schedule II controlled substances would reduce the risk of diversion and the risk of improper disposal and associated environmental impact. This is an enabling rule because it allows for partial fills of prescriptions for schedule II controlled substances, which was previously prohibited.

Risks:

If the DEA did not promulgate this rule, patients and practitioners would face uncertainty in complying with the requirements for partial fills of prescriptions for schedule II controlled substances. While the statute does directly address many aspects of the partial fill process, there are a number of details left out, which must be supplied by regulation. Without such clarifying regulations, few practitioners would take advantage of the partial fill provisions for fear of violating federal law, thus frustrating the original purposes of the CARA.

Timetable:

Action	Date	FR Cite

NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

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DOJ—Executive Office for Immigration Review(EOIR)	PROPOSED RULE STAGE

94. • PROCEDURES FOR ASYLUM

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

8 U.S.C. 1158(b)(2)(C); 8 U.S.C. 1229a(c)(4)

CFR Citation:

8 CFR 1208.3; 8 CFR 1208.13; 8 CFR 1208.16

Legal Deadline:

None

Abstract:

This rule will amend the regulations related to asylum, including bars to asylum eligibility, the form of an alien's application for asylum, and the reconsideration of discretionary denials of such applications.

Statement of Need:

The rule seeks to better promote the Attorney General's application of law through his discretionary authorities that statute and existing regulation provide. The Attorney General seeks to clarify and expand upon certain provisions related to asylum.

Summary of Legal Basis:

The Immigration and Nationality Act provides the Attorney General with the broad and general authority to establish, by regulation, bases for findings of ineligibility for asylum INA 208(b)(2)(C); 8 U.S.C. 1158(b)(2)(C).

Alternatives:

The alternative to this rulemaking would be to continue to leave immigration court and BIA adjudicators without clear rules by which they should evaluate applications for asylum and to further burden the backlogged immigration courts with incomplete applications.

Anticipated Cost and Benefits:

There are no anticipated costs associated with the DOJ portion of the rule. EOIR will benefit from the rule's promulgation by reducing resources spent processing incomplete or invalid asylum claims.

Risks:

EOIR does not anticipate any risks associated with the DOJ portion of this rulemaking.

Timetable:

Action	**Date**	**FR Cite**
NPRM	12/00/18	

NPRM Comment Period End	02/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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BILLING CODE 4410–BP–P

DEPARTMENT OF LABOR

2018 Regulatory Plan

Executive Summary: Safe and Family-Sustaining Jobs

The Department of Labor's mission is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. The Department works to hold employers accountable for their legal obligations to their employees, while recognizing that the Department also has a duty to help employers understand and comply with the many laws and regulations affecting their workplaces.

The Secretary of Labor has made protecting America's employees and promoting job creation his top priorities. Under his leadership, the Department is committed to fully and fairly enforcing the laws under its jurisdiction. The vast majority of employers work hard to keep their workplaces safe and to comply with wage and pension laws. Acknowledging this, the Department is working to provide compliance assistance, to give employers the knowledge and tools they need to comply with their obligations in these areas. Compliance with the law is, however, mandatory. Employers that do not comply with the law will continue to be subject to enforcement.

During the past year, the Department took action to help millions employed by small businesses gain access to quality, affordable health coverage through its Association Health Plan reform. This reform allows employers, including small businesses, and working owners – many of whom are facing much higher premiums and fewer coverage options as a result of Obamacare – a greater ability to join together and gain many of the regulatory advantages enjoyed by large employers, and thereby offer better health coverage options to their employees.

In the coming year, the Department will build upon its previous work in providing for workforce protections, protecting the jobs of American workers, and helping the workforce add more family-sustaining jobs.

The Secretary of Labor's Regulatory Plan for Accomplishing These Objectives

In general, the Department will work to assist employees and employers to meet their needs in a helpful manner, with a minimum of rulemaking.

The Department will roll back regulations that harm American workers and families - but we will do so while respecting the principles and institutions that make us who we are as Americans.

Where regulatory actions are necessary, they will be accomplished in a thoughtful and careful manner. The Department seeks to achieve needed employee protections while limiting the burdens regulations place on employers.

The Department's regulatory actions will provide American employers with certainty about workforce rules. The Department's regulatory plan will make employers' obligations under current law clear, while respecting the rule of law. Where Congress is silent, the Department does not have the authority to write the law.

The proposals that follow are common-sense approaches in areas needing regulatory attention, presenting a balanced plan for protecting employees, aiding them in the acquisition of needed skills, and helping the regulated community to do its part.

The Department's Regulatory Agenda is consistent with the requirements of Section 1 of Executive Order (EO) 13771 "Reducing Regulation and Controlling Regulatory Costs," 82 FR 9339 (January 30, 2017) recognizes that "it is essential to manage costs associated with the governmental imposition of private expenditures required to comply with Federal Regulations."

The Department's Regulatory Priorities

The Department's Employee Benefits Security Administration (EBSA) works to protect the benefit plans of workers, retirees, and their families.

On August 31, 2018, President Trump issued an executive order establishing the policy of the Federal Government to expand access to workplace retirement plans. Pursuant to the executive order, EBSA will consider ways to permit employees at different businesses to participate in a single workplace plan. EBSA intends to consider ways to allow small businesses to sponsor Association Retirement Plans for their employees. EBSA also intends to consider ways to expand access to workplace plans for sole proprietors, sometimes called working owners. To implement these steps, EBSA is considering issuing a notice of proposed rulemaking that would clarify when separate businesses can elect to jointly sponsor an Association Retirement Plan.

EBSA, in conjunction with the Department of the Treasury and the Department of Health and Human Services will, consistent with Executive Order 13813, consider proposing regulations or revising guidance consistent with law and sound policy to increase the usability of health reimbursement arrangements (HRAs), to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage.

The Wage and Hour Division (WHD) administers numerous laws that establish the minimum standards for wages and working conditions in the United States. WHD will propose an updated salary level for the exemption of executive, administrative, and professional employees for overtime purposes. In developing the NPRM, the Department has been informed by the comments previously received in response to its Request for Information.

WHD will also propose an update to its regulations concerning joint employment, i.e., those situations in which a worker is considered an employee of two or more employers jointly.

Under the Fair Labor Standards Act (FLSA), employers must pay covered employees at least one and one half times their regular rate of pay for hours worked in excess of 40 hours per workweek. WHD will propose to amend its regulations to clarify, update, and define regular rate requirements under the FLSA.

The Office of Federal Contract Compliance Programs (OFCCP) ensures that federal contractors and subcontractors take affirmative action and do not, among other things, discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. OFCCP plans to update its regulations to comply with current law regarding protections for religious organizations.

The Occupational Safety and Health Administration (OSHA) oversee a wide range of standards that are designed to reduce occupational deaths, injuries, and illnesses. OSHA is committed to the establishment of clear, common-sense standards to help accomplish this. The OSHA items discussed below are deregulatory in nature, in that they reduce burden, while maintaining needed worker protections.

OSHA continues its work to protect workers from occupational exposures to beryllium. Following the publication of a revised beryllium standard in January 2017, OSHA received evidence that exposure in the shipyards and construction is limited to a few operations and that requiring the ancillary provisions broadly may not improve worker protection and may be redundant with overlapping protections in other standards. Accordingly, OSHA sought comment on, among other things, whether existing standards covering abrasive blasting in construction, abrasive blasting in shipyards, and welding in shipyards provide adequate protection for workers engaged in these operations. The agency is reviewing the public comments and formulating a final rule.

OSHA issued a proposal on July 30, 2018, to revise provisions of the May 12, 2016, Improve Tracking of Workplace Injuries and Illnesses final rule. OSHA reviewed the May 2016 final rule as part of its regulatory reform efforts and proposed changes intended to reduce unnecessary burdens while maintaining worker protections. In particular, the proposed rule addresses concerns about the release of private information in the electronic submission of injury and illness reports by employers. Although OSHA stated its intention not to publish personally identifiable information (PII) included on Forms 300 and 301 in the May 2016 final rule, OSHA

has now determined that it cannot guarantee the non-release of private information. It has now proposed requiring submission of only the Form 300A summary data, which does not include any private information, not the individual, case-specific data recorded in Forms 300 and 301. If finalized, the rule would allow OSHA to continue to use the summary data to make targeted inspections, while better protecting worker privacy.

OSHA also continues work on its Standards Improvements Projects (SIPs), with the plan to finalize SIP IV next. These actions are intended to remove or revise duplicative, unnecessary, and inconsistent safety and health standards. OSHA published three earlier final standards to remove unnecessary provisions, reducing costs or paperwork burden on affected employers, while maintaining needed worker protections.

Finally, the Employment and Training Administration (ETA) administers federal job training and worker dislocation adjustment programs, federal grants to states for public employment service programs, and unemployment insurance benefits. ETA and WHD are amending regulations regarding the H-2A non-immigrant visa program. This action will include necessary technical improvements to the existing H-2A regulations, modernizing and streamlining the functionality of the program.

DOL—Wage and Hour Division(WHD)	**PROPOSED RULE STAGE**

95. DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, OUTSIDE SALES AND COMPUTER EMPLOYEES

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

Not Yet Determined

CFR Citation:

29 CFR 541

Legal Deadline:

None

Abstract:

The Department intends to issue a Notice of Proposed Rulemaking (NPRM) to determine the appropriate salary level for exemption of executive, administrative and professional employees. In developing the NPRM, the Department will be informed by the comments received in response to its Request for Information.

Statement of Need:

WHD is reviewing the regulations at 29 CFR 541, which implement the exemption of bona fide executive, administrative, and professional employees from the Fair Labor Standards Act's minimum wage and overtime requirements. The Department's NPRM will propose an updated salary level for exemption and seek the public's view on the salary level and related issues.

Summary of Legal Basis:

These regulations are authorized by section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1).

Alternatives:

Alternatives will be developed in considering any proposed revisions to the current regulations. The public will be invited to provide comments on any proposed revisions and possible alternatives.

Anticipated Cost and Benefits:

The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks:

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

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	07/26/17	82 FR 34616
RFI Comment Period End	09/25/17	
NPRM	03/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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DOL—WHD	

96. REGULAR AND BASIC RATES UNDER THE FAIR LABOR STANDARDS ACT

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

29 U.S.C. 201 et seq.

CFR Citation:

29 CFR 548; 29 CFR 778

Legal Deadline:

None

Abstract:

In this Notice of Proposed Rulemaking, the Department will propose to amend 29 CFR parts 548 and 778, to clarify, update, and define basic rate and regular rate requirements under sections 7(e) and 7(g)(3) of the Fair Labor Standards Act.

Statement of Need:

The majority of 29 CFR part 778 was promulgated more than sixty years ago. The Department believes that changes in the 21st century workplace are not reflected in its current regulatory framework. While the Department has periodically updated various sections of part 778 over the past several decades, they have not addressed the changes in compensation practices and relevant laws. The Department is interested in ensuring that its regulations provide appropriate guidance to employers offering these more modern forms of compensation and benefits regarding their inclusion in, or exclusion from, the regular rate. Clarifying this issue will ensure that employers have the flexibility to provide such compensation and benefits to their employees, thereby providing employers more flexibility in the compensation and benefits packages they offer to employees. Similarly, the Department believes that the proposed changes will facilitate compliance with the FLSA and lessen litigation regarding the regular rate. Additionally, the Department has not updated part 548 since 1967.

Summary of Legal Basis:

Part 778 constitutes the official interpretation of the Department with respect to the meaning and application of the maximum hours and overtime compensation requirements contained in section 7 of the FLSA, 29 U.S.C. 207, including calculation of the regular rate. Additionally, part 548 sets out the requirements for authorized basic rates under section 7(g)(3) of the FLSA, 29 U.S.C. 207(g).

Alternatives:

Alternatives will be developed in considering any proposed revisions to the current regulations. The public will be invited to provide comments on any proposed revisions and possible alternatives.

Anticipated Cost and Benefits:

The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

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DOL—WHD	

97. • JOINT EMPLOYMENT UNDER THE FAIR LABOR STANDARDS ACT

Priority:

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

EO 13771 Designation:

Deregulatory

Legal Authority:

Fair Labor Standards Act, 29 U.S.C. 201 et seq.

CFR Citation:

29 CFR 791

Legal Deadline:

None

Abstract:

In this Notice of Proposed Rulemaking, the Department will propose to clarify the contours of the joint employment relationship to assist the regulated community in complying with the Fair Labor Standards Act.

Statement of Need:

The majority of 29 CFR part 791 was promulgated sixty years ago. The Department believes that changes in the 21st century workplace are not reflected in its current regulatory framework. Consistent with the Administration's priorities to enact administrative reforms and provide clarity to enhance compliance, the Department is considering changes to its regulations concerning joint employment under the Fair Labor Standards Act. These proposed changes are intended to provide clarity to the regulated community and thereby enhance compliance. The Department believes the proposed changes will help to provide more uniform standards nationwide.

Summary of Legal Basis:

This regulation is authorized by sections 3(d), (e), and (g) of the Fair Labor Standards Act, 29 U.S.C. 203(d), (e), and (g). Part 791 constitutes the official interpretation of the Department with respect to joint employment.

Alternatives:

Alternatives will be developed in considering any proposed revisions to the current regulations. The public will be invited to provide comments on any proposed revisions and possible alternatives.

Anticipated Cost and Benefits:

The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Local, State, Tribal

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DOL—Employment and Training Administration(ETA)	PROPOSED RULE STAGE

98. • LABOR CERTIFICATION PROCESS FOR TEMPORARY AGRICULTURAL EMPLOYMENT IN THE UNITED STATES (H–2A WORKERS)

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

8 U.S.C. 1188

CFR Citation:

20 CFR 655, subpart B; 29 CFR 501

Legal Deadline:

None

Abstract:

The United States Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division are amending regulations regarding the H-2A non-immigrant visa program at 20 CFR part 655, subpart B. The Notice of Proposed Rulemaking (NPRM) will include necessary technical improvements to the existing H-2A regulations which will modernize and streamline the overall function of the program. The NPRM will also make necessary legal changes to modernize the regulation that have arisen since the current H-2A regulation was published in 2010.

Statement of Need:

DOL has identified necessary areas of the regulation that should be modernized and streamlined so that the agency can more effectively carry out its mandate to protect the wages and working

conditions of U.S. workers while also allowing the program to operate efficiently. DOL has also identified legal issues with the current regulation that must be addressed.

Summary of Legal Basis:

ETA is undertaking this rulemaking pursuant to its authority under section 218 of the Immigration and Nationality Act. In addition, courts have issued decisions since the publication of the current regulation that have presented legal issues with the regulation that must be addressed.

Alternatives:

Alternatives will be provided and open to public comment in the NPRM.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—Employee Benefits Security Administration(EBSA)	PROPOSED RULE STAGE

99. • HEALTH REIMBURSEMENT ARRANGEMENTS AND OTHER ACCOUNT–BASED GROUP HEALTH PLANS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

Pub. L. 111–148

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This regulatory action is being proposed in response to Executive Order 13813, Promoting Healthcare Choice and Competition Across the United States, and would increase the usability of HRAs, to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage.

Statement of Need:

This regulatory action is being proposed in response to Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States." The Executive Order directs the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) to consider proposing regulations or revising guidance consistent with law and

sound policy to increase the usability of health-reimbursement arrangements (HRAs), to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage.

Summary of Legal Basis:

Current joint final regulation issued by the Departments prohibited HRA integration with individual market policies. See 26 CFR 54.9815.2711, 29 CFR 2590.715-2711, and 45 CFR 147.126. The Departments are considering proposing regulations that would permit integration and expand usability of HRAs in certain circumstances.

Alternatives:

To be determined.

Anticipated Cost and Benefits:

To be determined.

Risks:

To be determined.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—EBSA	

100. • DEFINITION OF AN "EMPLOYER" UNDER SECTION 3(5) OF ERISA—ASSOCIATION RETIREMENT PLANS AND OTHER MULTIPLE EMPLOYER PLANS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

29 U.S.C. 1002(2), 1002(5) and 1135

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This regulatory action would establish criteria under section 3(5) of the Employee Retirement Income Security Act (ERISA) for purposes of being an "employer" able to establish and maintain an employee pension benefit plan (as defined in section 3(2) of ERISA) that is a multiple employer retirement savings plan (other than a multiemployer plan defined in section 3(37) of ERISA).

Statement of Need:

Many Americans do not have access to workplace retirement plans, including 401(k)s. Small businesses are particularly unlikely to offer workplace retirement plans because of high costs and regulatory burdens. Regulatory changes are needed to make it easier and less expensive for

small businesses to offer workplace retirement plans to their employees. Executive Order 13847, 83 FR 45321, directed the Secretary of Labor to examine policies that would clarify and expand the circumstances under which U.S. employers, especially small and mid-sized businesses, may sponsor or participate in a multiple employer plan or MEP as a workplace retirement savings option offered to their employees, subject to appropriate safeguards.

Summary of Legal Basis:

The proposal would clarify the statutory definition of employer in section 3(5) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1002. This definition includes direct employers and any other person acting indirectly in the interest of the employer in relation to an employee benefit plan, including a group or association of employers acting for an employer in such capacity. Section 505 of ERISA, 29 U.S.C. 1135, provides that the Secretary of Labor may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title.

Alternatives:

The Department intends to conduct an assessment of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, which are identified by the public, in order to conclude why the planned regulatory action is preferable to the identified potential alternatives.

Anticipated Cost and Benefits:

The Department intends to conduct an assessment of costs and benefits anticipated from the regulatory action together with, to the extent feasible, a quantification of those costs and benefits.

Risks:

This regulatory action is intended to reduce the risk that America's workers will enter retirement with inadequate financial resources. Too many American workers, including one-third of those in the private-sector, have no access to workplace retirement plans, burdening them with concerns about their financial futures. Polling shows that nearly half of all Americans are concerned they will not have enough money to live on during retirement.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—Occupational Safety and Health Administration(OSHA)	FINAL RULE STAGE

101. STANDARDS IMPROVEMENT PROJECT IV

Priority:

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

EO 13771 Designation:

Deregulatory

Legal Authority:

29 U.S.C. 655(b)

CFR Citation:

29 CFR 1926

Legal Deadline:

None

Abstract:

OSHA's Standards Improvement Projects (SIPs) are intended to remove or revise duplicative, unnecessary, and inconsistent safety and health standards. The Agency has published three earlier final standards to remove unnecessary provisions (63 FR 33450, 70 FR 1111 and 76 FR 33590), thus reducing costs or paperwork burden on affected employers. This latest project identified revisions to existing standards in OSHA's recordkeeping, general industry, maritime, and construction standards, with most of the revisions to its construction standards. OSHA also proposed to remove from its standards the requirements that employers include an employee's social security number (SSN) on exposure monitoring, medical surveillance, and other records in order to protect employee privacy and prevent identity fraud.

Statement of Need:

The Agency has proposed a fourth rule that identified unnecessary or duplicative provisions or paperwork requirements.

Summary of Legal Basis:

OSHA is conducting Phase IV of the Standards Improvement Project (SIP-IV) in response to the President's Executive Order 13563, Improving Regulations and Regulatory Review (76 FR 38210).

Alternatives:

The main alternative OSHA considered for all of the proposed changes contained in the SIP-IV rulemaking was retaining the existing regulatory language, i.e., retaining the status quo. In each instance, OSHA has concluded that the benefits of the proposed regulatory change outweigh the costs of those changes. In a few of the items, such as the proposed changes to the decompression requirements applicable to employees working in compressed air environments, OSHA has requested public comment on feasible alternatives to the Agency's proposal.

Anticipated Cost and Benefits:

OSHA has estimated that, at 3 percent discount rate over 10 years, there are net annual cost savings of $6.1 million per year for this final rule; at a discount rate of 7 percent there are net annual cost savings at $6.1 million per year. When the Department uses a perpetual time horizon, the annualized cost savings of the final rule is $6.1 million with 7 percent discounting.

Risks:

SIP rulemakings do not address new significant risks or estimate benefits and economic impacts of reducing such risks. Overall, SIP rulemakings are reasonably necessary under the OSH Act because they provide cost savings, or eliminate unnecessary requirements.

Timetable:

Action	**Date**	**FR Cite**
Request for Information (RFI)	12/06/12	77 FR 72781
RFI Comment Period End	02/04/13	
NPRM	10/04/16	81 FR 68504
NPRM Comment Period Extended	12/02/16	81 FR 86987
NPRM Comment Period Extended End	01/04/17	
Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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DOL—OSHA	

102. TRACKING OF WORKPLACE INJURIES AND ILLNESSES

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

29 U.S.C. 657; 29 U.S.C. 673

CFR Citation:

29 CFR 1904

Legal Deadline:

None

Abstract:

OSHA published a proposed rule on July 30, 2018, to remove provisions to the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016). OSHA proposed to amend its recordkeeping regulation to remove the requirement to electronically submit to OSHA information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) for establishments with 250 or more employees which are required to routinely keep injury and illness records. Under the proposed rule, these establishments would be required to electronically submit only information from the OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). OSHA also proposed to add the Employer Identification Number (EIN) to the data collection to increase the likelihood that the Bureau of Labor Statistics (BLS) would be able to match OSHA-collected data to BLS Survey of Occupational Injury and Illness (SOII) data and potentially reduce the burden on employers who are required to report injury and illness data both to OSHA (for the electronic recordkeeping

requirement) and to BLS (for SOII). OSHA is reviewing comments and will publish a final rule in June 2019.

Statement of Need:

The preamble to the May 2016 final rule pointed to publication of the collected data as a method to improve workplace safety and health through the rule's requirements. OSHA has preliminarily determined that the risk of disclosure of the personally identifiable information (PII) on the OSHA Form 300 and 301, the cost to OSHA of collection and using the information, and the reporting burden on employers are unjustified given the uncertain benefits of collecting the information.

Summary of Legal Basis:

OSHA is issuing this proposed rule pursuant to authority expressly granted by sections 8 and 24 of the Occupational Safety and Health Act (the OSH Act or Act) (29 U.S.C. 657 and 673).

Alternatives:

The alternative for the proposed changes contained in the NPRM is to retain the existing regulatory language, i.e., retaining the status quo. OSHA has proposed that the benefits of the proposed regulatory change outweigh the costs of those changes. OSHA has requested public comment on feasible alternatives to the Agency's proposal.

Anticipated Cost and Benefits:

The removal of the case specific requirement reduces costs. OSHA estimates that the rule will have net economic cost savings of $8.75 million per year. The Agency believes that the loss in annual benefits, while unquantified, are significantly less than the annual cost savings, hence there are positive net benefits to this proposed rule.

Risks:

This rulemaking does not address new significant risks or estimate benefits and economic impacts of reducing such risks. Overall, this rulemaking is reasonably necessary under the OSH Act because it provides cost savings, or eliminates unnecessary requirements.

Timetable:

Action	**Date**	**FR Cite**
NPRM	07/03/18	83 FR 36494
NPRM Comment Period End	09/28/18	
Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State

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DOL—OSHA	

103. • OCCUPATIONAL EXPOSURE TO BERYLLIUM AND BERYLLIUM COMPOUNDS IN CONSTRUCTION AND SHIPYARD SECTORS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

Not Yet Determined

CFR Citation:

None

Legal Deadline:

None

Abstract:

On January 9, 2017, OSHA published its final rule Occupational Exposure to Beryllium and Beryllium Compounds in the Federal Register (82 FR 2470). OSHA concluded that employees exposed to beryllium and beryllium compounds at the preceding permissible exposure limits (PELs) were at significant risk of material impairment of health, specifically chronic beryllium disease and lung cancer. OSHA also concluded that the new 8-hour time-weighted average (TWA) PEL of µg/m^3 reduced this significant risk to the maximum extent feasible. After a review of the comments received and a review of the applicability of existing OSHA standards, OSHA proposed to revoke ancillary provisions applicable to the construction and shipyard sectors on June 28, 2018 (82 FR 29182), but to retain the new lower PEL of 0.2 µg/m^3 and the STEL of 2.0 µg/m^3 for those sectors. OSHA has evidence that beryllium exposure in these sectors is limited to the following operations: Abrasive blasting in construction, abrasive blasting in shipyards, and welding in shipyards. OSHA has a number of standards already specifically applicable to these operations, including ventilation (29 CFR 1926.57) and mechanical paint removers (29 CFR 1915.34). Because OSHA determined that there is significant risk of material impairment of health at the new lower PEL of 0.2 µg/m^3, the Agency continues to believe that it is necessary to protect workers exposed at this level. However, OSHA is now reconsidering the need for ancillary provisions in the construction and shipyards sectors, and is currently reviewing comments received in response to the proposal to finalize the rulemaking.

Statement of Need:

The Occupational Safety and Health Administration (OSHA) proposed to revoke the ancillary provisions for the construction and the shipyard sectors, which OSHA adopted on January 9, 2017 (82 FR 2470), but retain the new lower permissible exposure limit (PEL) of 0.2 µg/m^3 and the short term exposure limit (STEL) of 2.0 µg/m^3 for each sector. OSHA will not enforce the

January 9, 2017, shipyard and construction standards without further notice while this new rulemaking is underway.

OSHA has determined that there is significant risk of material impairment of health at the new lower PEL of 0.2 $\mu g/m^3$, the Agency continues to believe that it is necessary to protect workers exposed at this level. However, OSHA has evidence that beryllium exposure in these sectors is limited to the following operations: abrasive blasting in construction, abrasive blasting in shipyards, and welding in shipyards. OSHA has a number of standards already applicable to these operations. Based on a review of the comments received and a review of the applicability of existing OSHA standards, OSHA is now reconsidering the need for ancillary provisions in the construction and shipyards sectors, and is currently reviewing comments received in response to the proposal to finalize the rulemaking.

Summary of Legal Basis:

29 U.S.C. 655(b); 29 U.S.C. 657.

Alternatives:

OSHA has several potential options. The first is to retain the original standards promulgated in 2017 for construction and shipyards, including all ancillary provisions. Alternatively, OSHA is evaluating whether there is benefit to retaining certain ancillary provisions that were proposed for rescission.

Anticipated Cost and Benefits:

OSHA preliminarily estimated that rescinding the ancillary provisions will result in cost savings to shipyard and construction establishments. For construction, cost savings are $8.8 million (7% discounting) and $8.6 million (3% discounting). For shipyards, cost savings are $3.5 million (7% discounting) and $3.4 million (3% discounting). OSHA has preliminarily concluded that there are limited to no foregone benefits (i.e., reduced number of cases of Chronic Beryllium Disease) as a

result of revoking the ancillary provisions of the beryllium final standards for construction and shipyards.

Risks:

Timetable:

Action	Date	FR Cite
NPRM (Construction in Shipyards) Published as 1218-AB76	06/27/17	82 FR 29182
NPRM (Construction in Shipyards) Comment Period End	08/28/17	
Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN:

Related to 1218–AB76

RIN: 1218–AD21

BILLING CODE 4510–04–P

DEPARTMENT OF TRANSPORTATION (DOT)

Introduction: Department Overview

DOT has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, transit, and pipeline transportation areas. The Department also regulates aviation consumer and economic issues, and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor transportation and vehicle safety. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that

govern programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles. The Department carries out its responsibilities through the Office of the Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous Materials Safety Administration; (PHMSA); and St. Lawrence Seaway Development Corporation (SLSDC).

The Department's Regulatory Philosophy and Initiatives

The Department's highest priority is safety. To achieve our safety goals responsibly and in accordance with principles of good governance, we embrace a regulatory philosophy that emphasizes transparency, stakeholder engagement, and regulatory restraint. Our goal is to allow the public to understand how we make decisions, which necessarily includes being transparent in the way we measure the risks, costs, and benefits of engaging in—or deciding not to engage in—a particular regulatory action. It is our policy to provide an opportunity for public comment on such actions to all interested stakeholders. Above all, transparency and meaningful engagement mandate that regulations should be straightforward, clear, and accessible to any interested stakeholder.

- At DOT, transparency and stakeholder engagement take a number of different forms. For example, we publish a monthly report on our website that provides a summary and the status for all significant rulemakings that DOT currently has pending or has issued recently

(https://www.transportation.gov/regulations/report-on-significant-rulemakings). This report provides the public with easy access to information about the Department's regulatory activities that can be used to locate other publicly-available information in the Department's regulatory docket at www.regulations.gov, or in the **Federal Register**.

- We also seek public input through direct engagement. For example, we published a request asking the public to help us identify obstacles to infrastructure projects, *Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation*, 82 FR 26734 (June 8, 2017). In response, we received more than 200 comments proposing more than 1,000 ideas. We have reviewed these comments and are working to implement ideas that streamline approval processes and guide investment in infrastructure. We also published another notice requesting the public to help us identify rules that are good candidates for repeal, replacement, suspension, or modification, or other deregulatory action, 82 FR 45750 (October 2, 2017). We received over 2,800 comments in response and are currently undertaking a comprehensive review of these comments. Finally, DOT has a long history of partnering with stakeholders to develop recommendations and consensus standards through advisory committees. Some committees meet regularly to provide advice, while others are convened on an *ad hoc* basis to address specific needs. Each OA, as well as OST, has at least one standing advisory committee.

The Department's regulatory philosophy also embraces the notion that there should be no more regulations than necessary. We emphasize consideration of non-regulatory solutions and have rigorous processes in place for continual reassessment of existing regulations. These processes provide that regulations and other agency actions are periodically reviewed and, if appropriate, are revised to ensure that they continue to meet the needs for which they were originally designed, and that they remain cost-effective and cost-justified.

For example, DOT regularly makes a conscientious effort to review its rules in accordance with the Department's 1979 Regulatory Policies and Procedures (44 FR

11034, Feb. 26, 1979), Executive Order (E.O.) 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and section 610 of the Regulatory Flexibility Act. The Department follows a repeating 10-year plan for the review of existing regulations. Information on the results of these reviews is included in the Unified Agenda.

In addition, through three new Executive orders, President Trump directed agencies to further scrutinize their regulations and other agency actions. On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs. Under section 2(a) of the Executive order, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it must identify at least two existing regulations to be repealed. On February 24, 2017, President Trump signed Executive Order 13777, enforcing the Regulatory Reform Agenda. Under this Executive order, each agency must establish a Regulatory Reform Task Force (RRTF) to evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. On March 28, 2017, President Trump signed Executive Order 13783, Promoting Energy Independence and Economic Growth, requiring agencies to review all existing regulations, orders, guidance documents, policies, and other similar agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.

In response to the mandate in Executive Order 13777, the Department formed an RRTF consisting of senior career and non-career leaders, which has already conducted extensive reviews of existing regulations, and identified a number of rules to be repealed,

replaced, or modified. As a result of the RRTF's work, since January 2017, the Department has issued deregulatory actions that reduce regulatory costs on the public by at least $882 million (in net present value cost savings). Even when the costs of significant regulatory actions are factored in, the Department's deregulatory actions in FY2018 will still result in over $500 million in net cost savings (in net present value). With the RRTF's assistance, the Department has achieved these cost savings in a manner that is fully consistent with enhancing safety. For example, in March 2018, the FAA promulgated a rule titled Rotorcraft Pilot Compartment View, which will reduce the number of tests for nighttime operations, after the Agency carefully considered the safety data and determined the tests were unnecessary.

The Department has also significantly increased the number of deregulatory actions it is pursuing. Today, DOT is pursuing over 120 deregulatory rulemakings, up from just 16 in the fall of 2016.

The RRTF continues to conduct monthly reviews across all OAs to identify appropriate deregulatory actions. The RRTF also works to ensure that any new regulatory action is rigorously vetted and non-regulatory alternatives are considered. Further information on the RRTF can be found online at: https://www.transportation.gov/regulations/regulatory-reform-task-force-report. The priorities identified below reflect the RRTF's work to implement the Department's focus on reducing burdens and improving the effectiveness of all regulations.

The Department's Regulatory Priorities

Four fundamental principles – safety, innovation, enabling investment in infrastructure, and reducing unnecessary regulatory burdens – are our top priorities.

These priorities are grounded in our national interest in maintaining U.S. global leadership in safety, innovation, and economic growth. To accomplish our regulatory goals, we must create a regulatory environment that fosters growth in new and innovative industries without burdening them with unnecessary restrictions. At the same time, safety remains our highest priority; we must remain focused on managing safety risks and be sure that we do not regress from the successes already achieved. Accordingly, the regulatory plan laid out below reflects a careful balance that emphasizes the Department's priority in fostering innovation while at the same time meeting the challenges of maintaining a safe and reliable, transportation system.

Safety. The success of our national transportation system requires us to remain focused on safety as our highest priority. Our regulatory plan reflects our commitment to safety through a balanced regulatory approach. Our goals are to deliver safety more efficiently and at a lower cost to the public by looking to market-driven solutions first.

Innovation. Every mode of transportation is affected by transformative technology. Whether we are talking about automation, unmanned vehicles, or other emerging technologies, we are looking forward to new and promising frontiers that will change the way we move on the ground, in water, through the air, and into space. Our regulatory plan reflects the Administration's commitment to fostering innovation by lifting barriers to entry and enabling innovative and exciting new uses of transportation technology.

Enabling investment in Infrastructure. The safe and efficient movement of goods and passengers requires us not just to maintain, but to improve our national transportation infrastructure. But that cannot happen without changes to the way we plan, fund, and approve projects. Accordingly, our Regulatory Plan prioritizes regulatory action that

streamlines the approval process and facilitates more efficient investment in infrastructure. To maintain global leadership and foster economic growth, this must be one of our highest priorities.

Reducing unnecessary regulatory burdens. Finally, our Regulatory Plan reflects our commitment to reducing unnecessary regulatory burdens. Our priority rules include some deregulatory actions that we identified after a comprehensive review of all of the Department's regulations. The Plan also reflects our policy of thoroughly considering non-regulatory solutions before taking regulatory action. When regulatory intervention is necessary, however, it is our policy to rely data-driven and risk-based analysis to craft the most effective and least burdensome solution to the problem.

This Regulatory Plan identifies the 10 pending rulemakings that reflect the Department's commitment to safety, innovation, infrastructure, and reducing burdens. For example:

- FAA will focus on regulatory activity to enable, safely and efficiently, the integration of unmanned aircraft systems (UAS) into the National Airspace System (NAS), and to enable expanded commercial space activities.
- NHTSA will focus on maintaining and advancing safety while reducing regulatory barriers to technology innovation, including the development of autonomous vehicles, and updating regulations on fuel efficiency.
- FRA will continue to focus on providing industry members regulatory relief through a rulemaking that allows for alternative compliance with FRA's Passenger Equipment Safety Standards for the operation of Tier III passenger equipment.

- FTA will continue to focus on its statutorily-mandated efforts to establish a comprehensive Public Transportation Safety Program to improve the safety of public transportation systems.
- PHMSA will focus on pipeline safety as well as the movement of hazardous materials across multiple modes of transportation.

At the same time, all OAs are prioritizing their regulatory and deregulatory actions accordance with Executive Orders 13771 and 13563, to make sure they are providing the highest level of safety while eliminating outmoded and ineffective regulations and streamlining other existing regulations in an effort to promote economic growth, innovation, competitiveness, and job creation. Since each OA has its own area of focus, we summarize the regulatory priorities of each below.

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Office of the Secretary of Transportation

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 senior officials in regulatory decision making. Through the Office of the General Counsel, OST is also responsible for ensuring that the Department complies with the Administrative Procedure Act, Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 (Enforcing the Regulatory Reform Agenda), Executive Order 13873 (Promoting Energy Independence and Economic Growth), DOT's Regulatory Policies and Procedures, and other legal and policy requirements affecting rulemaking. In addition, OST has the lead role in matters concerning aviation economic rules, the

Americans with Disabilities Act, and rules that affect multiple elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and process for 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; retrospective reviews of rules; and data quality, including peer reviews. The Office of the General Counsel is the lead office that works with the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) to get Administration approval to move forward with significant rules.

OST also leads and coordinates the Department's response to OMB's intergovernmental review of other agencies' significant rulemaking documents and to Administration and congressional proposals that concern the regulatory process. The Office of the General Counsel works closely with representatives of other agencies, OMB, 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.

- In Fiscal Year 2019, the Department will issue an NPRM proposing to establish the applicable regulatory standard for waivers from the Buy America requirement on the basis that a product or item is not manufactured in the United States meeting the applicable Buy America requirement. This rulemaking will streamline and coordinate aspects of the Buy America process across the Department.

In addition, OST will continue its efforts to help coordinate the activities of several OAs that advance various departmental efforts that support the Administration's initiatives on promoting

safety, enabling innovation, investing in infrastructure, and reducing regulatory burdens. OST will also continue to provide significant support to the RRTF's efforts to implement the Department's regulatory reform policies.

Federal Aviation Administration

FAA is charged with safely and efficiently operating and maintaining the most complex aviation system in the world. Destination 2025, an FAA initiative that captures the agency's vision of transforming the Nation's aviation system by 2025, has proven to be an effective tool for pushing the agency to think about longer-term aspirations; FAA has established a vision that defines the agency's priorities for the next five years.

During Fiscal Year 2019, FAA's regulatory priorities will be to enable transformative UAS and commercial space technologies by publishing two notices of proposed rulemaking (Updates to Clarify and Streamline Commercial Space Transportation Regulations, 2120-AL17 and Remote Identification of Unmanned Aircraft Systems, 2120-AL31), publishing an interim final rule on UAS marking (External Marking Requirement for Small UAS, 2120-AL32), and advancing the Small Unmanned Aircraft Over People (2120-AK85) rule. The Updates to Clarify and Streamline Commercial Space Transportation Regulations proposal would update and consolidate current regulations contained in four separate parts into a single regulatory part which will provide safety objectives to be achieved for the launch of suborbital and orbital expendable and reusable vehicles, and the reentry of vehicles. This proposal will significantly streamline and simplify licensing of launch and reentry operations and will enable novel operations.

- FAA's top deregulatory priorities will be to issue three final rules. Use of ADS-B

in support of Reduced Vertical Separation Minimum (RVSM), (2120-AK87) would revise the requirement for an application to operate in RVSM airspace. Recognition of Pilot in Command (PIC) Experience in the Military and in part 121 operations, (2120-AL-03) would allow pilots with 121 PIC experience prior to July 31, 2013, but who were not serving as a PIC on that date, to count that time toward the 1000 hour experience required to serve as a PIC in part 121 today. Severe Weather Detection Equipment Requirement for Helicopter Air Ambulance (HAA) Operations, (2120-AK94) would allow HAA operator to conduct instrument flight rules (IFR) departures and approaches procedures at airports and heliports that do not have an approved weather reporting source, in HAA aircraft without functioning severe weather detection equipment, when there is no reasonable expectation of severe weather at the destination, the alternate, or along the route of flight.

- More information about these rules can be found in the DOT Unified Agenda.
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Federal Highway Administration

FHWA carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. 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, in Fiscal Year 2019, the FHWA will continue with ongoing regulatory initiatives in support of its surface transportation programs. It will also work to implement legislation in the most cost-effective way possible. Finally, it will 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 decision-making authority of our State and local partners can be increased.

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Federal Motor Carrier Safety Administration

The mission of 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. In addition to Agency-directed regulations, FMCSA develops regulations mandated by Congress, through legislation such as the Moving Ahead for Progress in the 21st Century (MAP-21) and the Fixing America's Surface Transportation (FAST) Acts. FMCSA regulations establish minimum safety standards for motor carriers, commercial drivers, commercial motor vehicles, and State agencies receiving certain motor carrier safety grants and issuing commercial drivers' licenses.

FMCSA's regulatory efforts for FY 2019 will focus on removing regulatory burdens and streamlining the grants program. The Agency will consider changes to the hours of service regulations that would improve operational flexibilities for motor carriers consistent with safety. In addition, FMCSA will continue to coordinate efforts on the development of autonomous vehicle technologies and review existing regulations to identify changes that might be needed.

National Highway Traffic Safety Administration

- The mission of NHTSA is to save lives, prevent injuries, and reduce economic costs due to roadway crashes. The statutory responsibilities of NHTSA relating to motor vehicles include reducing the number, 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 requirements. NHTSA pursues policies that enable safety technologies and encourages the development of non-regulatory approaches when feasible in meeting its statutory mandates. NHTSA 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, NHTSA considers alternatives consistent with principles in applicable executive orders.

NHTSA's regulatory priorities for Fiscal Year 2019 include continuing to coordinate efforts on the development of autonomous vehicles and reducing regulatory barriers to technology innovation. NHTSA also plans to issue several rulemakings and other actions that increase safety and reduce economic burden. Most prominently, NHTSA plans to seek comments on amendments to existing regulations to address barriers to the deployment of automated vehicles, particularly those that affect vehicles that may have innovative designs. In addition, working with the Environmental Protection Agency, NHTSA plans to finalize fuel efficiency standards for light vehicles model years (MYs) 2021 thru 2026 (The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, RIN 2127-AL76). More information about these rules can be found in the DOT Unified Agenda.

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Federal Railroad Administration

FRA exercises regulatory authority over all areas of railroad safety and, where feasible, incorporates flexible performance standards. To foster an environment for collaborative rulemaking, FRA established the Railroad Safety Advisory Committee (RSAC). The purpose of RSAC is to develop consensus recommendations for regulatory action on issues FRA brings to it. Even in situations where RSAC consensus is not achieved, FRA benefits from receiving input from RSAC. In situations where RSAC participation would not be useful (e.g., a statutory mandate that leaves FRA with no

discretion), FRA fulfils its regulatory role without RSAC's input. The RSAC consultation process results in regulations that are likely to be better understood, more widely accepted, more cost-beneficial, and more correctly applied, because of stakeholder participation.

FRA's current regulatory program continues to reflect a number of pending proceedings to satisfy mandates resulting from the Rail Safety Improvement Act of 2008 (RSIA08), the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and the FAST Act. These actions support a safe, high-performing passenger rail network, address the safe and effective movement of energy products, and encourage innovation and the adoption of new technology in the rail industry to improve safety and efficiencies. FRA's regulatory priority for Fiscal Year 2019 will be to continue its work on a final rule that will advance high-performing passenger rail by providing alternative ways to comply with passenger rail equipment standards (Passenger Equipment Safety Standards for the operation of Tier III passenger equipment, RIN 2130-AC46). This rule would ease regulatory burdens on certain passenger rail operations, allowing the development of advanced technology and increasing safety benefits. More information about this rule is in the DOT Unified Agenda.

Federal Transit Administration

The mission of FTA is to improve public transportation for America's communities. To further that end, FTA provides financial and technical assistance to local public transit systems, including buses, subways, light rail, commuter rail, trolleys and ferries, oversees safety measures, and helps develop next-generation technology

research. FTA's regulatory activities implement the laws that apply to recipients' uses of Federal funding and the terms and conditions of FTA grant awards.

In addition to the Department-wide goals described above, FTA policy regarding regulations is to:

- Ensure the safety of public transportation systems;
- Provide maximum benefit to the Nation's mobility through the connectivity of transportation infrastructure;
- Provide maximum local discretion;
- Ensure the most productive use of limited Federal resources;
- Protect taxpayer investments in public transportation; and
- Incorporate principles of sound management into the grant management process.

In furtherance of its mission and consistent with statutory changes, in Fiscal Year 2019, FTA will focus on deregulatory actions. Specifically, FTA will streamline the environmental review process for transit projects, update its Project Management Oversight regulation, and remove duplicative or outdated rules, such as the Capital Leases regulation. More information about these rules can be found in the DOT Unified Agenda.

Maritime Administration

MARAD administers Federal laws and programs to improve and strengthen the maritime transportation system to meet the economic, environmental, and security needs of the Nation. To that end, MARAD's efforts are focused upon ensuring a strong American presence in the domestic and international trades and to expanding maritime opportunities for American businesses and workers.

MARAD's regulatory objectives and priorities reflect the agency's responsibility for ensuring the availability of water transportation services for American shippers and consumers and, in times of war or national emergency, for the U.S. armed forces. Major program areas include the following: Maritime Security, Voluntary Intermodal Sealift Agreement, National Defense Reserve Fleet and the Ready Reserve Force, Cargo Preference, Maritime Guaranteed Loan Financing, United States Merchant Marine Academy, Mariner Education and Training Support, Deepwater Port Licensing, and Port and Intermodal Development. Additionally, MARAD administers the Small Shipyard Grants Program through which equipment and technical skills training are provided to America's maritime workforce, with the aim of helping businesses to compete in the global marketplace while creating well-paying jobs at home.

MARAD's regulatory priorities for Fiscal Year 2019 will be to continue to support the objectives and priorities described above in addition to identifying new opportunities for deregulatory action.

Pipeline and Hazardous Materials Safety Administration

PHMSA has responsibility for rulemaking under two programs. Through the Associate Administrator for the Office of Hazardous Materials Safety (OHMS), PHMSA administers regulatory programs under Federal hazardous materials transportation law. Through the Associate Administrator for the Office of Pipeline Safety (OPS), PHMSA administers regulatory programs under the Federal pipeline safety laws. In addition, both offices administer programs under the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

PHMSA will continue to work toward improving safety related to transportation of hazardous materials by all transportation modes, including pipeline, while promoting economic growth, innovation, competitiveness, and job creation. PHMSA will concentrate on the prevention of high-risk incidents identified through PHMSA's evaluation of transportation incident data. 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.

Further, PHMSA will continue to focus on streamlining its regulatory system and reducing regulatory burdens. PHMSA will evaluate existing rules to examine whether they remain justified; should be modified to account for changing circumstances and technologies; or should be streamlined or even repealed. PHMSA will continue to evaluate, analyze, and be responsive to petitions for rulemaking. PHMSA will review regulations, letters of interpretation, and petitions for rulemaking, special permits, enforcement actions, approvals, international standards, and industry standards to identify inconsistencies, outdated provisions, and barriers to regulatory compliance.

In Fiscal Year 2019, OHMS will focus on two priority rulemakings. The first is designed to reduce risks related to the transportation of hazardous materials by rail. PHMSA aims to publish the final rule "Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains" (2137-AF08), that expands the applicability of comprehensive oil spill response plans for crude oil trains and requires railroads to share information about high-hazard flammable train operations with State and tribal emergency response commissions to improve community preparedness.

The second rulemaking is designed to reduce the risk of transporting lithium batteries by air by addressing the unique challenges they pose. Specifically, "Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft" (2137-AF20) contains three amendments: (1) a prohibition on the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) a requirement that lithium ion cells and batteries be shipped at not more than a 30 percent state of charge aboard cargo-only aircraft; and (3) a limitation on the use of alternative provisions for small lithium cell or battery shipments to one package per consignment or overpack.

OPS will focus on three pipeline rules. The first rulemaking will finalize a proposal to change the regulations covering hazardous liquid onshore pipelines related to High Consequence Areas for integrity management protections, repair timeframes, and reporting for all hazardous liquid gathering lines (Pipeline Safety: Safety of Hazardous Liquid Pipelines, 2137-AE66). The second rulemaking will finalize the testing and pressure reconfirmation of certain previously untested gas transmission pipelines and certain gas transmission pipelines with inadequate records, require operators incorporate seismicity into their risk analysis and data integration, require the reporting of maximum allowable operating pressure exceedances, allow a 6-month extension of integrity management reassessment intervals with notice, and expand integrity assessments outside of high consequence areas to other populated areas (Pipeline Safety: Safety of Gas Transmission Pipelines, 2137-AE72). PHMSA is considering issuing a notice of proposed rulemaking that would provide regulatory relief to certain pipeline operators that experience a reduction in allowable operating pressure due to construction that has occurred in the area (Pipeline Safety: Class Location Requirements, 2137-AF29).

BILLING CODE

DOT—Office of the Secretary(OST)	PROPOSED RULE STAGE

104. • +PROCESSING BUY AMERICA WAIVERS BASED ON NON AVAILABILITY (SECTION 610 REVIEW)

Priority:

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

EO 13771 Designation:

Regulatory

Legal Authority:

23 U.S.C. 313; 49 U.S.C. 5323(j); 49 U.S.C. 24405(a); 49 U.S.C. 50101; Consolidated Appropriations Act, 2018, div. L, tit. IV sec. 410; 41 U.S.C. 8301 to 8305; E.O. 13788, Buy American and Hire American (Apr. 18, 2017)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rule will establish the applicable regulatory standard for waivers from the Buy America requirement on the basis that a product or item is not manufactured in the United States meeting the applicable Buy America requirement. This standard will require the use of items and products

with the maximum known amount of domestic content. The rule will also establish the required information the applicants must provide in applying for such waivers.

Statement of Need:

Pursuant to Executive Order 13788-Buy American and Hire American, which establishes as a policy of the executive branch to "maximize, consistent with law...the use of goods, products, and materials produced in the United States," DOT will be requiring that applicants for non-availability waivers select products that maximize domestic content. In addition, this rule will streamline the Buy America non-availability waiver process, and improve coordination across the Department of Transportation.

Summary of Legal Basis:

23 U.S.C. 313; 49 U.S.C. 5323(j); 49 U.S.C. 24405(a); 49 U.S.C. 50101; Consolidated Appropriations Act, 2018, div. L, tit. IV 410; 41 U.S.C. 83018305; Executive Order 13788, Buy American and Hire American (Apr. 18, 2017).

Alternatives:

TBD

Anticipated Cost and Benefits:

TBD

Risks:

TBD

Timetable:

Action	Date	FR Cite
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Local, State, Tribal

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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DOT—Federal Aviation Administration(FAA)	FINAL RULE STAGE

105. +REGISTRATION AND MARKING REQUIREMENTS FOR SMALL UNMANNED AIRCRAFT

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

49 U.S.C. 106(f), 49 U.S.C. 41703, 44101 to 44106, 44110 to 44113, and 44701

CFR Citation:

14 CFR 1; 14 CFR 375; 14 CFR 45; 14 CFR 47; 14 CFR 48; 14 CFR 91

Legal Deadline:

None

Abstract:

This rulemaking would provide an alternative, streamlined and simple, web-based aircraft registration process for the registration of small unmanned aircraft, including small unmanned aircraft operated as model aircraft, to facilitate compliance with the statutory requirement that all aircraft register prior to operation. It would also provide a simpler method for marking small unmanned aircraft that is more appropriate for these aircraft. This action responds to public comments received regarding the proposed registration process in the Operation and Certification of Small Unmanned Aircraft notice of proposed rulemaking, the request for information regarding

unmanned aircraft system registration, and the recommendations from the Unmanned Aircraft System Registration Task Force.

Statement of Need:

This interim final rule (IFR) provides an alternative process that small unmanned aircraft owners may use to comply with the statutory requirements for aircraft operations. As provided in the clarification of these statutory requirements and request for further information issued October 19, 2015, 49 U.S.C. 44102 requires aircraft to be registered prior to operation. See 80 FR 63912 (October 22, 2015). Currently, the only registration and aircraft identification process available to comply with the statutory aircraft registration requirement for all aircraft owners, including small unmanned aircraft, is the paper-based system set forth in 14 CFR parts 45 and 47. As the Secretary and the Administrator noted in the clarification issued October 19, 2015, and further analyzed in the regulatory evaluation accompanying this rulemaking, the Department and the FAA have determined that this process is too onerous for small unmanned aircraft owners and the FAA. Thus, after considering public comments and the recommendations from the Unmanned Aircraft System (UAS) Registration Task Force, the Department and the FAA have developed an alternative process, provided by this IFR (14 CFR part 48), for registration and marking available only to small unmanned aircraft owners. Small unmanned aircraft owners may use this process to comply with the statutory requirement to register their aircraft prior to operating in the National Airspace System (NAS).

Summary of Legal Basis:

The FAA's authority to issue rules on 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 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing

regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This rule is also promulgated pursuant to 49 U.S.C. 44101 to 44106 and 44110 to 44113 which require aircraft to be registered as a condition of operation and establish the requirements for registration and the registration processes. Additionally, this rulemaking is promulgated pursuant to the Secretary's authority in 49 U.S.C. 41703 to permit the operation of foreign civil aircraft in the United States.

Alternatives:

Currently, the only registration and aircraft identification process available to comply with the statutory aircraft registration requirement for all aircraft owners, including small unmanned aircraft, is the paper-based system set forth in 14 CFR parts 45 and 47. As the Secretary and the Administrator noted in the clarification issued October 19, 2015, and further analyzed in the regulatory evaluation accompanying this rulemaking, the Department and the FAA have determined that this process is too onerous for small unmanned aircraft owners and the FAA.

Anticipated Cost and Benefits:

In order to implement the new streamlined, web-based system described in this interim final rule (IFR), the FAA will incur costs to develop, implement, and maintain the system. Small UAS owners will require time to register and mark their aircraft, and that time has a cost. The total of government and registrant resource cost for small unmanned aircraft registration and marking under this new system is $56 million ($46 million present value at 7 percent) through 2020. In evaluating the impact of this interim final rule, we compare the costs and benefits of the IFR to a baseline consistent with existing practices: for modelers, the exercise of discretion by FAA (not requiring registration) and continued broad public outreach and educational campaign, and for non-modelers, registration via part 47 in the paper-based system. Given the time to register aircraft under the paper-based system and the projected number of sUAS aircraft, the FAA estimates the cost to the government and non-modelers would be about $383 million. The resulting cost savings to society from this IFR equals the cost of this baseline policy ($383 million)

minus the cost of this IFR ($56 million), or about $327 million ($259 million in present value at a 7 percent discount rate). These cost savings are the net quantified benefits of this IFR.

Risks:

Many of the owners of these new sUAS may have no prior aviation experience and have little or no understanding of the NAS, let alone knowledge of the safe operating requirements and additional authorizations required to conduct certain operations. Aircraft registration provides an immediate and direct opportunity for the agency to engage and educate these new users prior to operating their unmanned aircraft and to hold them accountable for noncompliance with safe operating requirements, thereby mitigating the risk associated with the influx of operations. In light of the increasing reports and incidents of unsafe incidents, rapid proliferation of both commercial and model aircraft operators, and the resulting increased risk, the Department has determined it is contrary to the public interest to proceed with further notice and comment rulemaking regarding aircraft registration for small unmanned aircraft. To minimize risk to other users of the NAS and people and property on the ground, it is critical that the Department be able to link the expected number of new unmanned aircraft to their owners and educate these new owners prior to commencing operations.

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule	12/16/15	80 FR 78593
Interim Final Rule Effective	12/21/15	
OMB Approval of Information Collection	12/21/15	80 FR 79255
Interim Final Rule Comment	01/15/16	

Period End		
Final Rule	12/00/18	

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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DOT—National Highway Traffic Safety Administration(NHTSA)	PRERULE STAGE

106. +REMOVING REGULATORY BARRIERS FOR AUTOMATED DRIVING SYSTEMS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

delegation of authority at 49 CFR 1.95

CFR Citation:

49 CFR 571

Legal Deadline:

None

Abstract:

This notice seeks comment on existing motor vehicle regulatory barriers to the introduction and certification of automated driving systems. NHTSA is developing the appropriate analysis of requirements that are necessary to maintain existing levels of safety while enabling innovative vehicle designs and removing or modifying those requirements that would no longer be appropriate if a human driver will not be operating the vehicle. NHTSA previously published a Federal Register notice requesting public comment on January 18, 2018.

Statement of Need:

This notice seeks comment on existing motor vehicle regulatory barriers to the introduction and certification of automated driving systems.

Summary of Legal Basis:

Delegation of authority at 49 CFR 1.95

Alternatives:

NHTSA will seek regulatory alternatives in the upcoming proposal.

Anticipated Cost and Benefits:

NHTSA will seek cost and benefit estimates in the upcoming proposal.

Risks:

The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/18	

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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DOT—NHTSA	PROPOSED RULE STAGE

107. +THE SAFER AFFORDABLE FUEL–EFFICIENT (SAFE) VEHICLES RULE FOR MODEL YEARS 2021—2026 PASSENGER CARS AND LIGHT TRUCKS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

49 U.S.C. 32902; delegation of authority at 49 CFR 1.95

CFR Citation:

49 CFR 531; 49 CFR 533

Legal Deadline:

Final, Statutory, April 1, 2020, Publish Final Rule.

Abstract:

The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and the U.S. Environmental Protection Agency (EPA) proposed a rule to adjust the corporate average fuel economy (CAFE) and greenhouse gas (GHG) emissions standards for model years (MYs) 2021 through 2026 light-duty vehicles. EPA established national GHG emissions standards under the Clean Air Act that extend through 2025, and NHTSA established augural CAFE

standards for MY 2022-2025 vehicles under the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act (EISA). This joint rulemaking proposes adjustments to those standards, following conclusion of the Mid-Term Evaluation (MTE) process and EPA's Final Determination that it is appropriate to adjust the MY 2022-2025 GHG emission standards.

Statement of Need:

Setting Corporate Average Fuel Economy standards for passenger cars, light trucks and medium-duty passenger vehicles will reduce fuel consumption, and will thereby improve U.S. energy independence and energy security, which has been a national objective since the first oil price shocks in the 1970s. Transportation accounts for about 70 percent of U.S. petroleum consumption, and light-duty vehicles account for about 60 percent of oil use in the U.S. transportation sector.

Summary of Legal Basis:

This rulemaking responds to requirements of the Energy Independence and Security Act of 2007 (EISA), title 1, subtitle A, section 102, as it amends 49 U.S.C. section 32902, which was signed into law December 19, 2007. The statute requires that corporate average fuel economy standards be prescribed separately for passenger automobiles and non-passenger automobiles. For model years 2021 to 2030, the average fuel economy required to be attained by each fleet of passenger and non-passenger automobiles shall be the maximum feasible for each model year. The law requires the standards be set at least 18 months prior to the start of the model year.

Alternatives:

See the accompanying Regulatory Impact Analysis for the discussion of alternatives.

Anticipated Cost and Benefits:

See the accompanying Regulatory Impact Analysis for the discussion of estimated costs and benefits.

Risks:

The agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	08/24/18	83 FR 42986
NPRM Comment Period Extended	09/26/18	83 FR 48578
NPRM Comment Period End	10/23/18	
NPRM Comment Period Extended End	10/26/18	
Analyzing Comments	11/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

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

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DOT—Federal Railroad Administration(FRA)	FINAL RULE STAGE

108. +PASSENGER EQUIPMENT SAFETY STANDARDS AMENDMENTS

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Deregulatory

Legal Authority:

49 U.S.C. 20103

CFR Citation:

49 CFR 238

Legal Deadline:

None

Abstract:

This rulemaking would update existing safety standards for passenger rail equipment. Specifically, the rulemaking would add a new tier of passenger equipment safety standards (Tier III) to facilitate the safe implementation of nation-wide, interoperable, high-speed passenger rail service at speeds up to 220 mph. The Tier III standards require operations at speeds above 125 mph to be in an exclusive right-of-way without grade crossings. This rule would also establish crashworthiness and occupant protection performance requirements as an alternative to those currently specified for Tier I passenger train sets. Additionally, the rule would increase from 150 to 160 mph the maximum speed for passenger equipment that complies with FRA's Tier II

standards. The rule is expected to ease regulatory burdens, allow the development of advanced technology, and increase safety benefits.

Statement of Need:

This rulemaking would update existing safety standards for passenger rail equipment. Specifically, the rulemaking would add a new tier of passenger equipment safety standards (Tier III) to facilitate the safe implementation of nation-wide, interoperable, high-speed passenger rail service at speeds up to 220 mph. The Tier III standards require operations at speeds above 125 mph to be in an exclusive right-of-way without grade crossings. This rule would also establish crashworthiness and occupant protection performance requirements as an alternative to those currently specified for Tier I passenger train sets. Additionally, the rule would increase from 150 to 160 mph the maximum speed for passenger equipment that complies with FRA's Tier II standards. The rule is expected to ease regulatory burdens, allow the development of advanced technology, and increase safety benefits.

Summary of Legal Basis:

49 U.S.C. 20103, 20107, 20133, 20141, 20302 and 20303, 20306, 20701 and 20702, 21301 and 21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Alternatives:

The alternatives FRA considered in establishing the proposed safety requirements for Tier III train sets are the European and Japanese industry standards. However, as neither of those standards adequately address the safety concerns presented in the U.S. rail environment, FRA rejected adopting either of them as a regulatory alternative suitable for interoperable equipment.

Anticipated Cost and Benefits:

This rule would amend passenger equipment safety regulations. It adds a new equipment tier ("Tier III") to facilitate the safe implementation of high-speed rail (up to 220 mph on dedicated rail lines) and establishes alternative crashworthiness performance standards to qualify passenger rail equipment for Tier I operations. This rule is deregulatory in nature. At the proposed rule stage, FRA estimated the total cost of the proposed rule to be between $4.59 and $4.62 billion, discounted to between $3.13 and $3.16 billion at a 3% discount rate, and between $1.94 and $1.96 billion at a 7% discount rate. The annualized costs were estimated to be $64.6 to 65.1 million at a 7% discount rate and $101.9 to 102.6 million at a 3% discount rate. FRA estimated the total benefits to be between $8.66 and $16.75 billion, discounted to between $6.05 and $11.27 billion at a 3% discount rate, and between $3.85 and $7.06 billion at a 7% discount rate. The annualized benefits were estimated to be $121.8 to 235.8 million at a 7% discount rate and $192 to 371.7 million at a 3% discount rate. The benefits are derived by calculating the difference between the estimated equipment and infrastructure costs without the rule and the estimated costs of pursuing the same projects with the new rule in effect. The majority of the benefits are due to a rule modification that provides Tier III train sets the ability to operate on shared track rather than build new, independent infrastructure into urban areas. FRA is currently evaluating the core assumptions that lead to such large benefits to ensure their accuracy.

Risks:

The risk is regulatory uncertainty for potential Tier III and Tier I alternative operations. Tier III operations could still be conducted, but would require a series of waivers, which are not as permanent as regulatory approval (and not as certain). Also, Tier I alternative train sets would still require waivers for operation (same regulatory uncertainty as for Tier III).

Timetable:

Action	Date	FR Cite

NPRM	12/06/16	81 FR 88006
NPRM Comment Period End	02/06/17	
Final Rule	10/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DOT—Pipeline and Hazardous Materials Safety Administration(PHMSA)	PRERULE STAGE

109. +PIPELINE SAFETY: CLASS LOCATION REQUIREMENTS

Priority:

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

EO 13771 Designation:

Deregulatory

Legal Authority:

49 U.S.C. 60101 et seq.

CFR Citation:

49 CFR 192

Legal Deadline:

None

Abstract:

This rulemaking regards existing class location requirements, specifically as they pertain to actions operators are required to take following class location changes. Operators have

suggested that performing integrity management measures on pipelines where class locations have changed due to population increases would be an equally safe but less costly alternative to the current requirements of either reducing pressure, pressure testing, or replacing pipe.

Statement of Need:

Section 5 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 required the Secretary of Transportation to evaluate and issue a report on whether integrity management requirements should be expanded beyond high-consequence areas and whether such expansion would mitigate the need for class location requirements. PHMSA issued a Notice of Inquiry on this topic on August 1, 2013, and issued a report to Congress on its evaluation of this issue in April 2016. In that report, PHMSA decided to retain the existing class location requirements but noted it would further examine issues related to pipe replacement requirements when class locations change due to population growth. PHMSA noted that it would further evaluate the feasibility and appropriateness of alternatives to address this issue following publication of the final rule titled "Pipeline Safety: Safety of Gas Transmission Pipelines" (Docket No. PHMSA-2011-0023; RIN 2137-AE72). In line with that intent, section 4 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 requires PHMSA to provide a report to Congress no later than 18 months after the publication of the Gas Transmission final rule that reviews the types of benefits, including safety benefits, and estimated costs of the legacy class location regulations. Therefore, PHMSA is initiating this rulemaking to determine whether the performance on integrity management measures, or other safety measures, on pipelines where class locations have changed due to population increases would be an equally safe but less costly alternative to the current class location change requirements.

Summary of Legal Basis:

Congress established the current framework for regulating the safety of natural gas pipelines in the Natural Gas Pipeline Safety Act of 1968 (NGPSA). The NGPSA provided the Secretary of Transportation the authority to prescribe minimum Federal safety standards for natural gas

pipeline facilities. That authority, as amended in subsequent reauthorizations, is currently codified in the Pipeline Safety Laws (49 U.S.C. sections 60101 et seq.).

Alternatives:

In this rulemaking, PHMSA will identify possible alternatives to the current class location requirements, specifically those requirements causing operators to reduce pressure, pressure test, or replace pipe when class locations change in areas due to population increases. One such alternative, as suggested by certain members of the industry, could include the performance of integrity management measures on affected pipelines.

Anticipated Cost and Benefits:

PHMSA believes there is no cost to this rulemaking action, but we will solicit further information on the costs and benefits of the current class location requirements as they pertain to class location changes, as well as the costs and benefits of any alternatives.

Risks:

PHMSA is evaluating whether the performance of integrity management, or other alternatives, in lieu of the current regulatory requirements for reducing pressure, pressure testing, or replacing pipe when class locations change due to population growth, will increase, decrease, or maintain the current level of risk. PHMSA notes that while certain alternatives to the current regulations might allow for an equivalent level of risk, there is a potential for greater consequences in an area where a class location has changed due to population increases along the pipeline.

Timetable:

Action	**Date**	**FR Cite**
ANPRM	07/31/18	83 FR 36861

ANPRM Comment Period End	10/01/18	
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DOT—PHMSA	PROPOSED RULE STAGE

110. +HAZARDOUS MATERIALS: ENHANCED SAFETY PROVISIONS FOR LITHIUM BATTERIES TRANSPORTED BY AIRCRAFT

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

49 U.S.C. 44701; 49 U.S.C. 5103(b); 49 U.S.C. 5120(b)

CFR Citation:

49 CFR 172; 49 CFR 173

Legal Deadline:

None

Abstract:

This rulemaking action would amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) applicable to the transport of lithium cells and batteries by aircraft. The rulemaking contains three amendments: (1) a prohibition on the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) a requirement that lithium ion cells and batteries be shipped at

not more than a 30 percent state of charge aboard cargo-only aircraft; and (3) a limitation on the use of alternative provisions for small lithium cell or battery shipments to one package per consignment or overpack. These amendments are consistent with three emergency amendments to the 2015–2016 International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The amendments in this rulemaking do not restrict passengers or crew members from bringing personal items or electronic devices containing lithium batteries aboard aircraft in carry-on or checked baggage, or restrict cargo-only aircraft from transporting lithium ion batteries at a state of charge exceeding 30 percent when packed with or contained in equipment. PHMSA is providing limited relief from the passenger aircraft prohibition and the state of charge restriction for small lithium ion batteries transported entirely within Alaska, Hawaii, and U.S. territories.

Statement of Need:

This rule is necessary to address an immediate safety hazard and harmonize the US HMR with emergency amendments to the 2015-2016 edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). FAA research has shown that air transportation of lithium ion batteries poses a safety risk. We are issuing this rulemaking to (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery shipments under 49 CFR 173.185(c).

Summary of Legal Basis:

This rule is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 et seq. Section 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This rule revises regulations for the safe transport of lithium batteries by air and the protection of aircraft operators and the flying public.

Alternatives:

In this rulemaking, PHMSA considered the following three alternatives: (1) PHMSA adopts all of the amendments presented in the rule; (2) a No Action alternative; and (3) a Partial Harmonization alternative.

Anticipated Cost and Benefits:

PHMSA estimates the present value costs about $46.6 million over 10 years and about $6.6 million annualized at a 7 percent discount rate and $56.3 million over 10 years and about $6.6 million annualized at a 3 percent discount rate. Based on the estimated mean 10-year undiscounted cost of $65.84 million and the estimated economic consequences of $34.9 million for a cargo-only flight incident, the rulemaking would need to prevent 1.9 incidents over the next 10 years for the benefits to exceed the quantified costs, or approximately one every 5 years.

Risks:

PHMSA expects the rule will improve safety for flight crews, air cargo operators, and the public as a result of the state of charge requirement and the consignment and overpack restriction by reducing the possibility of fire on cargo-only aircraft. Additionally, the rule will harmonize the prohibition of lithium ion batteries as cargo on passenger aircraft and eliminate the possibility of a package of lithium ion batteries causing or contributing to a fire in the cargo hold of a passenger aircraft.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

HM-224I

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DOT—PHMSA	FINAL RULE STAGE

111. +PIPELINE SAFETY: SAFETY OF HAZARDOUS LIQUID PIPELINES

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

49 U.S.C. 60101 et seq.

CFR Citation:

49 CFR 195

Legal Deadline:

None

Abstract:

This rulemaking would amend the Pipeline Safety Regulations to improve protection of the public, property, and the environment by closing regulatory gaps where appropriate, and ensuring that operators are increasing the detection and remediation of unsafe conditions, and mitigating the adverse effects of hazardous liquid pipeline failures.

Statement of Need:

This rulemaking addresses Congressional mandates in the 2011 Pipeline Reauthorization Act (sections 5, 8, 21, 29, 14) and 2016 PIPES Act (sections 14 and 25); NTSB recommendations P-12-03 and P-12-04; and GAO recommendation 12-388. These statutory mandates and recommendations follow a number of high profile and high consequence accidents (e.g., the 2010 Marshall, MI spill of almost one million gallons of crude oil into the Kalamazoo River). PHMSA is amending the hazardous liquid pipeline safety regulations to: (1) extend reporting requirements to gravity lines that do not meet certain exceptions; (2) extend certain reporting requirements to all hazardous liquid gathering lines; (3) require inspections of pipelines in areas affected by extreme weather, natural disasters, and other similar events; (4) require periodic assessments of onshore transmission pipelines that are not already covered under the integrity management (IM) program requirements; (5) expand the use of leak detection systems on onshore hazardous liquid transmission pipelines to mitigate the effects of failures that occur outside of high consequence areas; (6) modify the IM repair criteria, both by expanding the list of conditions that require immediate remediation and consolidating the time frames for re-mediating all other conditions; (7) increase the use of inline inspection tools by requiring that any pipeline that could affect a high consequence area be capable of accommodating these devices within 20 years, unless its basic construction will not permit that accommodation; and (8) clarify other regulations to improve compliance and enforcement. The rule also requires safety data sheets and inspection of pipelines located at depths greater than 150 feet under the surface of the water.

Summary of Legal Basis:

Congress established the current framework for regulating the safety of hazardous liquid pipelines in the Hazardous Liquid Pipeline Safety Act (HLPSA) of 1979 (Pub. L. 96-129). The HLPSA provided the Secretary of Transportation the authority to prescribe minimum Federal safety standards for hazardous liquid pipeline facilities. That authority, as amended in subsequent reauthorizations, is currently codified in the Pipeline Safety Laws (49 U.S.C. sections 60101 et seq.).

Alternatives:

PHMSA proposed alternatives to include offshore and gathering lines in the scope of provisions requiring assessments outside of HCAs and leak detection systems, and revise the repair criteria for pipelines outside HCAs, and evaluated additional regulatory alternatives including no action.

Anticipated Cost and Benefits:

Estimated annualized costs are $18 million. Benefits are presented qualitatively and in terms of breakeven analysis based on reported consequences from past incidents.

Risks:

These changes will provide PHMSA additional data on pipelines to inform risk evaluation and reduce the probability and consequences of failures through increased inspections, leak detection, and other changes to managing pipeline risks.

Timetable:

Action	**Date**	**FR Cite**
ANPRM	10/18/10	75 FR 63774
Comment Period Extended	01/04/11	76 FR 303
ANPRM Comment Period End	01/18/11	
Extended Comment Period End	02/18/11	
NPRM	10/13/15	80 FR 61610

NPRM Comment Period End	01/08/16	
Final Rule	12/00/18	

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: 2137–AE66

DOT—PHMSA	

112. +PIPELINE SAFETY: SAFETY OF GAS TRANSMISSION PIPELINES, MAOP RECONFIRMATION, EXPANSION OF ASSESSMENT REQUIREMENTS AND OTHER RELATED AMENDMENTS

Priority:

Other Significant. Major under 5 USC 801.

EO 13771 Designation:

Regulatory

Legal Authority:

49 U.S.C. 60101 et seq.

CFR Citation:

49 CFR 192

Legal Deadline:

None

Abstract:

This rulemaking would amend the pipeline safety regulations to address the testing and pressure reconfirmation of certain previously untested gas transmission pipelines and certain gas transmission pipelines with inadequate records, require operators incorporate seismicity into their risk analysis and data integration, require the reporting of maximum allowable operating pressure exceedances, allow a 6-month extension of integrity management reassessment intervals with notice, and expand integrity assessments outside of high consequence areas to other populated areas.

Statement of Need:

This rulemaking is in direct response to Congressional mandates in the 2011 Pipeline reauthorization act, specifically; section 4(e) (Gas IM plus 6 months), section 5 (IM), 8 (leak detection), 23(b)(2)(exceedance of MAOP); and section 29 (seismicity). These statutory mandates and recommendations stem from a number of high profile and high consequence gas transmission and gathering pipeline incidents and changes in the industry since the establishment of existing regulatory requirements (e.g., the San Bruno, CA explosion that killed eight people).

Summary of Legal Basis:

Congress has authorized Federal regulation of the transportation of gas by pipeline under the Commerce Clause of the U.S. Constitution. Authorization is codified in the Pipeline Safety Laws (49 U.S.C. sections 60101 et seq.), a series of statutes that are administered by the DOT, PHMSA. PHMSA has used that authority to promulgate comprehensive minimum safety standards for the transportation of gas by pipeline.

Alternatives:

PHMSA considered alternatives to establishing a newly defined moderate consequence area and evaluated requiring assessments for all pipelines outside HCAs.

Anticipated Cost and Benefits:

Preliminary estimates of annualized costs are in the range of $40 million; annualized benefits, including cost savings, are over $200 million.

Risks:

This rule addresses known risks to gas transmission and gathering including the "grandfather clause" (exemption for testing to establish maximum operating pressure for transmission lines) and new unregulated gathering lines that resemble transmission lines.

Timetable:

Action	**Date**	**FR Cite**
ANPRM	08/25/11	76 FR 53086
ANPRM Comment Period Extended	11/16/11	76 FR 70953
ANPRM Comment Period End	12/02/11	
End of Extended Comment Period	01/20/12	
NPRM	04/08/16	81 FR 20721
NPRM Comment Period End	06/08/16	
Final Rule	03/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

SB- Y IC-N SLT-N;

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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DOT—PHMSA	

113. +HAZARDOUS MATERIALS: OIL SPILL RESPONSE PLANS AND INFORMATION SHARING FOR HIGH–HAZARD FLAMMABLE TRAINS (FAST ACT)

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

33 U.S.C. 1321; 49 U.S.C. 5101 et seq.

CFR Citation:

49 CFR 130; 49 CFR 174; 49 CFR 171; 49 CFR 172; 49 CFR 173

Legal Deadline:

None

Abstract:

This rulemaking would expand the applicability of comprehensive oil spill response plans (OSRP) based on thresholds of liquid petroleum oil that apply to an entire train. The rulemaking would also require railroads to share information about high-hazard flammable train operations with State and Tribal emergency response commissions to improve community preparedness in accordance with the Fixing America's Surface Transportation Act of 2015 (FAST Act). Finally, the rulemaking would incorporate by reference an initial boiling point test for flammable liquids for better consistency with the American National Standards Institute/American Petroleum Institute

Recommended Practices 3000, "Classifying and Loading of Crude Oil into Rail Tank Cars," First Edition, September 2014.

Statement of Need:

This rulemaking is important to mitigate the effects of potential train accidents involving the release of flammable liquid energy products by increasing planning and preparedness. The proposals in this rulemaking are shaped by mandates in Fixing America's Surface Transportation (FAST) Act of 2015, public comments, National Transportation Safety Board (NTSB) Safety Recommendations, analysis of recent accidents, and input from stakeholder outreach efforts (including first responders). To this end, PHMSA will consider expanding the applicability of comprehensive oil spill response plans; clarifying the requirements for comprehensive oil spill response plans; requiring railroads to share additional information; and providing an alternative test method for determining the initial boiling point of a flammable liquid.

Summary of Legal Basis:

The authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce." The Fixing America's Surface Transportation (FAST) Act of 2015 also includes mandates for the information sharing notification requirements. The authority of 33 U.S.C. 1321, the Federal Water Pollution Control Act (FWPCA), which directs the President to issue regulations requiring owners and operators of certain vessels and onshore and offshore oil facilities to develop, submit, update and in some cases obtain approval of oil spill response plans. Executive Order 12777 delegated responsibility to the Secretary of Transportation for certain transportation-related facilities. The Secretary of Transportation delegated the authority to promulgate regulations to PHMSA and provides FRA the approval authority for railroad OSRPs.

Alternatives:

This rulemaking analyzes five alternative proposals, including no change and changing the applicability threshold to analyze the impact to affected entities. Under the no change alternative, PHMSA would not proceed with any rulemaking on this subject and the current regulatory standards would remain in effect.

Anticipated Cost and Benefits:

In the rulemaking, PHMSA performed a breakeven analysis by identifying the number of gallons of oil that the rulemaking would need to prevent from being spilled in order for its benefits to at least equal its estimated costs. Additional benefits may also be conferred due to ecological and human health improvements that may not be captured in the value of the avoided cost of spilled oil. PHMSA currently estimates the rulemaking will be cost-effective if the requirements reduce the consequences of oil spills by 7.68% with ten year costs estimated at $25.2 million and annualized costs of $3.6 million (using a 7% discount rate).

Risks:

PHMSA expects this rulemaking to mitigate the effects of potential train accidents involving the release of flammable liquid energy products by increasing planning and preparedness.

Timetable:

Action	**Date**	**FR Cite**
ANPRM	08/01/14	79 FR 45079
ANPRM Comment Period End	09/30/14	
NPRM	07/29/16	81 FR 50067
NPRM Comment Period End	09/27/16	

Final Rule	11/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

HM-251B; SB - N, IC - N, SLT - N;

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN:

Related to 2137–AE91, Related to 2137–AF07

RIN: 2137–AF08

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Statement of Regulatory Priorities

The primary mission of the Department of the Treasury is to maintain a strong economy and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combatting threats and protecting the integrity of the financial system, and manage the U.S. Government's finances and resources effectively.

Consistent with this mission, regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by Congress and signed by the President. It is the policy of the Department to comply with applicable requirements to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

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 Orders 12866, 13563, 13609, and 13771 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.

I. Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to implement and enforce Federal laws relating to alcohol, tobacco, firearms, and ammunition excise taxes and certain non-tax laws relating to alcohol. TTB's mission and regulations are designed to:

1) Collect the taxes on alcohol, tobacco products, firearms, and ammunition;

2) Protect the consumer by ensuring the integrity of alcohol products; and

3) Prevent unfair and unlawful market activity for alcohol and tobacco products.

In FY 2019, TTB will continue its multi-year Regulations Modernization effort by prioritizing projects that reduce regulatory burdens, provide greater industry flexibility, and streamline the regulatory system, consistent with Executive Orders 13771 and 13777. TTB rulemaking priorities also include proposing regulatory changes in response to petitions from industry members and other interested parties, and requesting comments on ways TTB may further reduce burden and support a level playing field for the regulated industry. Specifically, during the fiscal year, TTB plans to publish a deregulatory final rule, following a notice published in FY 2017, which reduces the number of reports submitted by certain regulated industry members. TTB also plans to publish for public comment proposed deregulatory changes in connection with permit applications and to expand industry flexibility with regard to alcohol beverage container sizes (standards of fill). Priority projects also include continuing the rulemaking issued in FY 2017 in response to industry member petitions to authorize new wine treating materials and processes, new grape varietal names for use on labels of wine, and new American Viticultural Areas (AVAs). None of the TTB rulemaking documents issued in FY 2019 are expected to be "regulatory actions" under Executive Order 13771 and subsequent OMB guidance.

This fiscal year TTB plans to give priority to the following deregulatory and regulatory measures:

- ***Proposal to Streamline and Modernize Permit Application Process (RINs: 1513-AC46, 1513-AC47, 1513-AC48, and 1513-AC49, Modernization of Permit***

and Registration Application Requirements for Distilled Spirits Plants, Permit Applications for Wineries, Qualification Requirements for Brewers, and Permit Application Requirements for Manufacturers of Tobacco Products or Processed Tobacco, respectively). (Deregulatory)

Consistent with EO 13771 and 13777, in FY 2017, TTB engaged in a review of its regulations to identify any regulatory requirements that could potentially be eliminated, modified, or streamlined in order to reduce burdens on industry. In FY 2018, TTB worked to remove requirements where possible without the need for rulemaking. This included the elimination of certain information collected on TTB permit-related forms. In FY 2019, TTB intends to propose amending its regulations to eliminate or streamline various additional requirements for application or qualification of distilled spirits plants, wineries, breweries, and manufacturers of tobacco products or processed tobacco. In addition, through these regulatory amendments, TTB intends to address a number of comments it received from the interested public, including industry members, through the Treasury Department's Request for Information on deregulatory ideas (Docket No. TREAS-DO-2017-0012, published in the Federal Register on June 14, 2017).

- ***Proposed Revisions to the Regulations to Provide Greater Flexibility in the Use of Wine and Distilled Spirits Containers (RIN: 1513-AB56, Standards of Fill for Wine, and RIN: 1513-AC45, Standards of Fill for Distilled Spirits). (Deregulatory)***

  In these two notices, TTB will address petitions requesting that it amend regulations governing wine and distilled spirits containers to provide for additional authorized "standards of fill." (The term "standard of fill" generally relates to the size of containers, although the specific regulatory meaning is the authorized amount of liquid in the container, rather than the size or capacity of the container itself.) If implemented, this proposal would provide industry members greater flexibility in

producing and sourcing containers and meeting consumer demand. This deregulatory action would also eliminate restrictions that inhibit competition and the movement of goods in domestic and international commerce.

- ***Revisions to the Regulations to Reduce Report Filing Frequency (RIN: 1513-AC30, Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods). (Deregulatory)***

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act (PATH Act), which is Division Q of the Consolidated Appropriations Act, 2016. The PATH Act contains changes to certain statutory provisions that TTB administers in the Internal Revenue Code regarding excise tax return due dates and bond requirements for certain smaller excise taxpayers. These amendments took effect beginning in January 2017, and TTB published a temporary rule amending its regulations to implement these provisions. At the same time, TTB published in the Federal Register (82 FR 780) a notice of proposed rulemaking requesting comments on the amendments made in the temporary rule and proposing further amendments to the regulations governing reporting requirements for distilled spirits plants (DSPs) and breweries to reduce the regulatory burden on industry members who pay taxes and file tax returns annually or quarterly. Under the proposal, those industry members would also submit reports annually or quarterly, aligned with their filing of the tax return, rather than monthly as generally provided under current regulations. To be eligible for annual or quarterly filing, the DSP or brewery must reasonably expect to be liable for not more than $1,000 in excise taxes (in the case of annual filing) or $50,000 in excise taxes (in the case of quarterly filing) for the calendar year and must have been liable for not more than these respective amounts in the preceding calendar year. The reduced reporting frequency will reduce regulatory burdens on these smaller industry members.

- ***Revisions to the Regulations to Reflect Statutory Changes to the Definition of Hard Cider under the Internal Revenue Code (RIN: 1513–AC31). (Not yet determined)***

The PATH Act also contained changes to the Internal Revenue Code amending the definition of

hard cider for excise tax classification purposes. The amended definition broadened the range of products to which the hard cider tax rate applies. In FY 2017, TTB published a temporary rule amending its regulations to implement these provisions. At the same time, TTB published in the Federal Register (82 FR 7753) a notice of proposed rulemaking requesting comments on the amendments made in the temporary rule, including labeling requirements to identify products to which the hard cider tax rate applies. In 2018, TTB reopened the comment period for the notice, as requested by industry members and, after consideration of the comments, intends to issue a final rule in FY 2019.

- ***Proposal to Modernize the Alcohol Beverage Labeling and Advertising Requirements (RIN: 1513-AB54). (Deregulatory)***

The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate commerce have a label issued and approved under regulations prescribed by the Secretary of the Treasury. In accordance with the mandate of Executive Order 13563 of January 18, 2011, regarding improving regulation and regulatory review, TTB conducted an analysis of its alcohol beverage labeling regulations to identify any that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that analysis. These regulations were also reviewed to assess their applicability to the modern alcohol beverage marketplace. As a result of this review, and further review in FY 2017 and FY 2018 consistent with Executive Orders 13771 and 13777 regarding reducing regulatory burdens, in FY 2019, TTB plans to propose revisions to consolidate and modernize the regulations concerning the labeling requirements for wine, distilled spirits, and malt beverages. TTB anticipates that these regulatory changes will assist industry in voluntary compliance, decrease industry burden, and result in the regulated industries being able to bring products to market without undue delay. TTB also anticipates that this notice for public comment will give industry members another opportunity to provide comments and suggestions on any additional deregulatory measures in these areas.

In FY 2019, TTB intends to bring to completion a number of rulemaking projects published as notices of proposed rulemaking in FY 2017 in response to industry member petitions to amend the TTB regulations and reopened for public comment in FY 2018:

- ***Proposal to Amend the Regulations to Authorize the Use of Additional Wine Treating Materials (RIN: 1513–AB61). (Not yet determined)***

In FY 2017, TTB proposed to amend its regulations pertaining to the production of wine to authorize additional treatments that may be applied to wine and to juice from which wine is made. These proposed amendments were made in response to requests from wine industry members to authorize certain wine treating materials and processes not currently authorized by TTB regulations. Although TTB may administratively approve such treatments, rulemaking facilitates the acceptance of exported wine made using those treatments in foreign markets. In FY 2018 TTB reopened the comment period for the notice, as requested by industry members and, after consideration of the comments, intends to issue a final rule in FY 2019.

- ***Proposal to Amend the Regulations to Add New Grape Variety Names for American Wines (RIN: 1513–AC24). (Not significant)***

In FY 2017, TTB proposed to amend its wine labeling regulations by adding a number of new names to the list of grape variety names approved for use in designating American wines. The proposed deregulatory amendments would allow wine bottlers to use these additional approved grape variety names on wine labels and in wine advertisements. In 2018, TTB reopened the comment period for the notice, as requested by industry members and, after consideration of the comments, intends to issue a final rule in FY 2019.

II. Customs Revenue Functions

The Homeland Security Act of 2002 (the Act) provides that, although many functions of the former United States Customs Service were transferred to the Department of Homeland Security, the Secretary of the Treasury retains sole legal authority over 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 subject to certain exceptions, but further provided that the Secretary of the Treasury retained the sole authority to approve such regulations.

During fiscal year 2019, CBP and Treasury plan to give priority to regulatory matters involving the customs revenue functions which streamline CBP procedures, protect the public, or are required by either statute or Executive Order. The examples of these efforts described below are exempt from Executive Order 13771 as they are non-significant rules as defined by Executive Order. Examples of these efforts are described below.

- ***Investigation of Claims of Evasion of Antidumping and Countervailing Duties.*** (***Not significant)***

Treasury and CBP plan to finalize interim regulations (81 FR 56477) which amended CBP regulations implementing section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, which set forth procedures to investigate claims of evasion of antidumping and countervailing duty orders.

- ***Modernized Drawback. (Economically significant)***

Treasury and CBP plan to amend CBP regulations to implement changes to the drawback law contained in section 906 of the Trade Facilitation and Trade Enforcement Act of 2015. These proposed changes to the regulations will liberalize the standard for substituting merchandise, simplify recordkeeping requirements, extend and standardize timelines for filing drawback claims, and require the electronic filing of drawback claims.

- ***Enforcement of Copyrights and the Digital Millennium Copyright Act. (Significance not yet determined)***

Treasury and CBP plan to propose amendments to the CBP regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws, including the Digital Millennium Copyright Act (DMCA), in accordance with Title III of the Trade

Facilitation and Trade Enforcement Act of 2015 (TFTEA) and Executive Order 13785, "Establishing Enhanced Collection and Enforcement of Anti-dumping and Countervailing Duties and Violations of Trade and Customs Laws." The proposed amendments are intended to enhance CBP's enforcement efforts against increasingly sophisticated piratical goods, clarify the definition of piracy, simplify the detention process relative to goods suspected of violating the copyright laws, and prescribe new regulations enforcing the DMCA.

- ***Inter Partes Proceedings Concerning Exclusion Orders Based on Unfair Practices in Import Trade. (Deregulatory)***

Treasury and CBP plans to publish a proposal to amend its regulations with respect to administrative rulings related to the importation of articles in light of exclusion orders issued by the United States International Trade Commission ("Commission") under section 337 of the Tariff Act of 1930, as amended. The proposed amendments seek to promote the speed, accuracy, and transparency of such rulings through the creation of an inter partes proceeding to replace the current ex parte process.

III. Financial Crimes Enforcement Network

As administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) is responsible for developing and implementing regulations that are the core of the Department's anti-money laundering (AML) and counter-terrorism financing 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. The BSA

also authorizes requiring designated financial institutions to establish AML 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 AML initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

FinCEN's regulatory priorities for fiscal year 2018 include:

- ***Report of Foreign Bank and Financial Accounts. (Deregulatory)***

On March 10, 2016, FinCEN issued a Notice of Proposed Rulemaking to address requests from filers for clarification of certain requirements regarding the Report of Foreign Bank and Financial Accounts, including requirements with respect to employees who have signature authority over, but no financial interest in, the foreign financial accounts of their employers. FinCEN is considering public comments and preparing a Final Rule.

- ***Amendments to the Definitions of Broker or Dealer in Securities. (Regulatory)***

On April 4, 2016, FinCEN issued a Notice of Proposed Rulemaking proposing amendments to the regulatory definitions of broker or dealer in securities under the BSA's regulations. The proposed changes would expand the current scope of the definitions to include funding portals and would require them to implement policies and procedures reasonably designed to achieve compliance with all of the BSA's requirements that are currently applicable to brokers or dealers in securities. FinCEN is considering public comments and preparing a Final Rule.

- ***Anti-Money Laundering Program Requirements for Banks Lacking a Federal Functional Regulator. (Not yet determined)***

On August 25, 2016, FinCEN issued a Notice of Proposed Rulemaking to remove the AML program exemption for banks that lack a Federal functional regulator, including, but not limited to, private banks, non-federally insured credit unions, and certain trust companies. The proposed rule would prescribe minimum standards for AML programs and would ensure that all banks, regardless of whether they are subject to Federal regulation and oversight, are required to establish and implement AML programs. FinCEN is considering public comments and preparing a Final Rule.

- ***Anti-Money Laundering Program and SAR Requirements for Investment Advisers. (Regulatory)***

On September 1, 2015, FinCEN published in the Federal Register a Notice of Proposed Rulemaking to solicit public comment on proposed rules under the BSA that would prescribe minimum standards for anti-money laundering programs to be established by certain investment advisers and to require such investment advisers to report suspicious activity to FinCEN. FinCEN is considering those comments and preparing a Final Rule.

- ***Anti-Money Laundering Program Requirements for Persons Involved in Real Estate Closings and Settlements. (Regulatory)***

FinCEN intends to issue an ANPRM to initiate a rulemaking that would establish BSA requirements for "persons involved in real estate closings and settlements," 31 U.S.C. 5312(a)(2)(U). The new rules may cover various types of businesses and professions involved in real estate transactions, including real estate agents and brokers, settlement attorneys, and title companies. The data from a series of geographical targeting orders issued by FinCEN is being evaluated to support this rulemaking to address money laundering through real estate transactions, especially acquisitions made via currency transmittals. Real estate transactions involving mortgages are already covered by BSA rules for banks and FinCEN rules for residential mortgage lenders and originators.

- ***Registration Requirements of Money Services Businesses. (Regulatory)***

FinCEN is considering issuing a Notice of Proposed Rulemaking amending the registration requirements for money services businesses.

- ***Reporting of Cross-Border Electronic Transmittals of Funds. (Regulatory)***

FinCEN is considering requiring certain depository institutions and money services businesses (MSBs) to affirmatively provide records to FinCEN of certain cross-border electronic transmittals of funds (CBETF). Current regulations already require that these financial institutions maintain and make available, but not affirmatively report, essentially the same CBETF information. FinCEN issued this proposal to meet the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).

- ***Changes to the Currency and Monetary Instrument Report (CMIR) Reporting Requirements. (Significance not yet determined)***

FinCEN will research, obtain, and analyze relevant data to validate the need for changes aimed at updating and improving the CMIR and ancillary reporting requirements. Possible areas of study to be examined could include current trends in cash transportation across international borders, transparency levels of physical transportation of currency, the feasibility of harmonizing data fields with bordering countries, and information derived from FinCEN's experience with Geographic Targeting Orders.

- ***Other Requirements.***

FinCEN also will continue to issue proposed and final rules pursuant to section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects that it may propose various technical and other regulatory amendments in conjunction with ongoing efforts with respect to a comprehensive review of existing regulations to enhance regulatory efficiency.

VI. Internal Revenue Service

During fiscal year 2019, the IRS and Treasury's Office of Tax Policy have the following regulatory priorities. The first priority is to provide guidance regarding initial implementation of

key provisions of the Tax Cuts and Jobs Act (TCJA), Public Law 115-97. Initial implementation priorities include:

- Guidance under section s 101 and 1016 and new section 6050Y regarding reportable policy sales of life insurance contracts.
- Guidance under section 162(f) and new section 6050X.
- Computational, definitional, and other guidance under new section 163(j).
- Guidance on new section 168(k).
- Computational, definitional, and anti-avoidance guidance under new section 199A.
- Definitional and other guidance under new section 451(b) and (c).
- Guidance on computation of unrelated business taxable income for separate trades or businesses under new section 512(a)(6).
- Guidance implementing changes to section 529.
- Guidance implementing new section 965 and other international sections of the TCJA.
- Guidance implementing changes to section 1361 regarding electing small business trusts.
- Guidance regarding Opportunity Zones under sections 1400Z–1 and 1400Z–2.
- Guidance under new section 1446(f) for dispositions of certain partnership interests.
- Guidance on computation of estate and gift taxes to reflect changes in the basic exclusion amount.
- Guidance regarding withholding under section s 3402 and 3405 and optional flat rate withholding.

- Guidance on certain issues relating to the excise tax on excess remuneration paid by "applicable tax-exempt organizations" under section 4960.
- Guidance regarding new section 1061.
- Guidance regarding new section 6695(g).

In addition, the IRS and Treasury's Office of Tax Policy will continue to pursue the actions recommended in the Second Report pursuant to Executive Order 13789 to eliminate, or in other cases reduce, the burdens imposed on taxpayers by eight regulations that the Treasury has identified for review under Executive Order 13789. The remaining deregulatory actions include:

1. Finalize amendment of regulations under section 7602 regarding the participation of attorneys described in section 6103(n) in a summons interview. Proposed amendments were published on March 28, 2018.
2. Finalize removal of temporary regulations under section 707 concerning treatment of liabilities for disguised sale purposes. Proposed regulations that proposed the removal of the temporary regulations under section 707 and the reinstatement of the prior section 707 regulations were published on June 19, 2018.
3. Proposed removal of documentation regulations under section 385 and review of other regulations under section 385. A notice delaying the application of the documentation regulations was published on August 14, 2017.
4. Proposed modification of regulations under section 367 regarding the treatment of certain transfers of property to foreign corporations.
5. Proposed modification of regulations under section 337(d) regarding certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs
6. Proposed modification of regulations under section 987 on income and currency gain or loss with respect to a section 987 qualified business unit.

The IRS and Treasury are also prioritizing implementation of the President's Executive Order 13813, Promoting Healthcare Choice and Competition Across the United States. The

Executive Order, among other things, directs Treasury and the Departments of Labor and Health and Human Services to consider proposing or revising regulations or guidance to increase the usability of health reimbursement arrangements.

Finally, it is a priority of the IRS to publish regulations under section 1101 of the Bipartisan Budget Act of 2015 (BBA) that are necessary to implement the new centralized partnership audit regime enacted in November 2015. Section 1101(g)(1) of the BBA provides that the new regime is generally effective for partnership tax years beginning after December 31, 2017. Final regulations regarding the election out of the centralized partnership audit regime were published January 2, 2018. Final regulations regarding the partnership representative and the election to apply the centralized partnership audit regime were published August 9, 2018. Proposed regulations implementing the centralized partnership audit regime were published August 17, 2018.

V. Bureau of the Fiscal Service

The Bureau of the Fiscal Service (Fiscal Service) administers regulations pertaining to the Government's financial activities, including: (1) implementing Treasury's borrowing authority, including regulating the sale and issue of Treasury securities; (2) administering Government revenue and debt collection; (3) administering government-wide accounting programs; (4) managing certain Federal investments; (5) disbursing the majority of Government electronic and check payments; (6) assisting Federal agencies in reducing the number of improper payments; and (7) providing administrative and operational support to Federal agencies through franchise shared services.

During fiscal year 2019, the Fiscal Service will accord priority to the following regulatory projects:

- ***Management of Federal Agency Receipts. (Not yet determined)***

The Fiscal Service plans to publish a notice of proposed rulemaking to amend 31 CFR part 206 governing the collection of public money, along with a request for public comments. This notice will propose implementing statutory authority which mandates that some or all nontax

payments made to the Government, and accompanying remittance information, be submitted electronically. Receipt of such items electronically offers significant efficiencies and cost-savings to the government, compared to the receipt of cash, check or money order payments.

- ***Amendment of Electronic Payment Regulation. (Deregulatory)***

The Fiscal Service is proposing to amend its electronic payment regulation at 31 CFR part 208. The amendment would eliminate obsolete references in the rule, including references to the Electronic Transfer Account (ETA^{sm}). In addition, the proposed rule would provide for the disbursement of non-benefit payments through Treasury-sponsored accounts, such as the U.S. Debit Card.

- ***Government Participation in the Automated Clearing House. (Not yet determined)***

The Fiscal Service is proposing to amend its regulation at 31 CFR part 210 governing the government's participation in the Automated Clearing House (ACH). The proposed amendment would address changes to the National Automated Clearing House Association's (NACHA) private-sector ACH rules since those rules were last incorporated by reference in Part 210. Among other things, the amendment would address the expansion of Same-Day ACH.

VI. Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks and Federal savings associations (FSAs). The agency also supervises the Federal branches and agencies of foreign banks. The OCC's mission is to ensure that national banks and FSAs operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.

Regulatory priorities for fiscal year 2019 include the following regulatory actions, which include rules implementing various provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115-174) (EGRRCPA):

- ***Capital Simplification (12 CFR part 3).***

The banking agencies[2] are planning to issue rulemakings to simplify the generally applicable capital framework with the goal of meaningfully reducing regulatory burden on community banking organizations while at the same time maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system. These rulemakings will incorporate the new requirements set forth in section 201 of EGRRCPA, the community bank leverage ratio, and section 214 of EGRRCPA, requiring a revised approach to defining which acquisition, development, and construction loans should be deemed high volatility commercial real estate exposures. A notice of proposed rulemaking proposing various capital simplifications was issued on October 27, 2017, 82 FR 49984. A notice of proposed rulemaking concerning high volatility commercial real estate exposures was published on September 28, 2018, 83 FR 48990.

- ***Capital: Standardized Approach for Counterparty Credit Risk (12 CFR part 3).***

The banking agencies are planning to issue a notice of proposed rulemaking to implement a risk sensitive approach to counterparty credit risk using a risk adjusted notational amount of derivatives, allowing for better recognition of netting, and distinguishing margined trades from un-margined trades.

- ***Reforming the Community Reinvestment Act (CRA) Regulatory Framework (12 CFR parts 25 and 195).***

The OCC issued an advance notice of proposed rulemaking setting forth a new approach to CRA to bring clarity, transparency, flexibility, and less burden for regulated financial institutions and consumers. The advance notice of proposed rulemaking was published on September 5, 2018, 83 FR 45053.

- ***Employment Contracts (12 CFR part 163).***

The OCC plans to issue a notice of proposed rulemaking to remove the requirement that the board of directors of an FSA approve employment contracts with all employees and limit the approval requirement only to contracts with senior executives.

[2] The OCC, the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).

- ***Supplementary Leverage Ratio Standards (SLR) for Bank Holding Companies and Subsidiary Insured Depository Institutions (12 CFR part 3).***

The OCC and FRB issued a proposed rule that would modify the enhanced supplementary leverage ratio standards for U.S. top-tier bank holding companies identified as global systemically important bank holding companies, or GSIBs, and certain of their insured depository institution subsidiaries. In light of section 402 of EGRRCPA, which requires the Federal banking agencies to propose changes to the supplementary leverage ratio denominator for custody banks, the agencies intend to publish a new rulemaking to implement section 402. The notice of proposed rulemaking was published on April 19, 2018, 83 FR 17317.

- ***Exception from Appraisals of Real Property Located in Rural Areas (12 CFR part 34).***

The banking agencies plan to issue a notice of proposed rulemaking to implement section 103 of EGRRCPA. Section 103 amended Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 to exclude loans made by a financial institution from the requirement to obtain a Title XI appraisal if certain conditions are met.

- ***Expanded Examination Cycle for Certain Small Insured Depository Institutions (12 CFR part 4).***

To implement section 210 of EGRRCPA, the banking agencies issued an interim final rule expanding the 18-month examination schedule to qualifying well-capitalized and well-managed institutions with less than $3 billion in total assets. The interim final rule was published on August 29, 2018, 83 FR 43961.

- ***Heightened Capital Requirements for Investments in Long-Term Debt Instruments Issued by Global Systemically Important Bank Holding Companies and Intermediate Holding Companies (12 CFR part 3).***

The banking agencies issued a notice of proposed rulemaking that would specify capital requirements applicable to an advanced approaches banking organization that invests in long-

term debt instruments issued pursuant to the FRB's total loss absorbing capacity regulations, either by a bank holding company or an intermediate holding company.

- ***Implementation of the Current Expected Credit Losses Standard for Allowances and Related Adjustments (12 CFR parts 1, 3, 5, 23, 24, 32, 34, and 46).***

The banking agencies plan to issue a final rule to reflect the upcoming adoption by banking organizations of FASB's Accounting Standards Update 2016-13, which introduces the current expected credit losses methodology (CECL) for estimating allowances for credit losses. The notice of proposed rulemaking was issued on May 14, 2018, 83 FR 22312.

- ***Incentive-Based Compensation Arrangements (12 CFR part 42).***

Section 956 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, July 21, 2010) (Dodd-Frank Act) requires the banking agencies, National Credit Union Administration (NCUA), Securities and Exchange Commission (SEC), and the Federal Housing Finance Agency (FHFA) to jointly prescribe regulations or guidance prohibiting any type of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions by providing an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits, or that could lead to material financial loss to the covered financial institution. The Dodd-Frank Act also requires such agencies jointly to prescribe regulations or guidelines requiring each covered financial institution to disclose to its regulator the structure of all incentive-based compensation arrangements offered by such institution sufficient to determine whether the compensation structure provides any executive officer, employee, director, or principal shareholder with excessive compensation or could lead to material financial loss to the institution. The notice of proposed rulemaking was published on June 10, 2016, 81 FR 37669.

- ***Liquidity Coverage Ratio Rule: Treatment of Certain Municipal Obligations as Level 2B High-Quality Liquid Assets (12 CFR part 50).***

To implement section 403 of EGRRCPA, the banking agencies issued an interim final rule that would add investment-grade municipal obligations to the list of permitted assets for high-

quality liquid assets (HQLA), as defined in the agencies' Liquidity Coverage Ratio (LCR) rules. The interim final rule was published on August 31, 2018, 83 FR 44451.

- ***Loans in Areas Having Special Flood Hazards-Private Flood Insurance (12 CFR part 22).***

The banking agencies, the Farm Credit Administration (FCA), and the NCUA plan to issue a final rule to amend their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. The notice of proposed rulemaking was published on November 7, 2016, 81 FR 78063.

- ***Management Official Interlocks Asset Thresholds (12 CFR part 26).***

The banking agencies plan to issue a notice of proposed rulemaking that would amend agency regulations interpreting the Depository Institution Management Interlocks Act (DIMIA) to increase the asset thresholds based on inflation or market changes. The current asset thresholds are set at $2.5 billion and $1.5 billion.

- ***Margin and Capital Requirements for Covered Swap Entities (12 CFR part 45).***

The banking agencies, FHFA, and FCA issued a final rule to amend the minimum margin requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the agencies is the prudential regulator (Swap Margin Rule). The notice of proposed rulemaking was issued on February 21, 2018, 83 FR 7413, requesting comment on the agencies' plan to revise one definition in the current rule to match the definition used for the same purpose in the agencies' capital regulations. The final rule was published on October 10, 2018, 83 FR 50805.

- ***Net Stable Funding Ratio (12 CFR part 50).***

The banking agencies plan to issue a final rule to implement the Basel net stable funding ratio standards. These standards would require large, internationally active banking organizations to maintain sufficient stable funding to support their assets generally over a one-

year time horizon. The notice of proposed rulemaking was published on June 1, 2016, 81 FR 35123.

- ***Other Real Estate Owned (12 CFR part 34).***

The OCC plans to issue a notice of proposed rulemaking on other real estate owned (OREO). The proposed rule would update and clarify provisions relating to OREO for national banks and establish a framework to assist Federal savings associations with managing and disposing of OREO in a safe and sound manner.

- ***Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (12 CFR part 44).***

The banking agencies are planning to issue a final rule that would amend the regulations implementing section 13 of the Bank Holding Company Act. Section 13 contains certain restrictions on the ability of banking entities to engage in proprietary trading and acquire or retain certain interests in, or enter into certain relationships with, a hedge fund or private equity fund. The amendments are intended to provide banking entities with clarity about what activities are prohibited and to improve supervision and implementation of section 13.

The banking agencies intend to address sections 203 and 204 of EGRRCPA through a separate rulemaking process.

Pursuant to section 203 of EGRRCPA, OCC-supervised institutions with total consolidated assets of $10 billion or less are not “banking entities” within the scope of section 13 of the BHCA, if their trading assets and trading liabilities do not exceed 5 percent of their total consolidated assets, and they are not controlled by a company that has total consolidated assets over $10 billion or total trading assets and trading liabilities that exceed 5 percent of total consolidated assets. In addition, section 204 of EGRRCPA revises the statutory provisions related to the naming of covered funds. The notice of proposed rulemaking was issued on July 17, 2018, 83 FR 33432.

- ***Receiverships for Uninsured Federal Branches and Agencies (12 CFR chapter I).***

The OCC plans to issue an advance notice of proposed rulemaking setting forth key issues to be addressed prior to the development of a framework for receiverships of uninsured Federal branches and agencies.

- ***Rules of Practice and Procedure (12 CFR part 19).***

The banking agencies plan to issue a proposed rule to amend their rules of practice and procedure to reflect modern filing and communication methods and improve or clarify other procedures.

- ***Short-Form Consolidated Reports of Condition and Income (12 CFR part 3).***

The banking agencies plan to issue a notice of proposed rulemaking to provide criteria for banks and savings associations eligible to file a short-form report in the first and second quarters pursuant to section 205 of the EGRRCPA.

- ***Stress Testing (12 CFR part 46).***

The OCC is planning to issue a notice of proposed rulemaking to amend the annual stress test rule for national banks and Federal savings associations (FSAs) required under section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, July 21, 2010) (12 U.S.C. 5365(i)) (Dodd-Frank Act). These changes are required by section 401 of the EGRRCPA, which amended the Dodd-Frank Act to raise the threshold for national banks and FSAs subject to DFAST from $10 billion to $250 billion in total consolidated assets, reduce the number of stress test scenarios, and revise the annual stress test requirement to a periodic requirement.

- ***Covered Savings Associations (12 CFR part 101).***

The OCC issued a notice of proposed rulemaking to implement section 206 of the EGRRCPA, which adds a new section 5A of the Home Owners' Loan Act. Section 5A allows Federal savings associations with assets of $20 billion or less to elect to operate as "covered savings associations." Covered savings associations operate with the same rights and are

subject to the same restrictions as a national bank in the same location. As required by section 5A, the NPRM will propose standards and procedures for making the election. It will also address nonconforming assets and clarify requirements for the treatment of covered savings associations. The notice of proposed rulemaking was published on September 18, 2018, 83 FR 47101.

BILLING CODE 4810–25–P

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 families. 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 dependents. 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 commemorate their service and sacrifice to our Nation.

VA's regulatory priority plan consists of five high priority regulations with statutory deadlines. Four of the five are Veterans Health Administration (VHA) regulations and the fifth one is a Veterans Benefits Administration (VBA) Loan Guaranty regulation.

Three of the VHA regulations intend to codify the VA Mission Act of 2018, in accordance with section 101, 102 and 105 of Public Law 115-182 (hereafter referred to as the "Mission Act"). VA is required to implement the Veterans Community Care Program by June 6, 2019, under which VA will provide care to eligible Veterans through non-VA providers in the community. Under the Mission Act VA is also required to establish procedures to ensure eligible Veterans are able to access walk-in care from certain community providers by June 6, 2019.

The other VHA regulation intends to implement provisions from the Veterans Appeals Improvement and Modernization Act of 2017, Public Law. 115-55. This act allows VA to revise and enhance VA's rules for processing claims and appeals and is effective February 19, 2019.

The remaining VBA regulation is required to promulgate regulations governing cash-out home loans in accordance with the Economic Growth, Regulatory Relief, and Consumer Protection Act by November 20, 2018. This rule defines the parameters of when VA will permit cash-out home loans, to include defining net tangible benefit, recoupment, and seasoning requirements.

VA	PROPOSED RULE STAGE

114. • VETERANS COMMUNITY WALK–IN CARE

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

38 U.S.C. 1725A; Pub. L. 115–182, sec. 105

CFR Citation:

38 CFR 17.4200; 38 CFR 17.4225; ...

Legal Deadline:

Other, Statutory, June 6, 2018, Pub. L. 115–182, section 105.

By June 6, 2019, VA is required to develop procedures to ensure eligible Veterans are able to access walk–in care from certain community providers.

Abstract:

The Department of Veterans Affairs (VA) intends to add new regulations to title 38 Code of Federal Regulations to implement section 105 of Public Law 115-182 (hereafter referred to as the "Mission Act"), to establish procedures to ensure eligible Veterans are able to access walk-in care from certain community providers by June 6, 2019.

Statement of Need:

By June 6, 2019, VA is required to develop procedures to ensure eligible Veterans are able to access walk-in care from certain community providers.

Summary of Legal Basis:

Pub. L. 115-182, section 105.

Alternatives:

If VA does not add these new regulations, it will not be able to implement the required Community Walk-in Care Program by the statutory deadline of June 6, 2019. VA would risk not meeting the statutory deadline, and Veterans would not be able to receive walk-in care as required by law.

Anticipated Cost and Benefits:

TBD

Risks:

Timetable:

Action	Date	FR Cite
NPRM	02/00/19	
NPRM Comment Period End	04/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

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VA	FINAL RULE STAGE

115. • ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT (THE ACT), PUBLIC LAW 115–174, 132 STAT. 1296

Priority:

Other Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 115–174, sec. 309; 38 U.S.C. 3703 and 3710

CFR Citation:

38 CFR 36

Legal Deadline:

Final, Statutory, November 20, 2018.

This law has a statutory deadline and requires the SECVA to publish a regulation in the Federal Register not later than 180 days after the date of the enactment of this law.

Abstract:

The Economic Growth, Regulatory Relief, and Consumer Protection Act requires VA to promulgate regulations governing cash-out home loans. The Department of Veterans Affairs (VA) is amending its rules on VA-guaranteed or insured cash-out home loans. The This rule defines the parameters of VA cash-out home loans, to include defining net tangible benefits, recoupment, and seasoning requirements.

Statement of Need:

Section 309 of this law, the SECVA shall promulgate a Loan Guarantee rulemaking (regulation) to ensure that such refinancing is in the financial interest of the borrower, including rules relating to recoupment, seasoning, and net tangible benefits.

Summary of Legal Basis:

Pub. L. 115-174, sec. 309 requires VA to publish these regulations.

Alternatives:

Section 309 of this law requires that SECVA shall promulgate a Loan Guarantee rulemaking (regulation) to ensure that such refinancing is in the financial interest of the borrower, including rules relating to recoupment, seasoning, and net tangible benefits. There are no other alternatives to promulgate such regulation. However, VA did consider alternatives when developing new cash-out refinance policies, the guaranty and insurance of Type I and Type II case outs and different alternatives for establishing provisions regarding seasoning, recoupment and interest rate reduction that apply to Type I Cash-Outs.

Anticipated Cost and Benefits:

VA's Office of Financial Management (OFM) scored the rulemaking as a loss in funding revenue of $33.1 million in FY2019 and $91.3 million over a three-year period (FY2019 through FY2021), using the 2019 President's budget (PB) baseline. There are no FTE or GOE costs associated with this rulemaking. The impact is due to reduced funding fees generated related to the decrease in total cash-out refinance loan amount.

Risks:

If VA decided not to regulate, mortgage lenders may seek to find loopholes in the Act and continue to aggressively market and offer refinance loans to veterans that may not be in their financial interest. This regulation is necessary to inform all parties of the requirements to originate future loans for VA loan guaranty. It is urgent and compelling to issue this rule to provide clarity so that market disruption is minimized. While VA is required to issue this rule by statute, by not promulgating a rule industry uncertainty may lead to less access to mortgage capital for veterans.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

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VA	

116. • VETERANS HEALTH ADMINISTRATION BENEFITS CLAIMS, APPEALS, AND DUE PROCESS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 115–55; 38 U.S.C. 501(a); 38 U.S.C. 501, 1721 and 7105

CFR Citation:

38 CFR 17.132; 38 CFR 17.133; ...

Legal Deadline:

Other, Statutory, February 14, 2019, IFR to be published in time to coincide with effective date of law.

Pub. L. 115–55, section 2(x), provides generally that the new review system will apply to all claims for which a notice of decision is provided by the agency of original jurisdiction on or after the later of (a) 540 days from the date of enactment, which falls on February 14, 2019, or (b) 30 days after the date on which the Secretary certifies to Congress that VA is ready to carry out the new appeals system.

Abstract:

The Department of Veterans Affairs (VA) revises its regulations concerning its claims and appeals process governing various programs administrated by the Veterans Health Administration. In preparation for the launch of modernized claims and appeals processes mandated by the Veterans Appeals Improvement and Modernization Act of 2017, VA has reviewed the regulations governing various programs administered by its Veterans Health Administration and determined that certain sections are inconsistent with statutory requirements. This rulemaking amends those sections to ensure that they are no longer inconsistent with requirements contained in the law.

Statement of Need:

The Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. 115-55, overhauled VA's rules for processing claims and appeals, effective February 19, 2019. To successfully

implement changes in the context of healthcare benefits administered by VA's Veterans Health Administration (VHA), VA must make minor revisions to multiple sections of title 38 regulations applicable to healthcare benefits and appeals processing, and VA must enact delimiting dates to end certain processes, such as claim reconsideration, that are no longer permissible under the revised law.

Summary of Legal Basis:

Pub. L. 115-55 requires VA to publish the regulations to coincide with the effective date of this law.

Alternatives:

VA initially determined that a subsequent regulation to VA's 2900-AQ26 regulation was not necessary, because VHA adopted VBA's part 3 procedural rules some time ago through our own internal guidance, and those rules remain in effect until we publish rulemaking to the contrary. In practical terms, this means that in the absence of VHA-specific Appeals Modernization Act (AMA) notice and comment rulemaking, applicable provisions of 2900-AQ26, and other 38 CFR part 3 processes apply to VHA as they do to VBA. However, VA intends to publish this rulemaking to provide additional regulatory clarity.

Anticipated Cost and Benefits:

TBD

Risks:

If VA does not make minor revisions and add necessary delimiting dates, there is a risk that the Court of Appeals for Veterans Claims, which reviews VA benefit appeals, could determine that healthcare claimants have rights that are inconsistent with (essentially in addition to) revised

statutory authorities. This would place VHA claimants in the enviable position of enjoying rights that do not extend to claimants whose benefits are administered by VA's other administrations Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA) and other adjudication activities, such as VA's Office of General Counsel (OGC).

Timetable:

Action	Date	FR Cite
Final Rule	01/00/19	
Final Rule Effective	02/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

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VA	

117. • VETERANS CARE AGREEMENTS

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

38 U.S.C. 1703A; Pub. L. 115–182, sec. 102

CFR Citation:

38 CFR 17.4100; 38 CFR 17.4150; ...

Legal Deadline:

Other, Statutory, June 6, 2019, Pub. L. 115–182, section 102.

VA is required to establish the permanent Community Care program under 38 U.S.C. 1703 by June 6, 2019. By June 6, 2019, VA's current ability to use provider agreements and individual authorizations to purchase community care will also lapse. The procurement agreements established in this interim final rule, and authorized by 38 U.S.C. 1703A, are required to implement the program required under 38 U.S.C. 1703.

Abstract:

The Department of Veterans Affairs (VA) intends to add new regulations to title 38 Code of Federal Regulations to implement section 102 of Public Law 115-182 (hereafter referred to as the "Mission Act"), to establish the use of Veterans Care Agreements (VCAs) to procure care in the community for eligible Veterans.

Statement of Need:

In accordance with section 101 of the Mission Act, VA is required to implement the Veterans Community Care Program by June 6, 2019, under which VA will provide care to eligible Veterans through non-VA providers in the community. Also under the Mission Act, the current Veterans Choice Program to provide community care will lapse on June 6, 2019, as will two of VA's current methods of procuring community care (Veterans Choice Program provider agreements, and individual authorizations). The VCAs under section 102 of the Mission Act will essentially replace these two current methods of VA procurement of community care, and the VCAs are required to be in place six months prior to implementation of the Veterans Community Care Program to provide lead time for VA to establish new procurement relationships with community providers.

Summary of Legal Basis:

Pub. L. 115182, section 102 requires VA to establish the permanent Community Care program under 38 U.S.C. 1703 by June 6, 2019. The procurement agreements established in this interim final rule, and authorized by 38 U.S.C. 1703A, are required to implement the program required under 38 U.S.C. 1703.

Alternatives:

TBD

Anticipated Cost and Benefits:

TBD

Risks:

If VA does not publish new regulations, it will not be able to implement the required Veterans Community Care Program and legally procure care for our Nations Veterans, which is a tremendous health and safety risk.

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule	05/00/19	
Interim Final Rule Comment Period End	06/00/19	
Interim Final Rule Effective	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

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VA	

118. • VETERANS COMMUNITY CARE PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Other

Legal Authority:

38 U.S.C. 1703; Pub. L. 115–182, sec. 101

CFR Citation:

38 CFR 17.4000; ...

Legal Deadline:

Other, Statutory, June 6, 2019, Pub. L. 115–182, section 101.

VA is required to establish the permanent Community Care program under 38 U.S.C. 1703 by June 6, 2019.

Abstract:

The Department of Veterans Affairs (VA) intends to add new regulations to title 38 Code of Federal Regulations to implement section 101 of Public Law 115-182 (hereafter referred to as the "Mission Act"), to establish the Veterans Community Care Program by June 6, 2019, under which VA will provide care to eligible Veterans through non-VA providers in the community. Also under the Mission Act, the current Veterans Choice Program to provide community care will lapse on June 6, 2019. To ensure this transition to the new Veterans Community Care Program occurs without a significant disruption in Veterans' care, implementation must occur through an interim final rule to establish criteria for receipt of care or services upon VA's authorization and the election of eligible veterans, primarily: (1) whether VA offers the care or service required; (2) whether VA operates a full-service medical facility in the State in which the Veteran resides; (3) whether the Veteran meets certain conditions related to eligibility under the 40 mile criterion in the Veterans Choice Program; (4) whether VA is able to furnish care or services in a manner that complies with designated access standards developed by the Secretary; and (5) whether the Veteran and the Veteran's referring clinician agree that furnishing care and services through a community entity or provider is in the best medical interest of the Veteran based upon criteria

developed by VA. This interim final rule will also establish criteria by which covered Veterans could receive care if VA determined a medical services line was not meeting VA's standards for quality, with certain limitations. An interim final rule is necessary because VA requires additional time to develop the policy decisions necessary to interpret the legal criteria stated above (e.g., interpreting or defining the phrase does not offer the care or services, defining a full service medical facility, and developing the required access and quality standards), to implement the Veterans Community Care Program by June 6, 2019.

Statement of Need:

An interim final rule is necessary because VA requires additional time to develop the policy decisions necessary to interpret the legal criteria stated above (e.g., interpreting or defining the phrase does not offer the care or services, defining a full service medical facility, and developing the required access and quality standards), to implement the Veterans Community Care Program by June 6, 2019. Also under the Mission Act, the current Veterans Choice Program to provide community care will lapse on June 6, 2019. To ensure this transition to the new Veterans Community Care Program occurs without a significant disruption in Veterans' care, implementation must occur through an interim final rule to establish criteria for receipt of care or services upon VA's authorization and the election of eligible veterans.

Summary of Legal Basis:

Implement section 101 of Public Law 115-182 (hereafter referred to as the Mission Act).

Alternatives:

TBD

Anticipated Cost and Benefits:

TBD

Risks:

The Veterans Choice Program to provide community care will lapse on June 6, 2019. If VA does not publish new regulations, it will not be able to implement the required Veterans Community Care Program, which would significantly disrupt Veterans' healthcare. More specifically, specialty care for veterans with chronic illnesses would not be readily available, critical maternity services would not be available and emergency care services would be negatively impacted and overwhelmed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/19	
Interim Final Rule Comment Period End	06/00/19	
Interim Final Rule Effective	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

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ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

OVERVIEW

The U.S. Environmental Protection Agency (EPA) administers the laws enacted by Congress and signed by the President to protect people's health and the environment. In carrying out these statutory mandates, the EPA works to ensure that all Americans are protected from significant risks to human health and the environment where they live, learn and work; that national efforts to reduce environmental risk are based on the best available scientific information; that Federal laws protecting human health and the environment are enforced fairly and effectively; that environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental

policy; that all parts of society—communities, individuals, businesses, and State, local and tribal governments—have access to accurate information sufficient to effectively participate in managing human health and environmental risks; that environmental protection contributes to making our communities and ecosystems diverse, sustainable and economically productive; and, that the United States plays a leadership role in working with other nations to protect the global environment.

To accomplish its goals in the coming year, the EPA will use regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance and tools, and research and educational initiatives to address its statutory responsibilities. All of this work will be undertaken with a strong commitment to science, law and transparency.

HIGHLIGHTS OF EPA'S REGULATORY PLAN

The EPA's more than forty years of protecting public health and the environment demonstrates our nation's commitment to reducing pollution that can threaten the air we breathe, the water we use, and the communities we live in. Our nation has made great progress in making rivers and lakes safer for swimming and boating, reducing the smog that clouded city skies, cleaning up lands that were once used as hidden chemical dumps and providing Americans greater access to information on chemical safety. To achieve continued positive environmental results, we must foster and maintain a sense of shared accountability between states, tribes and the federal government. This Regulatory Plan contains information on some of our most important upcoming regulatory and deregulatory actions. As always, our Semiannual Regulatory Agenda contains information on a broader spectrum of the EPA's upcoming regulatory actions.

Improve Air Quality

As part of its mission to protect human health and the environment, the EPA is dedicated to improving the quality of the nation’s air. From 1970 to 2017, aggregate national emissions of the six criteria air pollutants were reduced over 70 percent, while gross domestic product grew by

over 260 percent. The EPA's work to control emissions of air pollutants is critical to continued progress in reducing public health risks and improving the quality of the environment. The Agency will continue to deploy existing regulatory tools where appropriate and warranted. Using the Clean Air Act, the EPA will work with States and tribes to accurately measure air quality and ensure that more Americans are living and working in areas that meet air quality standards. The EPA will continue to develop standards, as directed by the Clean Air Act, for both mobile and stationary sources, to reduce emissions of sulfur dioxide, particulate matter, nitrogen oxides, toxics, and other pollutants.

Electric Utility Sector Greenhouse Gas Rules

The EPA will continue its review of the Clean Power Plan suite of actions issued by the previous administration affecting fossil fuel-fired electric generating units (EGUs). On October 23, 2015, the EPA issued a final rule that established first-ever standards for States to follow in developing plans to reduce carbon dioxide (CO2) emissions from existing fossil fuel-fired EGUs. On the same day, the EPA issued a final rule establishing CO2 emissions standards for newly constructed, modified, and reconstructed fossil fuel fired EGUs. The Agency has proposed an alternative approach that is appropriately grounded in the EPA's statutory authority and consistent with the rule of law. This alternative approach would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the States; promote the Administration's dual goals of protecting public health and the environment, while also supporting economic growth and job creation; and appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security.

Safer Affordable Fuel-Efficient Vehicles Rule

On August 1, 2018, the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) proposed to amend certain existing Corporate Average Fuel Economy (CAFE) and greenhouse gas emissions standards for passenger cars and light trucks and establish new standards, covering model years 2021 through 2026. The proposed rule published in the Federal Register on August 24, 2018 (83 FR 42986), and the EPA docket is

currently open for submittal of public comments. NHTSA and EPA will jointly hold three public hearings on this proposal, which were announced in a supplemental Federal Register notice also published on August 24, 2018 (83 FR 42817).

New Source Review and Title V Permitting Programs Reform

The CAA establishes a number of permitting programs designed to carry out the goals of the Act. The EPA directly implements some of these programs through its regional offices, but most are carried out by States, local agencies, and approved tribes. New Source Review (NSR) is a preconstruction permitting program that ensures that the addition of new and modified sources does not significantly degrade air quality. NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source may be operated. There are three types of NSR permits: (1) Prevention of Significant Deterioration (PSD) (CAA part C) permits, which are required for new major sources or a major source making a major modification in an attainment area; (2) Nonattainment NSR (NNSR) (CAA part D) permits, which are required for new major sources or major sources making a major modification in a nonattainment area; and (3) Minor source permits.

CAA title V requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit. Sources with these "title V permits" are required by the CAA to certify compliance with the applicable requirements of their permits at least annually.

In accordance with the President’s goal to streamline permitting regulations for manufacturing facilities, the EPA has initiated an effort to issue a series of targeted improvements, including guidance memos and, as necessary, associated rulemakings, to simplify the New Source Review (NSR) process in manner consistent with the Clean Air Act.

We have recently highlighted flexibilities in the implementation of NSR regulations available to manufacturing facilities for the permitting of new projects. Two recent memos, for example,

clarified that project emissions accounting can take place in the first step of the NSR applicability process for all project categories and that the EPA will not “second guess” preconstruction analysis that complies with procedural requirements. In FY19, the EPA intends to follow-up these memos with rulemaking to codify these policies. Based on the recommendations of a number of state environmental agencies as well as small businesses under the air toxics program, the EPA has also rescinded its “once-in, always-in” policy. A major source which takes enforceable limitations on its potential to emit (PTE) hazardous air pollutants (HAP) emissions below the applicable thresholds becomes an area source (strike “,”) and is no longer subject to maximum achievable control technology (MACT) standards, no matter when the source may choose to take measures to limit its PTE. In early 2019, EPA anticipates that it will publish a *Federal Register* notice to take comment on adding regulatory text to reflect EPA’s plain language reading of the statute.

Oil and Gas

The EPA is reviewing the Agency’s Oil and Gas New Source Performance Standards. In June 2017, the EPA granted reconsideration of some specific requirements under the 2016 New Source Performance Standards, and indicated that the Agency would also look broadly at the entire rule, including the regulation of greenhouse gases through an emission limitation on methane. The EPA is issuing a proposal for public review and comment in the fall of 2018.

Provide for Clean and Safe Water

The nation’s water resources are the lifeblood of our communities, supporting our economy and way of life. Across the country we depend upon reliable sources of clean and safe water. Just a few decades ago, many of the nation’s rivers, lakes, and estuaries were grossly polluted, wastewater sources received little or no treatment, and drinking water systems provided very limited treatment to water coming through the tap. Since the enactment of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA), tremendous progress has been made toward ensuring that Americans have safe water to drink and generally improving the quality of the Nation’s waters. While progress has been made, numerous challenges remain in such areas as nutrient loadings, storm water runoff, invasive species and drinking water contaminants. These

challenges can only be addressed by working with our State and tribal partners to develop new and innovative strategies in addition to the more traditional regulatory approaches. The EPA plans to address the following challenging issues, in part, in rulemakings.

Waters of the U.S.

In 2015, the Environmental Protection Agency and the Department of the Army (the agencies) published the "Clean Water Rule: Definition of 'Waters of the United States" (2015 Rule) (80 FR 37054, June 29, 2015). On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court. On February 28, 2017, the President signed Executive Order 13778, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” which instructed the agencies to review the 2015 Rule and rescind or replace it as appropriate and consistent with law. The agencies have determined to address the Executive Order in a comprehensive two-step process. On July 27, 2017, the agencies published a Federal Register notice proposing to repeal (Step 1) the 2015 Rule and recodify the pre-existing regulations; the initial 30-day comment period was extended an additional 30 days to September 28, 2017. The agencies signed a supplemental notice of proposed rulemaking on June 29, 2018 clarifying and seeking additional comment on the Step 1 proposal.

In Step 2 (Revised Definition of 'Waters of the United States'), the agencies plan to pursue a public notice-and-comment rulemaking in which the agencies would conduct a substantive reevaluation of the definition of ‘‘waters of the United States.’’ As part of this reevaluation, the agencies are considering defining "navigable waters" in a manner consistent with the plurality opinion of Justice Scalia in the Rapanos decision, as instructed by Executive Order 13778.

On February 6, 2018, the agencies issued a final rule adding an applicability date to the 2015 Rule of February 6, 2020, to provide continuity and certainty for regulated entities, the States and Tribes, and the public while the agencies conduct Step 2 of the rulemaking. Until the new definition is finalized, the agencies will continue to implement the regulatory definition in place

prior to the 2015 Rule consistent with Supreme Court decisions and practice, and as informed by applicable agency guidance documents.

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

On November 3, 2015, under the authority of the CWA, the EPA issued a final rule amending the Effluent Limitations Guidelines (ELG) and Standards for the Steam Electric Power Generating Point Source Category (i.e., 2015 Steam Electric ELG). The amendments addressed and contained limitations and standards on various waste streams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate. In early 2017, the EPA received two petitions for reconsideration of the Steam Electric ELG rule, one from the Utility Water Act Group and one from the Small Business Administration Office of Advocacy. On August 11, 2017, the Administrator announced his decision to conduct a rulemaking to potentially revise the Best Available Technology Economically Achievable (BAT) effluent limitations and pretreatment standards for existing sources in the 2015 rule that apply to bottom ash transport water and FGD wastewater. In light of the reconsideration, the EPA views that it is appropriate to postpone impending deadlines as a temporary, stopgap measure to prevent the unnecessary expenditure of resources until it completes reconsideration of the 2015 rule. Thus, the Administrator signed a final rule on September 9, 2017, postponing the earliest compliance dates for the BAT effluent limitations and PSES for bottom ash transport water and FGD wastewater in the 2015 Rule, from November 1, 2018 to November 1, 2020. The EPA expects to publish a notice of proposed rulemaking for the Steam Electric reconsideration in March 2019.

National Primary Drinking Water Regulations for Lead and Copper – Long Term Revisions

The Lead and Copper Rule (LCR) reduces risks to drinking water consumers from lead and copper that can enter drinking water as a result of corrosion of plumbing materials. The LCR requires water systems to sample at taps in homes with leaded plumbing materials. Depending

upon the sampling results, water systems must take actions to reduce exposure to lead and copper including corrosion control treatment, public education, and lead service line replacement. The LCR was promulgated in 1991 and, overall, has been effective in reducing the levels of lead and copper in drinking water systems across the country. However, lead crises in Washington, DC, and in Flint, Michigan, and the subsequent national attention focused on lead in drinking water in other communities, have underscored significant challenges in the implementation of the current rule, including a rule structure that, for many systems, only compels protective actions after public health threats have been identified. Key challenges include the rule's complexity; the degree of flexibility and discretion it affords systems and primacy states with regard to optimization of corrosion control treatment; compliance sampling practices, which in some cases, may not adequately protect from lead exposure; and limited specific focus on key areas of concern such as schools. There is a compelling need to modernize and clarify implementation of the rule to strengthen its public health protections and to make it more effective and more readily enforceable. The EPA is evaluating the costs and benefits of the potential revisions and assessing whether the benefits justify the costs.

National Primary Drinking Water Regulations for Perchlorate

Perchlorate is an inorganic chemical produced for use in rocket propellants, fireworks, road flares, and explosives. Perchlorate is also formed naturally in the environment, particularly in arid climates, and may be present as an impurity in hypochlorite solutions (bleach). In February 2011, the EPA announced its decision to regulate perchlorate under SDWA. The EPA determined that perchlorate meets SDWA's three criteria for regulating a contaminant: 1) perchlorate may have adverse health effects because scientific research indicates that perchlorate can disrupt the thyroid's ability to produce the hormones needed for normal growth and development; 2) there is a substantial likelihood that perchlorate occurs with frequency at levels of health concern in public water systems because monitoring data show over four percent of public water systems have detected perchlorate; and 3) there is a meaningful opportunity for health risk reduction since between 5.1 and 16.6 million people may be provided with drinking water containing perchlorate. In 2013, the Science Advisory Board recommended that the EPA use models, rather than the

traditional approach to establish the health based Maximum Contaminant Level Goal (MCLG) for a perchlorate regulation. The EPA and FDA scientists worked collaboratively to develop biological models in accordance with SAB recommendations. The EPA will utilize the best available peer reviewed science to inform regulatory decision making for perchlorate.

Peak Flows Management

Wet weather events (e.g., rain, snowmelt) can impact publicly owned treatment works (POTWs) operations when excess water enters the wastewater collection system. The increased wet weather flows can exceed the POTW treatment plant's capacity to provide the same type of treatment for all of the incoming wastewater. The treatment plant's secondary treatment units are the most likely to be adversely affected by wet weather because the biological systems can be damaged when too much water flows through them. POTWs employ a variety of operational practices to ensure the integrity of their secondary treatment units during wet weather, and the EPA plans to propose updates to the regulations which will seek to clarify permitting procedures for POTWs with separate sanitary sewer systems under wet weather operational conditions. The goal of these updates will be to ensure a consistent national approach for permitting POTWs that provides for efficient treatment plant operation while protecting the public from potential adverse health effects of inadequately treated wastewater.

Clean Water Act Section 404(c) Regulatory Revision

Section 404(c) of the Clean Water Act authorizes the Administrator "to prohibit the specification (including withdrawal of the specification) of any defined area as a disposal site" as well as to "deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site . . . whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." In June 2018, the EPA announced that it would initiate an update to the regulations governing the EPA's role in permitting discharges of dredged or fill material under section 404 of the CWA. The EPA's current regulations on the implementation of section 404(c) of the CWA allow the Agency to veto – at any time –a permit

issued by the U.S. Army Corps of Engineers (USACE) or an approved state that allows for the discharge of dredged or fill material at specified disposal sites. The goal of this effort would be to increase predictability and regulatory certainty for landowners, investors, businesses, and other stakeholders. This rulemaking will consider, at minimum, changes to the EPA's 404(c) review process that would govern the future use of the EPA's section 404(c) authority.

Revitalize Land and Prevent Contamination

The EPA works to improve the health and livelihood of all Americans by cleaning up and returning land to productive use, preventing contamination, and responding to emergencies. The EPA collaborates with other federal agencies, industry, states, tribes, and local communities to enhance the livability and economic vitality of neighborhoods. Challenging and complex environmental problems persist at many contaminated properties, including contaminated soil, sediment, surface water, and groundwater that can cause human health concerns. The EPA's regulatory program recognizes the progress made in cleaning up and returning land to productive use, preventing contamination, and responding to emergencies, and works to incorporate new technologies and approaches that allow us to provide for an environmentally sustainable future more efficiently and effectively.

Reconsideration of the Accidental Release Prevention Regulations under Clean Air Act

Both the EPA and the Occupational Safety & Health Administration (OSHA) issued regulations, as required by the Clean Air Act Amendments of 1990, in response to a number of catastrophic chemical accidents occurring worldwide that had resulted in public and worker fatalities and injuries, environmental damage, and other community impacts. OSHA published the Process Safety Management standard in 1992, and the EPA modeled the Risk Management Program (RMP) regulation after it. The EPA published the RMP rule in two stages: (1) a list of regulated substances and threshold quantities in 1994, and (2) the RMP final regulation with risk management requirements in 1996. Both the OSHA standard and the EPA RMP regulation aim to prevent, or minimize the consequences of, accidental chemical releases to workers and the community.

On January 13, 2017, the EPA amended the RMP regulations in order to (1) reduce the likelihood and severity of accidental releases, (2) improve emergency response when those releases occur, and (3) enhance state and local emergency preparedness and response in an effort to mitigate the effects of accidents.

Prior to the effective date of the RMP Amendments rule, the EPA received petitions for reconsideration under Clean Air Act Section 307(d) (7) (B). Petitioners sought reconsideration of the RMP Amendments based on what they view as either EPA's failure to coordinate with OSHA and DOT as required by paragraph (D) of CAA section 112(r)(7) or at least inadequate coordination. Furthermore, petitioners indicated that the arson findings from the Bureau of Alcohol, Tobacco and Firearms and Explosives regarding the West Fertilizer 2013 explosion undercut EPA's basis for the proposed rule. Petitioners also raised security concerns related to sharing information with local emergency planning and response organizations and concerns about EPA's economic analysis and the economic burden associated with certain rule provisions. Having considered the concerns regarding the RMP Amendments rule raised in these petitions, the EPA subsequently delayed the effective date of the RMP Amendments rule to February 19, 2019, in order to give the EPA time to reconsider it. On May 30, 2018, the EPA published proposed changes to the rule and sought public comment on the proposed revisions and other related issues.

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues from Electric Utilities: Remand Rules

The EPA is planning to modify the final rule on the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act issued in 2015. As a result of a settlement agreement on this final rule, the EPA is addressing specific technical issues remanded by the court. Further, the Water Infrastructure Improvements for the Nation Act of 2016 established new statutory provisions applicable to CCR units, including authorizing states to implement the CCR rule through an EPA-approved permit program and authorizing the EPA to enforce the rule. Therefore the EPA is proposing to amend certain performance standards in the CCR rule through several rulemaking efforts to offer additional flexibility to state permitting

authorities with an approved program. The EPA proposed the first of these rulemaking efforts, the Phase One rule, in March 2018. The EPA then finalized a small number of the proposed Phase one rule provisions in the July 2018 Phase One Part One rule.

Designation of Per-and Polyfluoroalkyl Substances as Hazardous Substances

On May 22, 2018, the EPA held a two-day National Leadership Summit on per-and polyfluoroalkyl substances (PFAS). The Administrator announced that the EPA will begin the process to propose designating perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as "hazardous substances" through one of the available statutory mechanisms, including section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act. The EPA is currently evaluating the various statutory mechanisms, such as the. Clean Water Act Section 307(a) and Section 311. However, the Agency has not yet made a final decision on which mechanism is most appropriate.

Ensure Safety of Chemicals in the Marketplace

Chemicals and pesticides released into the environment as a result of their manufacture, processing, use, or disposal can threaten human health and the environment. The EPA gathers and assesses information about the risks associated with chemicals and pesticides and acts to minimize risks and prevent unreasonable risks to individuals, families, and the environment. The EPA acts under several different statutory authorities, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Food, Drug and Cosmetic Act (FFDCA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know-Act (EPCRA), and the Pollution Prevention Act (PPA). Using best available science, the Agency will continue to satisfy its overall directives under these authorities and highlights the following efforts underway in FY 2019:

Implementing TSCA amendments to enhance public health and chemical safety

The amendments to TSCA that were enacted in June 2016 now require the EPA to evaluate existing chemicals on the basis of the health risks they pose-including risks to vulnerable groups and to workers who may use chemicals daily as part of their jobs. If unreasonable risks are found, the EPA must then take steps to eliminate these risks. However, during the risk management

phase, EPA must balance the risk management decision with potential disruption based on compliance to the national economy, national security, or critical infrastructure.

The 2016 amendments to TSCA also require the EPA to take expedited regulatory action without a risk evaluation for persistent, bioaccumulative, and toxic (PBT) chemicals from the 2014 update of the TSCA Work Plan for Chemical Assessments that meet a specific set of criteria. Under the conditions of use for each PBT chemical, the EPA will characterize likely exposures to humans and the environment; this information is undergoing peer review and public comment. The exposure assessments will then be used to develop regulatory actions that address the risks of injury to health or the environment that the EPA determines are presented by the chemical substances and that reduce exposure to the chemical substances to the extent practicable. TSCA requires the EPA to issue proposed rules no later than June 22, 2019, and final rules no more than 18 months later.

The 2016 amendments to TSCA also authorize the EPA to cover a portion of its annual costs for the TSCA program by collecting user fees from chemical manufacturers and processors when they submit test data for the EPA review; submit a premanufacture notice for a new chemical or a notice of new use; manufacture or process a chemical substance that is the subject of a risk evaluation; or request that the EPA conduct a chemical risk evaluation. In Fiscal Year 2019, the EPA expects to take final action on the 2018 proposed fees rule.

Review of Lead Dust Hazard Standards under TSCA

In June 2018, EPA proposed strengthening the dust-lead hazard standards on floors and window sills. These standards apply to most pre-1978 housing and child-occupied facilities, such as day care centers and kindergarten facilities. Per a court order deadline, EPA intends on taking final action in June 2019.

Reconsideration of Pesticide Safety Requirements

In Fiscal Year 2019, the EPA expects to take a final action on amendments to pesticide safety regulations that address requirements for the certification of pesticide applicators and established

agricultural worker protection standards, which EPA intends on proposing in 2018. Specifically, the EPA is considering amending changes to the Certification of Pesticide Applicators regulations that EPA issued in 2017, and changes to the agricultural Worker Protection Standard regulations that EPA issued in 2015.

Annual Regulatory Costs

Section 3 of Executive Order 13771 (82 FR 9339, February 3, 2017) calls on agencies to "identify for each regulation that increases incremental cost, the offsetting regulations…and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation." Each action in the EPA's fall 2017 Regulatory Plan and Semiannual Regulatory Agenda contains information about whether an action is anticipated to be "regulatory" or "deregulatory" in fulfilling this executive directive. Based on current schedules and expectations regarding whether or not regulatory actions are subject to Executive Order 12866 and hence Executive Order 13771, in fiscal year 2019, the EPA is planning on finalizing approximately 30 deregulatory actions and fewer than ten regulatory actions.

Rules Expected to Affect Small Entities

By better coordinating small business activities, the 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. Actions that may affect small entities can be tracked on the EPA's Regulatory Flexibility Web site (https://www.epa.gov/reg-flex) at any time.

EPA—Office of Air and Radiation(OAR)	PROPOSED RULE STAGE

119. RECLASSIFICATION OF MAJOR SOURCES AS AREA SOURCES UNDER SECTION 112 OF THE CLEAN AIR ACT

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 7401 et seq.

CFR Citation:

40 CFR 63.1

Legal Deadline:

None

Abstract:

These amendments would address when a major source can become an area source, and, thus, become not subject to national emission standards for hazardous air pollutants (NESHAP) for major sources under Clean Air Act (CAA) section 112. The amendments will implement the EPA's plain language reading of the CAA section 112 definitions of "major" and "area" sources as discussed in the January 2018 William Wehrum memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." (See notice in 83 FR 5543, February 8, 2018.) This action will provide an opportunity for interested persons to provide comment on many of the same issues covered in the 2007 NESHAP: General Provision Amendments (72 FR 69, January 3, 2017).

Statement of Need:

The EPA will issue a proposed rule to add regulatory text that reflects EPA's plain language reading of the statute as discussed in the January 25, 2018, William Wehrum Memorandum (see notice in 83 FR 5543, February 8, 2018).

Summary of Legal Basis:

The January 25, 2018, William Wehrum Memorandum withdrew the Once In, Always In (OIAI) policy that required facilities that are major sources for HAP on the first substantive compliance date of a NESHAP maximum achievable control technology (MACT) standard to comply permanently with the MACT standard. The EPA will issue a proposal to add regulatory text that reflects EPA’s plain language reading of the statute as discussed in the January 25, 2018, William Wehrum Memorandum.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Adding regulatory text to be consistent with the plain language reading will allow sources classified as major to become area sources. This could lead to regulatory burden reduction for sources that have reclassified to area source status by not having to comply with previously applicable CAA section 112 major source requirements. An analysis to determine cost savings and benefits is underway to support issuance of a proposed rule.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	01/03/07	72 FR 69
NPRM Comment Period Extended	03/05/07	72 FR 9718
Notice	02/08/18	83 FR 5543
Second NPRM	02/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

EPA Docket information: EPA-HQ-OAR-2004-0094

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EPA—OAR	

120. EMISSION GUIDELINES FOR GREENHOUSE GAS EMISSIONS FROM EXISTING ELECTRIC UTILITY GENERATING UNITS; REVISIONS TO EMISSION GUIDELINE IMPLEMENTING REGULATIONS; REVISIONS TO NEW SOURCE REVIEW PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

EO 13771 Designation:

Regulatory

Legal Authority:

42 U.S.C. 7411, Clean Air Act

CFR Citation:

40 CFR 60

Legal Deadline:

None

Abstract:

On April 4, 2017, the EPA announced it is reviewing the Clean Power Plan (CPP), found at 40 CFR part 60, subpart UUUU via Executive Order 13771. The EPA has, in a separate action, proposed to repeal the CPP. The EPA solicited input on a CPP replacement rule through an Advanced Notice of Proposed Rule Making (ANPRM) published on December 28, 2017. On August 31, 2018, the EPA published the proposed Affordable Clean Energy (ACE) rule in the Federal Register as a replacement for the CPP.

Statement of Need:

The EPA has conducted its initial review of the CPP, as directed by Executive Order 13783, and has concluded that suspension, revision, or rescission of [the CPP] may be appropriate on the basis of the agency's proposed reinterpretation of the statutory provisions underlying the CPP. In light of the EPA's proposed repeal of the CPP and issued ANPRM, the agency has signed the Affordable Clean Energy (ACE) rule as a replacement to the CPP. The proposed ACE rule is intended to reduce carbon dioxide emissions from existing fossil-fueled electric generating units. The proposal solicits information on the development of such a regulation with the intention of promulgating a final replacement.

Summary of Legal Basis:

Clean Air Act, section 111, 42 U.S.C. 7411, provides the legal framework and basis for a potential replacement rule that the Agency is considering developing.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Not yet determined. In the intended proposed replacement to the CPP, the Agency will assess the costs and benefits.

Risks:

Not yet determined. In the intended proposed replacement to the CPP, the Agency will assess the risks to the extent feasible.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/17	82 FR 61507
NPRM	08/31/18	83 FR 44746
NPRM Comment Period End	10/30/18	
Final Rule	03/00/19	

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.

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

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RIN: 2060–AT67

EPA—OAR	

121. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): PROJECT EMISSIONS ACCOUNTING

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 7401 et seq.

CFR Citation:

Undetermined

Legal Deadline:

None

Abstract:

Under the New Source Review (NSR) pre-construction permitting program, sources undergoing modifications need to determine whether their modification is considered a major modification and thus subject to NSR pre-construction permitting. A source owner determines if its source is undergoing a major modification under NSR using a two-step applicability test. The first step is to determine if there is a "significant emission increase" of a regulated NSR pollutant from the proposed modification (Step 1) and the second step is to determine if there is a "significant net emission increase" of that pollutant (Step 2). In this action, we are proposing the consideration of

emissions increases and decreases from a modification in Step 1 of the NSR major modification applicability test for all unit types (i.e., new, existing, and hybrid units).

Statement of Need:

In March 2018, the Agency issued an interpretative memorandum to clarify that we interpret our current NSR regulations to allow Project Emissions Accounting for hybrid units as well as for new and existing units. This regulation would further clarify the concept of Project Emissions Accounting for all types of emissions units.

Summary of Legal Basis:

40 CFR 52.21

Alternatives:

Alternatives will be analyzed as the proposal is developed.

Anticipated Cost and Benefits:

Costs and benefits will be analyzed as the proposal is developed.

Risks:

Risks will be analyzed as the proposal is developed.

Timetable:

Action	Date	FR Cite
NPRM	02/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

Docket # EPA-HQ-OAR-2018-0048

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RIN: 2060–AT89

EPA—OAR	

122. OIL AND NATURAL GAS SECTOR: EMISSION STANDARDS FOR NEW, RECONSTRUCTED, AND MODIFIED SOURCES REVIEW

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 7401 et seq., Clean Air Act

CFR Citation:

40 CFR 60

Legal Deadline:

None

Abstract:

On June 3, 2016, the Environmental Protection Agency (EPA) published a final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule." Following promulgation of the final rule, the Administrator received petitions for reconsideration of several provisions of the rule. The EPA is addressing those specific reconsideration issues in a separate proposal. A number of states and industry associations sought judicial review of the rule, and the litigation is currently being held in abeyance. On March 28, 2017, newly elected President Donald Trump issued Executive Order 13783 titled "Promoting Energy Independence and Economic Growth," which directs agencies to review existing regulations that potentially burden the development of domestic energy resources, and appropriately suspend, revise or rescind regulations that unduly burden the development of U.S. energy resources beyond what is necessary to protect the public interest or otherwise comply with the law. In 2017, the EPA provided notice to initiate the review of the 2016 rule and stated that, if appropriate, it will initiate proceedings to suspend, revise or rescind the rule. Subsequently, in a notice dated June 5, 2017, the EPA further committed to look broadly at the entire 2016 rule. The purpose of this action is to propose amendments to address key policy issues, such as the regulation of greenhouse gases, in this sector.

Statement of Need:

On June 3, 2016, the EPA published a final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule." On March 28, 2017, newly elected President Donald Trump issued Executive Order 13783 titled "Promoting Energy Independence and Economic Growth," which directs agencies to review existing regulations that potentially burden the development of domestic energy resources, and appropriately suspend, revise or rescind regulations that unduly burden the development of U.S. energy resources beyond what is necessary to protect the public interest or otherwise comply with the law. In 2017, the EPA provided notice to initiate the review of the 2016 rule and stated that, if appropriate, it will initiate proceedings to suspend, revise or rescind the rule. Subsequently, in a notice dated June 5, 2017, the EPA further committed to look broadly at the entire 2016 rule. The purpose of this

action is to propose amendments to address key policy issues, such as the regulation of greenhouse gases, in this sector. This proposal will solicit comments and/or information from the public regarding the Agency's proposed requirements and options under consideration. These amendments are anticipated to remove regulatory duplication in an effort to reduce burden.

Summary of Legal Basis:

The review of the 2016 OOOOa rule is an exercise of the EPA's authority under section 111(b)(1)(B), section 307(d)(7)(B) and section 301(a) of the Clean Air Act.

Alternatives:

For the 2016 OOOOa review proposal, we anticipate soliciting comment on a lead policy option for the regulation of greenhouse gases and the sector regulatory structure and an alternative policy option under consideration.

Anticipated Cost and Benefits:

These values are estimates that are likely to change. Note all values at 7 percent discount rate in 2016 dollars. Total Present Value of Cost (2019 through 2025): $101 million Costs Annually: $18 million Forgone Benefits (2019 through 2025); $13 million Forgone Benefits Annually: $2.3 million

Risks:

We do not anticipate any risks to health related to this action.

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Docket #:EPA-HQ-OAR-2017-0757

Sectors Affected:

211111 Crude Petroleum and Natural Gas Extraction; 221210 Natural Gas Distribution; 211112 Natural Gas Liquid Extraction; 486110 Pipeline Transportation of Crude Oil; 486210 Pipeline Transportation of Natural Gas

URL For More Information:

https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-standards-and-guidelines-oil-and-natural-gas-industry

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RIN: 2060–AT90

EPA—OAR	

123. MERCURY AND AIR TOXICS STANDARDS FOR POWER PLANTS RESIDUAL RISK AND TECHNOLOGY REVIEW AND COST REVIEW

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 7412, Clean Air Act

CFR Citation:

40 CFR 63

Legal Deadline:

None

Abstract:

This action will address the Agency's residual risk and technology review (RTR) of the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (commonly referred to as the Mercury and Air Toxics Standards (MATS)), 40 CFR 63, subpart UUUUU, promulgated pursuant to section 112(d) of the Clean Air Act (CAA) on February 16, 2012 (67 FR 9464), and address other issues associated with the 2012 rule.

Statement of Need:

The EPA has completed its initial review of the MATS Supplemental Cost Finding (81 FR 24420, April 25, 2016) to determine if the finding will be reconsidered. The EPA will issue the results of the review in a notice of proposed rulemaking and will solicit comment on the resulting finding. The EPA will also, in the same action, propose the results of the RTR for MATS.

Summary of Legal Basis:

CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources. CAA section 112(f)(2) requires EPA, within 8 years of the promulgation of standards under CAA section 112(d), to determine whether additional standards are needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. CAA section 112(d)(6) requires EPA to review, and revise as necessary, emission standards promulgated under CAA section 112(d) at least every 8 years, taking into account developments in practices, processes and control technologies.

Alternatives:

Not yet determined. The EPA will consider whether alternative options are warranted once the Agency has completed the review of the Supplemental Cost Finding and the RTR.

Anticipated Cost and Benefits:

Not yet determined. Costs and benefits will depend upon the results of the review of the Supplemental Cost Finding and on the results of the RTR.

Risks:

Not yet determined. Risks will depend upon the results of the review of the Supplemental Cost Finding and on the results of the RTR.

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

Docket #:EPA-HQ-OAR-2009-0234

Sectors Affected:

921150 American Indian and Alaska Native Tribal Governments; 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AT99

EPA—OAR	

124. THE SAFER AFFORDABLE FUEL–EFFICIENT (SAFE) VEHICLES RULE FOR MODEL YEARS 2021–2026 PASSENGER CARS AND LIGHT TRUCKS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 7411, Clean Air Act

CFR Citation:

40 CFR 80

Legal Deadline:

None

Abstract:

The National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) proposed the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model

Years 2021-2026 Passenger Cars and Light Trucks" (SAFE Vehicles Rule). The SAFE Vehicles Rule, if finalized, would amend certain existing Corporate Average Fuel Economy (CAFE) and tailpipe carbon dioxide emissions standards for passenger cars and light trucks and establish new standards, all covering model years 2021 through 2026. More specifically, EPA proposed to amend its carbon dioxide emissions standards for model years 2021 through 2025 because they are no longer appropriate and reasonable in addition to establishing new standards for model year 2026. The preferred alternative is to retain the model year 2020 standards (specifically, the footprint target curves for passenger cars and light trucks) for both programs through model year 2026, but comment is sought on a range of alternatives.

Statement of Need:

Since finalizing the agencies' previous joint rulemaking in 2012 titled Final Rule for Model Year 2017 and Later Light-Duty Vehicle Greenhouse Gas Emission and Corporate Average Fuel Economy Standards, and even since EPA's 2016 and early 2017 mid-term evaluation process, the agencies have gathered new information, and have performed new analysis. That new information and analysis has led the agencies to the tentative conclusion that holding standards constant at MY 2020 levels through MY 2026 is appropriate.

Summary of Legal Basis:

42 U.S.C. 7411, Clean Air Act

Alternatives:

The preferred alternative is to retain the model year 2020 standards (specifically, the footprint target curves for passenger cars and light trucks) through model year 2026, but comment is sought on a wide range of alternatives, including eight alternatives ranging in stringency from the preferred alternative to the standards currently in place. Those eight alternatives are: 1) The no action alternative, which leaves the standards as they are and were announced in 2012 for MYs 2021-2025; 2) Alternative 2 increases the stringency of targets annually during MYs 2021-2026

by 0.5% for passenger cars and 0.5% for light trucks; 3) Alternative 3 phases out A/C efficiency and off-cycle adjustments and increases the stringency of targets annually during MYs 2021-2026 by 0.5% for passenger cars and 0.5% for light trucks; 4) Alternative 4 increases the stringency of targets annually during MYs 2021-2026 by 1.0% for passenger cars and 2.0% for light trucks; 5) Alternative 5 increases the stringency of targets annually during MYs 2022-2026 by 1.0% for passenger cars and 2.0% for light trucks; 6) Alternative 6 increases the stringency of targets annually during MYs 2021-2026 by 2.0% for passenger cars and 3.0% for light trucks; 7) Alternative 7 phases out A/C efficiency and off-cycle adjustments and increases the stringency of targets annually during MYs 2021-2026 by 1.0% for passenger cars and 2.0% for light trucks; and 8) Alternative 8 increases the stringency of targets annually during MYs 2022-2026 by 2.0% for passenger cars and 3.0% for light trucks.In addition, EPA is requesting comment on a variety of enhanced flexibilities whereby EPA would make adjustments to current incentives and credits provisions and potentially add new flexibility opportunities to broaden the pathways manufacturers would have to meet standards. Such an approach would support the increased application of technologies that the automotive industry is developing and deploying that could potentially lead to further long-term emissions reductions and allow manufacturers to comply with standards while reducing costs.

Anticipated Cost and Benefits:

Compared to maintaining the post-2020 standards set forth in 2012, NHTSA's analysis estimates that this proposal would result in $176 billion in societal net benefits, and reduce highway fatalities by 12,700 lives (over the lifetimes of vehicles through MY 2029). U.S. fuel consumption would increase by about half a million barrels per day (2-3 percent of total daily consumption, according to the Energy Information Administration), emissions would increase by 7,400 million metric tons of carbon dioxide by 2100, and would impact the global climate by 3/1000th of one degree Celsius by 2100, also when compared to the standards set forth in 2012.

Risks:

The proposed rule analyzes a range of public health and environmental risks, including the risks of increased greenhouse gas emission reductions on climate change, risks of increases of criteria pollutants and air toxics emissions on public health and air quality, and the risks of increased mobile source air emissions and climate impacts on children's health. The proposal discusses risks associated with increased petroleum consumption and the need for the U.S. to conserve oil, as well as risks associated with vehicle safety and travel demand. The proposal also examines economic risks including impacts on employment, vehicle sales, and U.S. industry competitiveness.

Timetable:

Action	**Date**	**FR Cite**
NPRM	08/24/18	83 FR 42986
NPRM Comment Period End	10/23/18	
Final Rule	03/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 2060–AU09

EPA—Office of Chemical Safety and Pollution Prevention(OCSPP)	**PROPOSED RULE STAGE**

125. REGULATION OF PERSISTENT, BIOACCUMULATIVE, AND TOXIC CHEMICALS UNDER TSCA SECTION 6(H)

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Regulatory

Legal Authority:

15 U.S.C. 2605, TSCA 6

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, June 21, 2019, Statutory: TSCA section 6(h).

Final, Statutory, December 22, 2020, Statutory: TSCA section 6(h).

Abstract:

As part of EPA's continuing efforts to implement the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended the Toxic Substance Control Act (TSCA) with immediate effect upon its enactment on June 22, 2016, EPA is developing a proposed rule to implement TSCA section 6(h). TSCA section 6(h) directs EPA to issue regulations under section 6(a) for certain persistent, bioaccumulative, and toxic chemical substances that were identified in the 2014 update of the TSCA Work Plan. These regulations must be proposed by June 22, 2019, and issued in final form no later than eighteen months after proposal. Section 6(h) further directs EPA, in selecting among the available prohibitions and other restrictions in TSCA section 6(a), to address risks of injury to health or the environment that the Administrator determines are presented by the chemical substances and reduce exposure to the chemical substances to the extent practicable. EPA must develop an exposure and use assessment, but the statute explicitly states that a risk evaluation is not required for these chemical substances. EPA has identified five chemical substances for proposed action under TSCA section 6(h). These chemical substances are: decabromodiphenyl ether; hexachlorobutadiene; pentachlorothiophenol; phenol, isopropylated phosphate (3:1), also known as tris(4-isopropylphenyl) phosphate; and 2,4,6-tris(tert-butyl)phenol. Decabromodiphenyl ether is a flame retardant that has been widely used in textiles, plastics, adhesives and polyurethane foam. Hexachlorobutadiene is produced as a byproduct in the production of chlorinated solvents and has also been used as an absorbent for gas impurity removal and as an intermediate in the manufacture of rubber compounds.

Pentachlorothiophenol is also used in the manufacture of rubber compounds. Phenol, isopropylated phosphate (3:1) is a flame retardant and is also used in lubricants and hydraulic fluids and in the manufacture of other compounds. 2,4,6-Tris(tert-butyl)phenol is an antioxidant that can be used as a fuel or lubricant and as an intermediate in the manufacture of other compounds.

Statement of Need:

Decisions and related analysis are still in process and not available for this rule.

Summary of Legal Basis:

Decisions and related analysis are still in process and not available for this rule.

Alternatives:

Decisions and related analysis are still in process and not available for this rule.

Anticipated Cost and Benefits:

Decisions and related analysis are still in process and not available for this rule.

Risks:

Decisions and related analysis are still in process and not available for this rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For More Information:

https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act-0#pbt

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RIN: 2070–AK34

EPA—OCSPP	

126. PESTICIDES; CERTIFICATION OF PESTICIDE APPLICATORS RULE; RECONSIDERATION OF THE MINIMUM AGE REQUIREMENTS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Deregulatory

Legal Authority:

7 U.S.C. 136 et seq., Federal Insecticide Fungicide and Rodenticide Act

CFR Citation:

40 CFR 171

Legal Deadline:

None

Abstract:

EPA promulgated a final rule to amend the Certification of Pesticide Applicators regulations at 40 CFR 171 on January 4, 2017 (82 FR 952). The rule went into effect on March 6, 2017. In accordance with Executive Order 13777, EPA solicited comments in the spring of 2017 on regulations that may be appropriate for repeal, replacement or modification as part of the Regulatory Reform Agenda efforts. EPA received comments specific to the certification rule. Based on concerns raised through the Regulatory Reform process, EPA announced in December 2017 that it was beginning a process to reconsider the minimum age provision for the Certification rule. EPA plans to issue a Notice of Proposed Rulemaking for this action.

Statement of Need:

Based on input received from stakeholders in part on Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Agency is proposing to amend the Certification of Pesticide Applicators rule ("Certification rule"), 40 CFR part 171, as revised January 4, 2017 (82 FR 952), by revising the minimum age requirements for applicators certified to use RUPs and for persons who use RUPs under the supervision of a certified applicator. EPA is proposing to defer to state or tribal minimum age requirements for commercial applicators, private applicators and noncertified applicators who use RUPs under the supervision of a certified applicator and to establish a federal minimum age of 16 years for all three types of applicators if states or tribes do not establish enforceable minimum age requirements.

Summary of Legal Basis:

This proposal would amend the Certification of Pesticide Applicators rule ("Certification rule"), 40 CFR part 171, as revised January 4, 2017 (82 FR 952).

Alternatives:

Not to propose the rule with the potential to reduce costs and potentially streamline regulatory burden.

Anticipated Cost and Benefits:

To be determined.

Risks:

By law, some states have minimum age of 18 years of age for workers and would probably not change the state laws to reap the additional cost benefit of this rule.

Timetable:

Action	Date	FR Cite
Notice	12/19/17	82 FR 60195
NPRM	01/00/19	
Final Rule	09/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

Sectors Affected:

924110 Administration of Air and Water Resource and Solid Waste Management Programs; 111 Crop Production; 561710 Exterminating and Pest Control Services; 424910 Farm Supplies Merchant Wholesalers; 561730 Landscaping Services; 111421 Nursery and Tree Production; 444220 Nursery, Garden Center, and Farm Supply Stores; 424690 Other Chemical and Allied Products Merchant Wholesalers; 541690 Other Scientific and Technical Consulting Services; 325320 Pesticide and Other Agricultural Chemical Manufacturing; 926140 Regulation of Agricultural Marketing and Commodities; 541712 Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology); 115112 Soil Preparation, Planting, and Cultivating; 115210 Support Activities for Animal Production; 115310 Support Activities for Forestry; 321114 Wood Preservation

URL For More Information:

https://www.epa.gov/pesticide-worker-safety

URL For Public Comments:

TBD

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Related RIN:

Related to 2070–AJ20

RIN: 2070–AK37

EPA—OCSPP	

127. PESTICIDES; AGRICULTURAL WORKER PROTECTION STANDARD; RECONSIDERATION OF SEVERAL REQUIREMENTS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

7 U.S.C. 136 to 136y, Federal Insecticide Fungicide and Rodenticide Act

CFR Citation:

40 CFR 170

Legal Deadline:

None

Abstract:

EPA published a final rule to amend the Worker Protection Standard (WPS) regulations at 40 CFR 170 on November 2, 2015 (80 FR 67496). Per Executive Order 13777, EPA solicited comments in the spring of 2017 on regulations that may be appropriate for repeal, replacement or modification as part of the Regulatory Reform Agenda efforts. EPA received comments suggesting specific changes to the 2015-revised WPS requirements which are being considered within the Regulatory Agenda efforts. Based on concerns raised through the Regulatory Reform agenda process, EPA intends to publish a Notice of Proposed Rulemaking (NPRM) for this action.

Statement of Need:

This action provides a response to comments received from the regulated community expressed through the Regulatory Reform Agenda. EPA is proposing changes to the requirements in the Agricultural Worker Protection Standard (WPS) related to minimum age, designated representative, application exclusion zone (AEZ), and entry restrictions for enclosed space production. EPA is also proposing a number of minor revisions to correct language and unintentional errors in the 2015 version of the rule.

Summary of Legal Basis:

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136 to 136y, particularly sections 136a(d), 136i, and 136w.

Alternatives:

Not to implement the NPRM.

Anticipated Cost and Benefits:

To be determined.

Risks:

By law, some states have minimum age of 18 years of age for workers and would probably not change the state laws to reap the additional cost benefit of this rule.

Timetable:

Action	Date	FR Cite
Notice	12/21/17	82 FR 60576
NPRM	01/00/19	
Final Rule	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Tribal

Sectors Affected:

111 Crop Production; 813312 Environment, Conservation and Wildlife Organizations; 115115 Farm Labor Contractors and Crew Leaders; 113210 Forest Nurseries and Gathering of Forest Products; 813311 Human Rights Organizations; 813930 Labor Unions and Similar Labor Organizations; 111421 Nursery and Tree Production; 541690 Other Scientific and Technical Consulting Services; 813319 Other Social Advocacy Organizations; 325320 Pesticide and Other Agricultural Chemical Manufacturing; 115114 Postharvest Crop Activities (except Cotton Ginning); 541712 Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology); 115112 Soil Preparation, Planting, and Cultivating; 11511 Support Activities for Crop Production; 115310 Support Activities for Forestry; 113110 Timber Tract Operations

URL For More Information:

https://www.epa.gov/pesticide-worker-safety

URL For Public Comments:

TBD

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RIN: 2070–AK43

EPA—Office of Policy(OP)	PROPOSED RULE STAGE

128. INCREASING CONSISTENCY AND TRANSPARENCY IN CONSIDERING COSTS AND BENEFITS IN THE RULEMAKING PROCESS

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

EPA is considering developing implementing regulations that would increase consistency across EPA divisions and offices, increase reliability to affected stakeholders, and increase transparency during the development of regulatory actions. Many EPA statutes, including the Clean Air Act and the Clean Water Act, provide language on the consideration of benefits and costs, but these have historically been interpreted differently by the EPA depending on the office promulgating the regulatory action. This has led to EPA choosing different standards under the same provision of the statute, the regulatory community not being able to rely on consistent application of the statute, and EPA developing internal policies on the consideration of benefits and costs through non-transparent actions. EPA issued an Advance Notice of Proposed Rulemaking in June 2018. The Agency is now reviewing comments received to determine if developing implementing regulations through a notice-and-comment rulemaking process or other action could provide the public with a better understanding on how EPA weighs benefits and costs when developing a regulatory action and allow the public to provide better feedback to EPA on potential future proposed rules.

Statement of Need:

EPA implements many environmental statutes, including the Clean Air Act, Clean Water Act, the Safe Drinking Water Act, the Resource Conservation Recovery Act, etc. All these laws provide

statutory direction for making regulatory decisions. EPA has applied varied and sometimes inconsistent interpretations of these statutory directions with respect to the consideration of costs and benefits in regulatory decision making. In doing so, EPA has created regulatory uncertainty, making planning decisions difficult and clouded the transparency of EPA decision making.

Summary of Legal Basis:

EPA is considering developing a foundational rule (or series of rules) to better clarify EPA's interpretation of costs and benefit considerations discussed in existing statutes. The rule would be proposed using the existing authority provided in each of the statutes providing regulatory authority to EPA (e.g., Clean Air Act).

Alternatives:

Alternatives have not yet been developed for this action. Alternatives will be developed following review of public comments received on the Advanced Notice of Proposed Rulemaking.

Anticipated Cost and Benefits:

This rule is fundamentally different than regulations that place limits on pollution or otherwise clean the environment. It will not directly lead to changes in environmental quality. However, by improving the transparency and clarity of EPA's interpretation of when and how benefits and costs are considered in decision making, EPA will provide greater regulatory certainty that will allow regulated entities to better plan for future regulatory requirements. It may also enhance the utilization of benefit-cost analysis in decision making. EPA plans to provide a full discussion and exposition of anticipated benefits and costs of regulatory approaches if the rule(s) go forward.

Risks:

In this action, EPA is examining the role of benefits, costs and other economic analytic concepts play in decision making, not the instructions on how to conduct economic analysis as contained in

OMB Circular A-4 or EPA's Guidelines on Performing Economic Analysis. Consequently, assessment of costs and benefits will be addressed under subsequent rulemakings developed to tackle specific pollutants.

Timetable:

Action	Date	FR Cite
ANPRM	06/13/18	83 FR 27524
Comment Period Extended	07/03/18	83 FR 31098
NPRM	05/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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RIN: 2010–AA12

EPA—Office of Land and Emergency Management(OLEM)	**PROPOSED RULE STAGE**

129. HAZARDOUS AND SOLID WASTE MANAGEMENT SYSTEM: DISPOSAL OF COAL COMBUSTION RESIDUES FROM ELECTRIC UTILITIES: AMENDMENTS TO THE NATIONAL MINIMUM CRITERIA (PHASE 2)

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 6906; 42 U.S.C. 6907; 42 U.S.C. 6912(a); 42 U.S.C. 6944; 42 U.S.C. 6945(c)

CFR Citation:

40 CFR 257

Legal Deadline:

None

Abstract:

The EPA is publishing three rules (Phase One Rule Part One, Phase One Rule Part Two, and Phase Two Rule) to modify the final Coal Combustion Residuals (CCR) Disposal Rule, published April 17, 2015. The EPA proposed Phase One in March 2018. The Agency then finalized a small number of the provisions from the Phase One proposal in the final rule, Phase One Part One rule, in July 2018. This rule is the second set of potential revisions to EPA's 2015 CCR Disposal Rule. In this proposed rulemaking, EPA plans to complete its review of all of the remaining matters raised in litigation and the petitions for reconsideration that were not included in the Phase One proposed rules, propose any revisions to those provisions determined to be warranted, and propose regulations for a federal CCR permit program.

Statement of Need:

On April 17, 2015, EPA finalized national regulations to regulate the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA) (2015 CCR final rule). The rule was challenged by several different parties, including a coalition of regulated entities and a coalition of public interest environmental organizations. Several of the claims, a subset of the provisions challenged by the industry and environmental petitioners, were settled on April 18, 2016. As part of that settlement, on April 18, 2016, EPA requested the court to remand these claims back to the Agency. On June 16, 2016, the United

States Court of Appeals for the District of Columbia Circuit granted EPA's motion. One claim was the subject of a rulemaking completed on August 5, 2016 (81 FR 51802). This proposed rule addresses some of the claims that were remanded back to EPA.

In addition, in December 2016, the Water Infrastructure Improvements for the Nation (WIIN) Act established new statutory provisions applicable to CCR units, including authorizing States to implement the CCR rule through an EPA-approved permit program and authorizing EPA to enforce the rule. In light of the legislation, EPA is proposing amendments for certain performance standards to provide flexibility to the State programs, which would be consistent with the WIIN Act's standard for approval of State programs. Under the WIIN Act, State programs require each CCR unit located in the State to achieve compliance with either the federal CCR rule or State criteria that EPA determines to be as protective as the existing federal CCR requirements.

Summary of Legal Basis:

As part of the settlement agreement discussed above, EPA committed to make best efforts to take final action on the remaining claims by December 2019.

Alternatives:

According to the terms of the settlement agreement discussed above, the Agency must provide public notice and opportunity for comment on these issues. Each of these settlement-related amendments is fairly narrow in scope and EPA has not identified any significant alternatives for analysis. Regarding the WIIN Act implementation amendments, one alternative would be not to include these additional issues in the CCR Remand proposal since they are not subject to a deadline.

Anticipated Cost and Benefits:

EPA will provide estimates of costs and benefits resulting from this proposed rule once they are fully developed and have received Agency clearance.

Risks:

As compared with the risks to human health and the environment that were presented in the 2015 CCR final rule, the proposed amendments discussed in this action are expected to produce human health and environmental benefits, which will likely be described qualitatively.

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	
Final Rule	12/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

Sectors Affected:

221112 Fossil Fuel Electric Power Generation

URL For More Information:

https://www.epa.gov/coalash

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EPA—Office of Water(OW)	**PROPOSED RULE STAGE**

130. NATIONAL PRIMARY DRINKING WATER REGULATIONS FOR LEAD AND COPPER: REGULATORY REVISIONS

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Regulatory

Legal Authority:

42 U.S.C. 300f et seq., Safe Drinking Water Act

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

None

Abstract:

The Lead and Copper Rule (LCR) reduces risks to drinking water consumers from lead and copper that can enter drinking water as a result of corrosion of plumbing materials. The LCR requires water systems to sample at taps in homes with leaded plumbing materials. Depending upon the sampling results, water systems must take actions to reduce exposure to lead and copper including corrosion control treatment, public education and lead service line replacement. The LCR was promulgated in 1991 and, overall, has been effective in reducing the levels of lead and copper in drinking water systems across the country. However, lead crises in Washington,

DC, and Flint, Michigan, and the subsequent national attention focused on lead in drinking water in other communities, have underscored significant challenges in the implementation of the current rule, including a rule structure that, for many systems, only compels protective actions after public health threats have been identified. Key challenges include the rule's complexity; the degree of flexibility and discretion it affords systems and primacy states with regard to optimization of corrosion control treatment; compliance sampling practices, which in some cases may not adequately protect from lead exposure; and limited specific focus on key areas of concern such as schools. There is a compelling need to modernize and strengthen implementation of the rule--to strengthen its public health protections and to clarify its implementation requirements to make it more effective and more readily enforceable.

Statement of Need:

The Lead and Copper Rule (LCR) reduces risks to drinking water consumers from lead and copper that can enter drinking water as a result of corrosion of plumbing materials. The LCR requires water systems to sample at taps in homes with leaded plumbing materials. Depending upon the sampling results, water systems must take actions to reduce exposure to lead and copper including corrosion control treatment, public education and lead service line replacement. The LCR was promulgated in 1991 and, overall, has been effective in reducing the levels of lead and copper in drinking water systems across the country. However, lead crises in Washington, DC, and Flint, Michigan, and the subsequent national attention focused on lead in drinking water in other communities, have underscored significant challenges in the implementation of the current rule, including a rule structure that, for many systems, only compels protective actions after public health threats have been identified. Key challenges include the rule's complexity; the degree of flexibility and discretion it affords systems and primacy states with regard to optimization of corrosion control treatment; compliance sampling practices, which in some cases may not adequately protect from lead exposure; and limited specific focus on key areas of concern such as schools. There is a compelling need to modernize and strengthen

implementation of the rule--to strengthen its public health protections and to clarify its implementation requirements to make it more effective and more readily enforceable.

Summary of Legal Basis:

Section 1412(b) of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.) includes a general authority for EPA to establish maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs). The first NPDWR for Lead and Copper was issued in 1991 (56 FR 26460, June 7, 1991). Section 1412(b)(9) of the SDWA (42 U.S.C. 300f et seq.) requires EPA, at least every six years, to review and revise, as appropriate, each national primary drinking water regulation. Any revision of a national primary drinking water regulation must be promulgated in accordance with Section 1412, except that each revision must maintain or provide for greater protection of the health of persons. This rulemaking will revise EPA's existing Lead and Copper Rule pursuant to Section 1412(b)(9). EPA's goal for the LCR revisions is to improve the effectiveness of public health protections while maintaining a rule that can be implemented by the 68,000 drinking water systems that are covered by the rule.

Alternatives:

The alternatives are to be determined.

Anticipated Cost and Benefits:

The costs and benefits are to be determined.

Risks:

Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects of lead on the

brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development.

Timetable:

Action	Date	FR Cite
NPRM	02/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

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

Sectors Affected:

924110 Administration of Air and Water Resource and Solid Waste Management Programs; 221310 Water Supply and Irrigation Systems

URL For More Information:

https://www.epa.gov/dwreginfo/lead-and-copper-rule

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RIN: 2040–AF15

EPA—OW	

131. NATIONAL PRIMARY DRINKING WATER REGULATIONS: REGULATION OF PERCHLORATE

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Regulatory

Legal Authority:

42 U.S.C. 300f et seq., Safe Drinking Water Act

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

NPRM, Judicial, October 31, 2018, Consent Decree, NRDC v. EPA (No. 16 Civ. 1251, S.D.N.Y., October 18, 2016).

Final, Judicial, December 19, 2019, Consent Decree, NRDC v. EPA (No. 16 Civ. 1251, S.D.N.Y., October 18, 2016).

Abstract:

A consent decree entered by the U.S. District Court for the Southern District of New York states that EPA shall propose a national primary drinking water regulation (NPDWR) with a proposed Maximum Contaminant Level Goal (MCLG) for perchlorate in drinking water no later than 10/31/18 and finalize a MCLG and NPDWR for perchlorate in drinking water no later than 12/19/19. The EPA has begun the process for developing a NPDWR for perchlorate. The Safe Drinking Water Act describes the EPA's requirements for regulating contaminants. In accordance with these requirements, the EPA will consider the Science Advisory Board's guidance on how to best interpret perchlorate health information to derive a MCLG for perchlorate. The agency is also evaluating the feasibility and affordability of treatment technologies to remove perchlorate from

drinking water and will examine the costs and benefits of a Maximum Contaminant Level (MCL) and alternative MCLs. The EPA is also seeking input through informal and formal processes from the National Drinking Water Advisory Council, the Department of Health and Human Services, State and Tribal drinking water programs, the regulated community (public water systems), public health organizations, academia, environmental and public interest groups, and other interested stakeholders on a number of issues relating to the regulation of perchlorate.

Statement of Need:

The EPA issued a final determination to regulate perchlorate on February 11, 2011. The EPA's 2011 determination was based upon the three criteria for regulation under the Safe Drinking Water Act: 1) The EPA determined that perchlorate may have adverse effects on the health of persons based upon the National Research Council's study that found perchlorate inhibits the thyroid's ability to uptake iodide needed to produce hormones. 2) The EPA concluded that perchlorate occurs with frequency at levels of health concern in public water systems based upon data collected under the first Unregulated Contaminant Monitoring Rule (UCMR 1) from 2001 to 2005. Monitoring results reported to the EPA under UCMR 1 show that perchlorate was measured in over four percent of water systems. 3) The EPA concluded that there was a meaningful opportunity to protect public health through a drinking water regulation by reducing perchlorate exposure for the 5 to 17 million people who may be served perchlorate in their drinking water. In 2013, the Science Advisory Board (SAB) recommended that the EPA use models, rather than the traditional approach to establish the health-based maximum contaminant level goal for a perchlorate regulation. The EPA and FDA scientists worked collaboratively to develop biological models in accordance with SAB recommendations. The EPA completed peer review of this analysis in March 2018. The EPA will utilize the best available, peer-reviewed science to inform regulatory decisionmaking for perchlorate.

Summary of Legal Basis:

On October 18, 2016, the U.S. District Court for the Southern District of New York entered a consent decree, which requires the EPA to sign, for publication in the Federal Register, a proposed MCLG and NPDWR for perchlorate by October 30, 2018 and issue a final MCLG and NPDWR by December 19, 2019. See NRDC v. EPA, No. 16 Civ. 1251 (S.D.N.Y.). The Safe Drinking Water Act (SDWA), section 1412(b)(1)(A), requires the EPA to make a determination whether to regulate at least five contaminants from its Contaminant Candidate List every 5 years. Once the EPA makes a determination to regulate a contaminant in drinking water, SDWA section 1412(b)(1)(E) requires the EPA to issue a proposed maximum contaminant level goal (MCLG) and national primary drinking water regulation (NPDWR) within 24 months and a final MCLG and NPDWR within 18 months of proposal (with an opportunity for one 9-month extension). The EPA made a determination to regulate perchlorate in drinking water on February 11, 2011.

Alternatives:

The alternatives will be determined.

Anticipated Cost and Benefits:

The anticipated costs and benefits will be determined.

Risks:

Perchlorate competes with iodide for transport into the thyroid gland, which is a necessary step in the production of thyroid hormones. Therefore, perchlorate may lead to decreases in levels of these hormones. Thyroid hormones are essential to the growth and development of fetuses, infants, and young children, as well as to metabolism and energy regulation throughout the life span. Primary pathways for human exposure to perchlorate are ingestion of contaminated food and drinking water.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	
Final Rule	12/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

Docket #:EPA-HQ-OW-2009-0297

Sectors Affected:

924110 Administration of Air and Water Resource and Solid Waste Management Programs;

221310 Water Supply and Irrigation Systems

URL For More Information:

https://www.epa.gov/dwstandardsregulations/perchlorate-drinking-water

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RIN: 2040–AF28

EPA—OW	

132. REVISED DEFINITION OF "WATERS OF THE UNITED STATES"

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

33 U.S.C. 1251 et seq.

CFR Citation:

40 CFR 110; 40 CFR 112; 40 CFR 116; 40 CFR 117; 40 CFR 122; 40 CFR 230; 40 CFR 232; 40 CFR 300; 40 CFR 302; 40 CFR 401

Legal Deadline:

None

Abstract:

In 2015, the Environmental Protection Agency and the Department of the Army (the agencies) published the Clean Water Rule: "Definition of Waters of the United States (2015 Rule) (80 FR 37054, June 29, 2015).” On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court. On February 28, 2017, the President signed Executive Order 13778, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States’ Rule,”,” which instructed the agencies to review the 2015 rule and rescind or replace it as appropriate and consistent with law. The agencies are publishing this proposed rule to follow the first step, which sought to recodify the definition of "waters of the United States" that existed prior to the 2015 rule. In this second step, the agencies are conducting a substantive reevaluation and revision of the definition of waters of the United States” in accordance with the Executive order.

Statement of Need:

This rulemaking action responds to the February 28, 2017, Presidential Executive Order: Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the

United States" Rule. To meet the objectives of the Executive order, the EPA and Department of the Army (Agencies) are engaged in an comprehensive, two-step rulemaking process. This action follows the first step to recodify the pre-existing definition of "waters of the United States." In this second step, the Agencies are conducting a reconsideration of the definition of "waters of the United States" consistent with the EO.

Summary of Legal Basis:

The rule is proposed under the Clean Water Act, 33 U.S.C. section 1251 et seq.

Alternatives:

Alternatives have not yet been developed at this time.

Anticipated Cost and Benefits:

An economic analysis analyzing anticipated costs and benefits will be developed for the rulemaking at the time of proposal.

Risks:

This action does not establish an environmental standard intended to address environmental or health risks.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	
Final Rule	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

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EPA—OW	

133. EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

Priority:

Other Significant

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Other

Legal Authority:

33 U.S.C. 1361; 33 U.S.C. 1342; 33 U.S.C. 1318; 33 U.S.C. 1317; 33 U.S.C. 1316; 33 U.S.C. 1311; 33 U.S.C. 1314

CFR Citation:

40 CFR 423

Legal Deadline:

None

Abstract:

EPA received petitions from the Utility Water Act Group and the U.S. Small Business Administration requesting reconsideration and an administrative stay of provisions of EPA's final rule titled "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category," (80 FR 67838; November 3, 2015). After considering the petitions, the Administrator decided that it is appropriate and in the public interest to conduct a rulemaking that may result in revisions to the new, more stringent Best Available Technology Economically Achievable effluent limitations and pretreatment standards for existing sources in the 2015 rule that apply to bottom ash transport water and flue gas desulfurization wastewater. EPA does not intend in this rulemaking to revise the BAT effluent limitations or pretreatment standards in the 2015 rule for fly ash transport water, flue gas mercury control wastewater, gasification wastewater, or any of the other requirements in the 2015 rule. As part of the rulemaking process, EPA will provide notice and an opportunity for public comment on any proposed revisions to the 2015 final rule.

Statement of Need:

Under the Clean Water Act (Â‘Â‘CWA), EPA intends to undertake a rulemaking that may result in revisions to certain Best Available Technology Economically Achievable (Â‘Â‘BAT) effluent limitations and pretreatment standards for existing sources (PSES) for the steam electric power generating point source category, which were published in the Federal Register on November 3, 2015.

Summary of Legal Basis:

EPA intends to propose this rule under the authority of sections 101, 301, 304, 306, 307, 308, 402, and 501 of the CWA, 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

Alternatives:

The alternatives are to be determined.

Anticipated Cost and Benefits:

The associated costs and benefits for the regulatory options are to be determined.

Risks:

The associated risks are to be determined.

Timetable:

Action	Date	FR Cite
NPRM	03/00/19	
Final Rule	12/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

Additional Information:

Docket #:EPA-HQ-OW-2009-0819. https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines

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Related RIN:

Related to 2040–AF14, Related to 2040–AF76

RIN: 2040–AF77

EPA—OW	

134. PEAK FLOWS MANAGEMENT

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

33 U.S.C. 1311; 33 U.S.C. 1314

CFR Citation:

40 CFR 122

Legal Deadline:

None

Abstract:

Wet weather events (e.g., rain, snowmelt) can affect publicly owned treatment works (POTWs) operations when excess water enters the wastewater collection system. The increased wet weather flows can exceed the POTW treatment plant's capacity to provide the same type of treatment for all of the incoming wastewater. The treatment plant's secondary treatment units are the most likely to be adversely affected by wet weather because the biological systems can be damaged when too much water flows through them. POTWs employ a variety of operational practices to ensure the integrity of their secondary treatment units during wet weather. This update to the regulations will seek to clarify permitting procedures so as to provide POTWs with separate sanitary sewer systems flexibility in how they manage and treat peak flows under wet weather conditions. These updates will also seek to ensure a consistent national approach for permitting POTWs that allows efficient treatment plant operation while protecting the public from potential adverse health effects of inadequately treated wastewater.

Statement of Need:

This update to the regulations will seek to clarify permitting procedures for POTW treatment plants with separate storm sewer systems under wet weather operational conditions. These updates will also seek to ensure a consistent national approach for permitting POTWs that provides for efficient treatment plant operation while protecting the public from potential adverse health effects of inadequately treated wastewater.

Summary of Legal Basis:

The rule will be proposed under the Clean Water Act, 33 U.S.C. 1311 and 33 U.S.C. 1314.

Alternatives:

Alternatives have not yet been developed at this time.

Anticipated Cost and Benefits:

A cost analysis analyzing anticipated costs and benefits will be developed for the rulemaking at the time of proposal.

Risks:

The agencies will be able to analyze the risks of the proposed rulemaking once policy decisions have been made.

Timetable:

Action	Date	FR Cite
NPRM	07/00/19	
Final Rule	07/00/20	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State, Tribal

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EPA—OW	

135. • CLEAN WATER ACT SECTION 404(C) REGULATORY REVISION

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

“Not Yet Determined”

CFR Citation:

40 CFR 230

Legal Deadline:

None

Abstract:

Section 404(c) of the Clean Water Act authorizes the Administrator "to prohibit the specification (including withdrawal of the specification) of any defined area as a disposal site" as well as to "deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site . . . whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." This rulemaking will consider, at minimum, changes to EPA's 404(c) review process that would govern the future use of EPA's section 404(c) authority.

Statement of Need:

The EPA's regulations governing CWA Section 404(c) are being revisited to reflect today's permitting process and modern-day methods and protections, including the robust ex siting processes under the National Environmental Policy Act that requires federal agencies to consider the environmental and related social and economic effects of their proposed actions while providing opportunities for public review and comment on those evaluations. The updated regulations have the opportunity for increasing certainty for landowners, investors, businesses and entrepreneurs to make investment decisions while preserving the EPA's authority to restrict discharges of dredge or fill material that will have an unacceptable adverse effect on water supplies, recreation, fisheries and wildlife.

Summary of Legal Basis:

Clean Water Act (CWA) 404(c).

Alternatives:

The alternatives will be determined.

Anticipated Cost and Benefits:

The anticipated costs and benefits will be determined.

Risks:

The associated risks will be determined.

Timetable:

Action	Date	FR Cite

NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2040–AF88

EPA—Office of Air and Radiation(OAR)	FINAL RULE STAGE

136. REVIEW OF THE PRIMARY NATIONAL AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES

Priority:

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

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 7401 et seq.

CFR Citation:

40 CFR 50

Legal Deadline:

NPRM, Judicial, May 25, 2018, Signed by 5/25/2018.

Final, Judicial, January 28, 2019, Signed by 1/28/2019.

Abstract:

Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On June 22, 2010, EPA published a final rule to revise the primary (health-based) NAAQS for Sulfur Oxides to provide increased protection for public health. This review of the 2010 NAAQS includes the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, a Risk/Exposure Assessment, and also a Policy Assessment Document, with opportunities for review by EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the current standard. This proposed decision was published in the Federal Register with opportunity provided for public comment. The Administrator's final decisions will take into consideration these documents, CASAC advice, and public comment on the proposed decision.

Statement of Need:

Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On June 22, 2010, EPA published a final rule to revise the primary (health-based) NAAQS for sulfur oxides to provide increased protection for public health.

Summary of Legal Basis:

Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and the primary (health-based) national ambient air quality standards (NAAQS) every 5 years.

Alternatives:

The main alternative for the Administrator's decision on the review of the primary (health-based) national ambient air quality standard for sulfur oxides (SOx) is whether to retain or revise the existing standard.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards is 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, when the Agency proposes revisions to the standards, 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. In those instances, cost and benefit information is generally included in the regulatory analysis accompanying the final rule. Because this action does not propose to change the existing primary NAAQS for SOx, it does not impose costs or benefits relative to the baseline of continuing with the current NAAQS in effect. EPA has thus not prepared a Regulatory Impact Analysis for this action.

Risks:

As part of this review, the EPA prepared an Integrated Review Plan, an Integrated Science Assessment, a Risk/Exposure Assessment, and also a Policy Assessment document, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee and the public. These documents will inform the Administrator's decision as to whether to retain or revise the standards. The proposed decision was published in the Federal Register with opportunity provided for public comment. The Administrator's final decisions will take into consideration these documents and public comment on the proposed decision.

Timetable:

Action	Date	FR Cite

NPRM	06/08/18	83 FR 26752
NPRM Comment Period Extended	06/21/18	83 FR 28843
Final Rule	01/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2060–AT68

EPA—OAR	

137. RENEWABLE FUEL VOLUME STANDARDS FOR 2019 AND BIOMASS–BASED DIESEL (BBD)VOLUME FOR 2020

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

42 U.S.C. 7401 et seq., Clean Air Act

CFR Citation:

40 CFR 80

Legal Deadline:

None

Abstract:

The Clean Air Act requires EPA to promulgate regulations that specify the annual volume requirements for renewable fuels under the Renewable Fuel Standard (RFS) program. Standards are to be set for four different categories of renewable fuels: cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. The statute requires that the standards be finalized by November 30 of the year prior to the year in which the standards would apply. In the case of biomass-based diesel, the statute requires applicable volumes to be set no later than 14 months prior to the year for which the requirements would apply.

Statement of Need:

The Clean Air Act requires EPA to promulgate regulations that specify the annual volume requirements for renewable fuels under the Renewable Fuel Standard (RFS) program. The statute requires that the standards be finalized by November 30 of the year prior to the year in which the standards would apply. In the case of biomass-based diesel, the statute requires applicable volumes to be set no later than 14 months prior to the year for which the requirements would apply.

Summary of Legal Basis:

CAA section 211(o)

Alternatives:

EPA requested comment on using the general waiver authority to reduce the required volumes for advanced and total renewable fuel in the proposed rule.

Anticipated Cost and Benefits:

Anticipated costs were developed for the proposed rule ($380-$740 million). Costs and benefits of this rulemaking are highly complex given the nature of the program and the standards being categorically nested under a total volume standard. An updated estimate of the costs, based on a number of illustrative assumptions, will be provided in the final rule.

Risks:

Environmental assessments are primarily addressed under another section of the CAA (Section 204). EPA released an updated report to Congress on June 29, 2018. More information on this report can be found at: https://cfpub.epa.gov/si/si_public_record_Report.cfm?dirEntryId=341491

Timetable:

Action	Date	FR Cite
Notice	07/03/18	83 FR 31098
NPRM	07/10/18	83 FR 32024
Final Rule	11/00/18	

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: 2060–AT93

EPA—Office of Chemical Safety and Pollution Prevention(OCSPP)	FINAL RULE STAGE

138. REVIEW OF DUST–LEAD HAZARD STANDARDS AND THE DEFINITION OF LEAD–BASED PAINT

Priority:

Other Significant

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Regulatory

Legal Authority:

15 U.S.C. 2681, TSCA 401; 15 U.S.C. 2682; 15 U.S.C. 2683,TSCA 403; 15 U.S.C. 2684

CFR Citation:

40 CFR 745

Legal Deadline:

NPRM, Judicial, June 22, 2018, NPRM issuance ordered within 90 days of the date that the 9th Circuit's decision becomes final.

Final, Judicial, June 22, 2019, The December 27, 2017, decision of the Ninth Circuit ordered “that EPA promulgate the final rule within one year after the promulgation of the proposed rule . . . .”.

Abstract:

EPA is reviewing existing regulatory dust-lead hazard standards for target housing and Child Occupied Facilities (COFs), and the definition of lead-based paint for non-target housing. On March 6, 1996, the EPA and the Department of Housing and Urban Development (HUD) issued a joint final regulation that, under section 401 of the Toxic Substances Control Act (TSCA), adopted the statutory definition of lead-based paint as "paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight." On January 5, 2001, EPA issued a final regulation that, under section 403 of the TSCA, established regulatory dust-lead hazard standards of 40 µg/ft2 for floors and 250 µg/ft2 for interior window sills. On August 10, 2009, EPA received a petition requesting that EPA take action to lower EPA's regulatory dust-lead hazard standards and the definition of lead-based paint. On October 22, 2009, EPA responded to the petition, agreeing to initiate a proceeding to determine whether the dust-lead hazard standards, and the definition of lead-based paint for non-target housing should be revised. On August 24, 2016, advocates filed a petition for writ of mandamus in the U.S. Court of Appeals for the Ninth Circuit, asking the court to compel EPA to make these revisions. The proposed rule was published in the Federal Register on July 2, 2018, and was issued in compliance with the December 27, 2017, decision of the Ninth Circuit, and the subsequent March 26, 2018, order that directed the EPA "to issue a proposed rule within ninety (90) days from the filed date of this order." Scientific advances made since the promulgation of the 2001 rule clearly demonstrate that exposure to low levels of lead result in adverse health effects. Moreover, since CDC has stated that no safe level of lead in blood has been identified, the reductions in children's blood lead levels as a result of this rule would help reduce the risk of adverse cognitive and developmental effects in children. Therefore, EPA proposed to change the dust-lead hazard standards from 40 µg/ft2 and 250 µg/ft2 to 10 µg/ft2 and 100 µg/ft2 on floors and window sills, respectively. These standards apply to most pre-1978 housing and child-occupied facilities, such as day care centers and kindergarten facilities. In addition, EPA proposed to make no change to the definition of lead-based paint because the Agency currently lacks sufficient information to support such a change.

Statement of Need:

The proposed rule was published in the Federal Register on July 2, 2018, and was issued in compliance with the December 27, 2017, decision of the Ninth Circuit, and the subsequent March 26, 2018, order that directed the EPA "to issue a proposed rule within ninety (90) days from the filed date of this order."

Summary of Legal Basis:

EPA is proposing this rule under sections 401, 402, 403, and 404 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., as amended by title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or Title X) (Pub. L. 102-550).

Alternatives:

EPA intends to finalize a rulemaking identifying hazardous levels of lead in dust on floors and window sills. While EPA has proposed standards of 10 mg/ft2 and 100 mg/ft2 for floors and window sills respectively, EPA is encouraging public comment on the full range of candidate standards analyzed in the associated Technical Support Document as alternatives to the proposal, including the option not to change the current standard. EPA has also specifically requested comment on an option that would reduce the floor dust standard but leave the sill dust standard unchanged (e.g., 20 mg/ft2 for floors and 250 mg/ft2 for window sills, or 10 mg/ft2 for floors and 250 mg/ft2 for window sills), since reducing floor dust lead has the greatest impact on children's health.

Anticipated Cost and Benefits:

Costs. This rule is estimated to result in costs of $66 million to $119 million per year. Benefits. This rule would reduce exposure to lead, resulting in benefits from avoided adverse health effects. For the subset of adverse health effects where the results were quantified, the estimated annualized benefits are $317 million to $2.24 billion per year using a 3% discount rate, and $68 million to $479 million using a 7% discount rate. There are additional unquantified benefits due to

other avoided adverse health effects in children, including attention-related behavioral problems, greater incidence of problem behaviors, decreased cognitive performance, reduced post-natal growth, delayed puberty and decreased kidney function.

Risks:

This rulemaking addresses the risk of adverse health effects associated with lead dust exposures in children living in pre-1978 housing and child-occupied facilities, as well as associated potential health effects in this subpopulation.

Timetable:

Action	Date	FR Cite
NPRM	07/02/18	83 FR 30889
Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, State, Tribal

Additional Information:

Docket #:EPA-HQ-OPPT-2018-0166

Sectors Affected:

541350 Building Inspection Services; 624410 Child Day Care Services; 236 Construction of Buildings; 611110 Elementary and Secondary Schools; 541330 Engineering Services; 611519

Other Technical and Trade Schools; 531 Real Estate; 562910 Remediation Services; 238 Specialty Trade Contractors

URL For More Information:

http://www2.epa.gov/lead

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RIN: 2070–AJ82

EPA—OCSPP	

139. SERVICE FEES FOR THE ADMINISTRATION OF THE TOXIC SUBSTANCES CONTROL ACT

Priority:

Other Significant

EO 13771 Designation:

Regulatory

Legal Authority:

15 U.S.C. 2601 et seq.; 15 U.S.C. 2625 TSCA 26

CFR Citation:

40 CFR 700–791

Legal Deadline:

None

Abstract:

As amended in June 2016, section 26(b)(1) of the Toxic Substance Control Act (TSCA) authorizes EPA to issue a rule to establish fees to defray the cost (including contractor costs incurred by the Agency) associated with administering sections 4, 5, and 6, and collecting, processing, reviewing, and providing access to and protecting from disclosure information on

chemical substances as appropriate under section 14. EPA issued a proposed rule in February 2018 and is planning to issue a final rule in September 2018, with immediate effect to enable the collection of fees beginning in October 2018.

Statement of Need:

The fees are intended to achieve the goals articulated by Congress to provide a sustainable source of funds for EPA to fulfill its legal obligations to conduct activities such as risk-based screenings, designation of applicable substances as High- and Low-Priority, conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, requiring testing of chemical substances and mixtures, and evaluating and reviewing manufacturing and processing notices, as required under TSCA sections 4, 5 and 6, as well as management of chemical information under TSCA section 14.

Summary of Legal Basis:

TSCA section 26(b), 15 U.S.C. 2625(b), provides EPA with authority to establish fees to defray a portion of the costs associated with administering TSCA sections 4, 5, and 6, as amended, as well as the costs of collecting, processing, reviewing, and providing access to and protecting information about chemical substances from disclosure as appropriate under TSCA section 14.

Alternatives:

Alternative approaches were considered in developing the proposed rule (see 83 FR 8212, Unit III.C, available at https://www.federalregister.gov/documents/2018/02/26/2018-02928/user-fees-for-the-administration-of-the-toxic-substances-control-act) and are being further considered in light of comments received on the proposed rule.

Anticipated Cost and Benefits:

EPA has evaluated the potential incremental economic impacts of the proposed rule. The Agency analyzed a three-year period, since the statute requires EPA to reevaluate and adjust, as necessary, the fees every three years. The Economic Analysis, which is available in the docket for the proposed rule (EPA-HQ-OPPT-2016-0401, ref. 2), is briefly summarized here. The annualized fees collected from industry for the proposed option (identified as Option C in the Economic Analysis) are approximately $20.05 million. This total does not include the fees collected for manufacturer-requested risk evaluations. Total fee collections were calculated by multiplying the estimated number of actions per fee category anticipated each year, by the corresponding proposed fee. For the proposed option, TSCA section 4 fees account for less than 1 percent of the total fee collection, TSCA section 5 fees for approximately 43 percent, and TSCA section 6 fees for approximately 56 percent. Annual fees collected by EPA are expected to total approximately $20.05 million. Under the proposed option, the total fees collected from industry for a risk evaluation requested by manufacturers are estimated to be $1.3 million for chemicals included in the Work Plan and $2.6 million for chemicals not included in the Work Plan. EPA estimates that 18.5 percent of TSCA section 5 submissions will be from small businesses that are eligible to pay discounted fees because they have average annual sales of less than $91 million in the three preceding years. Total annualized fees for TSCA section 5 collected from small businesses are estimated to be $550,000. For TSCA sections 4 and 6, discounted fees for eligible small businesses and fees for all other affected firms may differ over the three-year period that was analyzed, since the fee paid by each firm is dependent on the number of affected firms per action. Based on past TSCA section 4 actions and data related to the first ten chemicals identified for risk evaluations under TSCA as amended, EPA estimates annualized fees collected from small businesses for TSCA section 4 and TSCA section 6 to be approximately $37,000 and $2.6 million, respectively. EPA estimates that total fees paid by small businesses will account for about 16 percent of the approximately $20.05 million fees to be collected for TSCA sections 4, 5, and 6 actions. The annualized total industry fee collection for small businesses is estimated to be approximately $3.2 million.

Risks:

n/a

Timetable:

Action	Date	FR Cite
NPRM	02/26/18	83 FR 8212
Notice	04/24/18	83 FR 17782
Final Rule	10/00/18	

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.

Additional Information:

Docket #:EPA-HQ-OPPT-2016-0401. A summary of the recent amendments to TSCA is available at https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.

Sectors Affected:

325 Chemical Manufacturing

URL For More Information:

https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/

URL For Public Comments:

Http://www.regulations.gov

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EPA—Office of Land and Emergency Management(OLEM)	FINAL RULE STAGE

140. CLEAN WATER ACT HAZARDOUS SUBSTANCES SPILL PREVENTION

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

33 U.S.C. 1321(j)(1)(C)

CFR Citation:

40 CFR 151

Legal Deadline:

NPRM, Judicial, June 16, 2018, Sign by no later than June 16, 2018 and within 15 days thereafter transmit to the Federal Register.

Final, Judicial, August 25, 2019, Sign by no later than 14 months after publication of NPRM (NPRM was published on June 25, 2018) & within 15 days thereafter transmit to the Federal Register.

Abstract:

As a result of a consent decree, the EPA has issued a proposed rule that addresses the prevention of hazardous substance discharges under section 311(j)(1)(C) of the Clean Water Act (CWA). This section directs the President to issue regulations to prevent discharges of oil and hazardous substances from onshore and offshore facilities, and to contain such discharges.The EPA assessed the consequences of hazardous substance discharges into the nation's waters, and evaluated the costs and benefits of potential preventive regulatory requirements for facilities handling such substances. Based on an analysis of the frequency and impacts of reported CWA hazardous substances discharges and the existing framework of EPA regulatory requirements, the Agency is not proposing additional regulatory requirements at this time.

Statement of Need:

CWA 311(j)(1)(C) provides that the President "[establish] procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges..." EPA was delegated authority for regulating onshore facilities under CWA 311(j)(1)(C) by Executive Order 12777, and was redelegated authority for regulating offshore facilities landward of the coastline under CWA 311(j)(1)(C) by the Department of the Interior. See 40 CFR 112, appendix A.

Summary of Legal Basis:

In 2015, the EPA was sued for failure to finalize a rulemaking for chemicals under the CWA 311(j)(1)(C). This litigation was settled and a consent decree was filed with the court in February 2016 (Environmental Justice Health Alliance for Chemical Policy Reform v. U.S. EPA). The EPA is conducting this rulemaking in accordance with the consent decree and proposed rule on June 25, 2018, and intends to have the Administrator sign a final rule by August 25, 2019.

Alternatives:

The Agency considered three alternatives. The first alternatives was to establish a prevention program that included nine regulatory elements aimed at preventing CWA HS discharges. The second alternative was to establish a targeted approach that selects a limited set of requirements designed to prevent CWA hazardous substances discharges. This regulatory option could establish targeted requirements under one or more of the nine program elements under the first option; however, four elements are specifically identified and discussed. The third, and proposed alternative, establishes no new requirements under the authority of CWA 311(j)(1)(C).

Anticipated Cost and Benefits:

Since the proposed action recommended no new regulatory requirements, it neither imposes incremental costs nor provides incremental environmental protection benefits.

Risks:

The proposed action recommended no new regulatory requirements; therefore, EPA anticipates no changes in risk as a result of this action. In the 40 years since CWA section 311(j)(1)(C) was enacted by Congress, multiple statutory and regulatory requirements have been established under different Federal authorities that generally serve to, directly and indirectly, prevent CWA hazardous substances discharges.

Timetable:

Action	Date	FR Cite
NPRM	06/25/18	83 FR 29499
Final Rule	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Docket #:EPA-HQ-OLEM-2018-0024

Sectors Affected:

72 Accommodation and Food Services; 924 Administration of Environmental Quality Programs; 56 Administrative and Support and Waste Management and Remediation Services; 312 Beverage and Tobacco Product Manufacturing; 325 Chemical Manufacturing; 111 Crop Production; 61 Educational Services; 311 Food Manufacturing; 316 Leather and Allied Product Manufacturing; 423 Merchant Wholesalers, Durable Goods; 424 Merchant Wholesalers, Nondurable Goods; 212 Mining (except Oil and Gas); 327 Nonmetallic Mineral Product Manufacturing; 211 Oil and Gas Extraction; 322 Paper Manufacturing; 324 Petroleum and Coal Products Manufacturing; 326 Plastics and Rubber Products Manufacturing; 54 Professional, Scientific, and Technical Services; 44-45 Retail Trade; 115 Support Activities for Agriculture and Forestry; 313 Textile Mills; 48-49 Transportation and Warehousing; 221 Utilities; 493 Warehousing and Storage; 321 Wood Product Manufacturing

URL For More Information:

https://www.epa.gov.rulemaking-preventing-hazardous-substance-spills

URL For Public Comments:

https://www.regulations.gov/docket?D=EPA-HQ-OLEM-2018-0024

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EPA—OLEM	

141. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT; RECONSIDERATION OF AMENDMENTS

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 7412(r)

CFR Citation:

40 CFR 68

Legal Deadline:

None

Abstract:

The Environmental Protection Agency (EPA) published in the Federal Register on January 13, 2017, a final rule to amend the Risk Management Program regulations under the Clean Air Act. Prior to the rule becoming effective, EPA received three petitions for reconsideration that raised concerns with provisions of the final rule. EPA subsequently delayed the effective date of the final rule via notice and comment rulemaking to February 19, 2019, in order to conduct a reconsideration proceeding. On May 30, 2018, EPA published proposed changes to the final rule to address specific issues to be reconsidered and other issues that the Agency believes warrant additional public comment.

Statement of Need:

On January 13, 2017, the EPA issued a final rule (82 FR 4594) amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r) of the CAA (42 U.S.C. 7412(r)). The amendments addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to streamline, clarify, and otherwise technically correct the underlying rules. Prior to the rule taking effect, EPA received three petitions for reconsideration of the rule under CAA section 307(d)(7)(B), two from industry groups and one from a group of states. Under that provision, the Administrator is to commence a reconsideration proceeding if, in the Administrator's judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment

period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. In a letter dated March 13, 2017, the Administrator responded to the first of the reconsideration petitions received by announcing the convening of a proceeding for reconsideration of the Risk Management Program Amendments. As explained in that letter, having considered the objections raised in the petition, the Administrator determined that the criteria for reconsideration have been met for at least one of the objections. This proposal addresses the issues raised in all three petitions for reconsideration, as well as other issues that EPA believes warrant reconsideration.

Summary of Legal Basis:

The Agency's procedures in this rulemaking are controlled by CAA section 307(d). The statutory authority for this action is provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). Each of the portions of the Risk Management Program rule we propose to modify in this document are based on section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). EPA's authority for convening a reconsideration proceeding for certain issues is found under CAA section 307(d)(7)(B) or 42 U.S.C. 7607(d)(7)(B).

Alternatives:

EPA's primary proposal would rescind almost all the requirements added under the RMP Amendments rule to the accident prevention provisions program of subparts C (for program 2 processes) and D (for program 3 processes), and associated definitions, as well as the Amendments rule requirements in subpart H for providing to the public, upon request, chemical hazard information and access to community emergency preparedness information. The proposal would also modify the amendments rule provisions in subpart E for local emergency response coordination and emergency exercises, as well as the provisions in subpart H for public meetings after accidents. EPA has also requested public comment on various alternatives, including retaining certain minor changes made to the subparts C and D prevention programs relating to

hazard reviews, incident investigations, training, and others, as well as alternatives to the proposed changes to the local coordination and emergency exercise provisions.

Anticipated Cost and Benefits:

In total, EPA estimates annualized cost savings of $87.9 million at a 3% discount rate and $88.4 million at a 7% discount rate. Most of the annual cost savings under the proposed rule are due to the repeal of the STAA provision (annual savings of $70 million), followed by third-party audits (annual savings of $9.8 million), rule familiarization (annual net savings of $3.7 million), information availability (annual savings of $3.1 million), and root-cause incident investigation (annual savings of $1.8 million). The RMP Amendments Rule produced a variety of non-monetized benefits from prevention and mitigation of future RMP and non-RMP accidents at RMP facilities, avoided catastrophes at RMP facilities, and easier access to facility chemical hazard information. The proposed Reconsideration rule would largely retain the revised local emergency coordination and exercise provisions of the 2017 Amendments final rule, which convey mitigation benefits. The proposed rescission of the prevention program requirements (i.e., third-party audits, incident investigation, STAA), may result in a reduction of these benefits. The proposed rescission of the chemical hazard information availability provision may result in a reduction of the information sharing benefit, although the public meeting, emergency coordination and exercise provisions would still convey a portion of this qualitative benefit. However, the proposed rulemaking would convey the benefit of improved chemical site security, by modifying previously open-ended information sharing provisions of the Amendments rule that might have resulted in an increased risk of terrorism against regulated sources.

Risks:

The chemical accident prevention provisions of Clean Air Act section 112(r) and 40 CFR part 68 address the acute risks to human health and the environment associated with the accidental release of highly toxic and flammable chemicals. Approximately 12,500 U.S. facilities are subject to the provisions of 40 CFR part 68, and much of the U.S. population resides in a community

containing one or more such facilities. EPA believes that the existing part 68 provisions have been successful in reducing the frequency and severity of accidental chemical releases from covered facilities. The RMP Amendments Rule produced a variety of benefits from prevention and mitigation of future RMP and non-RMP accidents at RMP facilities, avoided catastrophes at RMP facilities, and easier access to facility chemical hazard information and accident history. The proposed rule would largely retain the revised local emergency coordination and exercise provisions of the 2017 Amendments final rule, which convey mitigation benefits. If a chemical accident or major catastrophe occurs, mitigating its impacts benefits society by reducing the number of fatalities and injuries, reducing the magnitude of property damage and lost productivity both on-site and off-site, and reducing the extent of public evacuations, sheltering, and expenditure of emergency response resources. These retained provisions along with public meetings also produce benefits by improving the information going to emergency planners, responders, and the public. The proposed reconsideration of the prevention program requirements, as well as certain information disclosure provisions in the RMP Amendments Rule may result in a reduction in prevention and information benefits, relative to the baseline post-2017 Amendments rule. However, as noted above, there may be an increase in security benefits by limiting information sharing, which might result in an increased risk of terrorism against regulated facilities.

Timetable:

Action	**Date**	**FR Cite**
NPRM	05/30/18	83 FR 24850
Notice	07/24/18	83 FR 34967
Correction	07/31/18	83 FR 36837
Final Rule	01/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State, Tribal

Additional Information:

Docket #: EPA-HQ-OEM-2015-0725

Sectors Affected:

325 Chemical Manufacturing; 49313 Farm Product Warehousing and Storage; 42491 Farm Supplies Merchant Wholesalers; 311511 Fluid Milk Manufacturing; 311 Food Manufacturing; 221112 Fossil Fuel Electric Power Generation; 311411 Frozen Fruit, Juice, and Vegetable Manufacturing; 49311 General Warehousing and Storage; 31152 Ice Cream and Frozen Dessert Manufacturing; 311612 Meat Processed from Carcasses; 211112 Natural Gas Liquid Extraction; 32519 Other Basic Organic Chemical Manufacturing; 42469 Other Chemical and Allied Products Merchant Wholesalers; 49319 Other Warehousing and Storage; 322 Paper Manufacturing; 42471 Petroleum Bulk Stations and Terminals; 32411 Petroleum Refineries; 311615 Poultry Processing; 49312 Refrigerated Warehousing and Storage; 22132 Sewage Treatment Facilities; 11511 Support Activities for Crop Production; 22131 Water Supply and Irrigation Systems

URL For More Information:

https://www.epa.gov/rmp

URL For Public Comments:

https://www.regulations.gov/docket?D=EPA-HQ-OEM-2015-0725

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RIN: 2050–AG95

EPA—OLEM	

142. • HAZARDOUS AND SOLID WASTE MANAGEMENT SYSTEM: DISPOSAL OF COAL COMBUSTION RESIDUES FROM ELECTRIC UTILITIES: AMENDMENTS TO THE NATIONAL MINIMUM CRITERIA (PHASE 1, PART 2)

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

42 U.S.C. 6906; 42 U.S.C. 6907; 42 U.S.C. 6912(a); 42 U.S.C. 6944; 42 U.S.C. 6945(c)

CFR Citation:

40 CFR 257

Legal Deadline:

Final, Judicial, June 14, 2019, Issue a final rule 3 years after settlement agreement date (6/14/2016).

Abstract:

The EPA published a proposed rule, Phase One rule in March 2018, to modify the final Coal Combustion Residuals (CCR) Disposal Rule, published April 17, 2015. Issues covered in the proposed rule included the height limitation of the vegetative slopes of dikes; the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in the final CCR rule; and adding boron to the list of contaminants in Appendix IV of the final CCR rule that trigger the corrective action requirements

under the final rule. The Agency is addressing these issues in two final rules; this action is the second of the final rules. The first final rule, Phase One Part One rule was published in July 2018. Within the Phase One Part One rule, the EPA finalized a small number of provisions from the March 2018 Phase One proposed rule. If finalized as proposed, the Phase One Part Two rule would address specific technical issues consistent with a settlement agreement to resolve issues raised in litigation of the final CCR rule. Furthermore, in this rule, the Agency is considering provisions that establish alternative performance standards for owners and operators of CCR units located in states that have approved CCR permit programs, as well as other potential revisions based on comments received since the date of the final CCR rule and petitions for rulemaking that were granted on September 13, 2017.

Statement of Need:

On April 17, 2015, EPA finalized national regulations to regulate the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA) (2015 CCR final rule). The rule was challenged by several different parties, including a coalition of regulated entities and a coalition of public interest environmental organizations. Several of the claims, a subset of the provisions challenged by the industry and environmental petitioners, were settled on April 18, 2016. As part of that settlement, on April 18, 2016, EPA requested the court to remand these claims back to the Agency. On June 16, 2016, the United States Court of Appeals for the District of Columbia Circuit granted EPA's motion. One claim was the subject of a rulemaking completed on August 5, 2016 (81 FR 51802). This proposed rule addresses the remaining claims that were remanded back to EPA.

In addition, in December 2016, the Water Infrastructure Improvements for the Nation (WIIN) Act established new statutory provisions applicable to CCR units, including authorizing States to implement the CCR rule through an EPA-approved permit program and authorizing EPA to enforce the rule. In light of the legislation, EPA is proposing amendments for certain performance standards to provide flexibility to the State programs, which would be consistent with the WIIN

Act's standard for approval of State programs. State programs require each CCR unit located in the State to achieve compliance with either the federal CCR rule or State criteria that EPA determines to be as protective as the existing federal CCR requirements.

Summary of Legal Basis:

As part of the settlement agreement discussed above, EPA committed to make best efforts to take final action on the remaining claims by June 14, 2019.

Alternatives:

According to the terms of the settlement agreement discussed above, the Agency must provide public notice and opportunity for comment on these issues. Each of these settlement-related amendments is fairly narrow in scope and EPA has not identified any significant alternatives for analysis. Regarding the WIIN Act implementation amendments, one alternative would be not to include these additional issues in the CCR remand proposal since they are not subject to a deadline.

Anticipated Cost and Benefits:

EPA will provide estimates of costs and benefits resulting from this proposed rule once they are fully developed and have received Agency clearance.

Risks:

As compared with the risks to human health and the environment that were presented in the 2015 CCR final rule, the proposed amendments discussed in this action are not expected to impact the overall conclusions in the 2015 final rule. As a result, the Agency believes these amendments, if finalized as proposed, would be protective of human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/15/18	83 FR 11584
NPRM Comment Period End	04/30/18	
Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

Docket #: EPA-HQ-OLEM-2017-0286. Linked to 2050-AG88

Sectors Affected:

221112 Fossil Fuel Electric Power Generation

URL For More Information:

https://www.epa.gov/coalash

URL For Public Comments:

https://www.regulations.gov/docket?D=EPA-HQ-OLEM-2017-0286

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Related RIN:

Related to 2050–AG88

RIN: 2050–AH01

EPA—Office of Water(OW)	FINAL RULE STAGE

143. DEFINITION OF "WATERS OF THE UNITED STATES"—RECODIFICATION OF PREEXISTING RULE

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

33 U.S.C. 1251 et seq.

CFR Citation:

40 CFR 110; 40 CFR 112; 40 CFR 116; 40 CFR 117; 40 CFR 122; 40 CFR 230; 40 CFR 232; 40 CFR 300; 40 CFR 302; 40 CFR 401

Legal Deadline:

None

Abstract:

In 2015, the Environmental Protection Agency and the Department of the Army (the agencies) published the Clean Water Rule: Definition of "Waters of the United States" (2015 Rule) 80 FR 37054, June 29, 2015). On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court. On February 28, 2017, the President signed Executive Order 13778, Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the "Waters of the United States" Rule, which instructed the agencies to review the 2015 rule and rescind or replace it as appropriate and consistent with law. The

agencies published a proposed rule to initiate the first step in a comprehensive, two-step process consistent with the Executive order. In this first step, the agencies sought to recodify the definition of "Waters of the United States" that existed prior to the 2015 Rule. This rule for the first step will now be finalized.

Statement of Need:

This rulemaking action responds to the February 28, 2017, Presidential Executive Order: Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Â‘"Waters of the United States" Rule. To meet the objectives of the Executive order, the agencies are engaged in a comprehensive two-step rulemaking process. Under the first step of this rulemaking process, the proposed rule will recodify the regulatory text that was in place prior to the 2015 Clean Water Rule and that is currently in place as a result of the Agencies' February 2018 final rule to add an applicability date of February 6, 2020 to the 2015 Rule.

Summary of Legal Basis:

The rule is proposed under the Clean Water Act, 33 U.S.C. section 1251 et seq.

Alternatives:

In this first step, the Agencies have proposed to repeal the 2015 definition of "waters of the United States" and codify the legal status quo that is currently being administered in light of the February 2018 final rule to add an applicability date to the 2015 Rule. This rule will result in the recodification of the regulations that existed prior to the 2015 Rule to provide regulatory certainty while the agencies engage in a second rulemaking to reconsider the definition of "waters of the United States." As a result, the Agencies did not propose any alternatives for this proposed rule.

Anticipated Cost and Benefits:

The agencies estimated the avoided costs and forgone benefits of repealing the 2015 Rule. Annual avoided costs range from $162.2 to $313.9 million for the low-end scenario and $242.4 to $476.2 million for the high-end scenario (at 2016 price levels). All of the forgone benefit categories were not fully quantified in the economic analysis for the proposed rule. The annual forgone benefits range from $33.6 million + unquantified forgone benefits to $44.5 million + unquantified forgone benefits for the low-end scenario and $55.0 million + unquantified forgone benefits to $72.8 million + unquantified forgone benefits in the high-end scenario. The economic analysis can be found in the docket for the proposed rulemaking.

Risks:

Because the proposed rule maintains the status quo, there are no environmental or health risks associated with this effort.

Timetable:

Action	**Date**	**FR Cite**
NPRM	07/27/17	82 FR 34899
NPRM Comment Period Extended	08/22/17	82 FR 39712
Supplemental NPRM	07/12/18	83 FR 32227
Final Rule	03/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Docket #:EPA-HQ-OW-2017-0203

URL For More Information:

https://www.epa.gov/wotus-rule/proposed-rule-definition-waters-united-states-recodification-pre-existing-rules

URL For Public Comments:

https://www.regulations.gov/docket?D=EPA-HQ-OW-2017-0203

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BILLING CODE 6560–50–P

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 and educating the public about the following Federal statutes: title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex (including pregnancy), religion, or national origin); the Equal Pay Act of 1963, as amended (makes it illegal to pay unequal wages to men and women performing substantially equal work under similar working conditions at the same establishment); the Age Discrimination in Employment Act of 1967, as amended (prohibits employment discrimination based on age of 40 or older); titles I and V of the Americans with Disabilities Act, as amended, and sections 501 and 505 of the Rehabilitation Act, as amended (prohibit employment discrimination based on disability); Title II of the Genetic Information Nondiscrimination Act (prohibits employment discrimination based on genetic information and limits acquisition and disclosure of genetic information); and section 304 of the Government Employee Rights Act of 1991 (protects certain previously exempt state and local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability).

The EEOC has authority to issue legislative regulations under the Age Discrimination in Employment Act, title I of the Americans with Disabilities Act (ADA), and title II of the Genetic Information Nondiscrimination Act (GINA). Under title VII of the Civil Rights Act, EEOC's authority to issue legislative regulations is limited to procedural, record keeping, and reporting matters.

Two items are identified in this Regulatory Plan. On August 22, 2017, the U.S. District Court for the District of Columbia ordered the EEOC to reconsider its regulations under the ADA and GINA related to incentives and employer-sponsored wellness plans. *See AARP v. EEOC*, Civ. Action No. 16-2113 (D.D.C. Aug. 22, 2017). In accordance with the Court's ruling, the EEOC will consider and take actions to cure defects in the rules. The EEOC's Fall 2018 Regulatory Agenda states that NPRMs are expected to be issued by June 2019.

Executive Order 13771 Statement

EEOC does not anticipate finalizing any regulatory or deregulatory actions subject to Executive Order 13771 in the next 12 months. The two rules related to wellness programs under the ADA and GINA are significant under EO 12866, but are not expected to be finalized in the next 12 months.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chair of the Agency. The statement has not been reviewed or approved by the other members of the Commission.

EEOC	PROPOSED RULE STAGE

144. AMENDMENTS TO REGULATIONS UNDER THE AMERICANS WITH DISABILITIES ACT

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 12101 et seq.

CFR Citation:

29 CFR 1630

Legal Deadline:

None

Abstract:

This rule amends the regulations to implement the equal employment provisions of the Americans with Disabilities Act (ADA) to address the interaction between title I of the ADA and wellness programs. On August 22, 2017, the U.S. District Court for the District of Columbia ordered the EEOC to reconsider its regulations under the ADA related to incentives and employer-sponsored wellness plans. *See AARP v. EEOC*, Civ. Action No. 16-2113 (D.D.C. Aug. 22, 2017). In accordance with the court's ruling, the EEOC will consider and take actions to cure defects in the rule. The final rule was published on May 17, 2016, (81 FR 31125) and completed in the fall 2016 agenda as RIN 3046-AB01.

Statement of Need:

The revision to 29 CFR 1630.14(d) is needed in accordance with the District Court's ruling noted above.

Summary of Legal Basis:

The ADA requires the EEOC to issue regulations implementing title I of the Act. The EEOC initially issued regulations in 1991 on the law's requirements and prohibited practices with respect to employment and issued amended regulations in 2011 to conform to changes to the ADA made by the ADA Amendments Act of 2008. The EEOC again issued regulations in May 2016 to address the interaction between title I of the ADA and wellness programs. The U.S. District Court for the District of Columbia ordered the EEOC to reconsider these regulations in August 2017. These new revisions are based on the court's order, as well as the statutory requirement to issue regulations to implement title I of the ADA.

Alternatives:

The EEOC will consider all alternatives offered by the public commenters.

Anticipated Cost and Benefits:

Based on the information currently available, the Commission does not anticipate that the rule will impose additional costs on employers, beyond minimal costs to train human resource professionals. The regulation does not impose any new employer reporting or recordkeeping obligations. We anticipate that the changes will benefit entities covered by title I of the ADA by clarifying employers' obligations under the ADA.

Risks:

The rule imposes no new or additional risks to employers. The rule does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State

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Related RIN:

Previously reported as 3046–AB01

RIN: 3046–AB10

EEOC	

145. AMENDMENTS TO REGULATIONS UNDER THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 2000ff

CFR Citation:

29 CFR 1635

Legal Deadline:

None

Abstract:

This rule amends the regulations on the Genetic Information Nondiscrimination Act of 2008 (GINA) to address wellness programs. On August 22, 2017, the U.S. District Court for the District of Columbia ordered the EEOC to reconsider its regulations under GINA related to incentives and employer-sponsored wellness plans. *See AARP v. EEOC*, Civ. Action No. 16-2113 (D.D.C. Aug. 22, 2017). In accordance with the court's ruling, the EEOC will consider and take actions to cure defects in the rule. The final rule was published on May 17, 2016, (81 FR 31143) and completed in the fall 2016 agenda as RIN 3046-AB02.

Statement of Need:

The revision to 29 CFR 1635.8 is needed in accordance with the District Court's ruling noted above.

Summary of Legal Basis:

GINA, section 211, 42 U.S.C. section 2000ff-10, requires the EEOC to issue regulations implementing title II of the Act. The EEOC issued regulations on November 9, 2010. In May 2016, the EEOC issued an amendment to the regulations which dealt with the interaction between title II of GINA and wellness programs. The U.S. District Court for the District of Columbia ordered the EEOC to reconsider these regulations in August 2017. These new revisions are based on the court order, as well as the statutory requirement.

Alternatives:

The EEOC will consider all alternatives offered by public commenters.

Anticipated Cost and Benefits:

Based on the information currently available, the Commission does not anticipate that the rule will impose additional costs on employers, beyond minimal costs to train human resource professionals. The regulation does not impose any new employer reporting or recordkeeping obligations. We anticipate that the changes will benefit entities covered by title II of GINA by clarifying employers' obligations under GINA.

Risks:

The rule imposes no new or additional risks to employers. The rule does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State

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Related RIN:

Related to 3046–AB02

RIN: 3046–AB11

BILLING CODE 6570-01-P

GENERAL SERVICES ADMINISTRATION (GSA) – Regulatory Plan – October 2018

GSA oversees the business of the Federal Government. GSA's acquisition solutions supply Federal purchasers with cost-effective, high-quality products, and services from commercial vendors. GSA provides workplaces for Federal employees and oversees the preservation of historic Federal properties. GSA helps keep the nation safe and efficient by providing tools, equipment, and non-tactical vehicles to the U.S. military, and providing state and local governments with law enforcement equipment, firefighting and rescue equipment, and disaster recovery products and services.

GSA serves the public by delivering products and services directly to its Federal customers through the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and the Office of Government-wide Policy (OGP). GSA has a continuing commitment to its Federal customers and the U.S. taxpayers by providing those products and services in the most cost-effective manner possible.

Federal Acquisition Service (FAS)

FAS is the lead organization for procurement of products and services (other than real property) for the Federal Government. The FAS organization leverages the buying power of the Government by consolidating Federal agencies' requirements for common goods and services. FAS provides a range of high-quality and flexible acquisition services to increase overall Government effectiveness and efficiency by aligning resources around key functions.

Public Buildings Service (PBS)

PBS is the largest public real estate organization in the United States. As the landlord for the civilian Federal Government, PBS acquires space on behalf of the Federal Government through new construction and leasing, and acts as a manager for Federal properties across the country. PBS is responsible for over 370 million rentable square feet of workspace for Federal employees, owns 1,600 plus assets totaling over 180 million rentable square feet, and contracts for more than 7,000 plus leased assets totaling over 180 million rentable square feet.

Office of Government-wide Policy (OGP)

OGP sets Government-wide policy in the areas of personal and real property, mail, travel, relocation, transportation, information technology, regulatory information, and the use of Federal

advisory committees. OGP also helps direct how all Federal supplies and services are acquired as well as GSA's own acquisition programs.

OGP's policy regulations are described in the following subsections:

Office of Asset and Transportation Management - Federal Travel Regulation

The Federal Travel Regulation (FTR) enumerates travel and relocation policy for all U.S. Code, Title 5 Executive agency employees at www.gpoaccess.gov/cfr. Federal Register publications and complete versions of the FTR are available at www.gsa.gov/ftr. The Federal Travel Regulation presents policies in a clear manner to both agencies employees to assure that official travel is performed responsibly.

Office of Asset and Transportation Management - Federal Management Regulation

The Federal Management Regulation (FMR) establishes policy for Federal aircraft management, mail management, transportation, personal property, real property, and committee management. The FMR is the successor regulation to the Federal Property Management Regulation (FPMR), and it contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material that describes how to do business with GSA. The FMR is in 41 CFR, chapters 101 through 102, and it implements statutory requirements and executive branch policies.

Office of Acquisition Policy - General Services Administration Acquisition Manual (GSAM) and General Services Administration Acquisition Regulation (GSAR)

GSA's internal rules and practices on how it buys goods and services from its business partners are covered by the General Services Administration Acquisition Manual (GSAM), which implements and supplement the Federal Acquisition Regulation at GSA. The GSAM comprises both a non-regulatory portion (GSAM), which reflects policies with no external impact, and a regulatory portion, the General Services Administration Acquisition Regulation (GSAR). The GSAR establishes agency acquisition regulations that affect GSA's business partners (e.g., prospective offerors and contractors) and acquisition of leasehold interests in real property. The latter are established under the authority of 40 U.S.C. 585, et seq. The GSAR implements

contract clauses, solicitation provisions, and standard forms that control the relationship between GSA and contractors and prospective contractors.

Regulatory and Deregulatory Activities

GSA's Regulatory Reform Task Force, established under Executive Order 13777, enforcing the Regulatory Reform Agenda, and is making it easier to do business with GSA by eliminating outdated, ineffective, or unnecessary regulations and policies. When GSA established its Regulatory Reform Task Force it set up four informal working groups, led by career employees, and gave them broad authority to review and evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification. Those working groups are organized around the agency's primary functions and regulations: the Federal Management Regulation, the Federal Travel Regulation, the GSA Acquisition Regulation, and policies relating to leasing of buildings.

During Fiscal Year 2018, GSA completed two (2) deregulatory actions.

- GSA issued a final GSAR rule on January 24, 2018 to incorporate order level materials (OLMs), also known as other direct costs (ODCs). This rule, which was implemented in June 2018, will make it easier for customer agencies to buy, and industry partners to provide, complete procurement solutions through the Federal Supply Schedules while ensuring excellent value for taxpayer dollars.

- GSA issued a final GSAR rule on February 22, 2018 to address common commercial supplier agreement (CSA) terms that are inconsistent with or create ambiguity with federal law. This rule, which was implemented in June 2018, mitigates risk for GSA's federal agency customers, reduces proposal and administrative costs for industry partners, and helps expedite the contract review process for GSA Contracting Officers.

Regulatory and Deregulatory Priorities

Permitting Council Priorities

Fees for Governance, Oversight and Processing of Environmental Reviews and Authorizations; The Permitting Council proposes to establish a fee structure to reimburse the Permitting Council and its Office of the Executive Director for reasonable costs to implement certain requirements and authorities required under FAST-41.

Federal Management Regulation (FMR) Priorities

GSA is amending the FMR by removing language that is not regulatory, revising rules of Federal personal property, management of transportation and the management, construction, and disposal of Federal real property. The appropriate real property regulations are being aligned with the various provisions in the Federal Sales and Transfer Act of 2016 and the Federal Property Management Reform Act of 2016. In addition, e.g. the Transportation Management regulation is being streamlined by consolidating policies into fewer subparts and modifying provisions to incorporate newer authorities.

Federal Property Management Regulation (FPMR) Priorities

GSA is amending the FPMR by migrating regulations regarding the supply and procurement of Government personal property management and Interagency Fleet Management Systems from the FPMR to the FMR.

Federal Travel Regulation (FTR) Priorities

GSA is amending the FTR. The Relocation Regulation was impacted by the recent Tax Cuts and Jobs Act. The amendment addresses both the moving expenses income tax deduction and qualified moving expense reimbursement. Also, in addition, the FTR is being amended to revise the payment in kind fee associated with registration fees provided by non-Federal sources for speakers and panelists at meetings.

General Services Administration Acquisition Regulation (GSAR) Priorities

GSA is amending the GSAR to implement streamlined and innovative acquisition procedures. GSAR initiatives are focused on:

- Adopting a major construction project delivery method involving early industry engagement;

- Establishing contractual arrangements and ordering procedures for commercial eCommerce portals;
- Streamlining contract requirements for GSA information systems;
- Establishing cyber incident reporting procedures; and
- Revising the requirements for Schedules contract and construction contract administration.

Regulations of Concern to Small Businesses

GSAR Case 2017-G502, Transition to Small Business Administration Mentor-Protégé Program, is of interest to small businesses as it will discontinue the GSA agency-level mentor-protégé program. The mentor-protégé program will instead be centralized and managed Government-wide by SBA, as discussed in the SBA rule at 81 FR 48557.

Regulations Which Promote Open Government and Disclosure

GSPMR Case 2016-105-01, Public Availability of Agency Records and Informational Materials; Proposed Rule. The GSA is issuing a proposed rule to amend its regulations implementing the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline language of several procedural provisions and to incorporate certain changes brought about by the amendments to the FOIA under both statutory and nonstatutory authorities. This rule also amends the GSA's regulations under the FOIA to incorporate certain changes made to the FOIA by the FOIA Improvement Act of 2016.

DATED: July 27, 2018.

NAME: Jessica Salmoiraghi.

Associate Administrator,

Office of Government-wide Policy.

BILLING CODE 6820-14

GSA	PROPOSED RULE STAGE

146. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR); GSAR CASE 2015–G506, ADOPTION OF CONSTRUCTION PROJECT DELIVERY METHOD INVOLVING EARLY INDUSTRY ENGAGEMENT

Priority:

Other Significant

EO 13771 Designation:

Deregulatory

Legal Authority:

40 U.S.C. 121(c)

CFR Citation:

48 CFR 536; 48 CFR 552

Legal Deadline:

None

Abstract:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to adopt an additional project delivery method for construction, construction manager as constructor (CMc). The current FAR and GSAR lacks detailed coverage differentiating various construction project delivery methods. GSA's policies on

CMc have been previously issued through other means. By incorporating CMc into the GSAR and differentiating for various construction methods, the GSAR will provide centralized guidance to ensure consistent application of construction project principles across the organization. Integrating these requirements into the GSAR will also allow industry to provide public comments through the rulemaking process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	
NPRM Comment Period End	01/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 3090–AJ64

GSA	

147. GENERAL SERVICES ACQUISITION REGULATION (GSAR); GSAR CASE 2016–G511, CONTRACT REQUIREMENTS FOR GSA INFORMATION SYSTEMS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

40 U.S.C. 121(c)

CFR Citation:

48 CFR 501; 48 CFR 502; 48 CFR 511; 48 CFR 539; 48 CFR 552

Legal Deadline:

None

Abstract:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline and update requirements for contracts that involve GSA information systems. GSA's unique policies on cybersecurity and other information technology requirements have been previously communicated through other means. By incorporating these requirements into the GSAR, the GSAR will provide centralized guidance to ensure consistent application across the organization. Integrating these requirements into the GSAR will also allow industry to provide public comments through the rulemaking process.

GSA's cybersecurity requirements mandate contractors protect the confidentiality, integrity, and availability of unclassified GSA information and information systems from cybersecurity vulnerabilities, and threats in accordance with the Federal Information Security Modernization Act of 2014 and associated Federal cybersecurity requirements. This rule will require contracting officers to incorporate applicable GSA cybersecurity requirements within the statement of work to ensure compliance with Federal cybersecurity requirements and implement best practices for preventing cyber incidents. These GSA requirements mandate applicable controls and standards (e.g., U.S. National Institute of Standards and Technology, U.S. National Archive and Records Administration Controlled Unclassified Information standards).

Contract requirements for internal information systems, external contractor systems, cloud systems, and mobile systems will be covered by this rule. This rule will also update existing GSAR provision 552.239-70, Information Technology Security Plan and Security Authorization and GSAR clause 552.239-71, Security Requirements for Unclassified Information Technology

Resources to only require the provision and clause when the contract will involve information or information systems connected to a GSA network.

Timetable:

Action	Date	FR Cite
NPRM	02/00/19	
NPRM Comment Period End	04/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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GSA	

148. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR); GSAR CASE 2016–G515, CYBER INCIDENT REPORTING

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

40 U.S.C. 121(c)

CFR Citation:

48 CFR 501; 48 CFR 502; 48 CFR 504; 48 CFR 539; 48 CFR 552

Legal Deadline:

None

Abstract:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to provide requirements for GSA contractors to report cyber incidents that could potentially affect GSA or its customer agencies. The rule integrates the existing cyber incident reporting policy within GSA Order CIO 9297.2C, GSA Information Breach Notification Policy that did not previously go through the rulemaking process into the GSAR. By incorporating cyber incident reporting requirements into the GSAR, the GSAR will provide centralized guidance to ensure consistent application of cybersecurity principles across the organization. Integrating these requirements into the GSAR will also allow industry to provide public comments through the rulemaking process.

The rule outlines the roles and responsibilities of the GSA contracting officer, contractors, and agencies ordering off of GSA's contracts in the reporting of a cyber incident.

The rule establishes a contractor's responsibility to report any cyber incident where the confidentiality, integrity, or availability of GSA information or information systems are potentially compromised or where the confidentiality, integrity, or availability of information or information systems owned or managed by or on behalf of the U.S. Government is potentially compromised. It establishes an explicit timeframe for reporting cyber incidents, details the required elements of a cyber incident report, and provides the required Government's points of contact for submitting the cyber incident report.

The rule also outlines additional contractor requirements that may apply for any cyber incidents involving personally identifiable information. In addition, the rule clarifies both GSA's and ordering agencies' authority to access contractor systems in the event of a cyber incident. It also establishes the role of GSA in the cyber incident reporting process and explains how the primary response agency for a cyber incident is determined. Further, it establishes the requirement for contractors to preserve images of affected systems and ensure contractor employees receive appropriate training for reporting cyber incidents. The rule also outlines how contractor

attributional/proprietary information provided as part of the cyber incident reporting process will be protected and used.

Timetable:

Action	Date	FR Cite
NPRM	04/00/19	
NPRM Comment Period End	06/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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GSA	

149. FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL (FPISC); FPISC CASE 2018–001; FEES FOR GOVERNANCE, OVERSIGHT, AND PROCESSING OF ENVIRONMENTAL REVIEWS AND AUTHORIZATIONS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

42 U.S.C. 4370m–8

CFR Citation:

40 CFR 1900

Legal Deadline:

None

Abstract:

GSA proposes to establish a fee structure to reimburse the Federal Permitting Improvement Steering Council and its Office of the Executive Director for reasonable costs incurred in coordinating environmental reviews and authorizations in implementing title 41 of the Fixing America's Surface Transportation Act. GSA will issue this regulation on behalf of the Federal Permitting Improvement Steering Council.

Timetable:

Action	Date	FR Cite
NPRM	09/04/18	83 FR 44846
NPRM Comment Period End	11/05/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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GSA	FINAL RULE STAGE

150. 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

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

40 U.S.C. 121(c); 40 U.S.C. 502(c)(1)(B)

CFR Citation:

48 CFR 511; 48 CFR 516; 48 CFR 532; 48 CFR 538; 48 CFR 546; 48 CFR 552

Legal Deadline:

None

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	02/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, Local, State

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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GSA	

151. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR); GSAR CASE 2013–G502, FEDERAL SUPPLY SCHEDULE CONTRACT ADMINISTRATION

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

40 U.S.C. 121(c)

CFR Citation:

48 CFR 501; 48 CFR 515; 48 CFR 538; 48 CFR 552

Legal Deadline:

None

Abstract:

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to clarify and update the contracting by negotiation GSAR section and incorporate existing Federal Supply Schedule Contracting policies and procedures, and corresponding provisions and clauses.

Timetable:

Action	Date	FR Cite

NPRM	09/10/14	79 FR 54126
NPRM Comment Period End	11/10/14	
Final Rule	02/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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GSA	

152. • GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR); GSAR CASE 2019–G501, ORDERING PROCEDURES FOR COMMERCIAL E–COMMERCE PORTALS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

40 U.S.C. 121(c)

CFR Citation:

48 CFR 572

Legal Deadline:

None

Abstract:

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to establish competition procedures when using commercial e-commerce portals established pursuant to section 846 of the National Defense Authorization Act for Fiscal Year 2018. Current competition procedures do not align with, nor reflect, technological innovation when purchasing from commercial e-commerce portals. This rule aims to modernize the buying experience in partnership with commercial e-commerce portal providers, enabling GSA to combine competition with speed, and will allow the procedures to evolve as technology advances.

Timetable:

Action	**Date**	**FR Cite**
Interim Final Rule	03/00/19	
Interim Final Rule Comment Period End	05/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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BILLING CODE 6820–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

The National Aeronautics and Space Administration's (NASA) aim is to increase human understanding of the solar system and the universe that contains it and to improve American aeronautics ability. NASA's basic organization consists of the Headquarters, nine field Centers, the Jet Propulsion Laboratory (a federally funded research and development center), and several component installations which report to Center Directors. Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters, located in Washington, DC.

NASA continues to implement programs according to its 2018 Strategic Plan. The Agency's mission is to "Lead an innovative and sustainable program of exploration with commercial and international partners to enable human expansion across the solar system and

bring new knowledge and opportunities back to Earth. Support growth of the Nation's economy in space and aeronautics, increase understanding of the universe and our place in it, work with industry to improve America's aerospace technologies, and advance American leadership." The FY 2018 Strategic Plan (available at https://www.nasa.gov/sites/default/files/atoms/files/nasa_2018_strategic_plan.pdf) guides NASA's program activities through a framework of the following four strategic goals:

- Strategic Goal 1: Expand human knowledge through new scientific discoveries.
- Strategic Goal 2: Extend human presence deeper into space and to the Moon for sustainable long-term exploration and utilization.
- Strategic Goal 3: Address national challenges and catalyze economic growth.
- Strategic Goal 4: Optimize capabilities and operations.

In the decades 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 humankind. NASA will continue to push scientific and technical boundaries in pursuit of these goals.

NASA's Regulatory Philosophy and Principles

The Agency's rulemaking program strives to be responsive, efficient, and transparent. As noted in Executive Order 13609, "Promoting International Regulatory Cooperation" (May 1, 2012), international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting public health, welfare, safety, and our environment as well as economic growth, innovation, competitiveness, and job creation.

NASA, along with the Departments of State and Commerce and Defense, engage with other countries in the Wassenaar Arrangement, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime through which the international community develops a common list of items that should be subject to export controls. NASA has also been a key participant in the Administration's Export Control Reform effort that resulted in a complete overhaul of the U.S. Munitions List and fundamental changes to the Commerce Control List. New

controls have facilitated transfers of goods and technologies to allies and partners while helping prevent transfers to countries of national security and proliferation concerns.

Executive Order 13777, “Enforcing the Regulatory Reform Agenda” (February 24, 2017), required NASA to appoint a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies and establish a Regulatory Reform Task Force (Task Force) to review and evaluate existing regulations and make recommendations to the Agency head regarding their repeal, replacement, or modification, consistent with applicable law. NASA is doing this work primarily through its work as a signatory to the Federal Acquisition Regulatory Council.

The FAR at 48 CFR chapter 1 contains procurement regulations that apply to NASA and other Federal agencies. Pursuant to 41 U.S.C. section 1302 and FAR 1.103(b), the FAR is jointly prepared, issued, and maintained by the Secretary of Defense, the Administrator of General Services, and the Administrator of NASA, under their several statutory authorities.
These reform initiatives and policies include Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs” (January 30, 2017), section 6 of Executive Order 13563, “Improving Regulation and Regulatory Review” (January 18, 2011), and Executive Order 12866.

In addition, NASA implements and supplements FAR requirements through the NASA FAR Supplement (NFS), 48 CFR chapter 18. As a result of the ongoing review, evaluation, and recommendations of the FAR Task Force and internal Agency discussions, NASA has identified priority regulatory and deregulatory actions that reduce costs to the public by eliminating unnecessary, ineffective, and duplicative regulations.

The Agency has focused its regulatory resources on the most serious acquisition, health, and personnel and readiness risks as discussed below.

NASA will revise the NASA FAR Supplement (NFS) to implement section 823 of NASA Transition Authorization of 2017 (Pub. L. 115-10) to improve the detection and avoidance of counterfeit electronic parts in the supply chain. This revision will add a contract clause to the NFS to require each covered contractor, including a subcontractor, to detect and avoid the inclusion of any counterfeit parts in electronic parts or products that contain electronic parts, take

corrective actions necessary to remedy, and notify the applicable NASA contracting officer not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part, or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA contains a counterfeit electronic part or suspect counterfeit electronic part.

NASA	PROPOSED RULE STAGE

153. DETECTION AND AVOIDANCE OF COUNTERFEIT PARTS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

sec. 823 of the NASA Transition Authorization Act of 2017 (Pub L. 115–10; 51 U.S.C. 20113)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

NASA is proposing to amend the NFS Supplement to implement section 823 of NASA Transition Authorization of 2017 (Pub. L. 115-10) to improve the detection and avoidance of counterfeit electronic parts in the supply chain. This proposed rule will add a contract clause to the NFS to require each covered contractor, including a subcontractor, to detect and avoid the inclusion of any counterfeit parts in electronic parts or products that contain electronic parts and to take corrective actions necessary to remedy or inclusion.

Timetable:

Action	**Date**	**FR Cite**
Proposed Rule	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

Overview

The National Archives and Records Administration (NARA) primarily issues regulations directed to other Federal agencies. These regulations include records management, information services, and information security. For example, 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, controlled unclassified information (CUI), and declassification programs; through the Office of Government Information Services, NARA issues Governmentwide regulations concerning Freedom of Information Act (FOIA) dispute resolution services and FOIA ombudsman functions; and through the Office of the Federal Register, NARA issues regulations concerning publishing Federal documents in the **Federal Register**, *Code of Federal Regulations*, and other publications.

NARA regulations directed to the public primarily address access to and use of our historically valuable holdings, including archives, donated historical materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA has two regulatory priorities for fiscal year 2018, which are included in The Regulatory Plan. The first priority is to update our electronic records management regulation to account for changes to 44 U.S.C. section 3302 which require NARA to issue standards for digital reproductions of records with an eye toward allowing agencies to then dispose of the original

source records. Agencies have begun major digitization projects and will be doing more in the future. Under the statutory provisions in 44. U.S.C. section 3302, agencies may not dispose of original source records due to having digitized them (prior to the disposal authority date established in a records schedule) unless they have digitized the records according to standards established by NARA. NARA is initiating two rulemaking actions to establish the necessary digitization standards: one rule for temporary records (records of short-term, temporary value that are not appropriate for preservation in the National Archives of the United States), and another rule for permanent records (permanently valuable and appropriate for preservation in the National Archives of the United States).

The second priority this fiscal year is a new regulation for the Office of Government Information Services (OGIS). The Open Government Act of 2007 (Pub. L. No. 110-175, 121 Stat. 2524) amended the Freedom of Information Act (FOIA) (5 U.S.C. 552, as amended), and created OGIS within the National Archives and Records Administration (NARA). OGIS is finalizing regulations, pursuant to 44 U.S.C. 2104, to clarify, elaborate upon, and specify the procedures in place for Federal agencies and public requesters who seek OGIS's dispute resolution services within the FOIA system. The regulation will describe one of the areas in which OGIS carries out its role as the Federal FOIA Ombudsman by working with Federal agencies to provide an alternative to litigation in resolving FOIA disputes.

BILLING CODE 7515–01–P

U.S. Office of Personnel Management

Statement of Regulatory and Deregulatory Priorities

Fall 2018 Unified Agenda

OPM works in several broad categories to recruit, retain and honor a world-class workforce for the American people.

- We manage Federal job announcement postings at USAJOBS.gov, and set policy on governmentwide hiring procedures.

- We conduct background investigations for prospective employees and security clearances across government, with hundreds of thousands of cases each year.
- We uphold and defend the merit systems in Federal civil service, making sure that the Federal workforce uses fair practices in all aspects of personnel management.
- We manage pension benefits for retired Federal employees and their families. We also administer health and other insurance programs for Federal employees and retirees.
- We provide training and development programs and other management tools for Federal employees and agencies.
- In many cases, we take the lead in developing, testing and implementing new Governmentwide policies that relate to personnel issues.

Altogether, we work to make the Federal Government America's model employer for the 21st century.

OPM's Regulatory Philosophy and Principles

Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (February 24, 2017), required OPM to appoint a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies and establish a Regulatory Reform Task Force (Task Force) to review and evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.

These reform initiatives and policies include Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" (January 30, 2017), section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011), and Executive Order 12866.

In relation to Executive Order 13771, many of OPM's agenda items are either exempt under section 4(b) of the order, or deregulatory. OPM published the following deregulatory item in fiscal year 2018.

- **Federal Employees Health Benefits Program Flexibilities**--This final rule added additional flexibility to the Federal Employees Health Benefits (FEHB) Program so that all carriers will be able to offer three plan options, one of which may be a High Deductible plan option. Employee Organization and Comprehensive Medical plans already have this flexibility. In the past not all

carriers could offer more than two options. This change will level the playing field in terms of options offered to Federal employees, annuitants, and their eligible family members. This action was necessary to promote a competitive environment where carriers have an incentive to offer higher quality benefits at affordable prices and broader provider networks. This regulation fully aligns with the Administration's goal of promoting affordable health plan choices.

The agenda includes one rule that promotes open government and uses disclosure as a regulatory tool.

- **Freedom of Information Act (FOIA) Regulations--**This proposed rule seeks to remove obsolete sections of OPM's FOIA regulations and incorporate all FOIA amendments, inclusive of the FOIA Improvement Act of 2016.

OPM also has a number of regulatory items that focus on Administration priorities and Executive Orders. These include:

- **Administrative Law Judges -** The U.S. Office of Personnel Management (OPM) is issuing interim regulations governing the appointment and employment of Administrative Law Judges (ALJ). This rule will implement changes to the appointment and employment of ALJs as required by Executive Order 13843.

- **Direct-Hire Authority for Agency Chief Information Officers**—This proposed rule revises OPM direct-hire authority (DHA) regulations for the implementation of Executive Order (EO) 13833 titled, "Enhancing the Effectiveness of Agency Chief Information Officers," which requires OPM to issue proposed regulations necessary to grant DHA for information technology (IT) positions under certain conditions.

A fully searchable e-Agenda is available for viewing in its entirety at www.reginfo.gov. Agenda information is also available at www.regulations.gov, the government-wide website for submission of comments on proposed regulations. Our fall 2018 agenda follows.

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OPM	PROPOSED RULE STAGE

154. FREEDOM OF INFORMATION ACT (FOIA) REGULATIONS

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 552

CFR Citation:

5 CFR 294

Legal Deadline:

None

Abstract:

The Office of Personnel Management (OPM) proposes to amend its Freedom of Information Act (FOIA) regulations. The Freedom of Information Act was enacted in 1966. This revision is required to incorporate all of the subsequent FOIA amendments, inclusive of the FOIA Improvement Act of 2016.

Statement of Need:

The Office of Personnel Management (OPM) proposes to amend the OPM FOIA regulations. The Freedom of Information Act was enacted in 1966. This revision is required to incorporate all of the subsequent FOIA amendments, inclusive of the FOIA Improvement Act.

Summary of Legal Basis:

In accordance with 5 U.S.C. 552, OPM and every federal agency shall make available to the public, information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Alternatives:

N/A.

Anticipated Cost and Benefits:

None.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	07/24/08	73 FR 43153
NPRM Comment Period End	09/22/08	
Second NPRM	03/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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OPM	

155. • DIRECT–HIRE AUTHORITY FOR AGENCY CHIEF INFORMATION OFFICERS

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 3304(a)(3)

CFR Citation:

5 CFR Part 337

Legal Deadline:

None

Abstract:

The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to revise its direct-hire authority (DHA) regulations for the implementation of Executive Order (EO) 13833 titled, Enhancing the Effectiveness of Agency Chief Information Officers, which requires OPM to issue proposed regulations necessary to grant DHA for information technology (IT) positions under certain conditions. This will enhance the Government's ability to recruit needed IT professionals and it allows Agencies to make the initial determination whether they have a severe-shortage of candidates or critical hiring need.

Statement of Need:

The U.S. Office of Personnel is revising the Direct-Hire Authority (DHA) regulation in Part 337 to implement the provisions of Executive Order 13833. The proposed regulation will allow certain agencies to determine whether a severe shortage of candidates (or, with respect to the Department of Veterans Affairs, that there exists a severe shortage of highly qualified candidates) or a critical hiring need exists for IT positions for purposes of establishing DHA.

Summary of Legal Basis:

On May 15, 2018, the President signed EO 13833, titled, Enhancing the Effectiveness of Agency Chief Information Officers (83 FR 23345). The EO is aimed at modernizing the Federal Government's information technology infrastructure and improving the delivery of digital services and the management, acquisition, and oversight of Federal IT. Section 9 of the EO directs OPM to propose regulations pursuant to which OPM may delegate to the heads of certain agencies (other than the Secretary of Defense) authority to determine, under regulations prescribed by OPM, whether a severe shortage of candidates (or, for the U.S. Department of Veterans Affairs (VA) a severe shortage of highly qualified candidates) or a critical hiring need exists for positions in the Information Technology Management (IT) Series, general schedule (GS)-2210 or equivalent, for purposes of an entitlement to a direct hire authority (DHA). The agencies covered by the EO are those listed in 31 U.S.C. 901(b), or independent regulatory agencies defined in 44 U.S.C. 3502(5).

Alternatives:

N/A.

Anticipated Cost and Benefits:

None.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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OPM	FINAL RULE STAGE

156. • ADMINISTRATIVE LAW JUDGES

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 3301; 5 U.S.C. 3302; EO 13843

CFR Citation:

5 CFR 212; 5 CFR 213; 5 CFR 300; 5 CFR 302; 5 CFR 930

Legal Deadline:

None

Abstract:

The U.S. Office of Personnel Management (OPM) is issuing interim regulations governing the appointment and employment of Administrative Law Judges (ALJ). This rule will implement changes to the appointment and employment of ALJs as required by Executive Order 13843.

Statement of Need:

The purpose of the interim rule is to implement changes to the appointment and employment ALJs, which places new appointments to ALJ positions in the excepted service and keeps incumbent ALJs hired on or before July 10, 2018 in the competitive service. The interim rule will revise OPM regulations on the appointment and employment of ALJs accordingly.

Summary of Legal Basis:

Executive Order 13843, signed on July 10, 2018, directs ALJ positions appointed under 5 U.S.C. 3105 be in the excepted service under Schedule E. Individuals appointed to ALJ positions prior to July 10, 2018, remain in the competitive service as long as they remain in their current positions.

Alternatives:

N/A

Anticipated Cost and Benefits:

None.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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BILLING CODE 6325–44–P

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

The Pension Benefit Guaranty Corporation (PBGC) is a federal corporation created under title IV of the Employee Retirement Income Security Act (ERISA) to guarantee the payment of pension benefits earned by nearly 40 million workers and retirees in private-sector defined benefit plans. PBGC is currently responsible for the benefits of about 1.5 million people in failed plans. PBGC receives no 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. PBGC administers two insurance programs — one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans.

- *Single-Employer Program*. Under the single-employer program, when a plan terminates with insufficient assets to cover all plan benefits (distress and involuntary terminations), PBGC pays plan benefits that are guaranteed under title IV. PBGC also pays nonguaranteed plan benefits to the extent funded by plan assets or recoveries from employers.
- *Multiemployer Program*. The multiemployer program covers 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 insolvent and thus unable to pay benefits at the guaranteed level. The guarantee is structured differently from, and is generally significantly lower than, the single-employer guarantee.

At the end of fiscal year (FY) 2017, PBGC had a deficit of $10.9 billion in its single-employer insurance program and $65 billion in its multiemployer insurance program. PBGC's projections show that the financial position of the single-employer program is likely to continue to improve, but the multiemployer program is in dire financial condition and likely to run out of funds by the end of fiscal year 2025. If that happens, PBGC will not have the money to pay benefits at the current guarantee levels to participants in insolvent plans.

To carry out its statutory functions, PBGC issues regulations on such matters as how to pay premiums, when reports are due, what benefits are covered by the insurance program, how

to terminate a plan, the liability for underfunding, and how withdrawal liability works for multiemployer plans. PBGC follows a regulatory approach that seeks to encourage the continuation and maintenance of defined benefit plans. So, in developing new regulations and reviewing existing regulations, PBGC seeks to reduce burdens on plans, employers, and participants, and to ease and simplify employer compliance wherever possible. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

Regulatory/Deregulatory Objectives and Priorities

PBGC's regulatory/deregulatory objectives and priorities are developed in the context of the Corporation's statutory purposes:

- To encourage the continuation and maintenance of voluntary private pension plans;
- To provide for the timely and uninterrupted payment of pension benefits; and
- To keep premiums at the lowest possible levels.

Pension plans and the statutory framework in which they are maintained and terminated are complex. Despite this complexity, PBGC is committed to issuing simple, understandable, flexible, and timely regulations to help affected parties. PBGC's regulatory/deregulatory objectives and priorities for the fiscal year are:

- To enhance the retirement security of workers and retirees;
- To implement statutory changes through regulatory actions that ease compliance burdens and achieve maximum net benefits; and
- To simplify existing regulations and reduce burden.

PBGC endeavors in all its regulatory and deregulatory actions to promote clarity and reduce burden with the goal that net cost impact on the public is zero or less overall.

Rethinking Existing Regulations

Most of PBGC's regulatory/deregulatory actions are the result of its ongoing retrospective review program to identify and ameliorate inconsistencies, inaccuracies, and requirements made

irrelevant over time. PBGC undertook a review of its multiemployer plan regulations and has identified rules in which it can reduce burden and clarify guidance. For example, PBGC has proposed reductions in actuarial valuation requirements for certain small terminated multiemployer pension plans, notice requirements on plan sponsors of plans terminated by mass withdrawal, and reporting and disclosure requirements on sponsors of insolvent plans ("Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors" RIN 1212-AB38). Another proposal would simplify how multiemployer plans calculate withdrawal liability where changes in contributions or benefits are, by statute, to be disregarded in that calculation ("Methods for Computing Withdrawal Liability" RIN 1212-AB36).

PBGC plans to propose a "housekeeping" rulemaking project to make miscellaneous technical corrections, clarifications, and improvements to PBGC's regulations, such as the reportable events regulation (particularly addressing duplicative active participant reduction event reporting) and the regulation on annual financial and actuarial information reporting ("Miscellaneous Corrections, Clarifications, and Improvements" RIN 1212-AB34). PBGC expects to undertake periodic rulemaking projects like this that deal with minor technical and clarifying issues. The "Benefit Payments" proposal (RIN 1212-AB 27) would make clarifications and codify policies in PBGC's benefit payments and valuation regulations involving payment of lump sums, entitlement to a benefit, changes to benefit form, partial benefit distributions, and valuation of plan assets. PBGC's regulatory review also identified a need to update the rules for administrative review of agency decisions (RIN 1212-AB35).

A couple of proposed rulemakings would update PBGC's regulations and policies to ensure that the actuarial and economic content remains current. The modifications PBGC is considering at this time are to interest and mortality assumptions under the asset allocation regulation (RIN 1212-AA55), and the methodology for setting interest assumptions under the benefit payments regulation (RIN 1212-AB41).

Small Businesses

PBGC takes into account the special needs and concerns of small businesses in making policy. For example, the "Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors" proposal discussed above would reduce valuation and reporting burdens primarily on small multiemployer plans, which generally are comprised of small employers.

Open Government and Increased Public Participation

PBGC encourages public participation in the regulatory process. For example, PBGC created a new page on its website that highlights when there are opportunities to comment on proposed rules, information collections, and other Federal Register notices. PBGC's current efforts to reduce regulatory burden in the projects discussed above are in substantial part a response to public comments. Last year PBGC asked for feedback on its regulatory planning and review of existing regulations by way of a Request for Information (RFI). A number of individuals and organizations responded, and PBGC considered the comments, some of which are reflected in this Fall agenda. PBGC encourages comments on an on-going basis as we continue to look for ways to further improve PBGC's regulations.

BILLING CODE 7709-02-P

U.S. SMALL BUSINESS ADMINISTRATION

Statement of Regulatory Priorities

Overview

The mission of the U.S. Small Business Administration (SBA) is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses and by assisting in the physical and economic recovery of communities after disasters. In carrying out this mission, SBA strives to improve the economic environment for small businesses, including those in rural areas, in areas that have significantly higher unemployment and lower income levels than the Nation's averages, and those in traditionally underserved markets. SBA has several financial, procurement, and technical assistance programs that provide a crucial foundation for those starting or growing a small business. For example, the Agency serves as a guarantor of loans made to small businesses by lenders that participate in SBA's programs and

also licenses small business investment companies that make equity and debt investments in qualifying small businesses using a combination of privately raised capital and SBA guaranteed leverage. SBA also funds various training and mentoring programs to help small businesses, particularly businesses owned by women, veterans, minorities, and other historically underrepresented groups, gain access to Federal government contracting opportunities. The Agency also provides management and technical assistance to existing or potential small business owners through various grants, cooperative agreements, or contracts. Finally, as a vital part of its purpose, SBA also provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster.

Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on the public, in particular the Agency's core constituents—small businesses. SBA's regulatory process generally includes an assessment of the costs and benefits of the regulations as required by Executive Order 12866, "Regulatory Planning and Review;" Executive Order 13563, "Improving Regulation and Regulatory Review;" and the Regulatory Flexibility Act. SBA's program offices are particularly invested in finding ways to reduce the burden imposed by the Agency's core activities in its loan, grant, innovation, and procurement programs.

On January 30, 2017, President Trump issued E.O. 13771, ``Reducing Regulation and Controlling Regulatory Costs," 82 FR 9339, which established principles for prioritizing an agency's regulatory and deregulatory actions. E.O. 13771 was followed by E.O. 13777, "Enforcing the Regulatory Agenda," 82 FR 12285 (February 24, 2017), which identified processes for agencies to follow in overseeing their regulatory programs. This Agenda was prepared in accordance with both E.O. 13771 and E.O. 13777, and SBA will continue to work with the Office of Management and Budget to fully integrate the Executive Orders and to implement OMB guidance into SBA's rulemaking processes. As part of that effort, SBA issued a Request for Information in the Federal Register requesting public input on which SBA regulations should be

repealed, replaced, or modified because they are obsolete, unnecessary, ineffective, or burdensome. 82 FR 38617 (August 15, 2017). The Agency continues to evaluate the comments received and will amend its regulations as appropriate. In addition, SBA's Office of Advocacy is hosting a series of small business roundtables in order to hear firsthand from small businesses facing regulatory burdens on steps SBA and other agencies can take to reduce or eliminate those burdens. For more information on these roundtables, please visit https://www.sba.gov/advocacy/regulatory-reform.

Openness and Transparency

SBA promotes transparency, collaboration, and public participation in its rulemaking process. To that end, SBA routinely solicits comments on its regulations, even those that are not subject to the public notice and comment requirement under the Administrative Procedures Act. Where appropriate, SBA also conducts hearings, webinars, and other public events as part of its regulatory process.

Regulatory Framework

The SBA Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve months. This Strategic Plan provides a framework for strengthening, streamlining, and simplifying SBA's programs while leveraging collaborative relationships with other agencies and the private sector to maximize the tools small business owners and entrepreneurs need to drive American innovation and strengthen the economy. The plan sets out four strategic goals: (1) support small business revenue and job growth; (2) build healthy entrepreneurial ecosystems and create business friendly environments; (3) restore small businesses and communities after disasters; and (4) strengthen SBA's ability to serve small businesses. In order to achieve these goals SBA will, among other objectives, focus on:

- Expanding access to capital through SBA's extensive lending network;
- Helping small business exporters succeed in global markets;

- Ensuring federal contracting and innovation goals are met or exceeded;
- Empowering veterans and military families who want to start or grow their business;
- Delivering entrepreneurial counseling and training services in collaboration with resource partners; and
- Enhancing program oversight and risk management, and improving recovery of taxpayer assets.

The regulations reported in SBA's semi-annual regulatory agenda and plan are intended to facilitate achievement of these strategic goals and objectives and further the objectives of E.O. 13771. Over the next twelve months, SBA's highest priorities will be to implement the following three regulations.

(1) E.O. 13771 Designation – Deregulatory Action:

Small Business HUBZone Program; Government Contracting Programs (RIN: 3245-AG38)

As part of its efforts to fulfill the objectives of E.O. 13771, SBA has completed a comprehensive review of the regulations for the Historically Underutilized Business Zone (HUBZone) Program. As a result of that review, this rule proposes amendments that would eliminate ambiguities in the regulations and reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies. The amendments would make it easier for small business concerns to understand and comply with the program's requirements and make the HUBZone program a more attractive option for procuring federal agencies.

For example, the rule proposes to eliminate the burden on HUBZone small businesses to continually demonstrate that they meet all eligibility requirements at the time of each HUBZone contract offer and award. The rule would instead require only annual recertification. This reduced burden on certified HUBZone small businesses would allow a firm to remain eligible for future HUBZone contracts for an entire year, without requiring it to demonstrate that it continues to meet all HUBZone requirements. The rule also proposes to eliminate the requirement for the concern to relocate in order to attempt to maintain its HUBZone status when the area where the business is located or a qualifying employee resides loses its HUBZone status.

In addition to carrying out the Administration's regulatory policy, removal of these and similar regulatory requirements would make it easier for firms to meet the eligibility requirements for HUBZone contracts, and help SBA to achieve its strategic objective to simplify access to federal contracting for small businesses.

(2) E.O. 13771 Designation – Regulatory Action

Implementation of the Small Business 7(a) Lending Oversight Reform Act of 2018 (RIN: 3245-AH05)

In order to protect the safety and soundness of its business loan programs, SBA's Office of Credit Risk Management (OCRM) is responsible for monitoring performance of the various types of lenders that participate in these loan programs, managing the programs' credit risks, and enforcing applicable program regulations and procedures. The recently enacted Small Business 7(a) Lending Oversight Reform Act of 2018 increases SBA's authority to supervise lenders and enforce prudent lending standards. This rule will propose the regulatory amendments necessary to implement the new authorities. The amendments will clarify or add conditions for informal and formal enforcement actions, including supervisory letters, voluntary letters, suspensions or revocations of lending authority. The rule will also propose to implement the statutory provision that authorizes lenders to appeal enforcement actions to SBA's Office of Hearings and Appeals.

SBA recognizes the importance of maintaining a comprehensive lender oversight and risk management system. As evidence of its commitment to a robust credit risk management system, SBA has identified lender oversight and risk management as one of the Agency's strategic objectives in its FY 2018-2022 Strategic Plan. After SBA has implemented the statutorily required amendments, the revised regulations will enhance SBA's oversight capabilities, reduce risk, and ensure the integrity of the small business loan programs.

(3) E.O. 13771 Designation – Other Action

Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business -- Certification (RIN: 3245-AG75).

SBA is proposing to amend its regulations to implement amendments to the Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) Federal Contract Program that were authorized by section 825 of the National Defense Authorization Act of 2015. Based on this authority, SBA is proposing to create a certification program for its WOSB and EDWOSB contracting program that, once implemented, will streamline the review process and provide an option for small businesses that reduces their certification costs. The proposed changes would further SBA's strategic objectives to simplify the process and increase contracting opportunities for small businesses. The proposed reduction in certification costs would also further the regulatory reform objectives of E.O. 13771.

The current WOSB and EDWOSB contracting program permits firms to self-certify for the program or to be certified by a third party certifier (TPC). The program also currently requires firms to submit documentation to an SBA-maintained electronic document repository. SBA regulations currently require contracting officers to check the repository for documents submitted by every WOSB or EDWOSB contract awardee. The rule will propose the establishment of an SBA certification process, removal of both the self-certification option and the requirement for contracting officers to review the repository documents. Shifting responsibilities to SBA and streamlining the review process will enable contracting officers to focus more on awarding awards, which should lead to an increased number of set-aside or sole source contracts for WOSBs and EDWOSBs. This outcome would help SBA to achieve its strategic objectives to ensure federal agencies meet or exceed their small business contracting goals.

While it is important to implement rules that do not unnecessarily burden small businesses, SBA also has a responsibility to ensure that its programs are serving only those businesses that meet program eligibility requirements. To that end, this rule will also propose standards for increased oversight in order to ensure continuing eligibly of certified program participants.

SBA	PROPOSED RULE STAGE

157. SMALL BUSINESS HUBZONE PROGRAM AND GOVERNMENT CONTRACTING PROGRAMS

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

15 U.S.C. 657a

CFR Citation:

13 CFR 115; 13 CFR 121; 13 CFR 125; 13 CFR 126

Legal Deadline:

None

Abstract:

SBA has been reviewing its processes and procedures for implementing the HUBZone program and has determined that several of the regulations governing the program should be amended in order to resolve certain issues that have arisen. As a result, the proposed rule would constitute a comprehensive revision of part 126 of SBA's regulations to clarify current HUBZone Program regulations, and implement various new procedures. The amendments will make it easier for participants to comply with the program requirements and enable them to maximize the benefits afforded by participation. In developing this proposed rule, SBA will focus on the principles of Executive Orders 12866, 13771, and 13563 to determine whether portions of regulations should

be modified, streamlined, expanded or repealed to make the HUBZone program more effective and/or less burdensome on small business concerns. At the same time, SBA will maintain a framework that helps identify and reduce waste, fraud, and abuse in the program.

Statement of Need:

The purpose of the proposed rule is to increase economic investment and employment in Historically Underutilized Business Zones (HUBZones).

Summary of Legal Basis:

The rule makes a number of changes necessary to clarify the HUBZone program's regulations and to make the program easier to use for small business contractors and procuring agencies.

Alternatives:

The alternative to the proposed regulations would be the status quo, where businesses cannot request reconsideration when their application is denied, must be eligible at the time of offer and time of award, and must recertify every 3 years. SBA has modeled the revised processes based on its other contracting programs (e.g., 8(a) request for reconsideration and annual review) and believes that these processes have worked well for these programs and should therefore be utilized for the HUBZone program.

Anticipated Cost and Benefits:

Overall, this proposed rule would reduce annual burden on HUBZone small business concerns. The proposed implementation of a formal request for reconsideration process would provide consistency in the processes for SBA’s programs and would be beneficial to HUBZone applicants because it would allow them to correct deficiencies and come into compliance without waiting 90 days to reapply for the program. This should enable additional firms to be more quickly certified for the HUBZone program, allowing them to seek and be awarded HUBZone contracts sooner.

SBA estimates that the proposed reconsideration process would increase the annual hourly burden on small business concerns applying to the HUBZone program by approximately 15 hours. The proposed requirement for HUBZone small business concerns to recertify annually to SBA that they continue to meet all of the HUBZone eligibility requirements, instead of requiring them to undergo a recertification every three years, would increase the annual hourly burden by approximately 3,800 hours. The proposed change removing the requirement for HUBZone small business concerns to represent or certify that they are eligible at the time of offer and award for every HUBZone contract would reduce burden on HUBZone small business concerns by approximately 4,200 hours. The proposed change to allow an employee who resides in a HUBZone at the time of a HUBZone concern's certification or recertification to continue to count as a HUBZone employee as long as the individual remains an employee of the firm will greatly reduce burden on firms, as they will not have to continuously track whether their employees still reside in a HUBZone or seek to employ new individuals if the location in which one or more current employees reside loses its HUBZone status. We estimate that this should reduce the hourly burden by 2,500 hours annually.

Risks:

There is very little risk associated with this proposed rule

Timetable:

Action	**Date**	**FR Cite**
Public Meeting	04/23/18	83 FR 17626
Public Meeting	05/30/18	83 FR 24684
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 3245–AG38

SBA	

158. WOMEN–OWNED SMALL BUSINESS AND ECONOMICALLY DISADVANTAGED WOMEN–OWNED SMALL BUSINESS—CERTIFICATION

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

Pub. L. 113–291, sec. 825; 15 U.S.C. 637(m)

CFR Citation:

13 CFR 127

Legal Deadline:

None

Abstract:

Section 825 of the National Defense Authorization Act for Fiscal Year 2015 (NDAA), Public Law 113-291, 128 Stat. 3292, Dec. 19, 2014, included language requiring that women-owned small business concerns and economically disadvantaged Women-Owned Small Business concerns are certified by a Federal agency, a State government, the Administrator, or national certifying entity approved by the Administrator as a small business concern owned and controlled by women. This rule will propose the standards and procedures for participation in this certification program. This rule will also propose to revise the procedures for continuing eligibility, program examinations, protests, and appeals. The proposed revisions will reflect public comments that SBA received in response to the Advanced Notice of Proposed Rulemaking that the agency issued in December 2016 to solicit feedback on implementation of the program. Finally, SBA is planning to continue to utilize new technology to improve its efficiency and decrease small business burdens, and therefore, the new certification procedures will be based on an electronic application and certification process.

Statement of Need:

The proposed rule will implement the statutory requirement to certify Women Owned Small Business Concerns (WOSBs) for purposes of receiving set aside and sole source contracts under the WOSB program.

Summary of Legal Basis:

These proposed regulations implement section 825 of the National Defense Authorization Act for Fiscal Year 2015, Public Law 113-291, 128 Stat. 3292 (December 19, 2014) (2015 NDAA).

Alternatives:

The proposed regulations are required to implement specific statutory provisions which require promulgation of implementing regulations.

Anticipated Cost and Benefits:

The benefit of the proposed regulation is a significant improvement in the confidence of contracting officers to make federal contract awards to eligible firms. Under the existing system, the burden of eligibility compliance was placed upon the awarding contracting officer. Under this new proposed rule, the burden is placed upon SBA. This will encourage more contracting officers to set-aside opportunities for WOSB Program participants as the validation process will be controlled by SBA in both the System for Award Management and the Dynamic Small Business Search.

Risks:

There is always a slight risk that an agency will award a set aside contract to a firm that is ineligible. Certification of firms prior to award will lessen this risk.

Timetable:

Action	Date	FR Cite
ANPRM	12/18/15	80 FR 78984
ANPRM Comment Period End	02/16/16	
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 3245–AG75

SBA	

159. • IMPLEMENTATION OF THE SMALL BUSINESS 7(A) LENDING OVERSIGHT REFORM ACT OF 2018

Priority:

Other Significant

EO 13771 Designation:

Other

Legal Authority:

15 USC 657t

CFR Citation:

13 CFR 120; 13 CFR 134

Legal Deadline:

Final, Statutory, June 21, 2019.

Not later than 1 year after the date of the enactment of this section, the Administrator shall issue regulations, after opportunity for notice and comment.

Abstract:

The Small Business 7(a) Lending Oversight Reform Act of 2018 was enacted on June 21, 2018. The purpose of the legislation is to strengthen the Office of Credit Risk Management within the Small Business Administration. The statute requires the SBA Administrator to promulgate new regulations not later than one year after enactment of the statute. This rule will propose to implement this statute and add clarity to informal and formal enforcement actions and appeal provisions. Examples of informal enforcement actions may include supervisory letters and voluntary actions/agreements. Examples of formal enforcement actions include suspension or revocation of delegated authority, suspension or revocation of 7(a) lending authority, and assessment of civil monetary penalties. The statute also provides lenders with the ability to appeal enforcement actions to the Office of Hearings and Appeals. The rule will propose conditions for accessing this appeal process.

Statement of Need:

This action is necessary to implement the Small Business 7(a) Lending Oversight Reform Act of 2018 (Public Law 115-189) (the Act), which was enacted on June 21, 2018. In the legislation, Congress strengthened the SBA's Office of Credit Risk Management (OCRM). This rule will provide additional regulatory guidance for informal and formal enforcement actions against SBA Lenders, including the new statutory authority to impose Civil Monetary Penalties up to $250,000. The rule will also conform the enforcement action appeals process to the statutory requirements. Congress has specifically required SBA to promulgate regulations implementing the legislation within one year of enactment. This rule will increase SBA's lender oversight capabilities, mitigate risk, and ensure the integrity of SBA's small business loan programs.

Summary of Legal Basis:

15 USC 657t(f) requires SBA to issue regulations, after opportunity for notice and comment, no later than one year after enactment. SBA is also authorized to supervise and oversee SBA Lenders under 15 USC 633(b)(3); 15 USC 634 note; 15 USC 634(b)(6), (7) and (14); and 15 USC 650.

Alternatives:

The Act requires SBA to issue regulations within one year after enactment. During the notice and comment process, SBA will consider various alternatives as it implements the statutory requirements while strengthening SBA lender oversight, ensuring the integrity of the SBA loan programs, and protecting taxpayer dollars.

Anticipated Cost and Benefits:

SBA is not yet certain of the anticipated costs and benefits. SBA will be assessing the costs and benefits as it develops the rule during the notice and comment process.

Risks:

Implementation of the Act through this rulemaking will encourage SBA Lenders to correct deficiencies, return SBA loan portfolios to safe and sound condition, and limit risk in the SBA loan programs. Codification of SBA's new authority to impose Civil Monetary Penalties up to $250,000 will provide a significant financial disincentive to imprudent and risky lending.

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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BILLING CODE 8025–01–P

FEDERAL ACQUISITION REGULATION (FAR)

The Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquisition of supplies and services by executive agencies. It is issued and maintained jointly under the statutory authorities granted to the Secretary of Defense, Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, known as the FAR Council. Overall statutory authority is found at chapters 11 and 13 of title 41 of the United States Code.

Regulatory and Deregulatory Activities

Executive Order 13777, “Enforcing the Regulatory Reform Agenda” (February 24, 2017), required the FAR Council to oversee the implementation of regulatory reform initiatives and policies. The reform initiatives and policies include Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs” (January 30, 2017), section 6 of Executive Order 13563, “Improving Regulation and Regulatory Review” (January 18, 2011), and Executive Order 12866, “Regulatory Planning and Review” (September 30, 1993). In response to Executive Order 13777, the FAR Council reviewed and evaluated existing

policies and regulations and identified regulations that could be repealed, replaced, or modified to reduce the regulatory burden. In relation to Executive Order 13771, the FAR Council conducts analysis of the regulatory cost or savings impact for agenda items.

During Fiscal Year 2018, the FAR Council completed two (2) deregulatory actions.

- The FAR Council issued a final rule (case 2015-039) on May 1, 2018 to increase the dollar threshold for the audit of prime contract settlement proposals and subcontract settlements submitted in the event of contract termination, from $100,000 to $750,000. The increased threshold reduces the number of terminated contracts that require settlement audits, and enables contracting officers to more quickly deobligate the excess funds from terminated contracts under the threshold. Contractors will save costs associated with the preparation for termination settlement audits and will have improved cash flow from faster final settlement under the threshold.

- The FAR Council issued a final rule (case 2017–007) on May 1, 2018 to raise the threshold for task- and delivery-order protests for DoD, NASA, and the Coast Guard from $10 million to $25 million, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract. The increased threshold will result in savings for the agencies involved in processing the protests and will benefit contractors who win awards and will no longer need to expend resources defending challenges to those awards.

The Fiscal Year 2019 Unified Agenda consists of forty-eight (48) agenda items of which the following seven (7) have been identified as deregulatory.

- FAR Case 2016-011, Revision of Limitations on Subcontracting

- FAR Case 2017-009, Special Emergency Procurement Authority

- FAR Case 2017-010, Evaluation Factors for Multiple-Award Contracts

- FAR Case 2018-004, Increased Micro-Purchase and Simplified Acquisition Thresholds

- FAR Case 2018-013, Exemption of Commercial and COTS Item Contracts from Certain Laws and Regulations
- FAR Case 2018-015, Governmentwide and Other Interagency Contracts
- FAR Case 2018-019, Review of Commercial Contract Clause Requirements and Flowdown

Regulatory and Deregulatory Priorities

The FAR Council is required to amend the Federal Acquisition Regulation to implement statutory and policy initiatives. The FAR Council prioritization is focused on initiatives that:

- Streamline regulations and reduce burden, especially for commercial and commercially available off-the-shelf (COTS) items;
- Promote disclosure and open government
- Support national security efforts, especially safeguarding Federal Government information technology systems; and
- Improve small business opportunities with the Federal Government.

Rulemakings That Streamline Regulations and Reduce Burdens

FAR Case 2018-004, Increased Micro-Purchase and Simplified Acquisition Thresholds, will increase the micro-purchase threshold (MPT) to $10,000; increase the simplified acquisition threshold (SAT) to $250,000; and make additional changes related to the thresholds. The increase in thresholds will allow the use of more streamlined procedures which reduces the time and effort needed to make an award. Some contractors will benefit from reduced contract compliance requirements.

FAR Case 2018-013, Exemption of Commercial and COTS Item Contracts from Certain Laws and Regulations, will implement revisions to the FAR to exempt commercial and COTS items from laws identified by the FAR Council or Administrator for Federal Procurement Policy. This

reduction will allow contractors to use existing commercial practices, reducing compliance costs from requirements unique to the Government.

FAR Case 2018-014, Increasing Task-order Level Competition, will provide an exception to the requirement to consider price as an evaluation factor, for the award of services to be acquired on an hourly rate basis under certain indefinite-delivery indefinite-quantity contracts and Federal Supply Schedule contracts. Meaningful evaluation of cost and price takes place later, when task or delivery order proposals are evaluated. The exception will allow procurement officials to focus on establishing and evaluating non-price factors at the earlier contract award level, resulting in more meaningful distinctions among offerors.

Rulemakings That Promote Disclosure and Open Government

FAR Case 2017-004, Use of Acquisition 360 to Encourage Vendor Feedback, will address soliciting contractor feedback on how well agencies are doing in awarding and administering contracts. This will improve the efficiency and effectiveness of agency acquisition activities.

FAR Case 2016-005, Effective Communication between Government and Industry, encourages agency acquisition personnel to talk to industry.

Rulemakings That Support National Security

FAR Case 2018-017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, will prohibit the procurement of covered equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company or Dahua Technology Company and any subsidiaries or affiliates. The prohibition is implemented to protect Government information systems from threats.

FAR Case 2018-010, Use of Product and Services of Kaspersky Lab, prohibits any department, agency, organization or other element of the Federal Government from using hardware, software or services developed by Kaspersky Lab or any entity in which Kaspersky Lab has a majority ownership. The prohibition is implemented to protect Government information systems from threats.

FAR Case 2017-018, Violation of Arms Control Treaties or Agreements with the United States, prohibits, with some exceptions, the heads of executive agencies from entering into, renewing or extending a contract for the procurement of products or services from any persons involved in activities that violate arms control treaties or agreements with the United States. The prohibition reduces potential threats to the security of the United States and our allies.

Rulemakings of Interest to Small Business

FAR Case 2016-011, Revision of Limitations on Subcontracting, will implement SBA's regulatory clarifications concerning the nonmanufacturer rule, and how much a small business may subcontract to a large business. These were inconsistent across small business programs, such as whether a HUBZone small business could subcontract to other HUBZone small businesses. This rule revises and standardizes these requirements from multiple FAR clauses to two.

FAR Case 2018-003, Credit for Lower-Tier Small Business Subcontracting will allow large businesses to receive small business subcontracting credit for subcontracts that their subcontractors award to small businesses.

DATED: July 27, 2018.

NAME: William F. Clark,

Director,

Office of Government-wide

Acquisition Policy,

Office of Acquisition Policy,

Office of Government-wide Policy.

BILLING CODE 6820-EP-P

SOCIAL SECURITY ADMINISTRATION (SSA)

I. Statement of Regulatory Priorities

We administer the Retirement, Survivors, and Disability Insurance programs under title II of the Social Security Act (Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and the Special Veterans Benefits program under title VIII of the Act. As directed by Congress, we also assist in administering portions of the Medicare program under title XVIII of the Act. 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, except for the States' Disability Determination Services. We fully fund the Disability Determination Services in advance or via reimbursement for necessary costs in making disability determinations.

The entries in our regulatory plan (plan) represent issues of major importance to the Agency. Through our regulatory plan, we intend to:

A. Update the medical criteria used to evaluate disability applications to keep pace with medicine, science, technology, and workforce changes;

B. Reduce the hearings backlog and improve the disability appeals process;

C. Update SSA disability evaluation criteria and the frequency of continuing disability reviews;

D. Combat Social Security fraud, impose civil monetary penalties for specific violations of the Social Security Act, and clarify that electronic and internet

communications are included in the prohibitions against misusing SSA's names, symbols, and emblems; and

E. Update our Freedom of Information Act and Privacy and Disclosure rules.

Regulatory Reform

We designate all of the proposed regulations in this plan as "fully or partially exempt" under Executive Order (EO) 13771. In compliance with the Administration's Regulatory Reform efforts, as prescribed by EO 13771 and EO 13777, SSA is committed to engaging in regulatory activity only when strictly necessary and to reducing regulatory burden wherever possible. Accordingly, our Unified Agenda and Regulatory Plan include only those regulatory activities needed to administer our Social Security benefits and payments programs. Moreover, the Agenda includes an item to remove outdated regulatory sections from the Code of Federal Regulations. Finally, we remain committed to innovate in ways that ease burden on the public even outside the realm of formal deregulation, such as through developing online reporting and application tools.

II. Regulations in the Proposed Rule Stage

Our regulations will:

- Selectively update the medical listings for evaluating digestive, cardiovascular, and skin disorders (RIN 0960-AG65);
- Increase the number of disability hearings held via video teleconference, where appropriate, to help make the hearings process more efficient (RIN 0960-AI09);
- Clarify that administrative appeals judges from our Appeals Council may hold hearings and issue decisions (RIN 0960-AI25);
- Remove the education category of "inability to communicate in English" to help us more accurately assess the vocational impact of education in the disability determination process (0960-AH86);

- Add a new category to the existing medical diary categories that we use to schedule continuing disability reviews and revise the criteria we follow to place a case in each of the categories (0960-AI27);
- Clarify our rules regarding the redetermination of entitlement when fraud or similar fault is involved (RIN 0960-AI10);
- Impose that SSA can assess the maximum allowable civil monetary penalty for certain violations of the Social Security Act (RIN 0960-AH91);
- Clarify that electronic and internet communications are included in the prohibitions against misusing SSA's names, symbols, and emblems (0960-AI04);
- Update our Freedom of Information Act policies to reflect recent legislation (RIN 0960-AI07);
- Allow SSA to create a new Privacy Act exemption category, enabling the retention of important records related to security and suitability (RIN 0960-AH97); and
- Clarify that written consent includes electronic consent, in compliance with recent legislation (RIN 0960-AI38).

III. Regulations in the Final Rule Stage

Our regulation in the final rule stage will:

- Comprehensively update the medical listings for evaluating musculoskeletal disorders (RIN 0960-AG38); and
- Allow SSA to create a new Privacy Act exemption category, enabling the retention of important records containing investigatory material compiled for law enforcement purposes (RIN 0960-AI08).

Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011), SSA regularly engages in retrospective review and analysis for

multiple existing regulatory initiatives. These initiatives may be proposed or completed actions, and they do not necessarily appear in The Regulatory Plan. You can find more information on these completed rulemakings in past publications of the Unified Agenda at www.reginfo.gov in the "Completed Actions" section for the Social Security Administration.

SSA	PROPOSED RULE STAGE

160. REVISED MEDICAL CRITERIA FOR EVALUATING DIGESTIVE DISORDERS, CARDIOVASCULAR DISORDERS, AND SKIN DISORDERS

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 423; 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C. 1382c; 42 U.S.C. 1383; 42 U.S.C. 1383b

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 4.00 and 104.00, Cardiovascular System; sections 5.00 and 105.00, Digestive System; and sections 8.00 and 108.00, Skin Disorders, of appendix 1 to subpart P of part 404 of our regulations describe those disorders that we consider severe enough to prevent a person 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:

These proposed revisions are necessary to evaluate claims for Social Security disability benefits.

Summary of Legal Basis:

Sections 4.00 and 104.00, Cardiovascular Systems; sections 5.00 and 105.00, Digestive Systems; and sections 8.00 and 108.00, Skin Disorders, of appendix 1 to subpart P of part 404 of our regulations.

This proposed rule is not required by statute or court order.

Alternatives:

We considered continuing to use our current criteria. However, we believe these proposed revisions are necessary because of advances in medical, technology, and treatment since we last revised these rules.

Anticipated Cost and Benefits:

Ensuring that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge, technology, and treatment will provide for accurate disability evaluations. Costs: None

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	12/12/07	72 FR 70527
ANPRM Comment Period End	02/11/08	
NPRM	01/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Includes Retrospective Review under E.O. 13563.

URL For Public Comments:

www.regulations.gov

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Related RIN:

Related to 0960–AG74, Related to 0960–AG91

RIN: 0960–AG65

SSA	

161. REMOVING INABILITY TO COMMUNICATE IN ENGLISH AS AN EDUCATION CATEGORY

Priority:

Other Significant. Major under 5 USC 801.

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

42 U.S.C. 402; 42 U.S.C. 405(a) to 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(h) to (j); 42 U.S.C. 422(c); 42 U.S.C. 423; 42 U.S.C. 425; 42 U.S.C. 902(a)(5)

CFR Citation:

20 CFR 404.1564, part 404 subpart P app; 20 CFR 416.964

Legal Deadline:

None

Abstract:

We propose to revise existing disability evaluation rules relating to the ability to communicate in English. Specifically, we will clarify that an inability to communicate in English is not tantamount

to illiteracy or inadequate verbal communication. Rather, an inability to communicate adequately verbally or in writing in any language will be the effective standard. The proposed revisions will reflect current research, analysis of our disability program data, Federal agency data about workforce participation, and comments we received from the public in response to an Advance Notice of Proposed Rulemaking.

Statement of Need:

These changes would modernize our disability program consistent with current research and data about disability and workforce participation.

Summary of Legal Basis:

42 U.S.C. 902(a)(5). Multiple sections of the Social Security Act. No aspect is required by statute or court order.

Alternatives:

Undetermined at this time.

Anticipated Cost and Benefits:

No costs on the public are anticipated as a result of this proposed rule. Benefits include more consistent and appropriate evaluations of vocational factors by eliminating the false equivalence between an inability to communicate in English and illiteracy.

Risks:

Timetable:

Action	Date	FR Cite

NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

URL For Public Comments:

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SSA	

162. NEWER AND STRONGER PENALTIES (CONFORMING CHANGES)

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

Bipartisan Budget Act of 2015, sec. 813; 42 U.S.C. 1320a–8

CFR Citation:

20 CFR 498

Legal Deadline:

None

Abstract:

Section 813 of the BBA establishes civil monetary penalties in section 1129 of the *Social Security Act* against individuals in a position of trust that make false statements, misrepresentations, or omissions in connection with obtaining or retaining SSA benefits or payments. Section 813 also establishes a new felony for conspiracy to commit Social Security fraud, and increases felony penalties for individuals in positions of trust who defraud the SSA.

Statement of Need:

Upon enactment of the BBA on November 2, 2015, civil monetary penalties for individuals in a position of trust took effect immediately. Imposing penalties against individuals in a position of trust assists in deterring fraud and maintaining the integrity of SSA's disability programs. The regulations at 20 CFR 498 should be updated to reflect the BBA's provisions.

Summary of Legal Basis:

Section 813 of the Bipartisan Budget Act of 2015

Alternatives:

Anticipated Cost and Benefits:

SSA projects no anticipated costs on the public with completing this regulatory action. Costs for the agency are as yet undetermined, but are expected to be mostly administrative in nature. Benefits include strengthening our civil monetary assessment processes.

Risks:

No risk is anticipated since this regulatory action reflects statutory requirements and authority.

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	

163. PRIVACY ACT EXEMPTION: PERSONNEL SECURITY AND SUITABILITY PROGRAM FILES

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 522a; 5 U.S.C. 553

CFR Citation:

20 CFR 401.85

Legal Deadline:

None

Abstract:

This NPRM will propose to create a Security and Suitability Files system to cover any additional security and suitability related information generated by SSA that is not sent to the Office of Personnel Management. We will use the information we collect to conduct background investigations and establish that applicants or incumbents, either employed by SSA or working for SSA under contract, are suitable for employment with us. Additionally, the NPRM will propose to remove two unused systems listed in our regulations.

Statement of Need:

We are required to amend our Code of Federal Regulations (CFR) when a new system of records is instituted within the agency that exempts certain records from disclosure. Here, we are creating a new system of records and an exemption to disclosure of some of those records, necessitating a new system of records disclosure in our CFR.

This update will replace the two following systems of records currently reflected in 401.85:

(iii) Pursuant to subsection (k)(5) of the Privacy Act:

(A) The Investigatory Material Compiled for Security and Suitability Purposes System, SSA; and,

(B) The Suitability for Employment Records, SSA.

Summary of Legal Basis:

In accordance with the Privacy Act (5 U.S.C. 552a), and Subsection (k)(5) of the Privacy Act, we are issuing public notice of our intent to establish a new system of records.

Alternatives:

There is no alternative. Failure to amend our CFR, while using a new system of records, would be contrary to the statutory authority and intent of 5 U.S.C. 552.

Anticipated Cost and Benefits:

There are no anticipated costs. We stand to benefit through better administrative efficiency by updating the systems we use for accurately tracking investigatory employment records.

Risks:

Violation of the Privacy Act and OMB requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	

164. REFERENCES TO SOCIAL SECURITY AND MEDICARE IN ELECTRONIC COMMUNICATIONS

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

Bipartisan Budget Act of 2015 (BBA), sec. 814; 42 U.S.C. 1320b–10

CFR Citation:

20 CFR 498

Legal Deadline:

None

Abstract:

Section 814 of the BBA clarifies that electronic and internet communications are included in the prohibitions against misusing SSA's names, symbols, and emblems to convey the false impression that such items are approved, endorsed, or authorized by SSA, as stated in section 1140 of the Social Security Act. For those misusing SSA's names, symbols, and emblems, it treats each dissemination, viewing, or accessing of a communication as a separate violation.

Statement of Need:

Section 814 of the BBA took effect upon enactment. However, our regulations do not currently reflect this statutory change. Imposing penalties against persons who commit consumer fraud deters fraud and maintains the integrity of SSA programs. The regulations at 20 CFR Part 498 should be updated to reflect the BBA's Section 814 provisions.

Summary of Legal Basis:

The legal basis for this action is section 814 of the Bipartisan Budget Act of 2015, which went into effect on November 2, 2015.

42 U.S.C. 1320b-10

Alternatives:

None

Anticipated Cost and Benefits:

There are no anticipated costs associated with this regulatory action. However, the benefit of this regulatory action is that it will clarify the applicability of section 1140 to electronic and internet communications and minimize unnecessary litigation as to the applicability of the section 1140 statute.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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SSA	

165. AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

Pub. L. 114–185, FOIA Reform Act of 2016, 5 U.S.C. 552

CFR Citation:

20 CFR 402

Legal Deadline:

Other, Statutory, December 27, 2016, FOIA Reform Act 2016.

Other, Statutory, 12/27/2016, FOIA Reform Act 2016

Abstract:

Revisions of our FOIA regulations will address the requirements of the FOIA Improvement Act of 2016 and ensure that our regulations are consistent with all applicable laws.

Statement of Need:

Revisions of our FOIA regulation will address the requirements of the FOIA Improvement Act of 2016 and ensure that our regulations are consistent with all applicable laws.

Summary of Legal Basis:

FOIA Reform Act of 2016, 5 U.S.C. 552

Alternatives:

None

Anticipated Cost and Benefits:

There are no anticipated costs to the implementation of the statutory requirements.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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SSA	

166. SETTING THE MANNER FOR THE APPEARANCE OF PARTIES AND WITNESSES AT A HEARING

Priority:

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

Unfunded Mandates:

Undetermined

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

42 U.S.C. 401(j); 42 U.S.C. 404(f); 42 U.S.C. 405(a) to 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 902(a)(5); ...

CFR Citation:

20 CFR 404.914; 20 CFR 404.929; 20 CFR 404.936; 20 CFR 404.938; 20 CFR 404.950; 20 CFR 404.976; 20 CFR 416.1414; 20 CFR 416.1429; 20 CFR 416.1436; 20 CFR 416.1438; 20 CFR 416.1450; 20 CFR 416.1476; ...

Legal Deadline:

None

Abstract:

We propose to revise and unify some of the rules that govern how, where, and when individuals appear for hearings before an administrative law judge at the hearings level and before a disability hearing officer at the reconsideration level of our administrative review process. At both levels, when we schedule a hearing, we propose that we will determine the manner in which the parties to the hearing will appear: by VTC, in person, or, under limited circumstances, by telephone. We would not permit individuals to opt out of appearing by VTC. We also propose that we would determine the manner in which witnesses to a hearing will appear.

Statement of Need:

With just over 880,000 individuals waiting for a hearing before an administrative law judge, we must ensure that we make the best use our resources to decrease the number of pending cases, reduce the average wait time, and significantly improve our service to the American public. Expanding our use of VTC technology would enable us to schedule many hearings sooner. This not only reduces the delays in claimants waiting for a hearing, but also gives us more flexibility in scheduling and allocating resources for in-person hearings to those cases that truly warrant an in-person, rather than a VTC, hearing. Some travel costs may be reduced as well, since there may be less need for in-person hearings to areas that can be serviced by more VTC hearings instead.

Summary of Legal Basis:

Administrative not required by statute or court order.

Alternatives:

To be determined.

Anticipated Cost and Benefits:

We anticipate increased administrative and adjudicatory efficiency benefiting a reduction in hearing delays.

Risks:

To be determined.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	

167. REDETERMINATIONS WHEN THERE IS A REASON TO BELIEVE FRAUD OR SIMILAR FAULT WAS INVOLVED IN AN INDIVIDUAL'S APPLICATION FOR BENEFITS

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

205(u) and 1631(e)(7) and 1129(l) of the Social Security Act; 42 U.S.C. 405(u); 42 U.S.C. 1383(e)(7); 42 U.S.C. 1320a–8(l)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

We are clarifying our rules regarding the redetermination of the entitlement or eligibility of individuals when there is reason to believe fraud or similar fault was involved in the individual's application for benefits. We intend to clarify how and when we redetermine the entitlement, and the administrative review process when we decide to terminate benefits.

Statement of Need:

Over time, our business processes evolved to support our statutory redetermination authority. We are now codifying the basic parameters for redetermination, including relevant definitions, clarification of notice and redetermination procedures, as well as a process for administratively reviewing redetermination termination and overpayment assessment decisions under secs. 205(u) and 1631(e)(7) of the Social Security Act, to provide the public the opportunity for

comment under the Administrative Procedures Act while providing our beneficiaries and their representatives the ability to find our redetermination process within our regulatory text.

Summary of Legal Basis:

Sections 205(u), 1129(l), and 1631(e)(7) of the Social Security Act. 42 U.S.C. 405(u)(1), 1320a-8(l), and 1383(e)(7).

206(d) of Pub. L. No. 103-296, the Social Security Independence and Program Improvements Act of 1994, 108 Stat. 1464, 1509.

Alternatives:

We could continue to manage our redetermination processes and procedures under our statutory authority and sub-regulatory guidances.

Anticipated Cost and Benefits:

Without enumerated regulations, we may experience additional litigation alleging lack of due process and violation of the Administrative Procedures Act.

Risks:

Without enumerated regulations, we may experience litigation alleging lack of due process and violation of the Administrative Procedures Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	

168. HEARINGS HELD BY ADMINISTRATIVE APPEALS JUDGES OF THE APPEALS COUNCIL

Priority:

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

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

42 U.S.C. 405(a) to 405(b); 42 U.S.C. 902(a)(5)

CFR Citation:

20 CFR 402.60; 20 CFR 404.2; 20 CFR 404.929; 20 CFR 404.955; 20 CFR 404.956 ; 20 CFR 404.970; 20 CFR 404.973; 20 CFR 404.976; 20 CFR 404.983; 20 CFR 404.984; 20 CFR 404.999c; 20 CFR 404.1765; 20 CFR 408.110; 20 CFR 411.175; 20 CFR 416.120; 20 CFR 416.1429; 20 CFR 416.1455; 20 CFR 416.1456; 20 CFR 416.1470; 20 CFR 416.1473; 20 CFR 416.1476; 20 CFR 416.1483–1484; 20 CFR 416.1498; 20 CFR 416.1565; 20 CFR 422.201; 20 CFR 422.203; 20 CFR 422.205; 20 CFR 422.210; ...

Legal Deadline:

None

Abstract:

We propose to revise our rules to clarify when administrative appeals judges (AAJ) from our Appeals Council may hold hearings and issue decisions. We propose that in all situations where an AAJ would conduct a hearing and issue a decision, the AAJ would adhere to the same due process requirements as administrative law judges. We also propose to update and clarify our regulations to conform to our current business processes and organizational components.

Statement of Need:

Ensuring that we make the best use of all of our resources is an important part of our ongoing effort to decrease the number of pending hearing cases, reduce the average wait time, and significantly improve our service to the American public. Having AAJs conduct hearings will help achieve those goals.

Summary of Legal Basis:

Administrative, not required by statute or court order.

Alternatives:

We would continue our current adjudicatory procedures.

Anticipated Cost and Benefits:

We do not anticipate this proposal would impose any costs on the public. Although specific figures are not available at this time, we anticipate there may be some administrative costs to SSA for this proposal, specifically related to training and new notices. Given the historic backlog and waiting times for a hearing, the benefits of this proposal, faster hearings and case resolutions, are potentially significant.

Risks:

NA

Timetable:

Action	Date	FR Cite
NPRM	11/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	

169. RULES REGARDING THE FREQUENCY AND NOTICE OF CONTINUING DISABILITY REVIEWS

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

Social Security Act; sec. 221 (i) of the Social Security Act

CFR Citation:

20 CFR 404 subpart P; 20 CFR 416 subpart I; 20 CFR 404.1590; 20 CFR 416.989; 20 CFR 416.990; ...

Legal Deadline:

None

Abstract:

We propose to revise our rules regarding when and how often we conduct continuing disability reviews (CDR). The proposed regulations would add a new category to our existing medical diary categories that we use to schedule CDRs and would revise the criteria we follow to place a case in each of the categories. They would also change how often we perform a CDR for claims with the medical diary category for permanent impairments. These revised regulations would ensure

that we continue to identify medical improvement at its earliest point and remain up to date with current research.

Statement of Need:

This rule is necessary to reform the process by which we conduct CDRs to ensure that we continue to identify medical improvement at its earliest point and remain up-to-date with current research.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The effects of this proposed rule are not yet determined. Our Office of the Chief Actuary and Office of Budget will formally estimate the programmatic and administrative effects of the NPRM when the proposal is fully drafted.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	

170. • PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 552a; S.2155, Economic Growth, Regulatory Relief, and Consumer Protection Act

CFR Citation:

20 CFR 401

Legal Deadline:

None

Abstract:

This NPRM will update the Agency's regulations at 20 CFR 401. Section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act directs us to modify or develop a database to facilitate the verification of certain information with the consumer's consent and in connection with a credit transaction. The agency is modifying our regulations to clarify that written consent, as required under the Privacy Act, includes electronic consent.

Statement of Need:

An update to the Agency's regulations at 20 CFR 401 is required to implement section 215 of the Economic Growth and Regulatory Relief, and Consumer Protection Act.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

There are no anticipated costs to the implementation of the statutory requirements.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	12/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA	FINAL RULE STAGE

171. REVISED MEDICAL CRITERIA FOR EVALUATING MUSCULOSKELETAL DISORDERS (3318P)

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 423; 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C. 1382c; 42 U.S.C. 1383; 42 U.S.C. 1383b

CFR Citation:

20 CFR 404.1500, app. 1

Legal Deadline:

None

Abstract:

Sections 1.00 and 101.00, Musculoskeletal System, of appendix 1 to subpart P of part 404 of our regulations describe those musculoskeletal system disorders that we consider severe enough to prevent a person from doing any gainful activity, or that cause marked and severe functional limitations for a child. We propose to revise the criteria in these sections to reflect our adjudicative

experience, advances in medical knowledge and treatment of musculoskeletal disorders, and comments from medical experts.

Statement of Need:

These rules are necessary to evaluate claims for Social Security disability benefits.

Summary of Legal Basis:

Administrative--not required by statute or court order.

Alternatives:

We considered continuing to use our current criteria. However, we believe these proposed revisions are necessary to ensure that our criteria reflect advances in medical knowledge and treatment since we last revised these rules.

Anticipated Cost and Benefits:

Ensuring that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge, technology, and treatment will provide for accurate disability evaluations.

Risks:

We expect the public and adjudicators to support the removal and clarification of ambiguous terms and phrases, and the addition of specific, demonstrable functional criteria for determining listing-level severity of all musculoskeletal disorders.

We expect adjudicators to support the change in the framework of the text because it makes the guidance in the introductory text and listings easier to access and understand.

Timetable:

Action	Date	FR Cite
NPRM	05/07/18	83 FR 20646
NPRM Comment Period End	07/06/18	
Final Action	09/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Includes Retrospective Review under E.O. 13563.

URL For Public Comments:

www.regulations.gov

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SSA	

172. PRIVACY ACT EXEMPTION: SOCIAL SECURITY ADMINISTRATION VIOLENCE EVALUATION AND REPORTING SYSTEM (SSAVERS)

Priority:

Other Significant

EO 13771 Designation:

Fully or Partially Exempt

Legal Authority:

5 U.S.C. 552a

CFR Citation:

20 CFR 401.85

Legal Deadline:

None

Abstract:

This rule will exempt a portion of a system of records entitled Social Security Administration Violence Evaluation and Reporting System (SSAvers) from certain provisions of the Privacy Act. Because this system will contain some investigatory material compiled for law enforcement purposes, this rule will exempt those records within this new system of records from specific provisions of the Privacy Act.

Statement of Need:

Because this system will contain some investigatory material compiled for law enforcement purposes, this rule will exempt those records within this new system of records from specific provisions of the Privacy Act. SSAvers captures and houses information regarding alleged incidents of workplace and domestic violence filed by SSA employees and SSA contractors.

It is required for compliance with the Privacy Act.

Summary of Legal Basis:

The Privacy Act of 1974 (5 U.S.C. 552a)

Alternatives:

none

Anticipated Cost and Benefits:

There are no anticipated costs to the operation of this system.

Risks:

There are no risks for the operation of this system of records.

Timetable:

Action	**Date**	**FR Cite**
NPRM	06/14/18	83 FR 27728
NPRM Comment Period End	07/16/18	
Final Action	10/00/18	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE 4191-02-P

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, among other things, the CPSC:

- develops mandatory product safety standards or bans when other efforts are inadequate to address a safety hazard, or where required by statute;

- obtains repair, replacement, or refunds for defective products that present a substantial product hazard;

- develops information and education campaigns about the safety of consumer products;

- participates in the development or revision of voluntary product safety standards; and

- follows statutory mandates.

Unless directed otherwise by congressional mandate, when deciding which of these approaches to take in any specific case, the CPSC gathers and analyzes data about the nature and extent of the risk presented by the product. The Commission's rules at 16 CFR section 1009.8 require the Commission to consider, among other factors, the following criteria, when deciding the level of priority for any particular project:

- frequency and severity of injury;
- causality of injury;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- unforeseen nature of the risk;
- vulnerability of the population at risk;
- probability of exposure to the hazard; and
- additional criteria that warrant Commission attention.

Significant Regulatory Actions

Currently, the Commission is considering taking action in the next 12 months on two rules, table saws (RIN 3041-AC31) and portable generators (RIN 3041-AC36), which would constitute a "significant regulatory action" under the definition of that term in Executive Order 12866.

1.Table Saws

In 2006, the Commission granted a petition requesting a rule to establish performance standards for a system to reduce or prevent injuries from contacting the blade of a table saw. The Commission has since issued a proposed rule under the Consumer Product Safety Act (CPSA). The regulatory proceeding could result in several actions, one of which could be the development of a mandatory standard.

2. Portable Generators

The Commission has been considering options to reduce deaths and injuries related to portable generators, particularly those involving carbon monoxide poisoning. In 2016, the Commission issued a proposed rule under the CPSA. The regulatory proceeding could result in several actions, one of which could be the development of a mandatory standard.

CPSC	FINAL RULE STAGE

173. REGULATORY OPTIONS FOR TABLE SAWS

Priority:

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

EO 13771 Designation:

Independent agency

Legal Authority:

5 U.S.C. 553(e); 15 U.S.C. 2051

CFR Citation:

16 CFR 1245

Legal Deadline:

None

Abstract:

On July 11, 2006, the Commission voted to grant a petition requesting that the Commission issue a rule prescribing performance standards for a system to reduce or prevent injuries from contacting the blade of a table saw. The Commission also directed CPSC staff to prepare an advance notice of proposed rulemaking (ANPRM) initiating a rulemaking proceeding under the Consumer Product Safety Act (CPSA) to: (1) identify the risk of injury associated with table saw blade-contact injuries; (2) summarize regulatory alternatives; and (3) invite comments from the public. An ANPRM was published on October 11, 2011. The comment period ended on February 10, 2012. Staff participated in the Underwriters Laboratories (UL) working group to develop performance requirements for table saws, conducted performance tests on sample table saws, conducted survey work on blade guard use, and evaluated comments to the ANPRM. Staff prepared a briefing package with a notice of proposed rulemaking (NPRM) and submitted the package to the Commission on January 17, 2017. The Commission voted to publish the NPRM, and the comment period for the NPRM closed on July 26, 2017. Public oral testimony to the Commission was heard on August 9, 2017. Staff conducted a study of table saw incidents that occurred and were reported through the National Electronic Injury Surveillance System (NEISS) between January 1, 2017 and December 31, 2017. Staff prepared a report summarizing the 2017 study findings and will submit to the Commission to publish a notice in the Federal Register. Staff will prepare a final rule briefing package for Commission consideration in FY 2019.

Statement of Need:

Summary of Legal Basis:

Alternatives:

The Commission could (1) pursue table saw voluntary standard activities; (2) extend the effective dates of a possible rule; (3) exempt certain categories of table saws from the draft proposed rule; (4) limit the applicability of the performance requirements to some, but not all, tables saws; or (5) pursue an information and education campaign to inform the public of the hazards of blade contact and the benefits of the AIM technology.

Anticipated Cost and Benefits:

The expected gross benefits range from about $970 million to $2.45 billion over the product life of 1 year of sales. The expected costs of the draft proposed rule will range from about $168 million to about $345 million annually. Based on staff's benefit and cost estimates, net benefits (*i.e.* , benefits minus costs) for the market as a whole were estimated to amount to about $625 million to $2.3 billion over the product life of 1 year of table saw sales.

Risks:

Timetable:

Action	**Date**	**FR Cite**
Commission Decision to Grant Petition	07/11/06	
ANPRM	10/11/11	76 FR 62678
Notice of Extension of Time	12/02/11	76 FR 75504

for Comments		
ANPRM Comment Period End	12/12/11	
Comment Period End	02/10/12	
Notice to Reopen Comment Period	02/15/12	77 FR 8751
Reopened Comment Period End	03/16/12	
Staff Sent NPRM Briefing Package to Commission	01/17/17	
Commission Decision	04/27/17	
NPRM	05/12/17	82-FR 22190
NPRM Comment Period End	07/26/17	
Public Hearing	08/09/17	82 FR 31035
Staff Sent 2016 NEISS Table Saw Type Study Status Report to Commission	08/15/17	
Staff Sends Final Rule Briefing Package to Commission	09/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

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

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CPSC	

174. PORTABLE GENERATORS

Priority:

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

EO 13771 Designation:

Independent agency

Legal Authority:

15 U.S.C. 2051

CFR Citation:

16 CFR 1241

Legal Deadline:

None

Abstract:

On December 5, 2006, the Commission voted to issue an advance notice of proposed rulemaking (ANPRM) under the Consumer Product Safety Act (CPSA) concerning portable generators. The ANPRM discusses regulatory options that could reduce deaths and injuries related to portable generators, particularly those involving carbon monoxide (CO) poisoning. The ANPRM was published in the **Federal Register** on December 12, 2006. Staff reviewed public comments and conducted technical activities. In FY 2006, staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust. Also in FY 2006, staff entered into an interagency agreement (IAG) with the National Institute of Standards and Technology (NIST) to

conduct tests with a generator, in both off-the-shelf and prototype configurations, operating in the garage attached to NIST's test house. NIST's test house, a double-wide manufactured home, is designed for conducting residential indoor air quality (IAQ) studies, and the scenarios tested are typical of those involving consumer fatalities. These tests provide empirical data on CO accumulation in the garage and infiltration into the house; staff used these data to evaluate the efficacy of the prototype in reducing the risk of fatal or severe CO poisoning. Under this IAG, NIST also modeled the CO infiltration from the garage under a variety of other conditions, including different ambient conditions and longer generator run times. In FY 2009, staff entered into a second IAG with NIST with the goal of developing CO emission performance requirements for a possible proposed regulation that would be based on health effects criteria. In 2011, staff prepared a package containing staff and contractor reports on the technology demonstration of the low CO emission prototype portable generator. This included, among other staff reports, a summary of the prototype development and durability results, as well as end-of-life emission test results performed on the generator by an independent emissions laboratory. Staff's assessment of the ability of the prototype to reduce the CO poisoning hazard was also included. In September 2012, staff released this package and solicited comments from stakeholders.

In October 2016, staff delivered a briefing package with a draft notice of proposed rulemaking (NPRM) to the Commission. In November 2016, the Commission voted to approve the NPRM. The notice was published in the **Federal Register** on November 21, 2016, with a comment period deadline of February 6, 2017. In December 2016, the Commission voted to extend the comment period until April 24, 2017, in response to a request to extend the comment period an additional 75 days. The Commission held a public hearing on March 8, 2017, to provide an opportunity for stakeholders to present oral comments on the NPRM.

Two voluntary standards now include requirements intended to address the CO poisoning hazard. Staff is assessing those standards, and in FY 2019 staff will prepare a final rule briefing package presenting staff's assessment and staff will deliver it to the Commission.

Statement of Need:

Summary of Legal Basis:

Alternatives:

The Commission could (1) have less stringent (higher allowable) CO emission rates; (2) limit coverage to one-cylinder engines, exempting portable generators with two-cylinder, class II engines from the proposed rule; (3) mandate alternate means of limiting consumer exposure which could include automatic shutoff systems; (4) require different (longer) compliance dates; (5) implement informational measures; or (6) take no action to establish a mandatory standard.

Anticipated Cost and Benefits:

The average present value of expected benefits per unit is $227. The cost to manufacturers and the lost consumer surplus amounts to an average of $116 per unit. The average net benefits (benefits minus costs) are $110 per unit. The aggregate net benefits from annual sales are $144.6 million.

Risks:

As of June 14, 2017, CPSC databases contained reports of at least 849 generator-related consumer CO-poisoning deaths resulting from 629 incidents that occurred from 2005 through 2016.

Timetable:

Action	**Date**	**FR Cite**
Staff Sent ANPRM to	07/06/06	

Commission		
Staff Sent Supplemental Material to Commission	10/12/06	
Commission Decision	10/26/06	
Staff Sent Draft ANPRM to Commission	11/21/06	
ANPRM	12/12/06	71 FR 74472
ANPRM Comment Period End	02/12/07	
Staff Releases Research Report for Comment	10/10/12	
Staff Sends NPRM Briefing Package to Commission	10/05/16	
NPRM	11/21/16	81 FR 83556
NPRM Comment Period Extended	12/13/16	81 FR 89888
Public Hearing for Oral Comments	03/08/17	82 FR 8907
NPRM Comment Period End	04/24/17	
Staff Sends Final Rule Briefing Package to Commission	09/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

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

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FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory and Deregulatory Priorities

I. Regulatory and Deregulatory Priorities

Background

The Federal Trade Commission (FTC or Commission) is an independent agency charged by its enabling statute, the Federal Trade Commission Act (FTC Act), 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, provides consumers the best choice of products and services at the lowest prices.

The Commission pursues its goal of promoting competition in the marketplace through two different but complementary approaches. 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, to ensure that consumers have a choice of products and services at competitive prices and quality, the marketplace must be policed for anticompetitive business practices and to prohibit anticompetitive mergers. These two complementary missions make the Commission unique insofar as it is the nation’s only Federal agency with this combination of statutory authority to protect consumers.

The Commission is charged with the responsibility of issuing and enforcing regulations under a number of statutes, including 16 trade regulation rules promulgated pursuant to the FTC

Act and numerous regulations issued pursuant to certain credit, financial, and marketing practice statutes[3] as well as energy laws.[4] The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

For the remainder of the *Background* section, the Commission sets out a brief overview of its ongoing law enforcement efforts, followed by a more detailed list of current regulatory reform-related initiatives and other focus areas.

(A) Law Enforcement Mission

The Commission is, first and foremost, a civil law enforcement agency. It pursues its mandate to enhance competition and protect consumers primarily through case-by-case enforcement of the FTC Act and other statutes. The FTC estimates that, in FY 2017, the agency saved consumers more than $3.7 billion through its competition enforcement efforts and more than $1.29 billion through its consumer protection enforcement actions.[5]

(1) Consumer Protection Enforcement. The agency has continued to pursue its long-standing consumer protection mission by initiating or obtaining settlements in 85 consumer protection cases in district court, reaching 24 administrative consent agreements related to

[3] For example, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) (15 U.S.C. sections 7701-7713) and the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. sections 6101-6108).
[4] For example, the Energy Policy Act of 1992 (106 Stat. 2776, codified in scattered sections of the U.S. Code, particularly 42 U.S.C. sections 6201 et seq.) and the Energy Independence and Security Act of 2007 (EISA) (codified in relevant part at 42 U.S.C. sections 17021, 17301-17305).
[5] FTC Report, Agency Financial Report for FY 2017, at 45 (Nov. 16, 2017), *available at* https://www.ftc.gov/reports/agency-financial-report-fy2017.

consumer protection, and distributing in excess of $269 million in redress to more than three million consumers during the 2017 calendar year.[6]

A major focus of the FTC's law enforcement efforts is fighting fraud. The Commission's anti-fraud program tracks down and stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money. Below are a few examples of the variety of frauds that the Commission has recently pursued, and ways that the Commission leverages its limited resources to do so effectively.

- Tech Support Scams: Last year, the FTC joined federal, state, and international law enforcement partners in announcing "Operation Tech Trap," a nationwide and international crackdown on tech support scams that trick consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.[7]

- Emerging Frauds: The FTC strives to stay ahead of scammers who are always on the lookout for new ways to market old schemes. For example, there has been an increase in deceptive money-making frauds involving cryptocurrencies—digital assets that use cryptography to secure or verify transactions. The Commission has worked to educate consumers about cryptocurrencies and hold

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[6] FTC Press Release, Acting FTC Chairman Ohlhausen Reports One Year of Agency Accomplishments (Jan. 18, 2018), *available a*t https://www.ftc.gov/news-events/press-releases/2018/01/acting-ftc-chairman-ohlhausen-reports-one-year-agency.

[7] FTC Press Release, FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams (May 12, 2017), *available at* https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown. "Operation Tech Trap" is just one example of a law enforcement "sweep"—coordinated, simultaneous law enforcement actions with partners—that the FTC uses to leverage resources to maximize effects. Another example of a recent sweep is"Operation Main Street," an initiative launched during June 2018 to stop small business scams. The FTC, jointly with the offices of eight state Attorneys General, announced 24 actions targeting fraud aimed at small businesses, as well as new education materials to help small businesses identify and avoid potential scams. FTC Press Release, FTC, BBB, and Law Enforcement Partners Announce Results of Operation Main Street: Stopping Small Business Scams Law Enforcement and Education Initiative (June 18, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/06/ftc-bbb-law-enforcement-partners-announce-results-operation-main.

fraudsters accountable. In March, the FTC halted the operations of Bitcoin Funding Team, which allegedly falsely promised that participants could earn large returns by enrolling in money-making schemes and paying with cryptocurrency.[8]

- Illegal Robocalls: Unlawful robocalls remain a significant consumer protection problem because they repeatedly disturb consumers' privacy and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In FY 2017, the FTC received more than 4.5 million robocall complaints.[9] The FTC is using every tool at its disposal to fight these illegal calls.[10] Because part of the increase in robocalls is attributable to relatively recent technological developments, the FTC has taken steps to spur the marketplace to develop technological solutions. For instance, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.[11] The FTC's challenges contributed to a shift in the development and availability of technological solutions in this area, particularly call-blocking and call-filtering products.[12] In addition, the FTC regularly works with its state, federal, and international partners to combat illegal robocalls, including co-hosting a Joint Policy Forum on Illegal Robocalls with the Federal

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[8] *FTC v. Thomas Dluca, et al*. (Bitcoin Funding Team) No. 0:18-cv-60379-KMM (S.D.N.Y. Mar. 16, 2018), *available at* https://www.ftc.gov/enforcement/cases-proceedings/172-3107/federal-trade-commission-v-thomas-dluca-et-al-bitcoin-funding.

[9] Total unwanted-call complaints for FY 2017, including both robocall complaints and complaints about live calls from consumers whose phone numbers are registered on the Do Not Call Registry, exceeded seven million. *See Do Not Call Registry Data Book 2017: Complaint Figures for FY 2017*, *available at* https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2017.

[10] *See* FTC Robocall Initiatives, *available at* https://www.consumer.ftc.gov/features/feature-0025-robocalls.

[11] The first challenge, announced in 2012, called upon the public to develop a consumer-facing solution to block illegal robocalls. One of the winners, "NomoRobo," was on the market within six months after the FTC selected it as a winner. NomoRobo, which reports blocking over 600 million calls, is being offered directly to consumers by a number of telecommunications providers and is available as an app on iPhones.

[12] Consumers can access information about potential solutions available to them at https://www.consumer.ftc.gov/features/how-stop-unwanted-calls.

Communications Commission, as well as a public expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive.[13]

(2) Competition Enforcement. During the 2017 calendar year, the agency filed 10 competition cases in federal or administrative courts and took action in 25 other cases to protect consumers from anticompetitive mergers or business conduct.[14] The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their pocketbooks, such as health care, consumer products and services, technology, manufacturing, and energy. The Commission shares federal antitrust enforcement responsibilities with the Antitrust Division of the U.S. Department of Justice (DOJ).

One of the FTC's principal responsibilities is to prevent mergers that may substantially lessen competition. Under the Hart-Scott-Rodino Act (HSR), parties to certain large mergers and acquisitions must file premerger notifications with both the FTC and the DOJ to allow for government review. Over the past five fiscal years, the number of HSR premerger filings has increased more than 50 percent, bringing filings in the past fiscal year to the average over the past 20 years.[15] The vast majority of reported transactions do not raise competitive concerns, and the agencies clear those transactions expeditiously. But, when the evidence gives the Commission reason to believe that a proposed merger would substantially lessen competition, the Commission has intervened.

For example, the FTC challenged a proposed $285 million acquisition by J.M. Smucker Co. of Conagra Brands, Inc.'s Wesson cooking oil brand due to concerns that the transaction

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[13] FTC Press Release, FTC and FCC to Host Joint Policy Forum on Illegal Robocalls (Mar. 22, 2018), *available at* www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls; FTC Press Release, FTC and FCC Seek Exhibitors for an Expo Featuring Technologies to Block Illegal Robocalls (Mar. 7, 2018), *available at* www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-seek-exhibitors-expo-featuring-technologies-block-illegal.

[14] Press Release, Acting FTC Chairman Ohlhausen (see footnote 4).

[15] In FY 2017, the agencies received notice of 2,052 transactions, compared with 1,326 in FY 2013 and 2,201 in FY 2007. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC/DOJ Hart-Scott-Rodino annual reports, *available a*t https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports.

would illegally reduce competition in the United States for canola and vegetable oils. Smucker currently owns the Crisco brand, and by acquiring the Wesson brand, it would control at least 70 percent of the market for branded canola and vegetable oils sold to grocery stores and other retailers. Once challenged, the parties abandoned the transaction.[16] The FTC has also successfully negotiated merger settlements requiring divestitures in a variety of industries, including pharmaceuticals, agricultural chemicals, animal vaccines, and others. Walgreens, for example, substantially restructured its proposed acquisition of Rite Aid after the Commission raised concerns about the original transaction during an extensive review.[17]

The courts continue to validate the Commission's competition work. In *FTC and State of North Dakota v. Sanford Health*, the U.S. District Court in North Dakota granted the request of the FTC and the Attorney General's Office of North Dakota for a preliminary injunction in the proposed merger of Sanford Health and Mid Dakota Clinic in the Bismarck-Mandan region of North Dakota.[18] Sanford Health and Mid Dakota have appealed the preliminary injunction to the U.S. Court of Appeals for the Eighth Circuit.

In *FTC v. AbbVie*, the district court ruled that AbbVie used sham litigation to illegally maintain its monopoly over the testosterone replacement drug Androgel, and ordered $448 million in monetary relief to consumers who were overcharged for Androgel as a result of AbbVie's conduct.[19] This court order represents the largest monetary award ever in a litigated FTC antitrust case.

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[16] FTC Press Release, FTC Challenges Proposed Acquisition of Conagra's Wesson Cooking Oil Brand by Crisco owner, J.M. Smucker Co., (Mar. 5, 2018), *available a*t https://www.ftc.gov/news-events/press-releases/2018/03/ftc-challengesproposed-acquisition-conagras-wesson-cooking-oil.

[17] *See* Statement of Acting Chairman Maureen K. Ohlhausen in Walgreens Boots Alliance/Rite Aid, (Sept. 19, 2017), *available a*t https://www.ftc.gov/public-statements/2017/09/statement-acting-chairman-maureen-k-ohlhausenwalgreens-boots-alliancerite.

[18] United States District Court Order Granting Plaintiffs' Motion For A Preliminary Injunction, *FTC v. Sanford Health, et al.*, No. 1:17-cv-00133 (W.D. N.D. Dec. 14, 2017), *available at* https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v .

[19] United States District Court Findings of Fact and Conclusions of Law, *FTC v. AbbVie*, No. 2:14-cv-5151 (E.D. Pa. June 29, 2018), *available at*

In *FTC v. Wilhelmsen*, the U.S. District Court granted the FTC's request for a preliminary injunction in the proposed merger of Wilhelmsen Maritime Services and Drew Marine Group.[20] Wilhelmsen subsequently announced that it will abandon the proposed transaction.[21]

(B) Regulatory Reform-related Initiatives

In addition to consumer protection and competition enforcement matters, the agency is continuing its efforts in reforming regulations and increasing agency transparency. For example, in February, the Commission announced a revised regulatory review schedule for 2018.[22] To ensure that agency rules and industry guides stay relevant and are not overly burdensome, the FTC reviews them on a 10-year schedule. The review schedule is published each year, with adjustments in response to public input, changes in the marketplace, and resource demands. For 2018, the Commission has already initiated or intends to initiate reviews of, and solicit public comments on, the following:

Guides for the Nursery Industry, 16 CFR Part 18;

Test Procedures and Labeling Standards for Recycled Oil, 16 CFR Part 311;

Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR Part 436; and

Identity Theft Rules, 16 CFR Part 681.

In addition, the FTC continues to streamline the Hart-Scott-Rodino Rules (or HSR Rules), including by clarifying Antitrust Improvements Act Notification and Report Form for Certain

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https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al.

[20] FTC Press Release, Statement by FTC Bureau of Competition Acting Deputy Director Haidee L. Schwartz on the U.S. District Court's Grant of a Preliminary Injunction and Announcement from Wilhelmsen Maritime Services that It will Abandon Acquisition of Drew Marine Group (July 26, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/07/statement-ftc-bureau-competition-acting-deputy-director-haidee-l.

[21] *Id*.

[22] FTC Press Release, FTC Announces Regulatory Review Schedule (Feb. 14, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/02/ftc-announces-regulatory-review-schedule.

Mergers and Acquisitions (HSR Form) and simplifying notification procedures.[23] On July 16, 2018, the Commission issued a final rule clarifying certain HSR Form instructions and allowing for the notification of early terminations and second requests by email.[24] The effective date of the rule change is August 15, 2018.

Further streamlining will occur as the FTC continues its regular, systematic review of all rules and guides, assessing their costs and benefits to consumers and businesses. In addition, the agency continues to examine ways in which it can streamline its investigations to reduce the burden on businesses and the Commission alike. For example, in response to criticisms regarding the length of time it takes to resolve complex merger cases, the FTC is developing better mechanisms to track the timing of milestone events throughout a merger investigation. The goal is to improve understanding of the factors that determine the length of a merger investigation and, in particular, to highlight whether those factors are within the control of the FTC, the merging parties, or others. Consistent with confidentiality obligations, the FTC intends to make public as much of this data as possible, to encourage additional dialogue among interested stakeholders regarding ways to streamline the merger review process.

The agency also has focused its advocacy efforts to reduce regulatory burdens and their associated costs at the state and federal level. A few of these efforts are described below.

(1) *Licensing Restrictions.* The agency's Economic Liberty Task Force (Task Force) continues to focus on ways to reduce unnecessary burdens imposed by occupational licensing requirements. Licensing restrictions—typically embodied in state statutory law, regulations, and administration—define an occupation's metes and bounds, or "scope of practice," and establish conditions for entry into an occupation. For some professions, licensing is necessary to protect the public against legitimate health and safety concerns. However, licensing requirements also prevent competition by imposing costs on anyone who wants to enter a licensed profession or continue competing in that market. In many cases, the services for which a license is required do

[23] 16 CFR 801-803.
[24] 83 FR 32768 (July. 16, 2018).

not require the skill or knowledge reflected in the license and such services could be practiced safely and effectively by professionals who do not possess the required license.

State-by-state licensing rules can be especially costly to workers who seek to move to another state or to offer services across state lines. These costs not only impact workers, but may also harm consumers by reducing availability and quality, and increasing the price, of services and goods offered by licensed professionals. Restrictions on license portability across state lines are particularly burdensome for the families of military service members who move frequently, as military spouses often work in licensed occupations.

On November 7, 2017, the Task Force hosted a roundtable to examine empirical evidence on the effects of state occupational licensure.[25] On December 14, 2017, the same Task Force hosted four individuals, including three military spouses, for a "fireside chat" with then-Acting Chairman Ohlhausen.[26] This event provided a voice to the millions of American workers and consumers—especially military families—whose lives and livelihoods are impacted by unnecessary occupational licensing requirements.

(2) *Telehealth.* Commission staff continued their efforts to promote competition among health care providers by removing state-based regulatory barriers to the use of telehealth in appropriate circumstances. In November 2017, in response to a call for public comments, FTC staff submitted a comment to the Department of Veterans Affairs (VA) in support of its proposed rule to clarify that VA health care practitioners may provide telehealth services to beneficiaries notwithstanding any contrary state licensing laws, rules, or requirements.[27] The rule would

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[25] FTC Press Release, The Effects of Occupational Licensure on Competition, Consumers, and the Workforce: Empirical Research and Results, (Nov. 7, 2017), *available at* https://www.ftc.gov/news-events/events-calendar/2017/11/effects-occupational-licensure-competition-consumers-workforce.

[26] FTC Press Release, Voices for Liberty Fireside Chat (Dec. 14, 2017), *available at* https://www.ftc.gov/policy/advocacy/economic-liberty/voices-liberty-fireside-chat.

[27] FTC Press Release, FTC Staff Comment Supports VA Telehealth Rule that Will Increase Access to Care, Promote Competition, and Benefit Veterans (Nov. 2, 2017), *available at* https://www.ftc.gov/news-events/press-releases/2017/11/ftc-staff-comment-supports-va-telehealth-rule-will-increase; *see also* FTC Staff Comment Before the Department of Veterans Affairs Regarding Its Proposed Telehealth Rule (Nov. 1, 2017), *available at*

ensure that VA telehealth practitioners may provide services to or from non-federal sites, such as a home, regardless of whether the practitioner is licensed in the state where the patient is located. The FTC staff comment noted that the proposed rule would likely increase access to telehealth services, increase the supply of telehealth providers, increase the range of choices available to patients, improve health care outcomes, and reduce the VA's health care costs, thereby benefiting veterans, especially those in underserved areas or who are unable to travel. FTC staff also indicated that the VA's rulemaking would send an important signal to non-VA health care providers, state legislatures, employers, patients, and others regarding the tremendous potential of telehealth to promote competition and improve access to care. The VA issued the rule on May 11, 2018, with an effective date of June 11, 2018.[28]

Other Ongoing Focus Areas

As discussed below, the Commission is also focused on fostering innovation in competition and consumer protection; consumer privacy; small business assistance and advice on data security; and protecting military consumers.

(1) Fostering Innovation, Competition, and Consumer Protection. On June 20, 2018, Chairman Joseph Simons announced that the Commission would hold a series of public hearings during the fall and winter of 2018-19 examining whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy.[29] These *Hearings on Competition and Consumer Protection in the 21st Century* will be similar in form and structure to the Global Competition and Innovation Hearings undertaken in 1995 during the Chairmanship of Robert Pitofsky. The Pitofsky Hearings were the first major step in establishing the FTC as a key modern center for competition policy research and development

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https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-department-veterans-affairs-regarding-its-proposed-telehealth-rule/v180001vatelehealth.pdf.

[28] 83 FR 21897 (May 11, 2018).

[29] *See* FTC Press Release, FTC Announces Hearings on Competition and Consumer Protection in the 21st Century (June 20, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st.

and sought to articulate recommendations that would effectively ensure the competitiveness of U.S. markets without imposing unnecessary costs on private parties or governmental processes. The hearings began in September 2018 and are expected to continue through January 2019, and will consist of 15 to 20 public sessions. All hearings will be webcast, transcribed, and placed on the public record. The Commission will invite public comment in stages throughout the term of the hearings.

(2) Consumer Privacy. As the nation's top enforcer on the consumer privacy beat, the FTC works to protect consumers' privacy so that they can take advantage of the benefits of a dynamic and ever-changing digital marketplace. The FTC achieves that goal through civil law enforcement, policy initiatives, and consumer and business education.

For example, the FTC's experience in consumer privacy enforcement has addressed practices offline, online, and in the mobile environment by large, well-known companies and lesser-known players alike. For example, electronic toy manufacturer VTech paid $650,000 to settle FTC charges that the company violated the Children's Online Privacy Protection Act by collecting personal information from children without providing direct notice and obtaining their parent's consent, and failing to take reasonable steps to secure the data it collected.[30] Vizio, one of the world's largest manufacturers and sellers of Internet-connected smart televisions, agreed to pay $2.2 million to settle charges that it installed software on its televisions to collect the viewing data of 11 million consumers without their knowledge or consent.[31] Ongoing work includes an investigation of Facebook's privacy practices.[32]

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[30] *See* Press Release, Electronic Toy Maker VTech Settles FTC Allegations That it Violated Children's Privacy Law and the FTC Act (Jan. 8, 2018), https://www.ftc.gov/news-events/press-releases/2018/01/electronic-toy-maker-vtech-settles-ftc-allegations-it-violated.

[31] *VIZIO, INC. and VIZIO Inscape Services, LL*C, No. 2:17-cv-00758 (D.N.J. Feb. 6, 2018), *available at* https://www.ftc.gov/enforcement/cases-proceedings/162-3024/vizio-inc-vizio-inscape-services-llc.

[32] Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices (Mar. 26, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection.

The FTC held its third annual PrivacyCon, a conference examining cutting-edge research and trends in protecting consumer privacy and security, on February 28, 2018. The 2018 event focused on the economics of privacy, including how to weigh the costs and benefits of security-by-design techniques and privacy-protective technologies and behaviors.[33]

(3) *Data Security*. The FTC continues to explore additional ways to provide practical guidance on data security. Since 2002, the FTC has brought more than 60 cases alleging that companies failed to have reasonable data security and placed consumers' data at risk. The FTC's law enforcement experience informs the agency's educational materials for businesses. For example, the FTC's 2015 *Start with Security* guide distills the lessons learned from FTC cases down to ten fundamental concepts. During 2017's *Stick with Security* initiative, agency staff published a periodic Business Blog post that focused on each of the ten *Start with Security* principles, using a series of hypotheticals to provide detailed guidance on steps companies can take to safeguard sensitive information.[34]

(4) Small Businesses. There are more than 30 million small businesses nationwide, employing nearly 59 million people, according to the Small Business Administration (SBA). The Commission maintains a small business website (www.ftc.gov/SmallBusiness) with information to help small business owners avoid scams and protect their systems and customer data from threats.[35] In April 2018, the FTC launched a national education campaign to help small businesses strengthen their cyber defenses and protect sensitive data that they store.[36] The FTC

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[33] FTC Workshop, PrivacyCon 2018 (Feb. 28, 2018), *available at* https://www.ftc.gov/news-events/events-calendar/2018/02/privacycon-2018.

[34] *See Stick with Security: A Business Blog Series* (October 2017), https://www.ftc.gov/tips-advice/business-center/guidance/stick-security-business-blog-series.

[35] For example, *see Scams and Your Small Business: A Guide for Business* (June 2018), https://www.ftc.gov/tips-advice/business-center/guidance/scams-your-small-business-guide-business.

[36] *See Engage, Connect, Protect The FTC's Projects and Plans to Foster Small Business Cybersecurity*
Staff Perspective (April 2018), https://www.ftc.gov/system/files/documents/reports/engage-connect-protect-ftcs-projects-plans-foster-small-business-cybersecurity-federal-trade/ecp_staffperspective_2.pdf.

also released business guidance to help multi-level marketers understand and comply with the law.[37]

(5) Military Consumers. The agency also has expanded its focus on military consumers. This includes a new militaryconsumer.gov website and a series of Military Financial Consumer conferences. The new website provides advice and assistance on a number of topics, including financial advice and alerts on numerous scams directed at military consumers and their families. A recent example is an alert about scammers targeting the September 11th Victim Compensation Fund.[38] In addition, a new Staff Perspective by the FTC's Bureau of Consumer Protection examined financial issues that can affect military consumers, including service members, veterans, and their families, when they are purchasing and financing a car, dealing with debt collectors, or making credit decisions.[39] The Staff Perspective also discusses the rights and remedies that are available to military consumers in making financial decisions, and emphasizes how financial education early and often, adapted to the military life cycle, is crucial.

(6) International Consumer Protection and Competition. Enforcement cooperation is the top priority of the FTC's international consumer protection program. During fiscal year 2017, the FTC cooperated in 51 investigations, cases, and enforcement projects with foreign consumer, privacy, and criminal enforcement agencies as well as global agency enforcement networks. The FTC used its authority under the U.S. SAFE WEB Act (SAFE WEB) to share information or provide investigative assistance to foreign authorities in some of these matters.[40] Passed in

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[37] *See Business Guidance Concerning Multi-Level Marketing* (Jan. 2018), https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing.

[38] *See* https://www.militaryconsumer.gov/scam-alerts/scammers-target-sept-11th-victim-compensation-fund.

[39] *See* A Closer Look At the Military Consumer Financial Workshop: The Federal Trade Commission Staff Perspective (Feb. 2018), *available at* https://www.ftc.gov/system/files/documents/reports/closer-look-military-consumer-financial-workshop-federal-trade-commission-staff-perspective/military_consumer_workshop_-_staff_perspective_2-2-18.pdf.

[40] Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act [U.S. SAFE WEB Act], Pub. L. No. 109-455, 120 Stat. 3372, extended by Pub. L. No. 112-203, 126 Stat. 1484, codified at 15 U.S.C., sections 41 et seq.

2006, and renewed in 2012, SAFE WEB has allowed the FTC to share evidence and provide investigative assistance to foreign authorities in a wide variety of cases, and has led to reciprocal assistance.[41] SAFE WEB has also underpinned the FTC's ability to participate in cross-border cooperation memoranda of understanding and other arrangements, including the EU-U.S. Privacy Shield Framework (Privacy Shield), which helps enable billions of transatlantic data flows.[42] Critically, SAFE WEB also expressly confirms the FTC's authority to challenge practices occurring in other countries that harm U.S. consumers, a common fraud scenario, as well as to challenge U.S. business practices that harm foreign consumers.

The FTC's cross-border enforcement cooperation covers the full range of FTC investigations and cases. A recent example is a sweep of elder fraud cases involving assistance from the International Mass-Marketing Fraud Working Group (IMMFWG), which the FTC co-chairs along with the Department of Justice and U.K. law enforcement.[43] As part of that sweep, the FTC worked directly with U.K. and Canadian authorities to halt *Next-Gen Inc.*, a sweepstakes scam targeting senior citizens in the United States, Canada, France, Germany, and the U.K.[44]

A key focus of the FTC's international privacy efforts is support for global interoperability of data privacy regimes. The FTC works with the U.S. Department of Commerce on three key

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[41] The FTC has responded to more than 125 SAFE WEB Act information sharing requests from 30 foreign enforcement agencies. The FTC has issued more than 110 civil investigative demands in more than 50 civil and criminal investigations on behalf of foreign agencies. In cases relying on SAFE WEB, the FTC has collected millions of dollars in restitution for injured domestic and foreign consumers. *See* Press Release, FTC Testifies before House Energy and Commerce Subcommittee about Agency's Work to Protect Consumers, Promote Competition, and Maximize Resources (July 18, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/07/ftc-testifies-house-energy-commerce-subcommittee-about-agencys.

[42] FTC Privacy Shield, https://www.ftc.gov/tips-advice/business-center/privacy-and-security/privacy-shield. Indeed, the FTC's SAFE WEB powers provide for stronger cooperation with European data protection authorities on investigations and enforcement against possible Privacy Shield violations, a point cited in the European Commission's Privacy Shield adequacy decision. *See* Commission Implementing Decision No. 2016/1250 (on the adequacy of the protection provided by the EU-U.S. Privacy Shield), 2016 O.J. L207/1 at ¶ 51, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2016:207:FULL&from=EN.

[43] DOJ Press Release, Justice Department Coordinates Nationwide Elder Fraud Sweep of More Than 250 Defendants (Feb. 22, 2018), *available at* https://www.justice.gov/opa/pr/justice-department-coordinates-nationwide-elder-fraud-sweep-more-250-defendants. The IMMFWG is a network of civil and criminal law enforcement agencies from Australia, Belgium, Canada, Europol, the Netherlands, Nigeria, Norway, Spain, the United Kingdom and the United States.

[44] FTC Press Release, FTC Challenges Schemes That Target or Affect Senior Citizens (Feb. 22, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/02/ftc-challenges-schemes-target-or-affect-senior-citizens.

cross-border data transfer programs for the commercial sector: the EU-U.S. Privacy Shield, the Swiss-U.S. Privacy Shield, and the Asia-Pacific Economic Cooperation ("APEC") Cross-Border Privacy Rules (CPBR) System. The Privacy Shield programs provide legal mechanisms for companies to transfer personal data from the EU and Switzerland to the United States with strong privacy protections. The APEC CBPR system is a voluntary, enforceable code of conduct protecting personal information transferred among the United States and other APEC economies. The FTC enforces companies' privacy promises in these programs, bringing cases as violations of Section 5 of the FTC Act.[45] The FTC also works closely with agencies developing and implementing new privacy and data security laws in Latin America and Asia.

The FTC's international competition program supports the Bureau of Competition in the international aspects of their investigations and enforcement, cooperates with competition agencies around the world on enforcement and policy, and promotes convergence of international antitrust policies toward best practice.

The FTC plays a lead role in the International Competition Network (ICN), which includes almost every competition agency in the world and provides a leading forum for international cooperation and convergence. The FTC's activities in the ICN include: serving on the Steering Group; co-chairing the Merger Working Group where it leads projects to develop recommended practices for merger notification and analysis, and practical guidance on investigative techniques; leading the ICN's work on procedural fairness in antitrust investigations; leading the ICN Training on Demand project, which is creating a comprehensive curriculum of video training materials on competition law and practice; and co-chairing the Advocacy and Implementation Network. At the ICN's annual conference in March 2018, the ICN adopted the Merger Working Group's revised

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[45] *See, e.g.*, *ReadyTech Corp.*, Matter No. 1823100 (July 2, 2018), https://www.ftc.gov/enforcement/cases-proceedings/182-3100/readytech-corporation-matter; *Md7, LLC*, No. C-4629 (Nov. 29, 2017), https://www.ftc.gov/enforcement/cases-proceedings/172-3172/md7-llc; *Tru Communication, Inc.*, No. C-4628 (Nov. 29, 2017), https://www.ftc.gov/enforcement/cases-proceedings/172-3171/tru-communication-inc; *Decusoft, LLC*, No. C-4630 (Nov. 29, 2017), https://www.ftc.gov/enforcement/cases-proceedings/172-3173/decusoft-llc; *Sentinel Labs, Inc.*, No. C-4608 (Apr. 14, 2017), https://www.ftc.gov/enforcement/cases-proceedings/162-3250/sentinel-labs-inc; *Vir2us, Inc.*, No. C-4609 (Apr. 14, 2017), https://www.ftc.gov/enforcement/cases-proceedings/162-3248/vir2us-inc; *SpyChatter, Inc.*, No. C-4614 (Apr. 14, 2017), https://www.ftc.gov/enforcement/cases-proceedings/162-3251/spychatter-inc.

Recommended Practices on international enforcement cooperation, timing of notification, and review periods. The working group also presented results of its agency survey on vertical merger analysis and related economic assessment.

The FTC continues to help lead the work of the Organisation for Economic Co-operation and Development (OECD) Competition Committee, including in its current strategic projects on procedural fairness, the digital economy, and the application of competition laws to intellectual property rights. The agency also participates actively in the competition components of the United Nations Conference on Trade and Development (UNCTAD) and the Asia-Pacific Economic Cooperation (APEC).

Within the U.S. government, the FTC works closely with colleagues in other agencies in intergovernmental fora that deal with competition matters, including challenges that arise from the enforcement of foreign competition laws. The FTC is also involved in issues at the intersection of trade and competition policy, including as part of the U.S. delegation that negotiates competition chapters of trade agreements.

(7) Self-Regulatory and Compliance Initiatives with Industry. The Commission continues to engage industry in compliance partnerships in the funeral and franchise industries, among others. For example, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, and is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule so that they can meet the rule's disclosure requirements. Five hundred and thirty-two funeral homes have participated in the program since its inception in 1996.[46]

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 assists franchisors found to have a minor or technical violation of the Franchise Rule in complying with the rule.[47]

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[46] *See* 16 CFR 453.

[47] 16 CFR 436. Violations involving fraud or other FTC Act 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, 21 companies have agreed to participate in the program.

(8) Second Chance and Leniency Policies. The Commission complements its compliance assistance efforts by considering the particular circumstance when enforcing business obligations. For example, the Commission has a small business leniency policy statement that analyzes various factors that may result in reduction or waiver of penalties.[48] As such cases arise; the Commission considers these leniency factors whenever a civil penalty may be assessed against a small business.

The Commission continued its "second chance" policy for certain minor and inadvertent violations of the textile and wool labeling rules, which can apply to small businesses. The Textile Corporate Leniency Policy helps increase overall compliance with the rules while minimizing the burden on business of correcting inadvertent labeling errors that are not likely to injure consumers. Since the Policy was announced (2002), at least 242 companies have been granted "leniency" for self-reported minor violations of the FTC textile regulations.

Regulatory and Deregulatory Measures

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 U.S.C. 601-612 and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's 10-year program also is consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations.[49] Under the Commission's program, rules are reviewed on a 10-year schedule that results in more frequent reviews than are generally required by Section 610

[48] *See* 62 FR 16809 (Apr. 8, 1997) (issuing policy), 62 FR 46363 (Sept. 2, 1997) (responding to comment received).
[49] 58 FR 51735 (Sept. 30, 1993).

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."[50] In each rule review, the Commission requests public comments on, among other things, the economic impact and benefits of the rule; possible conflict between the rule and state, local, or other federal laws or regulations; and the effect on the rule of any technological, economic, or other industry changes.

As part of its continuing 10-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. Pursuant to this program, the Commission has rescinded 37 rules and guides promulgated under the FTC's general authority and updated dozens of others since the early 1990s.

The FTC continues to take a fresh look at its long-standing regulatory review process. On February 20, 2018, the Commission issued a revised 10-year review schedule.[51] The Commission is currently reviewing 15 of the 65 rules and guides within its jurisdiction. The FTC maintains a Web page at http://www.ftc.gov/regreview that serves as a one-stop shop for the public to obtain information and provide comments on individual rules and guides under review as well as the Commission's regulatory review program generally.

In 2018, the Commission initiated or will initiate reviews of four of its rules or guides: (1) Test Procedures and Labeling Standards for Recycled Oil, 16 CFR 311; (2) Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR 436; (3) Identity Theft Rules, 16 CFR 681; and (4) The Nursery Guides, 16 CFR 18.

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[50] 5 U.S.C. 610.
[51] 83 FR 7120 (Feb. 20, 2018).

Ongoing Rule and Guide Reviews

The Commission is continuing review of a number of rules and guides, which are discussed below.

(a) Rules

CAN–SPAM Rule, 16 CFR 316. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM) regulates the transmission of all commercial electronic mail (email) messages. The FTC issued the CAN-SPAM Rule to implement the Act, as authorized by the statute. As part of its ongoing systematic review of its rules and guides, the Commission initiated a periodic review of the CAN-SPAM Rule on June 28, 2017.[52] The public comment period closed on August 31, 2017. Commission staff anticipates sending a recommendation to the Commission by December 2018.

Care Labeling Rule, 16 CFR 423. Promulgated in 1971, the Rule on Care Labeling of Textile Apparel and Certain Piece Goods as Amended (the Care Labeling Rule) makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating "what regular care is needed for the ordinary use of the product." The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions and allows the use of approved care symbols in lieu of words to disclose care instructions. After reviewing the comments from a periodic rule review,[53] the Commission concluded on September 20, 2012, that the Rule continued to benefit consumers and would be retained, and sought comments on potential updates to the Rule, including changes that would allow garment manufacturers and marketers to include instructions for professional wetcleaning on labels; permit the use of ASTM Standard D5489–07, "Standard Guide for Care Symbols for Care Instructions on Textile Products," or ISO 3758:2005(E), "Textiles—Care labeling code using symbols," in lieu of terms;

[52] 82 FR 29254 (June 28, 2017).
[53] 76 FR 41148 (July 13, 2011).

clarify what can constitute a reasonable basis for care instructions; and update the definition of "dryclean."[54] On March 28, 2014, the Commission hosted a public roundtable in Washington, DC, that analyzed proposed changes to the Rule. Staff anticipates Commission action by December 2018.

Contact Lens Rule, 16 CFR 315. As part of the systematic rule review process, on September 3, 2015, the Commission issued a Federal Register notice seeking public comments about the Contact Lens Rule.[55] The comment period closed on October 26, 2015. The Contact Lens Rule requires contact lens prescribers to provide prescriptions to their patients upon the completion of a contact lens fitting, and to verify contact lens prescriptions for contact lens sellers authorized by consumers to seek such verification. Sellers may provide contact lenses only in accordance with a valid prescription that is directly presented to the seller or verified with the prescriber. After Commission staff completed review of the 660 comments received from consumers, eye care professionals, industry members, trade associations, and consumer advocacy groups, the Commission published a notice of proposed rulemaking on December 7, 2016, seeking comment on its proposal to amend the Rule to require contact lens prescribers to obtain a signed acknowledgement after releasing a contact lens prescription to a patient, and to maintain it for at least three years. In addition, to conform language of the Rule to the language of the Fairness to Contact Lens Consumers Act, the Commission sought comment on a proposal to amend section 315.5(e) of the Rule to remove the words "private label." The comment period closed on January 30, 2017, and staff reviewed more than 4,000 comments that were received.

On December 8, 2017, the Commission announced that it would be holding a public workshop relating to the NPRM and other issues relating to competition in the marketplace and consumer access to contact lenses.[56] The workshop was held on March 7, 2018, and the deadline for submitting comments on the issues discussed at the workshop was April 6, 2018.

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[54] 77 FR 58338 (Sept. 20, 2012).
[55] 80 FR 53272 (Sept. 3, 2015).
[56] 82 FR 57889 (Dec. 8, 2017).

Staff is reviewing more than 3,000 comments received and plans to submit a recommendation to the Commission by early 2019.

Energy Labeling Rule, 16 CFR 305. The Energy Labeling Rule is officially known as the Rule concerning Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act. Staff anticipates that the Commission will issue an NPRM by Spring 2019.[57]

Eyeglass Rule, 16 CFR 456. As part of the systematic rule review process, on September 3, 2015, the Commission issued a Federal Register notice seeking public comments about the Eyeglass Rule (or Trade Regulation Rule on Ophthalmic Practice Rules).[58] The comment period closed on October 26, 2015. Commission staff has completed the review of 831 comments on the Eyeglass Rule and anticipates sending a recommendation for further Commission action by the fall of 2019. The Eyeglass Rule requires that an optometrist or ophthalmologist give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agree to purchase ophthalmic goods from the optometrist or ophthalmologist.

Franchise Rule, 16 CFR 436. By December 2018, the Commission plans to initiate periodic review of the Franchise Rule (officially titled, Disclosure Requirements and Prohibitions Concerning Franchising). The Rule gives prospective purchasers of franchises the material information they need in order to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example: the franchise's litigation history, past and current franchisees and their contact information, any exclusive territory that comes with the franchise,

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[57] *See Final Actions* below for information about a separate completed rulemaking proceeding for the Energy Labeling Rule.
[58] 80 FR 53274 (Sept. 3, 2015).

assistance the franchisor provides franchisees, and the cost of purchasing and starting up a franchise.

Funeral Rule, 16 CFR 453. The Commission plans to initiate periodic review of the Funeral Industry Practices Rule (Funeral Rule) during 2019. The Rule, which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit a funeral home and to disclose price and other information to callers who request it over the telephone. The Rule enables consumers to select and purchase only the goods and services they want, and requires funeral providers to seek authority before performing some services such as embalming. The Rule also requires funeral providers to make disclosures regarding any required purchases and prohibits misrepresentations regarding requirements and other aspects of funeral goods and services.

Holder in Due Course Rule, 16 CFR 433. On December 1, 2015, the Commission initiated a periodic review of the Preservation of Consumers' Claims and Defenses Rule (Holder in Due Course Rule).[59] The comment period closed on February 12, 2016. Staff is reviewing the comments and anticipates sending a recommendation to the Commission by December 2018. The Holder in Due Course Rule requires sellers to include language in consumer credit contracts that preserves consumers' claims and defenses against the seller. This Rule eliminated the "holder in due course" doctrine as a legal defense for separating a consumer's obligation to pay from the seller's duty to perform by requiring that consumer credit and loan contracts contain one of two clauses to preserve the buyer's right to assert sales-related claims and defenses against any "holder" of the contracts.

Identity Theft Rules, 16 CFR 681. By December 2018, the Commission expects to initiate periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule. The Red Flags Rule requires financial institutions and creditors to develop and implement a written identity theft prevention program (a Red Flags Program). By identifying red

[59] 80 FR 75018 (Dec. 1, 2015).

flags for identity theft in advance, businesses can be better equipped to spot suspicious patterns that may arise and take steps to prevent potential problems from escalating into a costly episode of identity theft. The Card Issuer Rule requires credit and debit card issuers to implement reasonable policies and procedures to assess the validity of a change of address if they receive notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards, also receive a request for an additional or replacement card for the same account.

Military Credit Monitoring Rule, to be promulgated at 16 CFR 609. The Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. Law 115-174, requires the Federal Trade Commission to promulgate the Free Credit Monitoring for Active Duty Military Rule by May 25, 2019. The Rule to be promulgated will require the nationwide consumer reporting agencies to provide a free electronic credit monitoring service that, at a minimum, notifies a consumer of material additions or modifications to the file of the consumer at the consumer reporting agency to any consumer who provides to the consumer reporting agency (A) appropriate proof that the consumer is an active duty military consumer; and (B) contact information of the consumer. The Act requires the implementing rule to define: electronic credit monitoring service, material additions or modifications to the file of the consumer, and to determine what constitutes appropriate proof that a consumer is active duty military. The Commission plans to issue a Notice of Proposed Rulemaking during October 2018. The public comment period will close 60 days after the NPRM is published in the Federal Register. The Commission plans to issue the final rule by or before May 25, 2019, as required by the Act.

Premerger Notification Rules and Report Form (or HSR Rules), 16 CFR 801-803. The HSR Rules and the Antitrust Improvements Act Notification and Report Form (HSR Form) were adopted pursuant to section 7(A) of the Clayton Act, which requires firms of a certain size contemplating mergers, acquisitions, or other transactions of a specified size to file notification

with the FTC and the DOJ and to wait a designated period of time before consummating the transaction. These Rules are continually reviewed in order to improve the program's effectiveness and to reduce the paperwork burden on the business community.

Staff anticipates submitting a recommendation to the Commission by October 2018 that would propose clarifying the definition of foreign issuer in the HSR Rules. The definition in the HSR Rules for U.S. and Foreign persons and issuers focuses on three tests: (1) location of incorporation, (2) country whose laws organized under, and (3) principal offices. The term "principal offices" is not defined in the rules and is often a source of confusion for parties. This rulemaking would provide a definition.[60]

Privacy Rule, 16 CFR 313. The Privacy Rule or Privacy of Consumer Financial Information Rule requires, among other things, that certain motor vehicle dealers provide an annual disclosure of their privacy policies to their customers by hand delivery, mail, electronic delivery, or through a website, but only with the consent of the consumer. On June 24, 2015, the Commission proposed amending the Rule to allow motor vehicle dealers instead to notify their customers that a privacy policy is available on their website, under certain circumstances.[61] The proposed amendment would also revise the scope and definitions in the Rule in light of the transfer of part of the Commission's rulemaking authority to the Bureau of Consumer Financial Protection in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The comment period closed on August 31, 2015. Since the Commission proposed amending the Rule, Congress enacted the Fixing America's Surface Transportation Act (FAST Act) which included a provision amending the Gramm-Leach-Bliley Act to create a new exception to the annual notice requirement. Staff anticipates submitting a recommendation to the Commission by November 2018

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[60] *See (B) Regulatory Reform-related Initiatives* above for information about the streamlining of paperwork burdens for E-filing HSR Forms and a separate completed rulemaking proceeding for the HSR Rules.

[61] 80 FR 36267 (June 24, 2015).

R-value Rule, 16 CFR 460. On April 6, 2016, the Commission initiated a periodic review of the R-value Rule, officially the Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, as part of its ongoing systematic review of all rules and guides.[62] The comment period was later extended to September 6, 2016.[63] Staff anticipates sending a recommendation to the Commission for the next action by October 2018. The R-value Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products by specifically requiring manufacturers of home insulation products to provide information about the product's degree of resistance to the flow of heat (R-value). The Rule also establishes uniform standards for testing, information disclosure, and substantiation of product performance claims.

Safeguards Rule (or Standards for Safeguarding Customer Information), 16 CFR 314. On September 7, 2016, the Commission initiated a periodic review of the Safeguards Rule as part of its ongoing systematic review of all rules and guides.[64] The comment period closed on November 7, 2016, and staff anticipates submitting a recommendation to the Commission by November 2018. The FTC's Safeguards Rule, as directed by the Gramm-Leach-Bliley Act, requires each financial institution subject to the FTC's jurisdiction to assess risks and develop a written information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue.

Telemarketing Sales Rule (TSR), 16 CFR 308. On August 11, 2014, the Commission initiated a periodic review of the TSR as set out on the 10-year review schedule.[65] The comment period as extended closed on November 13, 2014.[66] Staff anticipates making a recommendation to the Commission by December 2018.

(b) Guides

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[62] 81 FR 19936 (Apr. 6, 2016).
[63] 81 FR 35661 (June 3, 2016).
[64] 81 FR 61632 (Sept. 7, 2016).
[65] 79 FR 46732 (Aug. 11, 2014). *See Final Actions* below for information about a separate completed rulemaking proceeding for the Telemarketing Sales Rule.
[66] 79 FR 61267 (Oct. 10, 2014).

Nursery Guides, 16 CFR 18. On February 22, 2018, the Commission initiated periodic review of the Guides for the Nursery Industry.[67] Adopted in 1979 and last reviewed in 2007, the Guides address a number of sales practices for outdoor plants, trees, and flowers and prohibit deception as to such things as size, grade, age, condition, price, origin, or the place where the products were grown. The comment period closed on April 20, 2018. On August 30, 2018, the Commission proposed to rescind the Guides because they appear to serve little purpose for consumers and industry members in today's market.[68] The comment period will close on November 5, 2018.

Leather Guides, 16 CFR 24. During 2019, the Commission plans to initiate periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products. Adopted in 1996 and last reviewed in 2007, the Leather Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products. The Guides apply to the manufacture, sale, distribution, marketing, or advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. Importantly, the Leather Guides state that disclosure of non-leather content should be made for material that has the appearance of leather but is not leather.

Final Actions

Since the publication of the 2017 Regulatory Plan, the Commission has issued the following final rules or taken other actions to close other rulemaking or guide proceedings. These final rules continue to be consistent with the President's Statement of Regulatory Philosophy and Principles contained in Executive Order 12866 and Executive Order 13771.

Energy Labeling Rule, 16 CFR 305. On February 22, 2018, the Commission published final rule amendments to the Energy Labeling Rule that updated ranges of comparability and unit energy cost figures on EnergyGuide labels for dishwashers, furnaces, room air conditioners, and

[67] 83 FR 7643 (Feb. 22, 2018).
[68] 83 FR 45582 (Sept. 10, 2018).

pool heaters.[69] The effective date was May 23, 2018. The Commission also set a compliance date of October 1, 2019, for EnergyGuide labels on room air conditioner boxes and made several minor clarifications and corrections to the Rule.[70]

Picture Tube Rule, 16 CFR 410. On October 2, 2018, the Commission announced the completion of its regulatory review of the Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (Picture Tube Rule). The Commission determined that the Rule, which was effective in 1967, is no longer necessary to prevent deceptive claims regarding the size of television screens and to encourage uniformity and accuracy in their marketing. The Commission is therefore repealing the Rule, effective 90 days after publication in the Federal Register. As part of the systematic review of its rules and guides, the Commission had initiated a periodic review of the Rule on June 28, 2017.[71] Based on comments received and prevailing market practices, the Commission published an NPRM on April 18, 2018, that proposed to repeal the Rule.[72] While effective, the Picture Tube Rule set forth appropriate methods for measuring television screens when that measure was included in any advertisement or promotional material for the television set. If the measurement of the screen size was based on a measurement other than the horizontal dimension of the actual viewable picture area, the method of measurement had to be clearly and conspicuously disclosed in close proximity to the size designation.

Recycled Oil Rule, 16 CFR 311. On July 24, 2018, the Commission announced the completion of the review of the Recycled Oil Rule (officially the Rule on Test Procedures and Labeling Standards for Recycled Oil) and that the Rule is being retained in its current form.[73]

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[69] 83 FR 7593 (Feb. 22, 2018).
[70] *See Ongoing Rule and Guide Reviews (a) Rules* for information about a separate and ongoing rulemaking under the Energy Labeling Rule.
[71] 82 FR 29256 (June 28, 2017).
[72] 83 FR 17117 (Apr. 18, 2018).
[73] 83 FR 48213 (Sept. 24, 2018).

This Rule governs labeling of containers for recycled or "re-refined" oil intended for use as engine oil. The Rule, which implemented statutory requirements designed to encourage the use of recycled oil, permits manufacturers and other sellers to represent on a recycled engine-oil container label that the oil is substantially equivalent to new engine oil, as long as the determination of equivalency is based on National Institute of Standards and Technology test procedures prescribed by the Rule.

Textile Rules, 16 CFR 303. On January 23, 2018, the Commission amended the Textile Rules (formally Rules and Regulations under the Textile Fiber Products Identification Act) by eliminating an obsolete provision requiring that an owner of a registered word trademark furnish the agency with a copy of the mark's United States Patent and Trademark Office registration before using the mark on labels.[74] Eliminating this requirement is expected to reduce compliance costs while increasing firms' flexibility. The final Rules were effective on February 22, 2018. The Textile Rules implement the Textile Fiber Products Identification Act, which requires wearing apparel and other covered household textile articles to be marked with (1) the generic names and percentages by weight of the constituent fibers present in the textile fiber product; (2) the name under which the manufacturer or another responsible USA company does business, or in lieu thereof, the registered identification number (RN) of such a company; and (3) the name of the country where the textile product was processed or manufactured.

Jewelry Guides, 16 CFR 23. On July 24, 2018, the Commission announced it was adopting revised Guides for the Jewelry, Precious Metals, and Pewter Industries (Jewelry Guides).[75] As part of its comprehensive review of the Jewelry Guides, the Commission reviewed public comments and the transcript of a public roundtable. To help marketers avoid deceptive practices, our recommended revisions attempt to align the Guides with Section 5 by tying guidance to consumer expectations where we have supporting evidence while providing sellers greater flexibility. The final Guides include several revisions addressing precious metal surface

[74] 83 FR 3068 (Jan. 23, 2018).
[75] 83 FR 40665 (Aug. 16, 2018).

applications. First, for sellers choosing to advertise their products' precious metal coatings, the final Guides advise how to do so non-deceptively. Second, based on new durability testing, the final Guides include revised examples of non-deceptive markings and descriptions for gold surface applications that are reasonably durable. Third, the final Guides advise marketers to disclose the purity of coatings made with a gold, silver, or platinum alloy. Finally, the final Guides advise marketers to disclose rhodium coatings over products advertised as precious metal, such as rhodium-plated items marketed as "white gold" or silver.

Summary

The actions under consideration inform and protect consumers, while minimizing the regulatory burdens on legitimate businesses. The Commission continues to identify and weigh the costs and benefits of proposed regulatory actions and possible alternative actions and to seek and consider 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."[76]

II. Regulatory and Deregulatory Actions

The Commission has no proposed rules that would be a "significant regulatory action" under the definition in Executive Order 12866.[77] The Commission also has no proposed rules

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[76] Executive Order 12866, section 1.

[77] Section 3(f) of Executive Order 12866 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.

that would have significant international impacts or any international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations as defined in Executive Order 13609.

BILLING CODE 6750–01–P

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

In 1988, Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub L. 100-497, 102 Stat. 2475) with a primary purpose of providing “a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” IGRA established the National Indian Gaming Commission (NIGC or the Commission) to protect such gaming, amongst other things, as a means of generating Tribal revenue for strengthening Tribal governance and Tribal communities.

At its core, Indian gaming is a function of sovereignty exercised by Tribal Governments. In addition, the Federal government maintains a government-to-government relationship with the tribes--a responsibility of the NIGC. Thus, while the Agency is committed to strong regulation of Indian gaming, the Commission is equally committed to strengthening government-to-government relations by engaging in meaningful consultation with Tribes to fulfill IGRA’s intent. The NIGC’s vision is to adhere to principles of good government, including transparency to promote Agency accountability and fiscal responsibility, to operate consistently to ensure fairness and clarity in the administration of IGRA, and to respect the responsibilities of each sovereign to fully

promote Tribal economic development, self-sufficiency, a strong workforce, and strong tribal governments. The NIGC is fully committed to working with Tribes to ensure the integrity of the industry by exercising its regulatory responsibilities through technical assistance, compliance, and enforcement activities.

Retrospective Review of Existing Regulations

As an independent regulatory agency, the NIGC has been performing a retrospective review of its existing regulations well before Executive Order 13771 was issued on January 30, 2017. The NIGC, however, recognizes the importance of Executive Order 13771 and its regulatory review is being conducted in the spirit of Executive Order 13771, to identify those regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with input from the public. In addition, as required by Executive Order 13175, issued on November 6, 2000, the Commission has been conducting government-to-government consultations with Tribes regarding each regulation's relevancy, consistency in application, and limitations or barriers to implementation, based on the Tribes' experiences. The consultation process is also intended to result in the identification of areas for improvement and needed amendments, if any, new regulations, and the possible repeal of outdated regulations.

The following Regulatory Identifier Numbers (RINs) have been identified as associated with the review:

RIN	TITLE
3141-AA32	Definitions
3141-AA55	Class III Minimum Internal Control Standards
3141-AA58	Management Contracts
3141-AA60	Class II Minimum Internal Control Standards
3141-AA62	Buy Indian Goods and Services (BIGS) Rule
3141-AA68	Audit Regulations
3141-AA69	Class II Minimum Technical Standards

More specifically, the NIGC is currently considering promulgating new regulations in the following areas: (i) amendments to its regulatory definitions to conform to the newly promulgated rules and provide clarity; (ii) updates or revisions to its management contract regulations to address the current state of the industry; (iii) the review and revision of the minimum internal control standards (MICS) for Class II gaming; (iv) regulation that would provide a preference to qualified Indian-owned businesses when purchasing goods or services for the Commission at a fair market price; (v) the review and revision of the minimum technical standards for Class II gaming; and (vi) updates or revisions to the existing audit regulations to reduce cost burdens for small or charitable gaming operations. The Commission has decided to suspend the Class III minimum internal control standards at 25 CFR part 542 and publish updated standards as guidance documents.

NIGC is committed to staying up to date on developments in the gaming industry, including best practices and emerging technologies. Further, the Commission aims to continue reviewing its regulations to determine whether they are overly burdensome to

smaller, rural operations. The NIGC anticipates that the ongoing consultation with Tribes will continue to play an important role in the development of the NIGC's rulemaking efforts.

BILLING CODE 7565-01-P

U.S. Nuclear Regulatory Commission Statement of Regulatory Priorities for Fiscal Year 2019

I. Introduction

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the U.S. Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. Our regulatory mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, and promote the common defense and security. As part of our mission, we regulate the operation of nuclear power plants and fuel-cycle facilities; the safeguarding of nuclear materials from theft and sabotage; the safe transport, storage, and disposal of radioactive materials and wastes; the decommissioning and safe release for other uses of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material. In addition, we license the import and export of radioactive materials.

As part of our regulatory process, we routinely conduct comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations. We have developed internal procedures and programs to ensure that we impose only necessary requirements on our licensees and to review existing regulations to determine whether the requirements imposed are still necessary.

Our regulatory priorities for fiscal year (FY) 2019 reflect our safety and security mission and will enable us to achieve our two strategic goals described in NUREG-1614, Volume 7, "Strategic Plan: Fiscal Years 2018-2022" (https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v7/)

(1) to ensure the safe use of radioactive materials, and (2) to ensure the secure use of radioactive materials.

II. Regulatory Priorities

This section contains information on some of our most important and significant regulatory actions that we are considering issuing in proposed or final form during FY 2019. For additional information on these regulatory actions and on a broader spectrum of our upcoming regulatory actions, see our portion of the Unified Agenda of Regulatory and Deregulatory Actions. We also provide additional information on planned rulemaking and petition for rulemaking activities, including priority and schedule, on our Web site at https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html.

A. Proposed Rules

American Society of Mechanical Engineers 2015-2017 Code Editions Incorporation by Reference (RIN 3150-AJ74; NRC-2016-0082): This proposed rule would amend the NRC's regulations to incorporate by reference the 2015 and 2017 Editions of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and the 2015 and 2017 Editions of the ASME Operation and Maintenance of Nuclear Power Plants (OM Code).

Advanced Power Reactor 1400 (APR-1400) Design Certification (RIN 3150-AJ67; NRC-2015-0224): This proposed rule would amend the NRC's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52,

“Licenses, Certifications, and Approvals for Nuclear Power Plants,” by adding a new appendix for the initial certification of the APR1400

standard plant design (Korea Electric Power Corporation and Korea Hydro & Nuclear Power Co., Ltd).

Cyber Security for Fuel Facilities (RIN 3150-AJ64; NRC-2015-0179): This proposed rule would add cyber security requirements to the NRC's regulations applicable to certain nuclear fuel-cycle facility applicants and licensees. This proposed rule would assure that these fuel-cycle facilities adequately detect, protect against, and respond to a cyber attack capable of causing one or more of the consequences of concern defined in the proposed rule.

Low-Level Radioactive Waste Disposal (RIN 3150-AI92; NRC-2011-0012): This supplemental proposed rule would require licensees for low-level radioactive waste disposal facilities under 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," to conduct site-specific analyses, including an intruder assessment, and make additional changes to the current regulations to reduce ambiguity and facilitate implementation.

Regulatory Improvements for Production or Utilization Facilities Transitioning to Decommissioning (RIN 3150-AJ59; NRC-2015-0070): This proposed rule would amend the NRC's regulations that relate to the decommissioning of production and utilization facilities.

Approval of American Society of Mechanical Engineers Code Cases, Revision 38 (RIN 3150- AJ93; NRC-2017-0024): This proposed rule would incorporate by reference into 10 CFR 50.55a, "Codes and standards," the ASME Code cases that the NRC finds to be acceptable or conditionally acceptable.

B. Final Rules

The following rulemaking activities meet the requirements of a significant regulatory action in Executive Order 12866, “Regulatory Planning and Review,” because they are likely to have an annual effect on the economy of $100 million or more.

Mitigation of Beyond Design Basis Events (RIN 3150-AJ49; NRC-2011-0189, NRC-2014-0240): This final rule would enhance mitigation strategies for nuclear power reactors to respond to beyond-design-basis external events.

Revision of Fee Schedules: Fee Recovery for FY 2019 (RIN 3150-AJ99; NRC-2017-0032): This final rule would amend the NRC's fee schedules for licensing, inspection, and annual fees charged to its applicants and licensees.

NRC	PROPOSED RULE STAGE

175. LOW–LEVEL RADIOACTIVE WASTE DISPOSAL [NRC–2011–0012]

Priority:

Other Significant

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 20; 10 CFR 61

Legal Deadline:

None

Abstract:

This rulemaking would amend the NRC's regulations to revise the licensing requirements for low-level radioactive waste disposal. The rule would ensure that the waste streams that are significantly different from those considered during the development of existing regulations will continue to be disposed of safely and meet the performance objectives for land disposal of low-level radioactive waste. The rule would require certain licensees and applicants to conduct site-specific analyses, including a new intruder assessment, using a specified compliance period and would make other clarifying changes.

Statement of Need:

The rule would amend the Nuclear Regulatory Commission's (NRC) regulations to require low-level radioactive waste (LLRW) disposal facilities to conduct site-specific analyses to demonstrate compliance with the performance objectives. Although the NRC believes that part 61 is adequate to protect public health and safety, requiring a site-specific analysis to demonstrate compliance with the performance objectives would enhance the safe disposal of LLRW and would provide added assurance that waste streams not considered in the part 61 technical basis comply with the part 61 performance objectives. Further, these analyses would identify any additional measures that would be prudent to implement. These amendments would improve the efficiency of the regulations by making changes to reduce ambiguity, facilitate implementation, and better

align the requirements with the current and more modern health and safety regulations. This rulemaking would correct ambiguities and provide added assurance that LLRW disposal continues to meet the performance objectives in part 61.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The NRC published a regulatory analysis examining the costs and benefits associated with the proposed rule. Agreement States and industry (licensees) incur implementation and ongoing costs. The benefits of the regulatory action include allowing licensees to optimize disposal capacity and ensuring that LLRW streams that are significantly different from those considered during the development of the current regulations can be disposed of safely, minimizing future mitigation. These benefits are likely to avert potential future costs to licensees. The rule is cost-justified because the regulatory initiatives enhance public health and safety by ensuring the safe disposal of LLRW.

Risks:

Timetable:

Action	**Date**	**FR Cite**
Preliminary Proposed Rule Language	05/03/11	76 FR 24831
Comment Period End	06/18/11	
Preliminary Draft Rule Language; Second Request	12/07/12	77 FR 72997

for Comment		
Comment Period End	01/07/13	
Preliminary Draft Rule Language; Second Request for Comment; Correction	01/08/13	78 FR 1155
NPRM	03/26/15	80 FR 16082
NPRM Comment Period End	07/24/15	
NPRM Comment Period Reopened	08/27/15	80 FR 51964
NPRM Reopening of Comment Period End	09/21/15	
Supplemental NPRM	12/00/18	
Final Rule	08/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Staff intends to publish a supplemental proposed rule later in 2018, per Commission direction.

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RIN: 3150–AI92

NRC	

176. REGULATORY IMPROVEMENTS FOR PRODUCTION AND UTILIZATION FACILITIES TRANSITIONING TO DECOMMISSIONING [NRC–2015–0070]

Priority:

Other Significant

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 50; 10 CFR 73; 10 CFR 26; 10 CFR 140

Legal Deadline:

None

Abstract:

This rulemaking would amend the NRC's regulations to provide an appropriate regulatory framework for nuclear power reactors transitioning from operations to decommissioning. The goals of this rulemaking are to provide for a safe, effective, and efficient decommissioning process; to reduce the need for license amendment requests and exemptions from existing regulations; and to address other decommissioning issues deemed relevant by the NRC. The rulemaking would address lessons learned from licensees that have completed or are currently in the decommissioning process, and would align regulatory requirements with the reduction in risk that occurs over time, while continuing to maintain safety and security. The rulemaking was previously titled, "Regulatory Improvements for Power Reactors Transitioning to Decommissioning." The scope of this rulemaking would affect nuclear production and utilization facilities.

Statement of Need:

This rulemaking would respond to Commission direction to proceed with rulemaking for reactors transitioning to decommissioning. The goals are to provide for a safe, effective, and efficient decommissioning process; to reduce the need for license amendment requests and exemptions from existing regulations; and to address other decommissioning issues deemed relevant by the NRC.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The NRC published a regulatory basis document examining the costs and benefits associated with the proposed rule. The cost-benefit analysis shows that the rulemaking would result in a net averted cost of between $12.5 million to $32.3 million, in which the rulemaking costs would be offset by the eliminated need for exemption requests or licensing amendment submittals that licensees would typically submit to the NRC for review and approval during decommissioning.

Risks:

Timetable:

Action	**Date**	**FR Cite**
ANPRM	11/19/15	80 FR 72358
ANPRM Comment Period End	01/04/16	
ANPRM Extension of Comment Period	12/28/15	80 FR 80709
ANPRN Extension of Comment Period End	03/18/16	
Draft Regulatory Basis	03/15/17	82 FR 13778
Draft Regulatory Basis Comment Period End	06/13/17	
Final Regulatory Basis	11/27/17	82 FR 55954
NPRM	10/00/18	

Final Rule	12/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

The Commission directed the NRC staff to proceed with rulemaking in the Staff Requirements Memorandum on SECY-14-0118, “Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements,” which can be accessed in ADAMS under Accession No. ML14364A111.

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RIN: 3150–AJ59

NRC	

177. CYBER SECURITY AT FUEL CYCLE FACILITIES [NRC–2015–0179]

Priority:

Other Significant

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 40; 10 CFR 70; 10 CFR 73

Legal Deadline:

None

Abstract:

This rulemaking would amend the NRC's regulations to add cyber security requirements for certain nuclear fuel cycle facility applicants and licensees. The rule would require certain fuel cycle facilities to establish, implement, and maintain a cyber security program that is designed to protect public health and safety and the common defense and security. It would affect fuel cycle applicants or licensees that are or plan to be authorized to: (1) possess greater than a critical mass of special nuclear material and perform activities for which the NRC requires an integrated safety analysis or (2) engage in uranium hexafluoride conversion or deconversion.

Statement of Need:

The NRC currently does not have a comprehensive regulatory framework for addressing cyber security at fuel cycle facilities (FCFs). Each FCF licensee is subject to either design basis threats (DBTs) or to the Interim Compensatory Measures (ICM) Orders issued to all FCF licensees subsequent to the events of September 11, 2001. Both the DBTs and the ICM Orders contain a provision that these licensees include consideration of a cyber attack when considering security vulnerabilities. However, the NRC's current regulations do not provide specific requirements or guidance on how to implement these performance objectives. Since the issuance of the ICM Orders and the 2007 DBT rulemaking, the threats to digital assets have increased both globally and nationally. Cyber attacks have increased in number, become more sophisticated, resulted in physical consequences, and targeted digital assets similar to those used by FCF licensees. The rulemaking would establish requirements for FCF licensees to establish, implement, and maintain a cyber security program to detect, protect against, and respond to a cyber attack capable of causing a consequence of concern. The design of this cyber security program would provide flexibility to account for the various types of FCFs, promote common defense and security, and provide reasonable assurance that the public health and safety remain adequately protected against the evolving risk of cyber attacks.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The NRC evaluated the provisions of the proposed rule in the Regulatory Basis and concluded that the provisions provide a substantial increase in the overall protection of public health and safety through effective implementation of the cyber security program to prevent safety

consequences of concern. The analysis further demonstrated that the costs for the proposed rule provisions are cost justified for the additional protection provided.

Risks:

Timetable:

Action	Date	FR Cite
Draft Regulatory Basis	09/04/15	80 FR 53478
Draft Regulatory Basis Comment Period End	10/05/15	
Final Regulatory Basis	04/12/16	81 FR 21449
NPRM	10/00/18	
Final Rule	01/00/20	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 3150–AJ64

NRC	

178. AMERICAN SOCIETY OF MECHANICAL ENGINEERS 2015–2017 CODE EDITIONS INCORPORATION BY REFERENCE [NRC–2016–0082]

Priority:

Other Significant

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 50

Legal Deadline:

None

Abstract:

This rulemaking would amend the NRC's regulations to authorize the use of recent editions of the American Society of Mechanical Engineers (ASME) Codes. The rule would incorporate by reference the 2015 and 2017 Editions of the ASME Boiler and Pressure Vessel Code and the 2015 and 2017 Editions of the ASME Operations and Maintenance of Nuclear Power Plants into the NRC's regulations, with conditions. This action increases consistency across the industry, and makes use of current voluntary consensus standards (as required by the National Technology Transfer and Advancement Act), while continuing to provide adequate protection to the public. This rulemaking would affect nuclear power reactor licensees. The title of the rulemaking was revised to address that the rulemaking entitled, "2017 Edition of the American Society of Mechanical Engineers Operations and Maintenance Code" (RIN 3150-AJ90; NRC-2017-0019), was added to the scope of this rulemaking along with the rulemaking entitled, "2017 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code" (RIN 3150-AJ91; NRC-2017-0020).

Statement of Need:

This rulemaking enhances the efficiency and effectiveness of the NRC's regulations by making use of current voluntary consensus approaches and is consistent with applicable requirements of the National Technology Transfer and Advancement Act.

Summary of Legal Basis:

The legal basis for the proposed action is 42 U.S.C. 2201, 42 U.S.C. 5841, and 10 CFR part 2, Agency Rules of Practice and Procedure, "Subpart H, Rulemaking."

Alternatives:

Anticipated Cost and Benefits:

The NRC has examined the costs and benefits associated with the proposed rule. The NRC estimates that the proposed rulemaking would result in a net averted cost of between $6.5 million and $7.7 million, from reducing the industry burden of preparing and the NRC burden of reviewing and approving ASME Code alternative requests on a plant-specific basis.

Risks:

Timetable:

Action	**Date**	**FR Cite**
NPRM	10/00/18	
Final Rule	11/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN:

Related to 3150–AJ90, Related to 3150–AJ91

RIN: 3150–AJ74

NRC	

179. APPROVAL OF AMERICAN SOCIETY OF MECHANICAL ENGINEERS CODE CASES, REVISION 38 [NRC–2017–0024]

Priority:

Other Significant

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 50; 10 CFR 55

Legal Deadline:

None

Abstract:

This rulemaking would incorporate by reference into the NRC's regulations the latest revision to Regulatory Guides that list the American Society of Mechanical Engineers (ASME) Code Cases that the NRC finds to be acceptable (or conditionally acceptable). This action increases consistency across the industry and makes use of current voluntary consensus standards (as required by the National Technology Transfer and Advancement Act), while continuing to provide adequate protection to the public. This rulemaking would affect nuclear power reactor licensees. This rulemaking was formerly titled, "Regulatory Guide (RG) 1.84, Rev. 38; RG 1.147, Rev. 19; and RG 1.192, Rev. 3; Approval of American Society of Mechanical Engineers Code Cases."

Statement of Need:

This rulemaking enhances the efficiency and effectiveness of the NRC's regulations by making use of current voluntary consensus approaches and is consistent with applicable requirements of the National Technology Transfer and Advancement Act.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

The rulemaking and guidance implementation would result in a cost-justified change based on the net averted cost to the industry. Other beneficial factors include meeting the NRC goal of ensuring the protection of public health and safety and the environment through the NRC’s approval of new ASME Code Cases, which would allow the use of the most current methods and technology.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	10/00/18	
Final Rule	06/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 3150–AJ93

NRC	

180. REVISION OF FEE SCHEDULES: FEE RECOVERY FOR FY 2019 [NRC–2017–0032]

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Independent agency

Legal Authority:

31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

CFR Citation:

10 CFR 170; 10 CFR 171

Legal Deadline:

NPRM, Statutory, September 30, 2019.

The Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, requires that the NRC recover approximately 90 percent of its budget authority in Fiscal Year (FY) 2019, less the amounts appropriated from the Waste Incidental to Reprocessing, generic homeland security activities, and Inspector General services for the Defense Nuclear Facilities Safety Board, through fees assessed to licensees. Under OBRA–90, the NRC is required to collect the fees for FY 2019, by September 30, 2019.

Abstract:

This rule would implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires the NRC to recover approximately 90 percent of its budget authority in a given fiscal year, less the amounts appropriated from the Waste Incidental to Reprocessing, generic homeland security activities, and Inspector General services for the Defense Nuclear Facilities Safety Board, through fees assessed to licensees. This rulemaking would amend the Commission's fee schedules for licensing, inspection, and annual fees charged to its applicants and licensees. The licensing and inspection fees are established under 10 CFR part 170 and recover the NRC's cost of providing services to identifiable applicants and licensees. Examples of services provided by the NRC for which 10 CFR part 170 fees are assessed include license application reviews, license renewals, license amendment reviews, and inspections. The annual fees established under 10 CFR part 171 recover budgeted costs for generic (e.g., research and rulemaking) and other regulatory activities not recovered under 10 CFR part 170 fees.

Statement of Need:

The NRC's fee regulations are primarily governed by two laws: 1) the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701), and 2) OBRA-90. The OBRA-90 statute requires the NRC to recover approximately 90 percent of its budget authority through fees; this fee-recovery requirement excludes amounts appropriated for Waste Incidental to Reprocessing, generic homeland security activities, and Inspector General (IG) services for the Defense Nuclear Facilities Safety Board, as well as any amounts appropriated from the Nuclear Waste Fund. The OBRA-90 statute first requires the NRC to use its IOAA authority to collect user fees for NRC work that provides specific benefits to identifiable applicants and licensees (such as licensing work, inspections, special projects). The regulations at part 170 of title 10 of the Code of Federal Regulations (10 CFR) authorize these fees. Because the NRC's fee recovery under the IOAA (10 CFR part 170) does not equal 90 percent of the NRC's budget authority, the NRC also assesses generic annual fees under 10 CFR part 171 to recover the remaining fees necessary to achieve OBRA-90's 90 percent fee recovery. These annual fees recover generic regulatory costs that are not otherwise collected through 10 CFR part 170.

Summary of Legal Basis:

The OBRA-90, as amended, requires that the fees for FY 2019 must be collected by September 30, 2019.

Alternatives:

Because this action is mandated by statute and the fees must be assessed through rulemaking, the NRC did not consider alternatives to this action.

Anticipated Cost and Benefits:

The cost to the NRC's licensees is approximately 90 percent of the NRC FY 2019 budget authority less the amounts appropriated for non-fee items.

Risks:

Timetable:

Action	Date	FR Cite
NPRM	01/00/19	
Final Rule	05/00/19	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Local, State

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NRC	FINAL RULE STAGE

181. MITIGATION OF BEYOND DESIGN BASIS EVENTS (MBDBE) [NRC–2014–0240]

Priority:

Economically Significant. Major under 5 USC 801.

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 50; 10 CFR 52

Legal Deadline:

None

Abstract:

This rulemaking would amend the NRC's regulations to enhance mitigation strategies for nuclear power reactors to withstand beyond-design-basis external events. The rule would produce a more seamless accident response capability that includes emergency operating procedures and guidelines for beyond-design-basis external events and extensive damage mitigation. The scope of this rulemaking would affect nuclear power reactor licensees and applicants, and address several petitions for rulemaking (PRM-50-96, PRM-50-97, PRM-50-98, PRM-50-100, PRM-50-101, and PRM-50-102).

Statement of Need:

This rulemaking is intended to make generically applicable the requirements in EA-12-049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events, which was issued on March 12, 2012. This rulemaking is also intended to make generically applicable the requirements in EA-12-051, Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation that was issued on March 12, 2012. These orders were issued in response to the events that occurred at the Fukushima Dai-ichi Nuclear Power Station on March 11, 2011, involving an earthquake and tsunami.

Summary of Legal Basis:

Order EA-12-049 requirements were imposed on current power reactor licensees under 10 CFR 50.109(a)(4)(ii) as being required for adequate protection of public health and safety. The Commission imposed Order EA-12-051 requirements through an administrative exception to the

backfit analysis requirements in 10 CFR 50.109. This rulemaking would be making those order requirements generically applicable, and it is not anticipated that this action would be imposing substantial additional requirements beyond what has been already imposed on power reactor licensees by order. All additional requirements that involve integration of the station blackout mitigation strategies with other existing accident procedure and guideline sets must be justified under the NRC's backfitting regulations.

Alternatives:

As an alternative to the rulemaking, the NRC staff considered the "non-action" alternative. This alternative would mean that the NRC would be required to issue orders or impose license conditions on each new reactor licensed to ensure that the requirements continue to be imposed on all power reactor licensees. This alternative also would not require operators of nuclear power plants to strengthen and integrate various emergency response capabilities, improve strategies for large-scale events to promote effective decisionmaking at all levels, and have training/qualification/evaluation of key personnel to implement the procedures and strategies. This is not the optimal regulatory approach and not consistent with the NRC's principles of good regulation. The NRC sees benefit in pursuing a rulemaking that enables lessons-learned from implementation of EA-12-049 and external stakeholder feedback (through the public comment process) to be considered within the rulemaking to inform the requirements that are placed into the Code of Federal Regulations, which would then remove the need to issue orders or impose license conditions on each future reactor licensee.

Anticipated Cost and Benefits:

The portions of the rulemaking that entails making station blackout mitigation strategies and reliable spent fuel pool instrumentation generically applicable is not anticipated to impose significant additional costs beyond those that are already being incurred due to implementation of EA-12-049 and EA-12-051. The benefits associated with the mitigation strategies will occur as a result of EA-12-049 and EA-12-051 implementation rather than as a result of this

rulemaking. The costs and benefits associated with the integrated response capability portion of this rulemaking will be described in a supporting regulatory analysis.

Risks:

The risks associated with beyond-design-basis external events have not been estimated with sufficient certainty to enable a quantitative measure of risk to be determined for these events, including the corresponding benefit associated with implementation of the new mitigation strategies.

Timetable:

Action	Date	FR Cite
NPRM	11/13/15	80 FR 70610
NPRM Comment Period End	02/11/16	
Final Rule	10/00/18	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

The draft final rule was provided to the Commission in December 2016.

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Related RIN:

Merged with 3150–AJ11, Merged with 3150–AJ08

RIN: 3150–AJ49

NRC	

182. ADVANCED POWER REACTOR 1400 (APR–1400) DESIGN CERTIFICATION [NRC–2015–0224]

Priority:

Other Significant

EO 13771 Designation:

Independent agency

Legal Authority:

42 U.S.C. 2201; 42 U.S.C. 5841

CFR Citation:

10 CFR 52

Legal Deadline:

None

Abstract:

This rulemaking would amend the NRC's regulations to incorporate the Advanced Power Reactor 1400 (APR1400) standard plant design. The rulemaking would add a new appendix for the initial certification of the APR1400 standard plant design. This action would allow applicants intending to construct and operate a nuclear power plant to reference this design certification rule in future applications. Because the NRC considers this action to be non-controversial, the NRC is pursuing a direct final rule for this rulemaking. However, if the NRC receives significant adverse comments on the rule, the NRC will publish a document that withdraws the direct final rule and will address the comments received in a subsequent final rule.

Statement of Need:

This rule would place the APR1400 standard design certification, once issued by the Commission, into the Code of Federal Regulations (CFR). The regulations in 10 CFR 52.51 require the Commission to initiate rulemaking after an application is filed under 10 CFR 52.45, by which 10 CFR 52.41 allows any person to seek a standard design certification. This action is separate from the filing of an application for construction permit or combined license (COL) for such a facility. This rule would provide a COL applicant the ability to incorporate by reference this official certified standard design into its application. This design certification rule (DCR) also gives the public a chance to comment on the design before it receives finality.

Summary of Legal Basis:

Alternatives:

Anticipated Cost and Benefits:

There are no current utilities seeking to build or operate an APR1400 nuclear power plant within the United States. There is no anticipated major increase in costs for consumers, individual industries, or geographical regions as a result of the APR1400 DCR because this action does not constitute the license for construction of a nuclear power plant at a site.

Risks:

Timetable:

Action	Date	FR Cite
Direct Final Rule	02/00/19	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

The NRC staff is developing the regulatory basis.

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