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## REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2016

**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" (58 FR 51735) and incorporated in Executive Order 13563, "Improving Regulation and Regulatory Review" issued on January 18, 2011 (76 FR 3821). 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 2016 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.

The complete fall 2016 Unified Agenda contains the Regulatory Plans of 30 Federal agencies and 60 Federal agency regulatory agendas.

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**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](mailto:risc@gsa.gov).

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*Introduction to the Fall 2016 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 Interior

Department of Justice

Department of Labor

Department of Transportation

Department of 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

Federal Acquisition Regulation

## **Independent Regulatory Agencies**

Consumer Financial Protection Bureau

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 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

**Other Executive Agencies**

Architectural and Transportation Barriers Compliance Board

Environmental Protection Agency

General Services Administration

National Aeronautics and Space Administration

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

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 to 1995. The complete online edition of the Unified Agenda includes regulatory agendas from 62 Federal agencies. Agencies of the United States Congress are not included.

The fall 2016 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 State

Department of Veterans Affairs\*

### **Other Executive Agencies**

Agency for International Development

Commission on Civil Rights

Committee for Purchase From People Who Are Blind or Severely Disabled

Corporation for National and Community Service  
Court Services and Offender Supervision Agency for the  
District of Columbia

Equal Employment Opportunity Commission\*

National Archives and Records Administration\*

National Endowment for the Arts

National Endowment for the Humanities

National Science Foundation

Office of Government Ethics

Office of Management and Budget

Office of Personnel Management\*

Office of the United States Trade Representative

Peace Corps

Pension Benefit Guaranty Corporation\*

Railroad Retirement Board

Social Security Administration\*

## **Independent Agencies**

Council of the Inspectors General on Integrity and Efficiency

Farm Credit Administration

Farm Credit System Insurance Corporation

Federal Deposit Insurance Corporation

Federal Energy Regulatory Commission

Federal Housing Finance Agency

Federal Maritime Commission

Federal Trade Commission\*

Gulf Coast Ecosystem Restoration Council

National Credit Union Administration

National Indian Gaming Commission\*

National Transportation Safety Board

Special Inspector General for Afghanistan Reconstruction

Surface Transportation Board

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," signed September 30, 1993 (58 FR 51735), requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

### *Executive Order 13563*

*Executive Order 13563*, "Improving Regulation and Regulatory Review," issued on January 18, 2011, 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," signed August 4, 1999 (64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing 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," signed May 18, 2001 (66 FR 28355), directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for "those matters identified as significant energy actions." As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

#### *Small Business Regulatory Enforcement Fairness Act*

*The Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 et seq.), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted, or is likely to result, in an annual effect

on the economy of \$100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

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

*The Regulatory Plan* appears in part II 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 (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

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

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

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

*Timetable* -- the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 12/00/14 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 2015.

*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, PL 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:** November 17, 2016.

**NAME: John C. Thomas,**

*Executive Director.*

## **INTRODUCTION TO THE 2016 REGULATORY PLAN**

Executive Order 12866, issued in 1993, requires the production of a Unified Regulatory Agenda and Regulatory Plan. Executive Order 13563, issued in 2011, reaffirms the requirements of Executive Order 12866.

Consistent with these Executive Orders, the Office of Information and Regulatory Affairs (OIRA) is providing the 2016 Unified Regulatory Agenda (Agenda) and the Regulatory Plan (Plan) for public review. The Agenda and Plan are preliminary statements of regulatory and deregulatory policies and priorities under consideration. The Plan provides a list of important regulatory actions that agencies are considering for issuance in proposed or final form during the 2017 fiscal year. In contrast, the Agenda is a more inclusive list that includes numerous ministerial actions and routine rulemakings, as well as long-term initiatives that agencies do not plan to complete in the coming year but on which they are actively working. Changed circumstances, public comment, or applicable legal authorities could affect an agency's decision about whether to go forward with a listed regulatory action.

A central purpose of the Agenda is to involve the public, including State, local, and tribal officials, in Federal regulatory planning. The public examination of the Agenda and Plan will facilitate public participation in a regulatory system that, in the words of Executive Order 13563, protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." We emphasize that rules listed on the Agenda must still undergo significant development and review before agencies can issue them. No regulatory action can become effective until it has gone through the legally required processes, which normally include public notice and comment. Any proposed or final action must also satisfy the requirements of relevant statutes, Executive Orders, and Presidential Memoranda.

Among other information, the Agenda provides an initial classification of whether a rulemaking is “significant” or “economically significant” under the terms of Executive Orders 12866 and 13563. The Agenda might list a rule as “economically significant” within the meaning of Executive Order 12866 (generally, having an annual effect on the economy of \$100 million or more) because it imposes costs, confers large benefits, affects significant budget resources, or removes costly burdens.

### **Executive Orders 13563 and 13610: Regulatory Development, and the Retrospective Review of Regulation**

Executive Order 13563 reaffirmed the principles, structures, and definitions in Executive Order 12866, which has long governed regulatory review. Executive Order 13563 explicitly points to the need for predictability and certainty in the regulatory system, as well as for use of the least burdensome means to achieving regulatory ends. These Executive Orders include the requirement that, to the extent permitted by law, agencies should not proceed with rulemaking in the absence of a reasoned determination that the benefits justify the costs. They also establish public participation, integration and innovation, flexible approaches, scientific integrity, and retrospective review as areas of emphasis in regulation. In particular, Executive Order 13563 explicitly draws attention to the need to measure and improve “the actual results of regulatory requirements”—a clear reference to the importance of the retrospective review of regulations.

Executive Order 13563 addresses new regulations that are under development, as well as retrospective review of existing regulations that are already in place. With respect to agencies' review of existing regulations, the Executive Order calls for careful reassessment based on empirical analysis. The prospective analysis required by Executive Order 13563 may depend on a degree of prediction and speculation about a rule's likely impacts, and the actual costs and benefits of a regulation may be lower or higher than what was anticipated when the rule was originally developed.

Executive Order 13610, *Identifying and Reducing Regulatory Burdens*, issued in 2012, institutionalizes the retrospective—or “lookback”—mechanism set out in Executive Order 13563 by requiring agencies to report to the Office of Management and Budget and to the public twice each year (January and July) on the status of their retrospective review efforts. In these reports, agencies are to "describe progress, anticipated accomplishments, and proposed timelines for relevant actions."

Executive Orders 13563 and 13610 recognize that circumstances may change in a way that requires agencies to reconsider regulatory requirements. The retrospective review process allows agencies to reevaluate existing rules and to streamline, modify, or eliminate those regulations that do not make sense in their current form. The agencies’ lookback efforts so far during this Administration have yielded approximately \$37 billion in savings for the American public over the next five years. Reflecting that focus, the current Agenda lists numerous actions that retroactively review existing regulatory programs. Since President Obama issued Executive Order 13610, this Administration has worked to institutionalize retrospective review in the federal agencies. In July 2016, agencies submitted to OIRA the latest updates of their retrospective review plans, which are publicly available at:

<https://www.whitehouse.gov/omb/oira/regulation-reform>. Federal agencies will again update their retrospective review plans in January 2017. OIRA has asked agencies to continue to emphasize retrospective reviews in their latest Regulatory Plans.

As agencies advance the regulations detailed in this 2016 Regulatory Plan, OIRA will continue its efforts to ensure that our regulatory system emphasizes, public participation, scientific evidence, innovation, flexible regulatory approaches, and careful consideration of costs and benefits. These considerations are meant to produce a regulatory system that is driven by the best available knowledge and evidence, attentive to real-world impacts, and is suited to the evolving circumstances of the 21<sup>st</sup> Century.

## DEPARTMENT OF AGRICULTURE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
1	National Organic Program—Organic Aquaculture Standards	0581–AD34	Proposed Rule Stage
2	NOP; Organic Livestock and Poultry Practices;	0581–AD44	Final Rule Stage
3	Importation, Interstate Movement, and Release Into the Environment of Certain Genetically Engineered Organisms	0579–AE15	Proposed Rule Stage
4	Horse Protection; Licensing of Designated Qualified Persons and Other Amendments	0579–AE19	Final Rule Stage
5	Tournament Systems and Poultry Growing Arrangements	0580–AB26	Proposed Rule Stage
6	Unfair Practices and Unreasonable Preference	0580–AB27	Proposed Rule Stage
7	Clarification of Scope	0580–AB25	Final Rule Stage
8	Eligibility, Certification, and Employment and Training Provisions	0584–AD87	Final Rule Stage
9	National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010	0584–AE09	Final Rule Stage
10	Enhancing Retailer Eligibility Standards in SNAP	0584–AE27	Final Rule Stage

11	Supplemental Nutrition Assistance Program (SNAP) Photo Electronic Benefit Transfer (EBT) Card Implementation Requirements	0584–AE45	Final Rule Stage
12	Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed	0583–AD56	Proposed Rule Stage
13	Modernization of Swine Slaughter Inspection	0583–AD62	Proposed Rule Stage

### DEPARTMENT OF COMMERCE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
14	Endangered and Threatened Species; Critical Habitat for the Threatened Caribbean Corals	0648–BG20	Proposed Rule Stage
15	Designation of Critical Habitat for Threatened Indo-Pacific Reef-building Corals	0648–BG26	Proposed Rule Stage
16	Magnuson-Stevens Fisheries Conservation and Management Act; Seafood Import Monitoring Program	0648–BF09	Final Rule Stage
17	Designation of Critical Habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic Sturgeon	0648–BF28	Final Rule Stage
18	Designation of Critical Habitat for the Carolina and South Atlantic Distinct Population Segments of Atlantic Sturgeon	0648–BF32	Final Rule Stage

## DEPARTMENT OF DEFENSE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
19	Sexual Assault Prevention and Response Program Procedures	0790–AI36	Final Rule Stage
20	Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals (Adding Subpart D)	0790–AJ37	Final Rule Stage
21	Sexual Assault Prevention and Response (SAPR) Program	0790–AJ40	Final Rule Stage
22	TRICARE; Reimbursement of Long Term Care Hospitals and Inpatient Rehabilitation Facilities	0720–AB47	Final Rule Stage
23	TRICARE: Refills of Maintenance Medications Through Military Treatment Facility Pharmacies or National Mail Order Pharmacy Program	0720–AB64	Final Rule Stage

## DEPARTMENT OF EDUCATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
24	Title I of the Elementary and Secondary Education Act of 1965—Accountability and State Plans	1810–AB27	Final Rule Stage
25	Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Supplement Not Supplant under	1810–AB33	Final Rule Stage

	Title I, Part A		
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### DEPARTMENT OF ENERGY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
26	Energy Conservation Standards for General Service Lamps	1904-AD09	Proposed Rule Stage
27	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces	1904-AD20	Proposed Rule Stage
28	Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers	1904-AD59	Proposed Rule Stage
29	Energy Conservation Standards for Manufactured Housing	1904-AC11	Final Rule Stage
30	Energy Conservation Standards for Commercial Packaged Boilers	1904-AD01	Final Rule Stage
31	Energy Conservation Standards for Commercial Water Heating Equipment	1904-AD34	Final Rule Stage
32	Energy Conservation Standards for Dedicated-Purpose Pool Pumps	1904-AD52	Final Rule Stage

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
33	Confidentiality of Substance Use Disorder Patient	0930-AA21	Final Rule

	Records		Stage
34	Control of Communicable Diseases	0920-AA63	Final Rule Stage
35	Mammography Quality Standards Act; Regulatory Amendments	0910-AH04	Proposed Rule Stage
36	Patient Medication Information	0910-AH33	Proposed Rule Stage
37	340(B) Civil Monetary Penalties for Manufacturers and Ceiling Price Regulations	0906-AA89	Final Rule Stage
38	Definition of Human Organ Under Section 301 of the National Organ Transplant Act of 1984	0906-AB02	Final Rule Stage
39	340B Program Omnibus Guidelines	0906-AB08	Final Rule Stage
40	Federal Policy for the Protection of Human Subjects; Final Rules	0937-AA02	Final Rule Stage
41	Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid, and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP (CMS-2334-P2)	0938-AS55	Proposed Rule Stage
42	FY 2018 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs) (CMS-1679-P)	0938-AS96	Proposed Rule Stage
43	FY 2018 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1673-P)	0938-AS97	Proposed Rule Stage
44	FY 2018 Inpatient Rehabilitation Facility (IRF) Prospective Payment System (CMS-1671-P)	0938-AS99	Proposed Rule Stage

45	FY 2018 Hospice Rate Update (CMS-1675-P)	0938-AT00	Proposed Rule Stage
46	CY 2018 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1678-P)	0938-AT03	Proposed Rule Stage
47	CY 2018 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) (CMS-1674-P)	0938-AT04	Proposed Rule Stage
48	Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid, and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP (CMS-2334-F2)	0938-AS27	Final Rule Stage
49	CY 2017 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8062-N)	0938-AS70	Final Rule Stage
50	CY 2018 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8065-N)	0938-AT05	Final Rule Stage
51	Adoption and Foster Care Analysis and Reporting System (AFCARS)	0970-AC47	Final Rule Stage
52	Flexibility, Efficiency, and Modernization of Child Support Enforcement Programs	0970-AC50	Final Rule Stage

DEPARTMENT OF HOMELAND SECURITY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
53	Chemical Facility Anti-Terrorism Standards (CFATS)	1601-AA69	Proposed Rule Stage
54	New Classification for Victims of Criminal Activity; Eligibility for the U Nonimmigrant Status	1615-AA67	Proposed Rule Stage
55	Requirements for Filing Motions and Administrative Appeals	1615-AB98	Proposed Rule Stage
56	Improvement of the Employment Creation Immigrant Regulations	1615-AC07	Proposed Rule Stage
57	Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for T Nonimmigrant Status	1615-AA59	Final Rule Stage
58	Special Immigrant Juvenile Petitions	1615-AB81	Final Rule Stage
59	International Entrepreneur	1615-AC04	Final Rule Stage
60	Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting Highly-Skilled H-1B Nonimmigrant Workers	1615-AC05	Final Rule Stage
61	Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation	1625-AB85	Proposed Rule Stage
62	Seafarers' Access to Maritime Facilities	1625-AC15	Final Rule Stage
63	Air Cargo Advance Screening (ACAS)	1651-AB04	Proposed Rule Stage

64	Definition of Form I-94 to Include Electronic Format	1651-AA96	Final Rule Stage
65	Surface Transportation Vulnerability Assessments and Security Plans	1652-AA56	Prerule Stage
66	Security Training for Surface Transportation Employees	1652-AA55	Proposed Rule Stage
67	Vetting of Certain Surface Transportation Employees	1652-AA69	Proposed Rule Stage
68	Eligibility Checks of Nominated and Current Designated School Officials of Schools That Enroll F and M Nonimmigrant Students and of Exchange Visitor Program-Designated Sponsors of J Nonimmigrants	1653-AA71	Proposed Rule Stage
69	Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard	1660-AA85	Final Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
70	Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard (FR-5717)	2501-AD62	Proposed Rule Stage
71	Notification, Evaluation and Reduction of Lead-	2501-AD77	Final Rule

	Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Level (FR-5816)		Stage
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DEPARTMENT OF JUSTICE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
72	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments	1190-AA65	Proposed Rule Stage
73	Nondiscrimination on the Basis of Disability; Movie Captioning and Audio Description	1190-AA63	Final Rule Stage
74	Revision of Standards and Procedures for the Enforcement of Section 274B of the Immigration and Nationality Act	1190-AA71	Final Rule Stage
75	Motions To Reopen Removal, Deportation, or Exclusion Proceedings Based Upon a Claim of Ineffective Assistance of Counsel	1125-AA68	Final Rule Stage
76	Recognition of Organizations and Accreditation of Non-Attorney Representatives	1125-AA72	Final Rule Stage
77	Implementation of the ADA Amendments Act of 2008 Federally Assisted Programs (Section 504 of the Rehabilitation Act of 1973)	1105-AB50	Proposed Rule Stage

DEPARTMENT OF LABOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
78	Employment of Workers With Disabilities Under Special Certificates	1235-AA14	Proposed Rule Stage
79	Equal Employment Opportunity in Apprenticeship Amendment of Regulations	1205-AB59	Final Rule Stage
80	Amendment to Claims Procedure Regulation	1210-AB39	Final Rule Stage
81	Savings Arrangements Established by Political Subdivisions for Non-Governmental Employees	1210-AB76	Final Rule Stage
82	Respirable Crystalline Silica	1219-AB36	Proposed Rule Stage
83	Proximity Detection Systems for Mobile Machines in Underground Mines	1219-AB78	Proposed Rule Stage
84	Preventing Workplace Violence in Healthcare	1218-AD08	Prerule Stage
85	Infectious Diseases	1218-AC46	Proposed Rule Stage
86	Standards Improvement Project IV	1218-AC67	Proposed Rule Stage
87	Occupational Exposure to Beryllium	1218-AB76	Final Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
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88	Airport Safety Management System	2120-AJ38	Proposed Rule Stage
89	Pilot Professional Development	2120-AJ87	Proposed Rule Stage
90	Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes (RRR)	2120-AK65	Final Rule Stage
91	National Goals and Performance Management Measures 2 (MAP-21)	2125-AF53	Final Rule Stage
92	National Goals and Performance Management Measures 3 (MAP-21)	2125-AF54	Final Rule Stage
93	Entry-Level Driver Training	2126-AB66	Final Rule Stage
94	Tire Fuel Efficiency Consumer Information—Part 2	2127-AK76	Proposed Rule Stage
95	Heavy Vehicle Speed Limiters	2127-AK92	Proposed Rule Stage
96	Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication	2127-AL55	Proposed Rule Stage
97	Locomotive Recording Devices	2130-AC51	Proposed Rule Stage
98	Risk Reduction Program	2130-AC11	Final Rule Stage
99	Pipeline Safety: Safety of Hazardous Liquid Pipelines	2137-AE66	Final Rule Stage
100	Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard	2137-AF08	Final Rule Stage

	Flammable Trains		
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DEPARTMENT OF VETERANS AFFAIRS

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
101	Schedule for Rating Disabilities: The Genitourinary Diseases and Conditions	2900-AP16	Proposed Rule Stage
102	Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014-V001, Parts 803, 814, 822)	2900-AP50	Proposed Rule Stage
103	VA Homeless Providers Grant and Per Diem Program	2900-AP54	Proposed Rule Stage
104	Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014-V005, Parts 812, 813)	2900-AP58	Proposed Rule Stage
105	Diseases Associated With Exposure to Contaminants in the Water Supply at Camp Lejeune	2900-AP66	Proposed Rule Stage
106	Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation Principles VAAR Case 2014-V004 (Parts 811, 832)	2900-AP81	Proposed Rule Stage
107	Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation	2900-AP82	Proposed Rule Stage

	Principles (VAAR Case 2014-V002, Parts 816, 828)		
108	Schedule for Rating Disabilities: The Hematologic and Lymphatic Systems	2900–AO19	Final Rule Stage
109	Schedule for Rating Disabilities: The Endocrine System	2900–AO44	Final Rule Stage
110	Fiduciary Activities	2900–AO53	Final Rule Stage
111	Per Diem Paid to States for Care of Eligible Veterans in State Homes	2900–AO88	Final Rule Stage
112	Schedule for Rating Disabilities; Dental and Oral Conditions	2900–AP08	Final Rule Stage
113	Schedule for Rating Disabilities: Gynecological Conditions and Disorders of the Breast	2900–AP13	Final Rule Stage
114	Schedule for Rating Disabilities: The Organs of Special Sense and Schedule of Ratings—Eye	2900–AP14	Final Rule Stage
115	Schedule for Rating Disabilities: Skin Conditions	2900–AP27	Final Rule Stage
116	Tiered Pharmacy Copayments for Medications	2900–AP35	Final Rule Stage
117	Advanced Practice Registered Nurses	2900–AP44	Final Rule Stage
118	Expanded Access to Non-VA Care Through the Veterans Choice Program	2900–AP60	Final Rule Stage
119	Veterans Employment Pay for Success Grant Program	2900–AP72	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
120	Federal Baseline Water Quality Standards for Indian Reservations	2040–AF62	Prerule Stage
121	Renewables Enhancement and Growth Support Rule	2060–AS66	Proposed Rule Stage
122	Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements	2060–AS82	Proposed Rule Stage
123	Renewable Fuel Volume Standards for 2018 and Biomass Based Diesel Volume (BBD) for 2019	2060–AT04	Proposed Rule Stage
124	Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a)	2070–AK03	Proposed Rule Stage
125	N-Methylpyrrolidone (NMP) and Methylene Chloride; Rulemaking Under TSCA Section 6(a)	2070–AK07	Proposed Rule Stage
126	Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a); Vapor Degreasing	2070–AK11	Proposed Rule Stage
127	Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares	2070–AK12	Proposed Rule Stage
128	Procedures for Evaluating Existing Chemical Risks Under the Toxic Substances Control Act	2070–AK20	Proposed Rule Stage
129	Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances	2070–AK23	Proposed Rule Stage

	Control Act		
130	Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry	2050–AG61	Proposed Rule Stage
131	National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040–AF15	Proposed Rule Stage
132	Fees for Water Infrastructure Project Applications Under the Water Infrastructure Finance and Innovation Act	2040–AF64	Proposed Rule Stage
133	National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart W: Standards for Radon Emissions From Operating Uranium Mill Tailings: Review	2060–AP26	Final Rule Stage
134	Revision of 40 CFR 192—Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings and Uranium In Situ Leaching Processing Facilities	2060–AP43	Final Rule Stage
135	Model Trading Rules for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014	2060–AS47	Final Rule Stage
136	Renewable Fuel Volume Standards for 2017 and Biomass Based Diesel Volume (BBD) for 2018	2060–AS72	Final Rule Stage
137	Pesticides; Certification of Pesticide Applicators	2070–AJ20	Final Rule Stage
138	Modernization of the Accidental Release Prevention Regulations Under Clean Air Act	2050–AG82	Final Rule Stage
139	Credit Assistance for Water Infrastructure	2040–AF63	Final Rule

	Projects		Stage
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### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
140	Affirmative Action for Individuals With Disabilities in the Federal Government	3046-AA94	Final Rule Stage

### SMALL BUSINESS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
141	Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive	3245-AG64	Final Rule Stage
142	Small Business Investment Company (SBIC) Program - Impact SBICs	3245-AG66	Final Rule Stage

### SOCIAL SECURITY ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
143	Revised Medical Criteria for Evaluating Musculoskeletal Disorders (3318P)	0960-AG38	Proposed Rule Stage
144	Revised Medical Criteria for Evaluating Digestive Disorders (3441P)	0960-AG65	Proposed Rule Stage

145	Revised Medical Criteria for Evaluating Cardiovascular Disorders (3477P)	0960–AG74	Proposed Rule Stage
146	Revising the Ticket to Work Program Rules (3780A)	0960–AH50	Proposed Rule Stage
147	Revisions to Rules Regarding the Evaluation of Medical Evidence	0960–AH51	Proposed Rule Stage
148	Revised Medical Criteria for Evaluating Hearing Loss and Disturbances of Labyrinthine-Vestibular Function (3806P)	0960–AH54	Proposed Rule Stage
149	Use of Electronic Payroll Data To Improve Program Administration	0960–AH88	Proposed Rule Stage
150	Treatment of Earnings Derived From Services	0960–AH90	Proposed Rule Stage
151	Closure of Unintended Loopholes (Conforming Changes to Regulations on Presumed Filing and Voluntary Suspension)	0960–AH93	Proposed Rule Stage
152	Revisions to Rules on Representation of Parties (3396F)	0960–AG56	Final Rule Stage
153	Revised Medical Criteria for Evaluating Human Immunodeficiency Virus (HIV) Infection and for Evaluating Functional Limitations in Immune System Disorders (3466F)	0960–AG71	Final Rule Stage
154	Amendments to Regulations Regarding Withdrawals of Applications and Voluntary Suspension of Benefits (3573F)	0960–AH07	Final Rule Stage
155	Revisions to Rules of Conduct and Standards of Responsibility for Appointed Representatives	0960–AH63	Final Rule Stage

156	Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process	0960–AH71	Final Rule Stage
157	Implementation of the NICS Improvement Amendments Act of 2007	0960–AH95	Final Rule Stage
158	Availability of Information and Records to the Public	0960–AI07	Final Rule Stage

### CONSUMER PRODUCT SAFETY COMMISSION

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

### NATIONAL INDIAN GAMING COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
160	Class II Minimum Internal Control Standards	3141–AA60	Proposed Rule Stage
161	Minimum Internal Control Standards	3141–AA55	Final Rule Stage

### NUCLEAR REGULATORY COMMISSION

Sequence Number	Title	Regulation Identifier	Rulemaking Stage
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		Number	
162	Modified Small Quantities Protocol [NRC-2015-0263]	3150-AJ70	Final Rule Stage

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

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**U.S. Department of Agriculture**

**Fall 2016 Statement of Regulatory Priorities**

The U.S. Department of Agriculture (USDA) provides leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on sound public policy, the best available science, and efficient management. The Department touches the lives of almost every American, every day. Our regulatory plan reflects that reality and reinforces our commitment to achieve results for everyone we serve.

The regulatory plan reflects USDA’s efforts to implement several important pieces of legislation. The 2014 Farm Bill provides authorization for services and programs that impact every American and millions of people around the world. Under the Farm Bill authorities, USDA will continue to build on historic economic gains in rural America. The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) provided the authority for USDA to make genuine reforms to the school lunch and breakfast programs by improving the critical nutrition and hunger safety net for millions of children.

To assist the country in addressing today's challenges, USDA has developed a regulatory plan consistent with five strategic goals that articulate the Department's priorities.

**1. Assist rural communities to create prosperity so they are self-sustaining, re-populating, and economically thriving.**

Rural America is home to a vibrant economy supported by nearly 50 million Americans. These Americans come from diverse backgrounds and work in a variety of industries, including manufacturing, agriculture,

services, government, and trade. Today, the country looks to rural America not only to provide food and fiber, but for crucial emerging economic opportunities such as renewable energy, broadband, and recreation. Many of the Nation's small businesses are located in rural communities and are the engine of job growth and an important source of innovation for the country. The economic vitality and quality of life in rural America depends on a healthy agricultural production system. Farmers and ranchers face a challenging global, technologically advanced, and competitive business environment. USDA works to ensure that producers are prosperous and competitive, have access to new markets, can manage their risks, and receive support in times of economic distress or weather-related disasters. Prosperous rural communities are those with adequate assets to fully support the well-being of community members. USDA helps to strengthen rural assets by building physical, human and social, financial, and natural capital.

*Enhance rural prosperity, including leveraging capital markets to increase Government's investment in rural America.*

USDA is committed to providing broadband to rural areas. Since 2009, USDA investments have delivered broadband service to over 6 million rural residents. These investments support the USDA goal to create thriving communities where people want to live and raise families. Consistent with these efforts, the Rural Utilities Service (RUS) published a final rule confirming the interim rule entitled “**Rural Broadband Access Loans and Loan Guarantees**” which published in the **Federal Register** on June 9, 2016. The final rule implements the statutory changes from the 2014 Farm Bill and facilitates greater deployment of and access to broadband services in rural communities by adjusting certain service area eligibility criteria, establishing new priority considerations, and introducing new reporting sections that require more detailed information gathering and publishing for both the Agency and awardees. For more information about this rule, see RIN 0572-AC34.

USDA also works to increase the effectiveness of the Government's investment in rural America. To this end, Rural Development is developing a rule that will establish **program metrics** to measure the economic activities created through grants and loans, including any technical assistance provided as a

component of the grant or loan program, and to measure the short and long-term viability of award recipients, and any entities to whom recipients provide assistance using the awarded funds. The action is required by section 6209 of the 2014 Farm Bill, and will not change the underlying provisions of the included programs, such as eligibility, applications, scoring, and servicing provisions. For more information about this rule, see RIN 0570-AA95.

*Increase agricultural opportunities by ensuring a robust safety net, creating new markets, and supporting a competitive agricultural system.*

In another step to increase the effectiveness of the Government's investment in rural America, the Farm Service Agency (FSA) published a final rule on December 16, 2015, on behalf of the Commodity Credit Corporation (CCC) to specify the requirements for a person to be considered **actively engaged** in farming for the purpose of payment eligibility for certain FSA and CCC programs. These changes ensure that farm program payments are made to the farmers and farm families that they are intended to help. Specifically, as required by the 2014 Farm Bill, FSA revised the requirements for a significant contribution of active personnel management to a farming operation. These changes are required by the 2014 Farm Bill, and will not apply to persons or entities comprised solely of family members. For more information about this rule, see RIN 0560-AI31.

The **Federal Crop Insurance Program** mitigates production and revenue losses from yield or price fluctuations and provides timely indemnity payments. The 2014 Farm Bill improved the Federal Crop Insurance Program by allowing producers to elect coverage for shallow losses, improved options for growers of organic commodities, and the ability for diversified operations to insure their whole-farm under a single policy. To strengthen further the farm financial safety net, the Risk Management Agency (RMA) published a final rule on June 30, 2016, that amended the general administrative regulations governing Catastrophic Risk Protection Endorsement, Area Risk Protection Insurance, and the basic provisions for Common Crop Insurance consistent with the changes mandated by the 2014 Farm Bill. For more information about this rule, see RIN 0563-AC43.

The **Packers and Stockyards Program** promotes fair business practices and competitive environments to market livestock, meat, and poultry. Accordingly, and consistent with its oversight activities under the Packers and Stockyards Act (P&S Act), the Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to establish criteria to be considered in determining whether an undue or unreasonable preference or advantage has occurred during contractual growing arrangements. For more information about this rule, see RIN 0580-AB27. Consistent with the P&S Act, GIPSA also proposes to establish certain requirements when using a “tournament” system for contract poultry growing. For more information about this rule, see RIN 0580-AB26. Finally, GIPSA proposes to issue interim clarifying language on the list of unfair practices between those that do not require a showing of harm to competition and those that violate the P&S Act only with a finding of harm to competition. For more information about this rule, see RIN 0580-AB25

**2. Ensure our national forests and private working lands are conserved, restored, and made more resilient to climate change, while enhancing our water resources.**

National forests and private working lands provide clean air, clean and abundant water, and wildlife habitat. These lands sustain jobs and produce food, fiber, timber, and bio-based energy. Many of our landscapes are scenic and culturally important and provide Americans a chance to enjoy the outdoors. The 2014 Farm Bill delivered a strong conservation title that made robust investments to conserve and support America's working lands, and consolidated, and streamlined programs to improve efficiency and encourage participation. Farm Bill conservation programs provide America's farmers, ranchers and others with technical and financial assistance to enable conservation of natural resources, while protecting and improving agricultural operations. Seventy percent of the American landscape is privately owned, making private lands conservation critical to the health of our nation's environment and ability to ensure our working lands are productive. To sustain these many benefits, USDA has implemented the authorities provided by the 2014 Farm Bill to protect and enhance 1.3 billion acres of working lands. USDA also manages 193 million acres of national forests and grasslands. Our partners include Federal, Tribal, and State governments; industry; non-governmental organizations, community groups and producers. The Nation's lands face increasing threats that must be addressed. USDA's natural resource-focused

regulatory strategies are designed to make substantial contributions in the areas of soil health, resiliency to climate change, and improved water quality.

*Improve the health of the Nation's forests, grasslands and working lands by managing our natural resources.*

The Natural Resources Conservation Service (NRCS) administers the **Agricultural Conservation Easement Program** (ACEP), which provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. The 2014 Farm Bill consolidated the Wetlands Reserve Program (WRP), the Farm and Ranch Lands Protection Program (FRPP), and the Grassland Reserve Program (GRP) into ACEP. In fiscal year 2015, an estimated 115,233 acres of farmland, grasslands, and wetlands were enrolled into ACEP. Through regulation, NRCS established a comprehensive framework to implement ACEP, and standardized criteria for implementing the program, provided program participants with predictability when they initiate an application and convey an easement. On February 27, 2015, NRCS published an interim rule to implement ACEP. NRCS is currently developing a final rule to implement changes to the administration of ACEP based on public comments received. For more information about this rule, see RIN 0578-AA61.

The **Conservation Stewardship Program** (CSP) also helps the Department ensure that our national forests and private working lands are conserved, restored, and made more resilient to climate change. Through CSP, NRCS provides financial and technical assistance to eligible producers to conserve and enhance soil, water, air, and related natural resources on their land. NRCS makes funding for CSP available nationwide on a continuous application basis. In fiscal year 2014, NRCS enrolled about 9.6 million acres and now CSP enrollment exceeds 60 million acres, about the size of Iowa and Indiana combined. On March 10, 2016, NRCS published a final rule to implement provisions of the 2014 Farm Bill that amended CSP. For more information about this rule, see RIN 0578-AA63.

The **Environmental Quality Incentives Program** (EQIP) is another voluntary conservation program that helps agricultural producers in a manner that promotes agricultural production and environmental quality as compatible goals. Through EQIP, agricultural producers receive financial and technical assistance to

implement structural and management conservation practices that optimize environmental benefits on working agricultural land. Through EQIP, producers addressed their conservation needs on over 11 million acres in fiscal year 2014. EQIP has been instrumental in helping communities respond to drought. On June 3, 2016, NRCS published a final rule that implemented changes mandated by 2014 Farm Bill and addressed key discretionary provisions, including adding waiver authority to irrigation history requirements, incorporation of Tribal Conservation Advisory Councils where appropriate, and clarifying provisions related to Comprehensive Nutrient Management Plans (CNMP) associated with Animal Feeding Operations (AFO). For more information about this rule, see RIN 0578-AA62.

*Contribute to clean and abundant water by protecting and enhancing water resources on national forests and working lands.*

The 2014 Farm Bill relinked highly erodible land conservation and wetland **conservation compliance** with eligibility for premium support paid under the federal crop insurance program. The Farm Service Agency implemented these provisions through an interim rule published on April, 24, 2015. Since publication of the interim rule, more than 98.2 percent of producers met the requirement to certify conservation compliance to qualify for crop insurance premium support payments. Implementing these provisions for conservation compliance is expected to extend conservation provisions for an additional 1.5 million acres of highly erodible lands and 1.1 million acres of wetlands, which will reduce soil erosion, enhance water quality, and create wildlife habitat. Through this action, NRCS modified the existing wetlands Mitigation Banking Program to remove the requirement that USDA hold easements in the mitigation program. This allows entities recognized by USDA to hold mitigation banking easements granted by a person who wishes to maintain payment eligibility under the wetland conservation provision. FSA is currently developing a final rule to implement changes to the interim rule based on public comments received. For more information about this rule, see RIN 0560-AI26.

**3. Help America promote agricultural production and biotechnology exports as America works to increase food security.**

Food security is important for sustainable economic growth of developing nations and the long-term economic prosperity and security of the United States. Unfortunately, global food insecurity is expected to rise in the next five years. Food security means having a reliable source of nutritious and safe food and sufficient resources to purchase it. USDA has a role in curbing this distressing trend through programs such as Food for Progress and President Obama's Feed the Future Initiative and through new technology-based solutions, such as the development of genetically engineered plants that improves yields and reduces post-harvest loss.

*Ensure U.S. agricultural resources contribute to enhanced global food security.*

The Foreign Agricultural Service (FAS) published a final rule for the **Local and Regional procurement (LRP) Program** on July 1, 2016 as authorized in section 3207 of the 2014 Farm Bill. USDA implemented a successful LRP pilot program under the authorities of the 2008 Farm Bill. LRP ties to the President's 2014 Trade Policy Agenda and works with developing nations to alleviate poverty and foster economic growth to provide better markets for U.S. exporters. LRP is expected to help alleviate hunger for millions of individuals in food insecure countries. LRP supports development activities that strengthen the capacity of food-insecure developing countries, and build resilience and address the causes of chronic food insecurity while also supporting USDA's other food assistance programs, including the McGovern Dole International Food for Education and Child Nutrition Program (McGovern-Dole). In addition, the program can be used to fill food availability gaps generated by unexpected emergencies. For more information about this rule, see RIN 0551-AA87.

*Enhance America's ability to develop and trade agricultural products derived from new and emerging technologies.*

USDA uses science-based regulatory systems to allow for the safe development, use, and trade of products derived from new agricultural technologies. USDA continues to regulate the importation, interstate movement, and field-testing of newly developed **genetically engineered (GE) organisms** that qualify as "regulated articles" to ensure they do not pose a threat to plant health before they can be commercialized. These science-based evaluations facilitate the safe introduction of new agricultural

production options and enhance public and international confidence in these products. As a part of this effort, the Animal and Plant Health Inspection Service (APHIS) will publish a proposed rule to revise its regulations and align them with current authorizations by incorporating the noxious weed authority and regulate GE organisms that pose plant pest or weed risks in a manner that balances oversight and risk, and that is based on the best available science. The regulatory framework being developed will enable more focused, risk-based regulation of GE organisms that pose plant pest or noxious weed risks and will implement regulatory requirements only to the extent necessary to achieve the APHIS protection goal. For more information about this rule, see RIN 0579-AE15.

As part of an Act to reauthorize and amend the National Sea Grant College Program Act (Act), the President signed a bill to amend the Agricultural Marketing Act of 1946 to include subtitle E, the **National Bioengineered Food Disclosure Standard** (Pub. L. 114-216). The legislation requires that the Agricultural Marketing Service (AMS) establish a mandatory national bioengineered food disclosure standard and the procedures necessary to implement the national standard within two years of the enactment of the Act. Throughout the process, AMS will engage consumers and industry stakeholders to ensure that the final program is established effectively and with the utmost transparency. AMS is currently preparing an advance notice of proposed rulemaking to begin the rulemaking process for implementing the national bioengineered food disclosure standards. For more information about this action, see RIN 0581-AD54.

The AMS National Organic Program establishes national standards governing the marketing of organically produced agricultural products. These standards do not currently include **organic farmed aquatic animals** in the United States which means that seafood currently sold as organic in the United States is imported from other countries and certified to private standards or other countries' standards. Accordingly, and based on recommendations from the National Organic Standards Board, USDA is proposing to establish standards for organic farmed aquatic animals and their products. This would allow U.S. producers to compete in the organic seafood market and may expand trade partnerships. For more information about this rule, see RIN 0581-AD34.

#### **4. Ensure that all of America's children have access to safe, nutritious, and balanced meals.**

A plentiful supply of safe and nutritious food is essential to the well-being of every family and the healthy development of every child in America. Science has established strong links between diet, health, and productivity. Even small improvements in the average diet, fostered by USDA, may yield significant health and economic benefits. However, foodborne illness is still a common, costly-yet largely preventable-public health problem, even though the U.S. food supply system is one of the safest in the world. USDA is committed to ensuring that Americans have access to safe food through a farm-to-table approach to reduce and prevent foodborne illness. To help ensure a plentiful supply of food, the Department detects and quickly responds to new invasive species and emerging agricultural and public health situations.

*Improve access to nutritious food.*

USDA's domestic nutrition assistance programs serve one in four Americans annually. The Department is committed to making benefits available to every eligible person who wishes to participate in the major nutrition assistance programs, including the Supplemental Nutrition Assistance Program (SNAP), the cornerstone of the nutrition assistance safety net, which helped over 45 million Americans, more than half of whom were children, the elderly, or individuals with disabilities, put food on the table in 2015. The Food and Nutrition Service (FNS) plans to publish a final rule that works with States interested in implementing photos on **SNAP Electronic Benefit Transfer (EBT) cards** to ensure that the issuance of photo EBT cards does not inhibit access to this critical nutrition assistance program. For more information about this rule, see RIN 0584-AE09.

Additionally, FNS plans to issue a final rule codifying 2008 Farm Bill changes addressing **SNAP eligibility, certification, and employment and training** provisions. While the ultimate objective is for economic opportunities to make nutrition assistance unnecessary for as many families as possible, we will ensure that these vital programs remain ready to serve all eligible people who need them. For more information about this rule, see RIN 0584-AD87.

Promote healthy diet and physical activity behaviors.

The Administration has set a goal to solve the problem of childhood obesity within a generation so that children born today will reach adulthood at a healthy weight. This objective represents FNS's efforts to ensure that program benefits meet appropriate standards to effectively improve nutrition for program participants, to improve the diets of its clients through nutrition education, and to support the national effort to reduce obesity by promoting healthy eating and physical activity. The Department will finalize changes to **eligibility requirements for SNAP retail food stores** to ensure access to nutritious foods for home preparation and consumption for the families most vulnerable to food insecurity. The final rule will consider the balance of ensuring participant access to retail food stores with enhanced stocking requirements. For more information about this rule, see RIN 0584-AE27.

FNS published a final rule on July 27, 2016, for **Nutrition Standards for All Foods Sold in School**, as required by HHFKA. Section 208 requires the Secretary to promulgate regulations to establish science-based nutrition standards for all foods sold in schools, outside the school meal programs, on the school campus, and at any time during the school day. For more information about this rule, see RIN 0584-AE09.

FNS published the final rule, **Meal Pattern Revisions Related to the Healthy Hunger-Free Kids Act of 2010**, on July 8, 2016, to implement section 221 of the HHFKA. This section requires USDA to review and update, no less frequently than once every 10 years, requirements for meals served under the **Child and Adult Care Food Program (CACFP)** to ensure that meals are consistent with the most recent Dietary Guidelines for Americans and relevant nutrition science. For more information about this rule, see RIN 0584-AE18.

FNS published a final rule, **Local School Wellness Policy** Implementation and School Nutrition Environment Information, on July 27, 2016, to implement section 204 of the HHFKA. As a result of meal pattern changes in the school meals programs, students are now eating 16 percent more vegetables and there was a 23 percent increase in the selection of fruit at lunch. This Act requires each local educational agency participating in Federal child nutrition programs to establish, for all schools under its jurisdiction, a

local school wellness policy to maintain this momentum. The HHFKA requires that the wellness policy include goals for nutrition, nutrition education, physical activity, and other school-based activities that promote student wellness. In addition, the HHFKA requires that local educational agencies ensure stakeholder participation in development of local school wellness policies; periodically assess compliance with the policies; and disclose information about the policies to the public. For more information about this rule, see RIN 0584-AE25.

The Food Safety and Inspection Service (FSIS) continues to ensure that meat and poultry products are properly marked, labeled, and packaged, and prohibits the distribution in-commerce of meat or poultry products that are adulterated or misbranded. FSIS is planning to publish a proposed rule that would amend the **nutrition labeling requirements for meat and poultry products** to better reflect scientific research and dietary recommendations and to improve the presentation of nutrition information to assist consumers in maintaining healthy dietary practices. This rule will be consistent with the recent changes that the Food and Drug Administration (FDA) finalized for other food products. This rule will ensure that nutrition information is presented consistently across the food supply. For more information about this rule, see RIN 0583-AD56.

*Protect agricultural health by minimizing major diseases and pests to ensure access to safe, plentiful, and nutritious food.*

The Food Safety and Inspection Service (FSIS) continue to enforce and improve compliance with the Humane Methods of Slaughter Act. FSIS published a final rule on July 18, 2016, requiring **non-ambulatory disabled veal calves** that are offered for slaughter to be condemned and promptly euthanized. This rule will improve compliance with the Humane Methods of Slaughter Act by encouraging improved treatment of veal calves, as well as improve inspection efficiency by allowing FSIS inspection program personnel to devote more time to activities related to food safety. For more information about this rule, see RIN 0583-AD54.

FSIS is also proposing to amend the Federal meat inspection regulations to improve the effectiveness of **swine slaughter inspection** by establishing a new inspection system for swine slaughter establishments.

The proposed New Swine Slaughter Inspection System would facilitate pathogen reduction in pork products by permitting FSIS to conduct more offline inspection activities that are more effective in ensuring food safety; improving animal welfare and compliance with the Humane Methods of Slaughter Act; and making better use of FSIS resources. For more information about this rule, see RIN 0583-AD62.

##### **5. Create a USDA for the 21st century that is high performing, efficient, and adaptable.**

USDA has been a leader in the Federal government at implementing innovative practices to rein in costs and increase efficiencies. By taking steps to find efficiencies and cut costs, USDA employees have achieved savings and cost avoidances of over \$1.4 billion in recent years. Some of these results came from relatively smaller, common-sense initiatives such as the \$1 million saved by streamlining the mail handling at one of the USDA mailrooms or the consolidation of the Department's cell phone contracts, which is saving taxpayers over \$5 million per year. Other results have come from larger-scale activities, such as the focus on reducing non-essential travel that has yielded over \$400 million in efficiencies. Overall, these results have allowed us to do more with less during a time when such stewardship of resources has been critical to meeting the needs of those that we serve.

While these proactive steps have given USDA the tools to carry out our mission-critical work, ensuring that USDA's millions of customers receive stronger service, they are matters relating to agency management, personnel, public property, and/or contracts, and as such they are not subject to the notice and comment requirements for rulemaking codified at 5 U.S.C. 553. Consequently, they are not included in the Department's regulatory agenda. For more information about the USDA efforts to cut costs and modernize operations via the Blueprint for Stronger Service Initiative, see [http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=blueprint\\_for\\_stronger\\_service.html](http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=blueprint_for_stronger_service.html).

##### **Retrospective Review of Existing Regulations**

In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," and Executive Order 13610, "Identifying and Reducing Regulatory Burdens," USDA continues to review its

existing regulations and information collections to evaluate the continued effectiveness in addressing the circumstances for which the regulations were implemented. As part of this ongoing review to maximize the cost-effectiveness of its regulatory programs, USDA will publish a **Federal Register** notice inviting public comment to assist in analyzing its existing significant regulations to determine whether any should be modified, streamlined, expanded, or repealed.

USDA has identified the following regulatory actions as associated with retrospective review and analysis. Some of the regulatory actions on the below list are completed actions, which do not appear in the Regulatory Agenda. You can find more information about these completed rulemakings in past publications of the Unified Agenda (search the Completed Actions sections) on [www.reginfo.gov](http://www.reginfo.gov). Other entries on this list are still in development and have not yet appeared in the Regulatory Agenda. You can read more about these entries and the Department's strategy for regulation reform at [http://www.usda.gov/wps/portal/usda/usdahome?navid=USDA\\_OPEN](http://www.usda.gov/wps/portal/usda/usdahome?navid=USDA_OPEN).

<b>Agency</b>	<b>Title</b>	<b>RIN</b>
Food Safety & Inspection Service (FSIS)	Requirements for the Disposition of Non-Ambulatory Disabled Veal Calves	0583-AD54
Animal Plant Health & Inspection Service (APHIS)	Participation in the International Trade Data System (ITDS) via the Automated Commercial Environment (ACE)	TBD
FSIS	Electronic Export Application and Certification Fee	0583-AD41
Agricultural Marketing Service (AMS)	Input Export Form Numbers Into the Automated Export System	TBD
AMS	Revisions to the Electronic Submission of the Import Request of Shell Eggs	0581-AD40
APHIS	Forms for Declaration Mandated by 2008 Farm Bill (Lacey Act Amendments)	0579-AD99
Farm Service Agency (FSA) and Risk Management Agency	Acreage and Crop Reporting Streamlining Initiative	0563-0084

FSA	Environmental Policies and Procedures; Compliance with the National Environmental Policy Act and Related Authorities	0560-AH02
Natural Resources Conservation Service	Conservation Delivery Streamlining Initiative (CDSI) - Conservation Client Gateway (CCG)	TBD
Rural Business Services (RBS)	Business and Industry Loan Guaranteed Program	0570-AA85
Rural Housing Service	Community Facilities Loan and Grants	0575-AC91
FNS	Simplified Cost Accounting and Other Actions to Reduce Paperwork in the Summer Food Service Program	0584-AD84
Rural Business Services (RBS)	Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance	0570-AA73, 0570-0065
RBS	Rural Energy for America Program	0570-AA76

<b>USDA—Agricultural Marketing Service(AMS)</b>	<b>PROPOSED RULE STAGE</b>
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**1. NATIONAL ORGANIC PROGRAM—ORGANIC AQUACULTURE STANDARDS**

**Priority:**

Other Significant

**Legal Authority:**

7 U.S.C. 6501 to 6522

**CFR Citation:**

7 CFR 205

**Legal Deadline:**

None

**Abstract:**

This action proposes to establish standards for organic production and certification of farmed aquatic animals and their products in the USDA organic regulations. This action would also add aquatic animals as a scope of certification and accreditation under the National Organic Program (NOP).

**Statement of Need:**

This action is necessary to establish standards for organic farmed aquatic animals and their products which would allow U.S. producers to compete in the organic seafood market. This action is also necessary to address multiple recommendations provided to USDA by the National Organic Standards Board (NOSB). From 2007 through 2009, the NOSB made five recommendations to establish standards for the certification of organic farmed aquatic animals and their products. Finally, the U.S. currently has organic standards equivalence arrangements with Canada and the European Union (EU). Both Canada and the EU established standards for organic aquaculture products. Because the U.S. does not have organic aquaculture standards, the U.S. is unable to include aquaculture in the scope of these arrangements. Establishing U.S. organic aquaculture may provide a basis for expanding those trade partnerships

**Summary of Legal Basis:**

AMS National Organic Program is authorized by the Organic Foods Production Act of 1990 (OFPA) to establish national standards governing the marketing of organically produced agricultural products (7 U.S.C. 6501-6522). The USDA organic regulations set the requirements for the organic certification of agricultural products (7 CFR part 205).

**Alternatives:**

An alternative to providing organic aquatic animal standards would be to not publish such standards and allow aquatic animal products to continue to be sold as organic based on private standards or other countries' standards.

**Anticipated Cost and Benefits:**

The cost for existing conventional aquaculture operations to convert and participate in this voluntary marketing program generally would be incurred in the cost of changing management practices, increased feed costs, and obtaining organic certification. There also would be some costs to certifying agents who would need to add aquaculture to their areas of accreditation under the USDA organic regulations. These costs include application fees and expanded audits to ensure certifying agents meet the accreditation requirements needed to provide certification services to aquaculture operations. By providing organic standards for organic aquatic animal products, producers will be able to sell certified organic aquatic animal products for a premium above the price of conventionally produced seafood. Organic consumers will be assured that organic aquatic animal products comply with the USDA organic regulations.

**Risks:**

There are no known risks to providing these additional standards for certification of organic products.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/16	

**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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**RIN:** 0581-AD34

<b>USDA—AMS</b>	<b>FINAL RULE STAGE</b>
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**2. NOP; ORGANIC LIVESTOCK AND POULTRY PRACTICES;**

**Priority:**

Other Significant

**Legal Authority:**

7 U.S.C. 6501 to 6522

**CFR Citation:**

7 CFR 205

**Legal Deadline:**

None

**Abstract:**

This action would establish standards that support additional practice standards for organic livestock and poultry production. This action would add provisions to the USDA organic regulations to address and clarify livestock and poultry living conditions (for example, outdoor access, housing environment and stocking densities), health care practices (for example physical alterations, administering medical treatment, euthanasia), and animal handling and transport to and during slaughter.

**Statement of Need:**

This action would establish standards that support additional practice standards for organic livestock and poultry production. This action would add provisions to the USDA organic regulations to address and clarify livestock and poultry living conditions (for example, outdoor access, housing environment and stocking densities), health care practices (for example physical alterations, administering medical treatment, euthanasia), and animal handling and transport to and during slaughter.

**Summary of Legal Basis:**

This action is necessary to augment the USDA organic livestock and poultry production regulations with robust and clear provisions to fulfill an objective of the Organic Foods Production Act of 1990 (OFPA): to assure consumers that organically-produced products meet a consistent and uniform standard (7 U.S.C. 6501). OFPA mandates that detailed livestock and poultry regulations be developed through notice and comment rulemaking and intends for National Organic Standards Board (NOSB) involvement in that process (7 U.S.C. 6508(g)).

**Alternatives:**

The alternative is that consumers will not have the assurance that organically-produced products meet a consistent and uniform standard as there will be continued inconsistency among organic livestock producers. Nor will certifying agents be able to make consistent certification decisions and facilitate fairness and transparency for the organic producers and consumers that participate in the market.

**Anticipated Cost and Benefits:**

AMS expects this rule to maintain consumer confidence in the high standards represented by the USDA organic seal. This action would promote consistency among certifying agents to uniformly verify and enforce clear requirements for organic livestock. AMS estimates that annualized benefits for increased or sustained demand for organic products is \$14.5 to \$34 million per year. The cost of implementing the rule would fall primarily on organic poultry operations that may need to purchase and transition additional land to organic production and modify existing poultry structures to come into compliance with this rule. AMS estimates that the annualized cost to the organic industry for this rule is \$13 to 15.6 million per year.

**Risks:**

AMS expects that a few provisions among the numerous proposed will be contentious.

**Timetable:**

Action	Date	FR Cite
NPRM	04/13/16	81 FR 21955
NPRM Comment Period End	06/13/16	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0581-AD44

<b>USDA—Animal and Plant Health Inspection Service (APHIS)</b>	<b>PROPOSED RULE STAGE</b>
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### **3. IMPORTATION, INTERSTATE MOVEMENT, AND RELEASE INTO THE ENVIRONMENT OF CERTAIN GENETICALLY ENGINEERED ORGANISMS**

**Priority:**

Other Significant

**Legal Authority:**

7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 31 U.S.C. 9701

**CFR Citation:**

7 CFR 340

**Legal Deadline:**

None

**Abstract:**

USDA uses science-based regulatory systems to allow for the safe development, use, and trade of products derived from new agricultural technologies. USDA continues to regulate the importation, interstate movement, and field-testing of newly developed genetically engineered (GE) organisms that qualify as "regulated articles" to ensure they do not pose a threat to plant health before they can be commercialized. These science-based evaluations facilitate the safe introduction of new agricultural production options and enhance public and international confidence in these products. As a part of this effort, the Animal and Plant Health Inspection Service (APHIS) will publish a proposed rule to revise its regulations regarding the regulation of GE organisms.

**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 organisms, to evaluate genetically engineered plants for noxious weed risk (an evaluation that is not part of the current regulations), to respond to two Office of Inspector General audits regarding APHIS' regulation of genetically engineered organisms, and to respond to the requirements of the 2008 Farm Bill.

**Summary of Legal Basis:**

The Plant Protection Act of 200, as amended (7 U.S.C. 7701 *et seq.*).

**Alternatives:**

Alternatives that we considered were (1) to leave the regulations unchanged; (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; or (3) to withdraw APHIS regulations governing biotechnology and instead implement a voluntary program under which developers would present genetically engineered organisms to APHIS for an evaluation of their plant pest and noxious weed risk, and organisms determined to be plant pests and/or noxious weeds would be regulated under other APHIS regulations.

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

Unless we issue this proposal, we may not be able to regulate a genetically engineered plant that does not pose a plant pest risk, but does pose a noxious weed 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	12/00/16	
NPRM Comment Period End	02/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Organizations

**Government Levels Affected:**

Local, 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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**RIN:** 0579-AE15

<b>USDA—APHIS</b>	<b>FINAL RULE STAGE</b>
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**4. HORSE PROTECTION; LICENSING OF DESIGNATED QUALIFIED PERSONS AND OTHER AMENDMENTS**

**Priority:**

Other Significant

**Legal Authority:**

15 U.S.C. 1823 to 1825; 15 U.S.C. 1828

**CFR Citation:**

9 CFR 11

**Legal Deadline:**

None

**Abstract:**

This rulemaking will amend training and licensing requirements mandated by the horse protection regulations. We are also making several changes to the responsibilities of show management of horse shows, horse exhibitions, horse sales, and horse auctions, as well as changes to the list of devices, equipment, substances, and practices that can cause soring or are otherwise prohibited under the Horse Protection Act and regulations. Additionally, we are amending the inspection procedures. These actions are intended to strengthen existing requirements intended to eliminate soring and promote enforcement of Horse Protection Act and regulations.

**Statement of Need:**

Soring, the act of deliberately inducing pain in a horse's feet to produce an exaggerated show gait, has been a persistent practice within the Tennessee Walking Horse industry despite regulations prohibiting it. Third party inspectors are currently trained and licensed by horse industry organizations and conduct inspections of horses at horse shows and exhibitions. In response to public concerns about the ability of the Horse Protection Program to prevent soring, the United States Department of Agriculture's (USDA's) Office of the Inspector General (OIG) initiated an audit of APHIS' oversight of the Horse Protection program and concluded that APHIS' inspection program for inspecting gaited horses is not adequate to ensure that horses are not being sored for the purposes of enhanced performance. OIG recommended that APHIS eliminate the horse inspection program in its current form and assume a direct involvement in the accreditation and monitoring of inspectors and inspection procedures. Under the proposed rule, all training and licensing of inspectors would be conducted only by APHIS, and devices used to cause soring

would be further restricted or prohibited. APHIS is in agreement with these recommendations but needs to amend the regulations through rulemaking in order to adopt it.

### **Summary of Legal Basis:**

Section 4 of the Horse Protection Act, as amended (15 U.S.C. 1823), requires the Secretary of Agriculture to prescribe by regulation requirements for the appointment by the management of a horse show, exhibition, sale, or auction (referred to below as show management) of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Section 9 (15 U.S.C. 1828) authorizes the Secretary of Agriculture to issue such rules and regulations as deemed necessary to carry out the provisions of the Act.

### **Alternatives:**

In following the recommendations of the USDA OIG Audit, we believe the changes we proposed in this rulemaking represent the best alternative option that would accomplish the stated objectives and minimize impacts on small entities. In the proposed rule, we welcomed comments from the public on other options, in particular the viability of alternative approaches that would continue to rely on the horse industry organization concept, and what the governance of such an organization should be like.

### **Anticipated Cost and Benefits:**

The benefits of the proposed rule are expected to justify the costs. The proposed changes to the horse protection regulations would promote the humane treatment of walking and racking horses by more effectively ensuring that those horses that participate in exhibitions, sales, shows, or auctions are not sore. This benefit is an unquantifiable animal welfare enhancement. The proposed rule is not expected to adversely impact communities in which shows are held since walking and racking horse shows are expected to continue.

### **Risks:**

This rulemaking is intended to reduce the risk of horses suffering pain and injury from the practice of soring without restricting the activities of horse owners and organizations that have no history of soring and for which the USDA does not consider soring to be a concern.

**Timetable:**

Action	Date	FR Cite
NPRM	07/26/16	81 FR 49111
NPRM Comment Period End	09/26/16	
Final Rule	01/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Organizations

**Government Levels Affected:**

None

**Additional Information:**

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

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<b>USDA—Grain Inspection, Packers and Stockyards Administration(GIPSA)</b>	<b>PROPOSED RULE STAGE</b>
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**5. TOURNAMENT SYSTEMS AND POULTRY GROWING ARRANGEMENTS**

**Priority:**

Other Significant

**Legal Authority:**

7 U.S.C. 181 to 229c

**CFR Citation:**

9 CFR 201

**Legal Deadline:**

None

**Abstract:**

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) plans to propose amending part 201 of the Regulations under the Packers and Stockyards Act (P&S Act) (7U.S.C.181 229c) to address the use of tournament systems as a method of payment and settlement grouping for poultry growers under contract in poultry growing arrangements with live poultry dealers. The proposed regulation would establish certain requirements to which a live poultry dealer must comply if a tournament system is going to be utilized to determine grower payment. A live poultry dealer's failure to comply would be deemed an unfair, unjustly discriminatory and deceptive practice according to factors outlined in the proposed rule.

**Statement of Need:**

This proposed section 201.214 will establish criteria that the Secretary may consider when determining whether a live poultry dealer has used a poultry grower ranking system to compensate poultry grower in an unfair, unjustly discriminatory, or deceptive manner, or in a way that gives an undue or unreasonable prejudice or disadvantage. Proposed section 201.210(10) will link the criteria to an unfair practice in violation of section 202(a) of the P&S Act. These provisions are needed to protect poultry growers from unfair, unjustly discriminatory or deceptive practices and devices and from undue or unreasonable prejudice or disadvantage. SUMMARY OF LEGAL BASIS: Section 407 of the P&S Act provides that [t]he Secretary may make such rules, regulations, and orders as may be necessary to carry out the

provisions of this Act. This rule is necessary to carry out the provisions of Section 202(a) and (b) of the P&S Act.

**Summary of Legal Basis:**

GIPSA considered three regulatory alternatives: maintain the status quo and not propose the regulation; propose a revised version of the proposed rule published in 2010; and propose a revised version that would be phased in as existing contracts expire, are replaced, or modified.

**Alternatives:**

**Anticipated Cost and Benefits:**

GIPSA estimates the annualized costs of proposed regulation 201.211 to be less than \$11 million. GIPSA estimates the costs to be greater than \$100 million annually. GIPSA was unable to quantify the benefits of the regulations. However, the primary benefit of regulation 201.214 is the increased ability to protect poultry growers from unfair practices associated with the use of poultry grower ranking systems. GIPSA also expects that the regulation will improve efficiencies and reduce market failures, by increasing the amount of relevant information available to poultry growers and reducing information asymmetries. Potential poultry growers will make better informed business decisions regarding whether to enter the industry and established poultry growers will make better informed decisions regarding additional capital investments.

**Risks:**

The risk addressed by this rulemaking is the present uncertainty that poultry growers face regarding treatment in a poultry grower ranking system and the inefficient allocation of resources due to incomplete information needed for business decisions.

**Timetable:**

Action	Date	FR Cite
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Proposed Rule	12/00/16	
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**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

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**RIN:** 0580–AB26

<b>USDA—GIPSA</b>	
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**6. UNFAIR PRACTICES AND UNREASONABLE PREFERENCE**

**Priority:**

Other Significant

**Legal Authority:**

Pub. L. 110–246; 7 U.S.C. 181–229c

**CFR Citation:**

9 CFR 201

**Legal Deadline:**

None

**Abstract:**

Title XI of the 2008 Farm Bill required the Secretary of Agriculture to issue a number of regulations under the P&S Act. Among these instructions, the 2008 Farm Bill directed the Secretary to identify criteria to be considered in determining whether an undue or unreasonable preference or advantage has occurred in violation of the P&S Act. In June of 2010, the Grain Inspection, Packers and Stockyards Administration (GIPSA) published a proposed rule addressing this statutory requirement along with several other rules required by the 2008 Farm Bill. Proposed 201.211 to the regulations under the P&S Act would have established criteria that the Secretary may consider in determining if conduct would violate section 202(b) of the P&S Act (undue or unreasonable preference or advantage). While many commenters provided examples of similarly situated poultry growers and livestock producers receiving different treatment, other commenters were concerned about the impacts of the provision on marketing arrangements and other beneficial contractual agreements. Beginning with the FY 2012 appropriations act, USDA was precluded from working on certain proposed regulatory provisions related to the P&S Act, including criteria in this proposal regarding undue or unreasonable preferences or advantages. Consequently, GIPSA did not finalize this rule in 2011. The prohibitions are not included in the Consolidated Appropriations Act, 2016. This rulemaking is necessary to fulfill statutory requirements. Section 201.210 will illustrate by way of examples types of conduct GIPSA would consider unfair, unjustly discriminatory, or deceptive.

**Statement of Need:**

This proposed rulemaking will establish a list of practices that violate section 202(a) of the P&S Act without a showing of harm to completion and establish criteria that the Secretary will consider when determining whether a packer, swine contractor, or live poultry dealer has engaged in conduct or action that constitutes an undue or unreasonable preference or advantage in violation of section 202(b) of the P&S Act. These provisions are needed to protect livestock producers and poultry growers from unfair, unjustly discriminatory or deceptive practices and devices and from undue or unreasonable prejudice or disadvantage or undue or unreasonable preference or advantage. The 2008 Farm Bill directed the

Secretary of Agriculture to establish criteria that the Secretary will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and if a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract. GIPSA published final rules establishing the required criteria in December 2011. These regulations will link the regulatory criteria to a violation of the P&S Act.

### **Summary of Legal Basis:**

Section 11006 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (2008 Farm Bill) required GIPSA to establish criteria regarding: undue or unreasonable preference or advantage; suspension of delivery of birds under a poultry growing arrangement; additional capital investments for poultry or swine contracts; and reasonable period of time to remedy a breach of contract. GIPSA issued final regulations for three of the four required criteria on December 9, 2011. Section 201.210 of this rule, will link the criteria to a violation of the section 202(a) of the Packers and Stockyards Act. In addition, section 201.210 will identify other conduct that GIPSA considers to be unfair, unjustly discriminatory, or deceptive and a violation of section 202(a) of the P&S Act without a showing of harm to competition. Section 201.211 will establish criteria for the remaining area undue or unreasonable preference or advantage. Together, the regulations will complete the unfinished work from the 2008 Farm Bill. Section 407 of the P&S Act provides that [t]he Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act. This rule is necessary to carry out the provisions of section 202(a) and (b) of the P&S Act.

### **Alternatives:**

GIPSA considered three regulatory alternatives: maintain the status quo and not issue the regulations; issuing revised versions of the proposed rule published in 2010 as proposed rules; and proposing regulations that would be phased in as existing contracts expire.

**Anticipated Cost and Benefits:**

GIPSA estimates the cost to be greater than \$100 million annually. GIPSA was unable to quantify the benefits of the regulations. However, the primary benefit of regulations 201.210 and 201.211 is the increased ability to protect producers and growers through enforcement of the P&S Act for violations of section 202(a) and/or (b) that do not result in harm or the likelihood of harm to competition.

**Risks:**

The risk addressed by this rulemaking is the present uncertainty that limits enforcement of section 202(a) or (b) of the P&S Act. The clarification provided by this rulemaking will allow the linkage of the regulatory criteria to a violation of the P&S Act, which is a substantial portion of the GIPSA Packers and Stockyards Program's mission.

**Timetable:**

Action	Date	FR Cite
Proposed Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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<b>USDA—GIPSA</b>	<b>FINAL RULE STAGE</b>
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## **7. CLARIFICATION OF SCOPE**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

Pub. L. 110–246; 7 U.S.C. 181 to 229c

**CFR Citation:**

9 CFR 201

**Legal Deadline:**

None

**Abstract:**

In June of 2010, GIPSA published a proposal to amend section 201.3 of the regulations issued under the Packers and Stockyards Act (P&S Act), 1921, as amended. This proposed change responds to guidance from the courts. The courts, in addressing litigation brought by poultry growers alleging harm, have said that GIPSA's statements regarding the appropriate application of subsections 202(a) and 202(b) are not entitled to deference in the absence of regulation addressing whether the P&S Act prohibits all unfair

practices, or only those causing harm or a likelihood of harm to competition. The amendment to 201.3 will establish GIPSA's interpretation of the statute which will then be entitled to judicial deference.

**Statement of Need:**

This rulemaking will clarify the long held position of the Department of Agriculture that it is not necessary in all cases to demonstrate harm or likely harm to competition in order to establish a violation of either Section 202(a) or (b) of the P&S Act. Several U.S. Courts of Appeals have held that it was necessary for plaintiffs to prove harm or likely harm to competition in cases alleging unfair practices in violation of the P&S Act. The 2008 Farm Bill directed the Secretary of Agriculture to establish criteria that the Secretary will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and if a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract. GIPSA published final rules establishing the required criteria in December 2011. However, to link the regulatory criteria and a violation of the P&S Act, requires the interpretation that it is not necessary to show harm to competition in order to prove that a packer, swine contractor, or live poultry dealer has committed an unfair practice in violation of the P&S Act.

**Summary of Legal Basis:**

Section 407 of the P&S Act provides that [t]he Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act. This rule is necessary to carry out the provisions of section 202(a) and (b) of the P&S Act.

**Alternatives:**

GIPSA considered three regulatory alternatives: maintain the status quo and not issue the regulation; issuing regulation as an interim final regulation; and issuing the regulation as an interim final regulation but exempting small businesses.

**Anticipated Cost and Benefits:**

GIPSA estimates the costs to be greater than \$100 million annually. GIPSA was unable to quantify the benefits of the regulation. However, the primary benefit of regulation 201.3 is the increased ability to protect producers and growers through enforcement of the P&S Act for violations of section 202(a) and/or (b) that do not result in harm or the likelihood of harm to competition.

**Risks:**

The risk addressed by this rulemaking is the present uncertainty that limits enforcement of section 202(a) or (b) of the P&S Act. The clarification provided by this rulemaking will allow the linkage of the regulatory criteria to a violation of the P&S Act, which is a substantial portion of the GIPSA Packers and Stockyards Program’s mission.

**Timetable:**

Action	Date	FR Cite
NPRM	06/22/10	75 FR 35338
NPRM Comment Period End	11/22/10	
Interim Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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<b>USDA—Food and Nutrition Service(FNS)</b>	<b>FINAL RULE STAGE</b>
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## **8. ELIGIBILITY, CERTIFICATION, AND EMPLOYMENT AND TRAINING PROVISIONS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

Pub. L. 110–246; Pub. L. 104–121

**CFR Citation:**

7 CFR 273

**Legal Deadline:**

None

**Abstract:**

This final rule amends the regulations governing the Supplemental Nutrition Assistance Program (SNAP) to codify provisions from the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (FCEA)

concerning the eligibility and certification of SNAP applicants and participants and SNAP employment and training.

**Statement of Need:**

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

**Summary of Legal Basis:**

Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246).

**Alternatives:**

Most aspects of the rule are non-discretionary and tied to specific requirements for SNAP in the FCEA, and others were new program options the FCEA created that State agencies may include in their administration of the program. FNS did consider alternatives within these mandatory and optional FCEA provisions addressed in the rule. For example, under the new optional provision implementing section 4119 of the FCEA, Telephonic Signature Systems, FNS considered what specific conditions must be satisfied for a signature to be considered a spoken signature.

**Anticipated Cost and Benefits:**

The proposed rule estimated total SNAP costs to the Government of the FCEA provisions proposed in the rule to be \$831 million in fiscal 2010 and \$5.619 billion over the five years of fiscal year 2010 through fiscal year 2014. The final rule will present a revised cost analysis. There are many potential societal benefits of this rule, including that certain provisions in the rule will reduce the administrative burden for households and State agencies.

**Risks:**

The statutory and discretionary changes under consideration would streamline program operations. The changes are expected to reduce the risk of inefficient operations.

**Timetable:**

Action	Date	FR Cite
NPRM	05/04/11	76 FR 25414
NPRM Comment Period End	07/05/11	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

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USDA—FNS	
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**9. NATIONAL SCHOOL LUNCH AND SCHOOL BREAKFAST PROGRAMS: NUTRITION  
STANDARDS FOR ALL FOODS SOLD IN SCHOOL, AS REQUIRED BY THE HEALTHY, HUNGER-  
FREE KIDS ACT OF 2010**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect State, local or tribal governments.

**Legal Authority:**

Pub. L. 111-296

**CFR Citation:**

7 CFR 210; 7 CFR 220

**Legal Deadline:**

None

**Abstract:**

This rule codifies a provision of the Healthy, Hunger-Free Kids Act (Pub. L. 111-296; the Act) under 7 CFR parts 210 and 220. Section 208 requires the Secretary to promulgate regulations to establish science-based nutrition standards for all foods sold in schools. The nutrition standards apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day.

**Statement of Need:**

This rule codifies the two provisions of the Healthy, Hunger-Free Kids Act (Pub. L. 111-296; the Act) under 7 CFR parts 210 and 220. Section 203 requires schools participating in the National School Lunch Program to make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service. Section 208 requires the Secretary to promulgate regulations to establish science-based nutrition standards for all foods sold in schools not later than December 13, 2011. The nutrition standards apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day.

**Summary of Legal Basis:**

There is no existing regulatory requirement to make water available where meals are served. Regulations at 7 CFR parts 210.11 direct State agencies and school food authorities to establish regulations necessary to control the sale of foods in competition with lunches served under the NSLP, and prohibit the sale of foods of minimal nutritional value in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

**Alternatives:**

Several alternatives were considered in the proposed rule that were not incorporated into the final rule. Alternatives included different options for the treatment of entrees and side dishes that are served as part

of a reimburseable meal, options for establishing limits on the frequency of exempt fundraisers, options for public comment on lower-calorie beverages for high school students, and an option that considered prohibiting the sale of beverages with added caffeine to high school students.

**Anticipated Cost and Benefits:**

Expected Costs Analysis and Budgetary Effects Statement: We expect that these provisions would incur no Federal costs.

Although the complexity of factors that influence overall food consumption and obesity prevent us from defining a level of dietary change or disease or cost reduction that is attributable to the rule, there is evidence that standards like those in the rule will positively influence and perhaps directly improve food choices and consumption patterns that contribute to students' long-term health and well-being, and reduce their risk for obesity.

Any rule-induced benefit of healthier eating by school children would be accompanied by costs, at least in the short term. Healthier food may be more expensive than unhealthy food either in raw materials, preparation, or both and this greater expense would be distributed among students, schools, and the food industry.

**Risks:**

None known.

**Timetable:**

Action	Date	FR Cite
NPRM	02/08/13	78 FR 9530

NPRM Comment Period End	04/09/13	
Interim Final Rule	06/28/13	78 FR 39067
Interim Final Rule Effective	08/27/13	
Interim Final Rule Comment Period End	10/28/13	
Final & Interim Final Rule	07/29/16	81 FR 50131
Final Action	03/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**Federalism:**

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

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**RIN:** 0584-AE09

<b>USDA—FNS</b>	
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## **10. ENHANCING RETAILER ELIGIBILITY STANDARDS IN SNAP**

**Priority:**

Other Significant

**Legal Authority:**

3 U.S.C. 2012; 9 U.S.C. 2018

**CFR Citation:**

7 CFR 271.2; 7 CFR 278.1

**Legal Deadline:**

None

**Abstract:**

The final rule will address the criteria used to authorize retail food stores for redemption of SNAP benefits.

**Statement of Need:**

The Agricultural Act 2014 (2014 Farm Bill) amended the Food and Nutrition Act of 2008 to increase the required amount of food that certain SNAP authorized retail food stores have available on a continual basis from at least three varieties of items in each of four staple food categories to a mandatory minimum of seven varieties. The 2014 Farm Bill also amended the Act to increase the minimum number of categories in which perishable foods are required from two to three. This rule codifies these mandatory requirements. Further, the rulemaking addresses depth of stock, redefines staple and accessory foods,

and amends the definition of retail food store to clarify when a retailer is a restaurant rather than a retail food store.

**Summary of Legal Basis:**

Section 3(k) of the Food and Nutrition Act of 2008 (the Act) generally (with limited exception) (1) requires that food purchased with SNAP benefits be meant for home consumption and (2) prohibits the purchase of hot foods with SNAP benefits. The intent of those statutory requirements can be circumvented by selling cold foods, which may be purchased with SNAP benefits, and offering onsite heating or cooking of those same foods, either for free or at an additional cost. In addition, section 9 of the Act provides for approval of retail food stores and wholesale food concerns based on their ability to effectuate the purposes of the Program.

**Alternatives:**

Alternative approaches to several discretionary provisions are being considered based on commenter feedback on the proposed rule.

**Anticipated Cost and Benefits:**

The changes will allow FNS to improve access to healthy food choices for SNAP participants and to ensure that participating retailers effectuate the purposes of the Program. FNS anticipates that these provisions will have no significant costs to States.

**Risks:**

None identified.

**Timetable:**

Action	Date	FR Cite
NPRM	02/17/16	81 FR 8015

NPRM Comment Period End	05/18/16	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

State

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**RIN:** 0584-AE27

<b>USDA—FNS</b>	
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## **11. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) PHOTO ELECTRONIC BENEFIT TRANSFER (EBT) CARD IMPLEMENTATION REQUIREMENTS**

### **Priority:**

Other Significant

### **Legal Authority:**

Pub. L. 104–193

### **CFR Citation:**

7 CFR 273; 7 CFR 274; 7 CFR 278

### **Legal Deadline:**

None

### **Abstract:**

Under section 7(h)(9) of the Food and Nutrition Act of 2008 (the Act), as amended [7 U.S.C. 2016(h)(9)], States have the option to require the SNAP Electronic Benefit Transfer (EBT) card contain a photo of one or more household members. The final rule would incorporate into regulation and provide additional clarity on the Food and Nutrition Service (FNS) guidance developed for State agencies wishing to implement the photo EBT card option.

### **Statement of Need:**

The regulation would create a clearer structure for those States wishing to exercise the option of placing a photo on EBT cards and ensure uniform accessibility for participants in all States.

### **Summary of Legal Basis:**

The Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., requires that any States choosing to issue a photo on the EBT card establish procedures to ensure that all other household members or any authorized representative of the household may utilize the card. Furthermore, applying this option must also preserve client rights and responsibilities afforded by the Act to ensure that all household members are able to maintain uninterrupted access to benefits, that non-applicants applying on behalf of eligible

household members are not negatively impacted, and that SNAP recipients using photo EBT cards are treated equitably in accordance with Federal law when purchasing food at authorized retailers.

**Alternatives:**

The final rule would mostly codify guidance issued in December 2014. The Department considered not issuing any regulation on photo EBT cards.

**Anticipated Cost and Benefits:**

The changes are not expected to create serious inconsistencies or otherwise interfere with actions taken or planned by another agency or materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The requirements will not raise novel or legal policy issues.

As a result of this rule, States that exercise the option to implement photos on EBT cards would incur costs associated with development of an implementation plan, State staff training, client training, and retailer training. It is expected that providing guidance or oversight of these requirements would fall under the standard purview of these agencies and could be absorbed by existing staff. State Agencies are responsible for approximately 50% of SNAP administration costs, which would include the costs associated with implementing and maintaining photo EBT cards.

**Risks:**

This rule will promulgate and expand on current program guidance to provide clarification and more detailed guidance to States implementing the photo EBT option and ensure program access is protected.

**Timetable:**

Action	Date	FR Cite
NPRM	01/06/16	81 FR 398
NPRM Comment Period End	03/07/16	

Final Action	12/00/16	
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**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

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**RIN:** 0584-AE45

<b>USDA—Food Safety and Inspection Service(FSIS)</b>	<b>PROPOSED RULE STAGE</b>
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**12. REVISION OF THE NUTRITION FACTS PANELS FOR MEAT AND POULTRY PRODUCTS AND UPDATING CERTAIN REFERENCE AMOUNTS CUSTOMARILY CONSUMED**

**Priority:**

Other Significant

**Legal Authority:**

Federal Meat Inspection Act (21 U.S.C. 601 et seq.); Poultry Products Inspection Act (21 U.S.C. 451 et seq.)

**CFR Citation:**

9 CFR 317; 9 CFR 381; 9 CFR 413

**Legal Deadline:**

None

**Abstract:**

Consistent with the recent changes that the Food and Drug Administration (FDA) finalized, the Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to update and revise the nutrition labeling requirements for meat and poultry products to reflect recent scientific research and dietary recommendations and to improve the presentation of nutrition information to assist consumers in maintaining healthy dietary practices. FSIS is proposing to (1) update the list of nutrients that are required or permitted to be declared; (2) provide updated Daily Reference Values (DRV) and Reference Daily Intake (RDI) values that are based on current dietary recommendations from consensus reports; and (3) amend the requirements for foods represented or purported to be specifically for children under the age of four years and pregnant and lactating women and establish nutrient reference values specifically for these population subgroups. FSIS is also proposing to revise the format and appearance of the Nutrition Facts Panel; amend the definition of a single-serving container; require dual-column labeling for certain containers; and update and modify several reference amounts customarily consumed (RACCs or reference amounts). FSIS also is proposing to consolidate the nutrition labeling regulations for meat and poultry products into a new Code of Federal Regulations (CFR) part.

**Statement of Need:**

On May 27, 2016, the Food and Drug Administration (FDA) published two final rules: (1) "Food Labeling: Revision of the Nutrition and Supplement Facts Labels" (81 FR 33742); and (2) "Food Labeling: Serving Sizes of Foods that Can Reasonably be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments" (81 FR 34000). FDA finalized these rules to update the

Nutrition Facts label to reflect new nutrition and public health research, to reflect recent dietary recommendations from expert groups, and to improve the presentation of nutrition information to help consumers make more informed choices and maintain healthy dietary practices. FSIS has reviewed FDA's analysis and, to ensure that nutrition information is presented consistently across the food supply, FSIS will propose to amend the nutrition labeling regulations for meat and poultry products to parallel, to the extent possible, FDA's regulations. This approach will help increase clarity of information to consumers and will improve efficiency in the marketplace.

### **Summary of Legal Basis:**

The Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

### **Alternatives:**

FSIS is considering different alternatives for presentation of nutrition information on the Nutrition Facts Panel.

### **Anticipated Cost and Benefits:**

These proposed regulations are expected to benefit consumers by increasing and improving dietary information available in the market. An estimate of the monetary benefits from these market improvements can be obtained by calculating the medical cost savings generated by linking information use to improved consumer diets. In addition, FSIS believes that the public would be better served by having the regulations governing nutrition labeling consolidated in one part of title 9. Rather than searching through two separate parts of title 9, CFR parts 317 and 381, to find the nutrition labeling regulations, interested parties would only have to survey one, part 413, to be able to apply nutrition panels to their meat and poultry products. The proposed actions would necessitate the majority of products to be relabeled. Firms would incur a one-time cost for relabeling, recordkeeping costs, and costs associated with voluntary reformulation.

**Risks:**

None

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0583-AD56

<b>USDA—FSIS</b>	
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**13. • MODERNIZATION OF SWINE SLAUGHTER INSPECTION**

**Priority:**

Other Significant

**Legal Authority:**

21 U.S.C. 601 et seq

**CFR Citation:**

9 CFR 301, 309, 310, and 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:**

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 estimated total annualized value of all mandatory costs to industry is approximately \$0.74 million, while total annualized value of all voluntary costs to industry is approximately \$11.66 million, assuming a 10 year annualization and a 3 percent discount rate. Estimated combined the total annualized costs to industry is approximately \$12.40 million (\$0.77 + \$11.66), assuming a 10 year annualization and a 3 percent discount rate. FSIS estimates industry-wide adoption of the NSIS would reduce the number of human illness attributed to products derived from market hog by an average of about 2,621 Salmonella illnesses, which represents potential savings of approximately \$9.56 million annually. The Agency’s budget is expected to be impacted by changes to personnel and training requirements. The estimated annualized value of the combined changes to the Agency’s budget is a net reduction of roughly \$8.77 million, over 10 years assuming a 3 percent discount rate. With the expected impact on the Agency’s budget included, and assuming all large and small exclusively market hog establishments convert to NSIS, the rule is anticipated to have a net benefit of approximately \$4.97 million a year, annualized over 10 years assuming a 3 percent discount rate.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
NPRM	03/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0583–AD62

**BILLING CODE 3410-90-P**

**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, several of which involve regulation of the private sector by Commerce.

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

The vast majority of the Commerce's programs and activities do not involve regulation. Of Commerce's 12 primary operating units, only the National Oceanic and Atmospheric Administration (NOAA) will be planning actions that are considered the "most important" significant pre-regulatory or regulatory actions for FY 2017. During the next year, NOAA plans to publish five rulemaking actions that are designated as Regulatory Plan actions. The Bureau of Industry and Security (BIS) may also publish rulemaking actions 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.

### **National Oceanic and Atmospheric Administration**

NOAA establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental and climate services vital to public safety and to the Nation's economy, such as weather forecasts, drought forecasts, and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving 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 threatened and endangered marine and anadromous species and marine mammals, and promotes economic development of the U.S. fishing industry. NOS assists the coastal States in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the 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.

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.

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; increasing the populations of depleted, threatened, or endangered species and marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed

in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: understanding climate change science and impacts, and communicating that understanding to government and private sector stakeholders enabling them to adapt; continually improving the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

#### *Magnuson-Stevens Fishery Conservation and Management Act*

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3-200 nautical miles). Among the several hundred rulemakings that NOAA plans to issue in FY 2017, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. NOAA issues regulations to implement FMPs and FMP amendments. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NOAA by which it must exercise its rulemaking responsibilities. FMPs and FMP amendments for Atlantic highly migratory species, such as bluefin tuna, swordfish, and sharks, are developed directly by NOAA, not by FMCs.

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

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

#### *Marine Mammal Protection Act*

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

#### *Endangered Species Act*

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be "endangered" or "threatened," and the conservation of the ecosystems on which these species depend. The ESA authorizes both NMFS and the Fish and Wildlife Service (FWS) to jointly administer the provisions of the 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 1,300 listed species found in part or entirely in the United States and its waters, NMFS has jurisdiction over approximately 60 species. NMFS' rulemaking actions are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing, and revising critical habitat for any listed species. In addition, under the ESA's procedural framework, Federal agencies consult with NMFS on any proposed action authorized, funded, or carried out by that agency that may affect one of the listed species or designated critical habitat, or is likely to jeopardize proposed species or adversely modify proposed critical habitat that is under NMFS' jurisdiction.

#### *NOAA's Regulatory Plan Actions*

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in 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.

#### **1. Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring**

**Program (0648-BF09):** The Magnuson-Stevens Fishery Conservation and Management Act prohibits the importation and trade in interstate commerce of fishery products from fish caught in violation of any foreign law or regulation.

**2. Final Rule to Designate Critical Habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic Sturgeon (0648-BF28):** The National Marine Fisheries Service listed four distinct population segments of Atlantic sturgeon as endangered—and one distinct population of Atlantic sturgeon as threatened—under the Endangered Species Act on February 6, 2012. This rule would designate critical habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic sturgeon.

**3. Final Rule to Designate Critical Habitat for the Carolina and South Atlantic Distinct Population Segments of Atlantic Sturgeon (0648-BF32):** The National Marine Fisheries Service listed four distinct population segments of Atlantic sturgeon as endangered—and one distinct population of Atlantic sturgeon as threatened—under the Endangered Species Act on February 6, 2012. This action would designate critical habitat for the Carolina and South Atlantic Distinct Population Segments of Atlantic sturgeon, both listed as endangered.

**4. Proposed Rule to Designate Critical Habitat for Threatened Caribbean Corals (0648-BG20):** On September 10, 2014, the National Marine Fisheries Service listed 5 corals in the Caribbean as threatened under the Endangered Species Act. With this action, the National Marine Fisheries Service proposes to designate critical habitat for the 5 Caribbean corals (*Dendrogyra cylindrus*, *Orbicella annularis*, *Orbicella faveolata*, *Orbicella franksi*, and *Mycetophyllia ferox*) and revises critical habitat for the previously-listed corals *Acropora palmata* and *Acropora cervicornis*. The proposed designation would cover coral reef habitat containing essential features that support reproduction, growth, and survival of the listed coral species.

**5. Proposed Rule to Designate Critical Habitat for Threatened Indo-Pacific Corals (0648-BG26):** On September 10, 2014, the National Marine Fisheries Service listed 15 species of reef-building corals in the Indo-Pacific as threatened under the Endangered Species Act. Of the 15 Indo-Pacific species listed, seven occur in U.S. waters of the Pacific Islands Region, including in American Samoa, Guam, the

Commonwealth of the Mariana Islands, and the Pacific Remote Island Areas. With this action, the National Marine Fisheries Service proposes to designate critical habitat for the seven species in U.S. waters (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora retusa*, *Acropora speciosa*, *Euphyllia paradivisa*, *Isopora crateriformis*, and *Seriatopora aculeata*). The proposed designation would cover coral reef habitat containing essential features that support reproduction, growth, and survival of the listed coral species.

### **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 Actions**

In August 2009, the President directed a broad-based interagency review of the U.S. export control system with the goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on the current threats and adapting to the changing economic and technological landscape. In August 2010, the President outlined an approach, known as the Export Control Reform Initiative (ECRI), under which agencies that administer export controls will apply new criteria for determining what items need to be controlled and a common set of policies for determining when an export license is required. The control list criteria are to be based on transparent rules, which will reduce the uncertainty faced by our Allies, U.S. industry and its foreign customers, and will allow the Government to erect higher walls around the most sensitive export items in order to enhance national security.

Under the President's approach, agencies are to apply the criteria and revise the lists of munitions and dual-use items that are controlled for export so that they:

- Distinguish the transactions that should be subject to stricter levels of control from those where more permissive levels of control are appropriate;
- Create a "bright line" between the two current control lists to clarify jurisdictional determinations and reduce Government and industry uncertainty about whether particular items are subject to the control of the State Department or the Commerce Department; and
- Are structurally aligned so that they potentially can be combined into a single list of controlled items.

BIS' current regulatory plan action is designed to implement the initial phase of the President's directive, which will add to BIS' export control purview, military related items that the President determines no longer warrant control under rules administered by the State Department.

As the agency responsible for leading the administration and enforcement of U.S. export controls on dual-use and other items warranting controls but not under the provisions of export control regulations administered by other departments, BIS plays a central role in the Administration's efforts to reform the export control system. Changing what we control, how we control it and how we enforce and manage our controls will help strengthen our national security by focusing our efforts on controlling the most critical products and technologies, and by enhancing the competitiveness of key U.S. manufacturing and technology sectors.

In FY 2011, BIS began implementing the ECRI with a final rule (76 FR 35275, June 16, 2011) implementing a license exception that authorizes exports, reexports and transfers to destinations that do not pose a national security concern, provided certain safeguards against diversion to other destinations are taken. Additionally, BIS began publishing proposed rules to add to its Commerce Control List (CCL), military items the President determined no longer warranted control by the Department of State. BIS continued to publish such proposed rules in FY 2012.

In FY 2013, BIS crossed an important milestone with publication of two final rules that began to put ECRI policies into place. An Initial Implementation rule (78 FR 22660, April 16, 2013) set in place the structure under which items the President determines no longer warrant control on the United States Munitions List are controlled on the Commerce Control List. It also revised license exceptions and regulatory definitions, including the definition of "specially designed" to make those exceptions and definitions clearer and to more closely align them with the International Traffic in Arms Regulations, and added to the CCL certain military aircraft, gas turbine engines and related items. A second final rule (78 FR 40892, July 8, 2012) followed on by adding to the CCL military vehicles, vessels of war, submersible vessels, and auxiliary military equipment that President determined no longer warrant control on the USML.

BIS continued its ECRI efforts and by the end of fiscal year 2016 had published final rules adding to the CCL additional items that the President determined no longer warrant control under rules administered by the State Department in the following categories: Military training equipment; Explosives and energetic materials; Personal protective equipment; Launch vehicles and rockets; Spacecraft; Military Electronics; Toxicological agents; and Directed energy weapons. During fiscal year 2015, BIS published a proposed rule that would add to the CCL items related to: Fire control, range finder, optical and guidance and control equipment, followed by a second proposed rule in fiscal year 2016.

During fiscal year 2015, BIS initiated a process of evaluating the effectiveness of its ECRI efforts by seeking public input on whether the regulations are clear; do not inadvertently control, as military items, items in normal commercial use; account for technological developments; and properly implement the national security and foreign policy objectives of the reform effort. The first review addressed the first two categories of items added to the CCL by ECRI: military aircraft and gas turbine engines. After reviewing public comments, BIS completed this review by publishing a final rule in fiscal year 2016. In fiscal year 2016, BIS continued this review process with a notice seeking public comment on implementation of ECRI with respect to military vehicles, vessels of war, submersible vessels, oceanographic equipment, and auxiliary and miscellaneous military equipment. BIS anticipates continuing this series of notices after the public has had time to develop experience with each regulation that added categories of items to the CCL.

### **Promoting International Regulatory Cooperation**

As the President noted in Executive Order 13609, "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. Accordingly, in E.O. 13609, the President requires each executive agency to include in its Regulatory Plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.

The Department of Commerce engages with numerous international bodies in various forums to promote the Department's priorities and foster regulations that do not "impair the ability of American business to export and compete internationally." E.O. 13609(a). For example, the United States Patent and Trademark Office is working with the European Patent Office to develop a new classification system for both offices' use. The Bureau of Industry and Security, along with the Department of State and Department of Defense, engages with other countries in the Wassenaar Arrangement, through which the international community develops a common list of items that should be subject to export controls because they are conventional arms or items that have both military and civil uses. Other multilateral export control regimes include the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Australia Group, which lists items controlled for chemical and biological weapon nonproliferation purposes. In addition, the National Oceanic and Atmospheric Administration works with other countries' regulatory bodies through regional fishery management organizations to develop fair and internationally-agreed-to fishery standards for the High Seas.

BIS is also engaged, in partnership with the Departments of State and Defense, in revising the regulatory framework for export control, through the President's Export Control Reform Initiative (ECRI). Through this effort, the United States Government has moved certain items currently controlled by the United States Military List (USML) to the Commerce Control List (CCL) in BIS' Export Administration Regulations. The objective of ECRI is to improve interoperability of U.S. military forces with those of allied countries, strengthen the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and allow export control officials to focus Government resources on transactions that pose greater concern. The new export control framework also will benefit companies in the United States seeking to export items through more flexible and less burdensome export controls. The system, however, requires ongoing review and maintenance for it to accomplish these objectives. Some technologies are modified and become more sensitive or are applied to more sensitive uses; others become more commercially available and warrant fewer controls. The approach is novel and will require regular refinement to further the objective of increasing interoperability with allies and reducing unnecessary regulatory burdens.

## **Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), the Department has identified several rulemakings as being associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Accordingly, the Agency is reviewing these rules to determine whether action under E.O. 13563 is appropriate. Some of these entries on this list may be completed actions, which do not appear in the Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for the Agency. These rulemakings can also be found on Regulations.gov.

Two rulemakings that are the product of the Agency's retrospective review are from BIS and NOAA. BIS published a rule effective in September 2015 that removed the Special Comprehensive License provisions from the EAR. These provisions had been rendered obsolete by liberalizations to the individual licensing process, and their removal not only streamlined the EAR but also achieved paperwork burden reductions. More significantly, BIS, working with its colleagues in the State Department, substantially updated and revised the key structural definitions within the export control regulations. The effort is not yet completed and substantial additional work is needed to harmonize, update, and simplify the regulatory structure of the existing export control system, which has been in place for decades without material modification.

NOAA continues to demonstrate great success in fishery sustainability managed under the Magnuson-Stevens Act, with near-record landings and revenue accomplished while rebuilding stocks across the country and preventing overfishing. Since the Magnuson-Stevens Act reauthorization in 2007, NMFS and the Regional Fishery Management Councils have implemented annual catch limits and accountability measures in every fishery management plan under National Standard One of the act. Informed by a robust public process that gained input through a public summit (Managing our Nation's Fisheries), visits to each region and Council and multiple public hearings, NMFS took the experience gained from 8 years of implementation of National Standard One and has proposed multiple substantive,

technical changes to the National Standard One rule that will improve implementation and continue to support healthy fisheries.

For more information, the most recent E.O. 13563 progress report for the Department can be found here: <http://open.commerce.gov/news/2016/04/05/commerce-plan-retrospective-analysis-existing-rules>.

<b>DOC—National Oceanic and Atmospheric Administration(NOAA)</b>	<b>PROPOSED RULE STAGE</b>
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**14. • ENDANGERED AND THREATENED SPECIES; CRITICAL HABITAT FOR THE THREATENED CARIBBEAN CORALS**

**Priority:**

Other Significant

**Legal Authority:**

16 U.S.C. 1531 et seq.

**CFR Citation:**

50 CFR 226

**Legal Deadline:**

None

**Abstract:**

The National Marine Fisheries Service listed five Caribbean corals in the Southeast Region as threatened under the Endangered Species Act on October 10, 2014. Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. We concluded that critical habitat was not determinable for the five corals at the time of listing. However, we anticipated that critical habitat would be determinable in the future given on-going research. We, therefore,

announced in the final listing rules that we would propose critical habitat in separate rulemakings. This rule proposes to designate critical habitat for the 5 newly-listed corals and revises critical habitat for the previously-listed corals *Acropora palmata* and *Acropora cervicornis*. A separate rule is being prepared that would propose to designate critical habitat for the 15 Indo-Pacific corals listed as threatened in the same rule as the five Caribbean corals.

**Statement of Need:**

This action would designate new critical habitat for five corals (*Dendrogyra cylindrus*, *Orbicella annularis*, *O. faveolata*, *O. franksi*, and *Mycetophyllia ferox*) and revise the 2008 critical habitat designation for two corals (*Acropora palmata* and *A. cervicornis*) in accordance with section 4 of the Endangered Species Act. This action follows from the listing of the five new species.

**Summary of Legal Basis:**

Endangered Species Act

**Alternatives:**

NMFS evaluated alternatives including the impacts of designating all and any parts of 38 (one for each species in each US jurisdiction in which it occurs) units as critical habitat. Units 1 for each species are the waters offshore Florida (generally Martin, Palm Beach, Broward, Miami-Dade, and Monroe counties). Units 2 are the waters surrounding the islands of Puerto Rico. Units 3 are the waters surround the islands of St. Thomas and St. John, US Virgin Islands. Units 4 are the waters surrounding the island of St. Croix, US Virgin Islands. Units 5 are the waters surrounding the island of Navassa. Units 6 are the waters within the Flower Garden Banks National Marine Sanctuary, approximately 100 miles offshore of Texas in the Gulf of Mexico. NMFS analyzed the economic, national security, and other relevant impacts of designating critical habitat. NMFS will further consider these impacts based on any relevant public and peer reviewer comments regarding this proposed designation.

**Anticipated Cost and Benefits:**

The primary benefit of designation is the protection afforded under section 7 of the Endangered Species Act, requiring all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. In addition to these protections, the designation may also result in other forms of benefits including, but not limited to: educational awareness and outreach benefits, benefits to tourism

and recreation, and improved or sustained habitat quality. Costs specifically associated with the designation of critical habitat stem mainly from Federal agencies requirement to consult with NMFS, under section 7 of the Endangered Species Act, to insure that any action they carry out, permit (authorize), or fund will not result in the destruction or adverse modification of critical habitat of a listed species.

**Risks:**

If critical habitat is not designated, listed corals will not be protected to the extent provided for in the ESA, posing a legal risk to the agency and a risk to the species continued existence and recovery.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

None

**Agency Contact:**

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**RIN:** 0648-BG20

**15. • DESIGNATION OF CRITICAL HABITAT FOR THREATENED INDO–PACIFIC REEF–BUILDING****CORALS****Priority:**

Other Significant

**Legal Authority:**

16 U.S.C. 1531 et seq.

**CFR Citation:**

50 CFR 226

**Legal Deadline:**

Final, Statutory, September 10, 2016, Statutory deadline for final critical habitat designation of listed Indo–Pacific corals.

**Abstract:**

On September 10, 2014, the National Marine Fisheries Service listed 20 species of reef-building corals as threatened under the Endangered Species Act, 15 in the Indo-Pacific and five in the Caribbean. Of the 15 Indo-Pacific species, seven occur in U.S. waters of the Pacific Islands Region, including in American Samoa, Guam, the Commonwealth of the Mariana Islands, and the Pacific Remote Island Areas. This proposed rule would designate critical habitat for the seven species in U.S. waters (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora retusa*, *Acropora speciosa*, *Euphyllia paradivisa*, *Isopora crateriformis*, and *Seriatopora aculeata*). A separate proposed rule is being prepared to designate critical habitat for the listed Caribbean coral species. The proposed designation would cover coral reef habitat around 13 island or atoll units in the Pacific Islands Region, including three in American Samoa, one in Guam, seven in the Commonwealth of the Mariana Islands, and two in Pacific Remote Island Areas, containing essential features that support reproduction, growth, and survival of the listed coral species.

**Statement of Need:**

This action would designate new critical habitat for seven corals (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora retusa*, *Acropora speciosa*, *Euphyllia paradivisa*, *Isopora crateriformis*, and

Seriatopora aculeata) in accordance with section 4 of the Endangered Species Act. This action follows from the listing of the seven new species.

**Summary of Legal Basis:**

Endangered Species Act

**Alternatives:**

NMFS evaluated alternatives including the impacts of designating all and any parts of 19 islands within the U.S. jurisdictions of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Pacific Remote Island Areas as units of proposed critical habitat for the seven listed corals, including: (1) Tutuila & Offshore Banks; (2) Ofu & Olosega; (3) Ta'u; (4) Rose Atoll; (5) Guam & Offshore Banks; (6) Rota; (7) Aguijan; (8) Tinian and Tatsumi Reef; (9) Saipan and Garapan Bank; (10) Farallon de Medinilla; (11) Anatahan; (12) Pagan; (13) Maug Islands & Supply Reef; (14) Howland Island; (15) Palmyra Atoll; (16) Kingman Reef; (17) Johnston Atoll; (18) Wake Atoll; and (19) Jarvis Island. NMFS analyzed the economic, national security, and other relevant impacts of designating critical habitat. NMFS will further consider these impacts based on any relevant public and peer reviewer comments regarding this proposed designation.

**Anticipated Cost and Benefits:**

The primary benefit of designation is the protection afforded under section 7 of the Endangered Species Act, requiring all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. In addition to these protections, the designation may also result in other forms of benefits including, but not limited to: educational awareness and outreach benefits, benefits to tourism and recreation, and improved or sustained habitat quality. Costs specifically associated with the designation of critical habitat stem mainly from Federal agencies requirement to consult with NMFS, under section 7 of the Endangered Species Act, to insure that any action they carry out, permit (authorize), or fund will not result in the destruction or adverse modification of critical habitat of a listed species.

**Risks:**

If critical habitat is not designated, listed corals will not be protected to the extent provided for in the ESA, posing a legal risk to the agency and a risk to the species continued existence and recovery.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Federal

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**RIN:** 0648-BG26

<b>DOC—NOAA</b>	<b>FINAL RULE STAGE</b>
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**16. MAGNUSON-STEVENSON FISHERIES CONSERVATION AND MANAGEMENT ACT; SEAFOOD**

**IMPORT MONITORING PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

16 U.S.C. 1857

**CFR Citation:**

50 CFR 300; 50 CFR 600

**Legal Deadline:**

None

**Abstract:**

On March 15, 2015, the Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, published its action plan to implement Task Force recommendations for a comprehensive framework of integrated programs to combat illegal, unreported, and unregulated fishing and seafood fraud. The plan identifies actions that will strengthen enforcement, create and expand partnerships with state and local governments, industry, and non-governmental organizations, and create a traceability program to track seafood from harvest to entry into U.S. commerce, including the use of existing traceability mechanisms. As part of that plan, the National Marine Fisheries Service proposes regulatory changes to improve the administration of the Magnuson-Stevens Fisheries Conservation and Management Act prohibition on the entry into interstate or foreign commerce of any fish taken in violation of any foreign law or regulation. The rule includes adjustments to 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 labeled. Requirements for an international trade permit and reporting on the origin of certain imported or exported fishery products were previously established by regulations applicable to a number of specified fishery products. This rulemaking would extend those existing permitting and reporting requirements to additional fish species and seafood products.

**Statement of Need:**

The Magnuson-Stevens Fishery Conservation and Management Act prohibits the importation and trade in interstate commerce of fishery products from fish caught in violation of any foreign law or regulation.

**Summary of Legal Basis:**

Magnuson-Stevens Fishery Conservation and Management Act

**Alternatives:**

An alternative to this rulemaking that would diminish the incentives for illegal, unreported and unregulated fishing would be through cooperation and assistance programs. While the U.S. has developed effective fisheries management and enforcement techniques and applied these in many fisheries, there is no

guarantee that these methods will be widely adopted in foreign fisheries. Technical and financial assistance for the development and implementation of monitoring, control and surveillance measures would not be precluded by this rulemaking, but market access incentives will increase the likelihood of action by harvesting nations exporting to the U.S.

**Anticipated Cost and Benefits:**

Potential benefits of this rulemaking include: an incentive for exporting nations to adopt and implement fisheries regulatory and enforcement standards, including monitoring, control and surveillance measures that are comparable to the U.S. as a condition for access to the U.S. seafood market, enhanced fisheries conservation for shared and transboundary stocks, especially high seas stocks, and a safe and sustainable seafood supply for the U.S. market.. Anticipated costs include: increased administrative costs to the U.S. government for monitoring U.S. imports and making determinations about lawful acquisition of fisheries products; increased requests for international cooperation and assistance to implement fisheries monitoring, control and surveillance measures. Additionally, U.S. importers and fish processors may incur incremental costs for recordkeeping and reporting.

**Risks:**

Prohibiting imports from seafood exporting nations for which lawful acquisition cannot be established will diminish the risk of further declines in global fisheries stocks that are affected by illegal, unreported and unregulated fishing activities.

**Timetable:**

Action	Date	FR Cite
NPRM	02/05/16	81 FR 6210
NPRM Comment Period End	04/05/16	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**International Impacts:**

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

**Agency Contact:**

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**Related RIN:**

Related to 0648-AX63

**RIN:** 0648-BF09

DOC-NOAA	
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**17. DESIGNATION OF CRITICAL HABITAT FOR THE GULF OF MAINE, NEW YORK BIGHT, AND CHESAPEAKE BAY DISTINCT POPULATION SEGMENTS OF ATLANTIC STURGEON**

**Priority:**

Other Significant

**Legal Authority:**

16 U.S.C. 1531 et seq.

**CFR Citation:**

50 CFR 226

**Legal Deadline:**

NPRM, Judicial, May 30, 2016, per consent decree entered December 3, 2014, and modified by a November 9, 2015, order.

Following a complaint from the Natural Resources Defense Council and Delaware Riverkeeper Network, we agreed to submit this proposed rule to the Federal Register by November 30, 2015 for publication.

**Abstract:**

The National Marine Fisheries Service listed four distinct population segments of Atlantic sturgeon as endangered and one distinct population of Atlantic sturgeon as threatened under the Endangered Species Act on February 6, 2012. This rule would designate critical habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic sturgeon. A separate rule would designate critical habitat for the Carolina and South Atlantic distinct population segments of Atlantic sturgeon.

**Statement of Need:**

The Gulf of Maine, New York Bight, and Chesapeake Bay distinct population segments (DPSs) of Atlantic sturgeon were listed under the Endangered Species Act (ESA) in February 2012. Section 4 of the ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time a species is listed (16 U.S.C. 1533(b)(6)(C)). The ESA also requires that we publish final critical habitat rules within one year of proposed rules. At the time the Atlantic sturgeon DPSs were listed, we were unable to determine what areas met the statutory definition of critical habitat. We subsequently published a proposed rule to designate critical habitat for these DPSs on June 3, 2016. Under an existing court-ordered settlement agreement, we are required to publish final critical habitat designations by June 3, 2017 - one year from the date of publication of the proposed rules.

**Summary of Legal Basis:**

Endangered Species Act and court-ordered settlement agreement

**Alternatives:**

During the formulation of the final rule, pursuant to section 4(b)(2) of the ESA, we will evaluate the impacts of designating all and any parts of the proposed critical habitat. We are required to analyze the

economic, national security, and other relevant impacts of designating critical habitat. Through this process, we have discretion to exclude areas from the final designation as long as such exclusions do not result in the extinction of Atlantic sturgeon DPSs. Based on our draft impacts analysis supporting the proposed rule, we did not exclude any portions of the proposed critical habitat. We also completed an Initial Regulatory Flexibility Analysis and analyzed a no action alternative, an alternative in which some of the identified critical habitat areas are designated, and an alternative in which all critical habitat areas identified for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs of Atlantic sturgeon are designated.

**Anticipated Cost and Benefits:**

The primary benefit of critical habitat designation is the protection afforded under section 7 of the ESA, which requires all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. In addition to these protections, the designation may also result in other forms of benefits including, but not limited to: educational awareness and outreach benefits, benefits to tourism and recreation, and improved or sustained habitat quality. Costs specifically associated with the designation of critical habitat stem mainly from the requirement that Federal agencies consult with NMFS, under section 7 of the ESA, to insure that any action they carry out, permit (authorize), or fund will not result in the destruction or adverse modification of critical habitat of a listed species.

**Risks:**

If critical habitat is not designated, listed Atlantic sturgeon will not be protected to the extent provided for in the ESA, posing a legal risk to the agency and a risk to the species continued existence and recovery.

**Timetable:**

Action	Date	FR Cite
NPRM	06/03/16	81 FR 35701
NPRM Comment Period End	09/01/16	
NPRM Comment Period Reopened	09/29/16	81 FR 66911
Comment Period End	10/14/16	
Final Action	06/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, Local, State

**Agency Contact:**

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**RIN:** 0648-BF28

DOC-NOAA	
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**18. DESIGNATION OF CRITICAL HABITAT FOR THE CAROLINA AND SOUTH ATLANTIC DISTINCT POPULATION SEGMENTS OF ATLANTIC STURGEON**

**Priority:**

Other Significant

**Legal Authority:**

16 U.S.C. 1531 et seq.

**CFR Citation:**

50 CFR 226

**Legal Deadline:**

NPRM, Judicial, May 30, 2016, Per consent decree entered December 3, 2014, and modified by a November 9, 2015, order.

**Abstract:**

The National Marine Fisheries Service listed four distinct population segments of Atlantic sturgeon as endangered--and one distinct population of Atlantic sturgeon as threatened--under the Endangered Species Act on February 6, 2012. This action proposes to designate critical habitat for the Carolina and South Atlantic Distinct Population Segments of Atlantic sturgeon, both listed as endangered.

**Statement of Need:**

The Carolina and south Atlantic distinct population segments (DPSs) of Atlantic sturgeon were listed under the Endangered Species Act (ESA) in February 2012. Section 4 of the ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time a species is listed (16 U.S.C. 1533(b)(6)(C)). The ESA also requires that we publish final critical habitat rules within one year of proposed rules. At the time the Atlantic sturgeon DPSs were listed, we were unable to determine what areas met the statutory definition of critical habitat. We subsequently published a proposed rule to designate critical habitat for these DPSs on June 3, 2016. Under an existing court-ordered settlement agreement, we are required to publish final critical habitat designations by June 3, 2017 - one year from the date of publication of the proposed rules.

**Summary of Legal Basis:**

Endangered Species Act and court-ordered settlement agreement

**Alternatives:**

During the formulation of the final rule, pursuant to section 4(b)(2) of the ESA, we will evaluate the impacts of designating all and any parts of the proposed critical habitat. We are required to analyze the economic, national security, and other relevant impacts of designating critical habitat. Through this process, we have discretion to exclude areas from the final designation as long as such exclusions do not result in the extinction of Atlantic sturgeon DPSs. Based on our draft impacts analysis supporting the proposed rule, we did not exclude any portions of the proposed critical habitat. We also completed an

Initial Regulatory Flexibility Analysis and analyzed a no action alternative, an alternative in which some of the identified critical habitat areas are designated, and an alternative in which all critical habitat areas identified for the Carolina and south Atlantic DPSs of Atlantic sturgeon are designated.

**Anticipated Cost and Benefits:**

The primary benefit of critical habitat designation is the protection afforded under section 7 of the ESA, which requires all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. In addition to these protections, the designation may also result in other forms of benefits including, but not limited to: educational awareness and outreach benefits, benefits to tourism and recreation, and improved or sustained habitat quality. Costs specifically associated with the designation of critical habitat stem mainly from the requirement that Federal agencies consult with NMFS, under section 7 of the ESA, to insure that any action they carry out, permit (authorize), or fund will not result in the destruction or adverse modification of critical habitat of a listed species.

**Risks:**

If critical habitat is not designated, listed Atlantic sturgeon will not be protected to the extent provided for in the ESA, posing a legal risk to the agency and a risk to the species continued existence and recovery.

**Timetable:**

Action	Date	FR Cite
NPRM	06/03/16	81 FR 36077
Correction	06/28/16	81 FR 41926
NPRM Comment Period End	09/01/16	
NPRM Comment Period Reopened	09/29/16	81 FR 66911
Comment Period End	10/14/16	
Final Action	06/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, Local, State

**Agency Contact:**

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**RIN:** 0648-BF32

**BILLING CODE 3510-12-P**

**DEPARTMENT OF DEFENSE**

**Statement of Regulatory Priorities**

**Background**

The Department of Defense (DoD) is the largest Federal department consisting of three Military departments (Army, Navy, and Air Force), nine Unified Combatant Commands, 17 Defense Agencies, and ten DoD Field Activities. It has 1,329,949 military personnel and 878,527 civilians assigned as of June 30, 2016, and over 200 large and medium installations in the continental United States, U.S. territories, and foreign countries. The overall size, composition, and dispersion of DoD, coupled with an innovative regulatory program, present a challenge to the management of the Defense regulatory efforts under Executive Order (E.O.) 12866 "Regulatory Planning and Review" of September 30, 1993.

Because of its diversified nature, DoD is affected by the regulations issued by regulatory agencies such as the Departments of Commerce, Energy, Health and Human Services, Housing and Urban Development, Labor, State, Transportation, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in Executive Order

12866, there must be coordination of proposed regulations among the regulatory agencies and the affected DoD components. Coordinating the proposed regulations in advance throughout an organization as large as DoD is a straightforward, yet formidable, undertaking.

DoD issues regulations that have an effect on the public and that can be significant as defined in Executive Order 12866. In addition, some of DoD's regulations may affect other agencies. DoD, as an integral part of its program, not only receives coordinating actions from other agencies, but coordinates with the agencies that are affected by its regulations as well.

### **Overall Priorities**

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

### **International Regulatory Cooperation**

As the President noted in Executive Order 13609, "Promoting International Regulatory Cooperation" of 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. Accordingly, in Executive Order 13609, the President requires each executive agency to include in its Regulatory Plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.

The Department of Defense, 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. 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.

**Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (January 18, 2011), the following Regulatory Identification Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Several are of particular interest to small businesses. The entries on this list are completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on [reginfo.gov](http://www.reginfo.gov) in the Completed Actions section for DoD. These rulemakings can also be found on [regulations.gov](http://www.regulations.gov). We will continue to identify retrospective review regulations as they are published and report on the progress of the overall plan biannually. DoD's final agency plan and all updates to the plan can be found at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

RIN	Rule Title (*expected to significantly reduce burdens on small businesses)
0702-AA71	Army Privacy Program
0703-AA90	Guidelines for Archaeological Investigation Permits and Other Research on Sunken Military Craft and Terrestrial Military Craft Under the Jurisdiction of the Department of the Navy
0703-AA92	Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General
0710-AA66	Civil Monetary Penalty Inflation Adjustment Rule

0710-AA60	Nationwide Permit Program Regulations*
0750-AG47	Safeguarding Unclassified Controlled Technical Information (DFARS Case 2011-D039)
0750-AG62	Patents, Data, and Copyrights (DFARS Case 2010-D001)
0750-AH11	Only One Offer (DFARS Case 2011-D013)
0750-AH19	Accelerated Payments to Small Business (DFARS Case 2011-D008)
0750-AH54	Performance-Based Payments (DFARS Case 2011-D045)
0750-AH70	Defense Trade Cooperation Treaty With Australia and the United Kingdom (DFARS Case 2012-D034)
0750-AH86	Forward Pricing Rate Proposal Adequacy Checklist (DFARS Case 2012-D035)
0750-AH87	System for Award Management Name Changes, Phase 1 Implementation (DFARS Case 2012-D053)
0750-AH90	Clauses With Alternates—Transportation (DFARS Case 2012-D057)
0750-AH94	Clauses with Alternates—Foreign Acquisition (DFARS Case 2013-D005)
0750-AH95	Clauses with Alternates—Quality Assurance (DFARS Case 2013-D004)
0750-AI02	Clauses with Alternates—Contract Financing (DFARS Case 2013-D014)
0750-AI10	Clauses with Alternates—Research and Development Contracting (DFARS Case 2013-D026)
0750-AI19	Clauses with Alternates—Taxes (DFARS Case 2013-D025)
0750-AI27	Clauses with Alternates—Special Contracting Methods, Major System Acquisition, and Service Contracting (DFARS Case 2014-D004)

0750-AI03	Approval of Rental Waiver Requests (DFARS Case 2013-D006)
0750-AI07	Storage, Treatment, and Disposal of Toxic or Hazardous Materials—Statutory Update (DFARS Case 2013-D013)
0750-AI18	Photovoltaic Devices (DFARS Case 2014-D006)
0750-AI34	State Sponsors of Terrorism (DFARS Case 2014-D014)
0750-AI43	Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2014-D025)
0750-AI58	Detection and Avoidance of Counterfeit Electronic Parts--Further Implementation (DFARS Case 2014-D005)
0750-AI76	Duty-Free Entry Threshold (DFARS Case 2015-D036)
0750-AI85	Prohibition on Requiring the Use of Fire-Resistant Rayon Fiber (DFARS Case 2016-D012)
0790-AI19	Service Academies
0790-AI42	Personnel Security Program
0790-AI54	Defense Support of Civilian Law Enforcement Agencies
0790-AI63	Alternative Dispute Resolution
0790-AI77	Provision of Early Intervention and Special Education Services to Eligible DoD Dependents
0790-AI86	Defense Logistics Agency Privacy Program
0790-AI87	Defense Logistics Agency Freedom of Information Act Program

0790-AI88	Shelter for the Homeless
0790-AI90	DoD Assistance to Non-Government, Entertainment-Oriented Media Productions
0790-AI94	Public Affairs Liaison with Industry
0790-AI98	Professional U.S. Scouting Organizations Operating at U.S. Military Installations Overseas
0790-AJ00	Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of, the Uniformed Services
0790-AJ03	DoD Privacy Program
0790-AJ06	Voluntary Education Programs
0790-AJ07	Historical Research in the Files of the Office of the Secretary of Defense (OSD)
0790-AJ10	Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents
0790-AJ11	Defense Materiel Disposition
0790-AJ19	Background Checks on Individuals in DoD Child Care Services Programs
0790-AJ28	National Language Service Corps (NLSC)
	Pursuant to Executive Order 13563, DoD also removed 32 CFR part 513, "Indebtedness of Military Personnel," because the part is obsolete and the governing policy is now codified at 32 CFR part 112.

**Administration Priorities:**

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

The Department plans to finalize the following Defense Federal Acquisition Regulation Supplement (DFARS) rule:

- Network Penetration Reporting and Contracting for Cloud Services (DFARS case 2013-D018).

This final rule implements section 941 of the National Defense Authorization Act (NDAA) for FY 2013 and section 1632 of the NDAA for FY 2015. Section 941 requires cleared defense contractors to report penetrations of networks and information systems and allows DoD personnel access to equipment and information to assess the impact of reported penetrations. Section 1632 requires that a contractor designated as operationally critical must report each time a cyber-incident occurs on that contractor's network or information systems. Ultimately, DoD anticipates significant savings to taxpayers as a result of this rule, by improving information security for DoD information that resides in or transits through contractor systems and a cloud environment. Recent high-profile breaches of Federal information show the need to ensure that information security protections are clearly, effectively, and consistently addressed in contracts. This rule will help protect covered defense information or other Government data from compromise and protect against the loss of operationally critical support capabilities, which could directly impact national security.

The Department plans to propose the following DFARS rule:

- Use of the Government Property Clause (DFARS Case 2015-D035). This rule amends the DFARS to expand the prescription for use of Federal Acquisition Regulation (FAR) clause 52.245-1, Government Property. This clause requires contractors to comply with basic property receipt and record keeping requirements in order for the Government to track, report, and manage Government-furnished property. Currently, this clause is not required for use in purchase orders for repair when the unit acquisition cost of Government property to be repaired does not exceed the simplified acquisition threshold (SAT). However, acquisition value alone is not an indicator of the criticality or sensitivity of Government property items. For example, firearms, body armor, night vision equipment, computers or crypto-logical devices may individually all be below the SAT, but accountability of these items is of vital importance. Lack of the use of the Government property clause in these instances significantly increases the risk of misuse or loss of Government property. In order to strengthen the

management and accountability of Government-furnished property (GFP), this rule proposes to amend the DFARS to require use of the Government property clause in these instances, regardless of the acquisition value.

## **2. Rulemakings that promote open Government and use disclosure as a regulatory tool.**

The Department plans to finalize the following DFARS rule:

- Promoting Voluntary Post-Award Disclosure of Defective Pricing (DFARS Case 2015-D030). In response to the Better Buying Power 2.0 initiative on “Eliminating Requirements Imposed on Industry where Costs Outweigh Benefits,” contractors recommended that DoD clarify policy guidance to reduce repeated submissions of certified cost or pricing data. Frequent submissions of such data are used as a defense against defective pricing claims by DoD after contract award, since data that are frequently updated are less likely to be considered outdated or inaccurate and, therefore, defective. Better Buying Power 3.0 called for a revision of regulatory guidance regarding the requirement for contracting officers to request an audit, even if a contractor voluntarily discloses defective pricing after contract award. This rule amends the DFARS to stipulate that DoD contracting officers shall request a limited-scope audit when a contractor voluntarily discloses defective pricing after contract award, unless a full-scope audit is appropriate for the circumstances.

## **3. Rulemakings of particular interest to small businesses.**

The Department plans to propose the following DFARS rules—

- Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans (DFARS Case 2015-D013). This rule amends the DFARS to implement section 821 of the NDAA for FY 2015 regarding the Test Program for Comprehensive Small Business Subcontracting Plans. The Test Program was established under section 834 of the NDAs for FYs 1990 and 1991 to determine whether the negotiation and administration of comprehensive small business subcontracting plans would result in an increase of opportunities provided for small business concerns under DoD contracts. A comprehensive subcontracting plan (CSP) can be negotiated on a corporate, division, or sector level, rather than contract by contract. This rule will amend the DFARS to: (1) extend the Test Program through December 31, 2017; (2) implement new reporting requirements for program

participants; (3) require contracting officers to consider an offerors failure to make a good faith effort to comply with its CSP in past performance evaluations; and (4) establish procedures for the assessment of liquidated damages. This rule is of particular interest to small businesses because it holds prime contractors that are participating in the program accountable for the small business goals established in their CSP, resulting in increased business opportunities for small business subcontractors.

- Amendment to Mentor-Protégé Program (DFARS Case 2016-D011). This rule amends the DFARS to implement section 861 of the NDAA for FY 2016 (Pub. L. 114-92), which provides amendments to the Pilot Mentor-Protégé Program (“the Program”). Specifically, section 861 requires mentor firms participating in the Program to report additional information on the assistance they have provided to their protégé firms, the success this assistance has had in addressing the protégé firm’s developmental needs, the impact on DoD contracts, and any problems encountered. The new reporting requirements apply retroactively to mentor-protégé agreements entered into before, on, or after the date of enactment of the NDAA for FY 2016 (enacted November 25, 2015). DoD’s OSBP will use the information reported by mentors to support decisions regarding continuation of particular mentor-protégé agreements. In addition, section 861 adds new eligibility criteria for mentor and protégé firms; limits the period of time a protégé firm can participate in the Program; limits the number of mentor-protégé agreements to which a protégé can be a party; and extends the Program for three years. This rule amends DFARS to implement the new reporting requirements and other Program amendments.

The Department plans to reissue the Nationwide Permits—

- Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States and any structures or other work that affect the course, location, or condition of navigable waters of the United States. Small businesses proposing to discharge dredged or fill material into waters of the United States and/or install structures or do work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. Nationwide permits (NWP) are a form

of general permit issued by the U.S. Army Corps of Engineers (Corps) that authorize activities that have no more than minimal individual and cumulative adverse environmental effects. The NWP provide a streamline authorization process for small businesses to fulfill DA permit requirements. Nationwide permits can only be issued for a period of no more than five years. The issuance and reissuance of NWPs must be done every five years to continue the NWP program. Currently, there are 50 NWPs, and those NWPs expire on March 18, 2017. In addition to proposing to reissue all of the 50 existing NWPs, the Corps is also proposing to issue two new NWPs. The Corps plans on issuing the final NWP rule before the current NWPs expire so that NWPs will continue to be available to small businesses and other regulated entities.

#### **4. Rulemakings that streamline regulations, reduce unjustified burdens, and minimize burdens on small businesses.**

The Department plans to propose the following DFARS rule—

- Pilot Program for Streamlining Awards for Innovative Technology Projects (DFARS Case 2016-D016). This rule proposes to amend the DFARS to implement section 873 of the NDAA for FY 2016 (Pub. L. 114-92). Section 873 provides the following exception from certified cost and pricing data requirements for contracts, subcontracts, or modifications of contracts or subcontracts valued at less than \$7.5 million awarded to a small business or nontraditional defense contractor pursuant to a technical, merit-based selection procedure (e.g., broad agency announcement) or the Small Business Innovation Research (SBIR) Program. In addition, section 873 provides an exception from the records examination requirement at 10 U.S.C. 2313 for contracts valued at less than \$7.5 million awarded to a small business or nontraditional defense contractor pursuant to a technical, merit-based selection procedure (e.g., broad agency announcement) or the SBIR Program. However, section 873 also provides authority in certain circumstances to determine that submission of cost and pricing data or auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor or analysis of other information specific to the award. These exceptions end on October 1, 2020.

The Department plans to reissue the Nationwide Permits—

- As discussed above, nationwide permits (NWP) are a form of general permit issued by the Corps that authorizes activities that require DA authorization and have no more than minimal individual and cumulative adverse environmental effects. The Corps plans to reissue the 50 existing NWP and issue two new NWP. Unlike individual permits, NWP authorize activities without the requirement for public notice and comment on each proposed activity, which reduces burdens on small businesses and streamlines the authorization process. In FY 2015, the Corps issued approximately 31,700 NWP verifications, with an average processing time of 41 days. In FY 2015, the Corps issued approximately 1,700 standard individual permits, with an average processing time of 211 days. The proposed NWP were published in the Federal Register on June 1, 2016, for a 60-day comment period. The Corps plans on finalizing the NWP before the current NWP expire on March 18, 2017. The costs for obtaining authorization under an NWP are low compared to the standard individual permit process, both in terms of financial costs and the time it takes to obtain the required authorization.

**5. Rules to be modified, streamlined, expanded, or repealed to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.**

The Department plans to finalize the following DFARS rule—

- Enhancing Independent Research and Development Efforts (DFARS Case 2016-D002). This rule will amend the DFARS to improve the effectiveness of independent research and development (IR&D) investments by the defense industrial base that are reimbursed as allowable costs. Specifically, DoD is revising DFARS 231.205-18, Independent Research and Development and Bid and Proposal Costs, to require that proposed new independent research and development (IR&D) efforts be communicated to appropriate DoD personnel prior to the initiation of these investments, and that results from these investments should also be shared with appropriate DoD personnel. IR&D investments need to meet the complementary goals of providing defense companies an opportunity to exercise independent judgement on investments in promising technologies that will provide a competitive advantage, including the creation of intellectual property, while at the same

time pursuing technologies that may improve the military capability of the United States. These efforts can have the best payoff, both for DoD and for individual performing companies, when the Government is well informed of the investments that companies are making, and when companies are well informed about related investments being made elsewhere in the Government's research and development portfolios and about Government plans for potential future acquisitions where this IR&D may be relevant.

### **Specific DoD Priorities:**

For this regulatory plan, there are six specific DoD priorities, all of which reflect the established regulatory principles. DoD has focused its regulatory resources on the most serious health and safety risks. Perhaps most significant is that each of the priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning acquisition, health affairs, personnel benefits, and cyber security.

## **1. Acquisition, Technology, and Logistics/Defense Procurement and Acquisition**

### **Policy (DPAP), Department of Defense**

DPAP continuously reviews the DFARS and continues to lead Government efforts to—

- Improve the presentation, clarity, and streamlining of the regulation by, for example: (1) implementing the new convention to construct clauses with alternates in a manner whereby the alternate clauses are included in full-text; and (2) removing obsolete reporting or other requirements imposed on contractors. Such improvements ensure that contracting officers, contractors, and offerors have a clear understanding of the rules for doing business with the Department.
- Obtain early engagement with industry on procurement topics of high public interest by, for example: (1) utilizing the DPAP Defense Acquisition Regulation System website to obtain early public feedback on newly enacted legislation that impacts the Department's acquisition regulations, prior to initiating rulemaking to draft the implementing rules; and (2) holding public meetings to solicit industry feedback on proposed rulemakings.

- Employ methods to facilitate and improve efficiency of the contracting process, such as (1) updating certain evaluation thresholds based on the consumer price index; (2) allowing contractors to display one DoD Inspector General hotline poster instead of three; and (3) revising the DD Form 1547, Record of Weighted Guidelines, to provide a more transparent means of documenting costs incurred during the undefinitized period of an undefinitized contract action.

## **2. Health Affairs, Department of Defense**

The Department of Defense is able to meet its dual mission of wartime readiness and peacetime health care for those entitled to DoD medical care and benefits by operating an extensive network of military medical treatment facilities supplemented by services furnished by civilian health care providers and facilities through the TRICARE program as administered under DoD contracts. TRICARE is a major health care program designed to improve the management and integration of DoD's health care delivery system.

The Department of Defense's Military Health System (MHS) continues to meet the challenge of providing the world's finest combat medicine and aeromedical evacuation, while supporting peacetime health care for those entitled to DoD medical care and benefits at home and abroad. The MHS brings together the worldwide health care resources of the Uniformed Services (often referred to as "direct care," usually within military treatment facilities) and supplements this capability with services furnished by network and non-network civilian health care professionals, institutions, pharmacies, and suppliers, through the TRICARE program as administered under DoD contracts, to provide access to high quality health care services while maintaining the capability to support military operations. The TRICARE program serves 9.5 million Active Duty Service Members, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide. TRICARE 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.

The Defense Health Agency plans to publish the following rules—

- Final Rule: Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Refills of Maintenance Medications Through Military Treatment Facility Pharmacies or National Mail Order Pharmacy Program. This final rule implements Section 702 (c) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 which states that beginning October 1, 2015; the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. Section 702(c) of the National Defense Authorization Act for Fiscal Year 2015 also terminates the TRICARE For Life Pilot Program on September 30, 2015. The TRICARE For Life Pilot Program described in Section 716 (f) of the National Defense Authorization Act for Fiscal Year 2013, was a pilot program which began in March 2014 requiring TRICARE For Life beneficiaries to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. TRICARE for Life beneficiaries are those enrolled in the Medicare wraparound coverage option of the TRICARE program. This rule includes procedures to assist beneficiaries in transferring covered prescriptions to the mail order pharmacy program. This rule has been identified as an economically significant rule. DoD anticipates publishing the final rule in the first quarter of FY 2017.
- Final Rule: TRICARE; Reimbursement of Long Term Care Hospitals and Inpatient Rehabilitation Facilities. The Department of Defense, Defense Health Agency, is revising its reimbursement of Long Term Care Hospitals (LTCHs) and Inpatient Rehabilitation Facilities (IRFs). Revisions are in accordance with the statutory provision at title 10, United States Code (U.S.C.), section 1079(i)(2) that requires TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare. 32 CFR 199.2 includes a definition for "Hospital, long-term (tuberculosis, chronic care, or rehabilitation)." This rule deletes this definition and creates separate definitions for "Long Term Care Hospital" and "Inpatient Rehabilitation Facility" in accordance with Centers for Medicare and Medicaid Services (CMS) classification criteria. Under TRICARE, LTCHs and IRFs (both freestanding rehabilitation hospitals and rehabilitation hospital

units) are currently paid the lower of a negotiated rate (if they are a network provider) or billed charges (if they are a non-network provider). Although Medicare's reimbursement methods for LTCHs and IRFs are different, it is prudent to adopt both the Medicare LTCH and IRF Prospective Payment System (PPS) methods simultaneously to align with our statutory requirement to reimburse like Medicare. This rule sets forth the proposed regulation modifications necessary for TRICARE to adopt Medicare's LTCH and IRF Prospective Payment Systems and rates applicable for inpatient services provided by LTCHs and IRFs to TRICARE beneficiaries. This rule has been identified as an economically significant rule. DoD anticipates publishing the final rule in the third quarter of FY 2017.

### **3. Personnel and Readiness, Department of Defense**

The Department of Defense plans to publish the following rules—

- Final Rule; Amendment: Sexual Assault Prevention and Response (SAPR) Program. The purpose of this rule is to implement DoD policy and assign responsibilities for the SAPR Program on prevention, response, and oversight of sexual assault. The goal is for DoD to establish a culture free of sexual assault through an environment of prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons. DoD anticipates publishing the final rule in the third quarter of FY 2017.
- Final Rule: Sexual Assault Prevention and Response (SAPR) Program Procedures. This rule establishes policy, assigns responsibilities, and provides guidance and procedures for the SAPR Program. It establishes processes and procedures for the Sexual Assault Forensic Examination Kit, the multidisciplinary Case Management Group, and guidance on how to handle sexual assault reports, SAPR minimum program standards, SAPR training requirements, and SAPR requirements for the DoD Annual Report on Sexual Assault in the Military. The DoD goal is a culture free of sexual assault through an environment of prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons. DoD anticipates publishing the final rule in the third quarter of FY 2017.
- Final Rule: Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals. Among the Obama Administration regulatory priorities are rules which

extend fairness and tolerance to all Americans. The Department of Defense (DoD) previously published an interim final rule that extended benefits to all eligible dependents of uniformed Service members and eligible DoD civilians. It was necessary to publish an amended interim final rule to ensure the issuance of ID cards and extension of benefits aligns with current Federal and DoD policy, and to include an additional implementing manual addressing eligibility documentation requirements. The final rule incorporates all comments received during the public comment process that were adjudicated by the Department as necessary changes to the rule. DoD anticipates publishing the final rule in the third quarter of FY 2017.

#### **4. Chief Information Officer, Department of Defense**

The Department of Defense plans to publish the final rule for the Defense Industrial Base (DIB) Cybersecurity (CS) Activities that implements statutory requirements for mandatory cyber incident reporting while maintaining the voluntary cyber threat information sharing program.

- **Interim Final Rule: Defense Industrial Base (DIB) Cyber Security (CS) Activities.** The DoD-DIB CS Activities regulation mandates reporting of cyber incidents that result in an actual or potentially adverse effect on a covered contractor information system or covered defense information residing therein, or on a contractor's ability to provide operationally critical support. This interim final rule will modify eligibility criteria to permit greater participation in the voluntary DoD-DIB CS information sharing program. Expanding participation in the DoD-DIB CS information sharing program is part of DoD's comprehensive approach to counter cyber threats through information sharing between the Government and DIB participants. The DoD-DIB CS information sharing program allows eligible DIB participants to receive Government furnished information (GFI) and cyber threat information from other DIB participants, thereby providing greater insights into adversarial activity targeting the DIB. DoD anticipates publishing the interim final rule in the third quarter of FY 2017.

<b>DOD—Office of the Secretary(OS)</b>	<b>FINAL RULE STAGE</b>
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## **19. SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM PROCEDURES**

### **Priority:**

Other Significant

### **Legal Authority:**

Pub. L. 112–239; Pub. L. 113–66; Pub. L. 113–291; Pub. L. 114–92

### **CFR Citation:**

32 CFR 105

### **Legal Deadline:**

None

### **Abstract:**

This rule will provide sexual assault victims the ability to get a fresh start through an Expedited Transfer policy aimed at removing the stigma associated with victimization. It will also allow sexual assault victims to be notified of the protections and support that come with individual legal representation as they navigate the criminal justice process. With this rule Reserve Component and National Guard members who are victims of sexual assault would receive the same SAPR advocacy regardless of when the sexual assault incident occurred, similar to the advocate support afforded their active duty counterparts. The goal of this rule is to ensure victims of sexual assault receive improved victim advocacy support, quality health care service, appropriate and sensitive command involvement, individualized legal support, and a military culture better informed on the issue of sexual assault. This rule establishes the SAFE Helpline as the sole DoD hotline for crisis intervention; establishes requirements for a sexual assault victim safety assessment and the execution of a high-risk team to monitor cases where the sexual assault victim's life and safety may be in jeopardy; and incorporates several requirements of the National Defense Authorization Act (NDAA) relating to sexual assault in the military.

### **Statement of Need:**

Issue this part to:

- (1) Implement 32 Code of Federal Regulations (CFR) 103 and assign responsibilities and provide guidance and procedures for the SAPR Program;
- (2) Establish SAPR minimum program standards, SAPR training requirements, and SAPR requirements for the Department of Defense (DoD) Annual Report on Sexual Assault in the Military; and consistent with title 10, United States Code (Reference (d)) the DoD Task Force Report on Care for Victims of Sexual Assault (Reference (e)) and pursuant to References (b) and (c), and Public Law 106-65, 108-375, 109-163, 109-364, 110-417, 111-84, 111-383, 112-81, 112-239, 113-66, 113-291, and 114-92;
- (3) Provide of the preemption of state and local laws mandating reporting of an adult sexual assault incident;
- (4) Protect from retaliation, coercion, and reprisal due to reporting a sexual assault;
- (5) Provide for individualized legal representation from a Special Victims' Counsel (SVC) or Victims' Legal Counsel (VLC);
- (6) Provide for the opportunity to request an Expedited Transfer as a means to getting a fresh start to support victim recovery;
- (7) Establish the multidisciplinary Case Management Group as the oversight body of an Unrestricted sexual assault report.

**Summary of Legal Basis:**

This regulation is pursued under the authorities of all applicable congressional mandates from section 113 of title 10, United States Code (U.S.C.), and Public Law 106-65, 108-375, 109-163, 109-364, 110-417, 111-84, 112-81, 113-66; 113-291, 114-92.

**Alternatives:**

The DoD will not have current guidance relating to the provisions of law enacted by Congress critical to the implementation of sexual assault prevention and response (SAPR), SAPR training standards, victim support, and reporting procedures.

**Anticipated Cost and Benefits:**

Fiscal year 2016 estimate of the anticipated cost associated with this rule is approximately \$15 million. Additionally, each of the Military Services establishes its own SAPR budget for the programmatic costs arising from the implementation of the training, prevention, reporting, response, and oversight requirements established by this rule. These costs are less than those of other alternative benefits and include:

- (1) A complete SAPR Policy consisting of this part and 32 CFR 103, to include comprehensive SAPR procedures to implement the DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program, which is the DoD policy on prevention and response to sexual assaults involving members of the U.S. Armed Forces.
- (2) Guidance and procedures with which the DoD may establish a culture free of sexual assault, through an environment of prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered by this part and 32 CFR 103.
- (3) Requirement that medical care and SAPR services are gender-responsive, culturally competent, and recovery-oriented. A 24 hour, 7 day per week sexual assault response capability for all locations, including deployed areas for persons covered in this part.
- (4) Creating Command sexual assault awareness and prevention programs and DoD law enforcement procedures that enable persons to be held appropriately accountable for their actions.
- (5) Standardized SAPR requirements, terminology, guidelines, protocols, and guidelines for training materials focus on awareness, prevention, and response at all levels, as appropriate.

(6) Requiring Sexual Assault Response Coordinators (SARC), SAPR Victim Advocates (VA), and other responders to assist sexual assault victims regardless of Service affiliation.

(7) Procedures for informing victims at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned command or installation, in accordance with the procedures for commanders in 105.9 of this part.

(8) Protections from reprisal, or threat of reprisal, for filing a report of sexual assault.

(9) Reporting options for Service members and military dependents 18 years and older who have been sexually assaulted.

(10) Providing support to an active duty Military Service member regardless of when or where the sexual assault took place.

(11) Establishing a DoD-wide certification program with a national accreditor to ensure all sexual assault victims are offered the assistance of a SARC or SAPR VA who has obtained this certification.

(12) Implementing training standards that cover general SAPR training for Service members, and contain specific standards for: accessions, annual , professional military education and leadership development training, pre- and post-deployment, pre-command, General and Field Officers and SES, military recruiters, civilians who supervise military, and responders trainings.

(13) Requiring Military Departments to establish procedures for supporting the DoD Safe Helpline in accordance with Guidelines for the DoD Safe Helpline for the referral database, provide timely response to victim feedback, publicize the DoD Safe Helpline to SARCs and Service members and at military confinement facilities.

(14) Directing additional responsibilities for the DoD SAPRO Director (develop metrics for measuring effectiveness, act as liaison between DoD and other agencies with regard to SAPR, oversee development

of strategic program guidance and joint planning objectives, quarterly include Military Service Academies as a SAPR IPT standard agenda item, semi-annually meet with the Superintendents of the Military Service Academies, and develop and administer standardized and voluntary surveys for survivors of sexual assault to comply with 1726 of NDAA FY 14.

(15) Providing for the Preemption of state and local laws requiring disclosure of personally identifiable information of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official.

**Risks:**

The degree of risk to Service member is that sexual assault victims will not be able to access support services or understand the availability of resources to assist them, such as: the opportunity to receive an Expedited Transfer as a means to getting a fresh start to support recovery; inability to request a Restricted Report in mandatory reporting jurisdiction; and failure to capture and preserve forensic evidence associated with sexual assault cases.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	04/11/13	78 FR 21715
Interim Final Rule Effective	04/11/13	
Interim Final Rule Comment Period End	06/10/13	
Interim Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

DoD Instruction 6495.02, "Sexual Assault Prevention and Response (SAPR) Program Procedures"

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<b>DOD—OS</b>	
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**20. IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS (ADDING SUBPART D)**

**Priority:**

Other Significant

**Legal Authority:**

10 U.S.C. 1061; 10 U.S.C. 1062; 10 U.S.C. 1063; 10 U.S.C. 1064; 10 U.S.C. 1072; 10 U.S.C. 1073; 10 U.S.C. 1074; 10 U.S.C. 1074(a); 10 U.S.C. 1074(b); 10 U.S.C. 1074(c); 10 U.S.C. 1076; 10 U.S.C. 1076(a); 10 U.S.C. 1077; 10 U.S.C. 1095(k)(2); 18 U.S.C. 499; 18 U.S.C. 506; 18 U.S.C. 509; 18 U.S.C. 701; 18 U.S.C. 1001

**CFR Citation:**

32 CFR 161

**Legal Deadline:**

None

**Abstract:**

Among the Obama Administration regulatory priorities are rules which extend fairness and tolerance to all Americans. The Department of Defense (DoD) previously published an interim final rule that establishes policy, assigns responsibilities, and provides procedures for the issuing of distinct DoD ID cards. The ID cards are issued to uniformed service members, their dependents, and other eligible individuals and are used as proof of identity and DoD affiliation, and facilitate the extension of DoD benefits. The interim final rule extended benefits to all eligible dependents of Uniformed Service members and eligible DoD civilians. It was necessary to amend the interim final rule to ensure the issuance of ID cards and extension of benefits aligns with current Federal and DoD policy, and to include an additional implementing manual addressing eligibility documentation requirements. The revisions to this rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563, completed in August 2011. DoD's full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

**Statement of Need:**

Many changes have occurred since DoD previously issued ID card policy in 1997 that require regulation and policy to be updated, which include but are not limited to Obama administration priorities of extending fairness and tolerance to all Americans. Supreme Court decisions within the last five years, required DoD to ensure that ID card policy was inclusive of same-sex spouse and transgender retiree and dependent populations. Additionally, the length of the previous document combined with additional information necessary to make the document current, required separation into an overarching instruction with supporting subject matter specific manuals.

**Summary of Legal Basis:**

This regulation is pursued under the authorities of title 5, title 10 and title 18 U.S.C.

**Alternatives:**

DoD does not have any alternatives to address the issuing of distinct DoD ID cards.

**Anticipated Cost and Benefits:**

There are no costs to the public. There are no capital or start-up costs associated with the issuance of this rule. ID cards cost the Department approximately \$28.3 million annually.

**Risks:**

There is no risk to the public.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	10/27/16	81 FR 74874
Interim Final Rule Effective	10/27/16	
Interim Final Rule Comment Period End	12/27/16	
Final Action	05/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

DoD Instruction 1000.13, "Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals"; DoD Manual 1000.13, Volume 1, "DoD Identification (ID) Cards: ID Card Life-Cycle"; DoD Manual 1000.13, Volume 2, "DoD Identification (ID) Cards: Benefits for

Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals”; DoD Manual 1000.13, Volume 3, “DoD Identification (ID) Cards: Eligibility Documentation Required for Defense Enrollment Eligibility (DEERS) Enrollment, Record Management, and ID Card Issuance”

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**Related RIN:**

Related to 0790-AI61

**RIN:** 0790-AJ37

<b>DOD—OS</b>	
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**21. SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

10 U.S.C. 113; Pub. L. 112-81; Pub. L. 113-66; Pub. L. 114-92

**CFR Citation:**

32 CFR 103

**Legal Deadline:**

None

**Abstract:**

This interim final rule establishes that victims of sexual assault perpetrated by a spouse or intimate partner, or military dependent under the age of 18 is a Family Advocate Program (FAP) matter and does not fall within the SAPR program. However to ensure FAP involvement, this interim final rule requires the installation SARC and installation FAP to coordinate together when a sexual assault occurs as a result of domestic violence or involves child abuse. The rule requires sexual assault victims be informed of the availability of legal assistance and the right to consult with a Special Victims' Counsel and Victims' Legal Counsel and gives military members who are sexually assaulted the ability to request an Expedited Transfer as a means to getting a fresh start" while escaping the stigma associated with sexual assault. Finally, the rule mandates the establishment and implementation of a SAPR program within National Guard Bureau. The Department of Defense is publishing this rule as interim to maintain and enhance the current SAPR program which elucidates the prevention, response, and oversight of sexual assaults involving members of the U.S. Armed Forces and Reserve Component, to include the National Guard.

**Statement of Need:**

The purpose of this rule is to:

- (1) Establish and implement a complete SAPR program which focuses on prevention, training, and response to sexual assaults involving members of the U.S. Armed Forces.
- (2) Establish a culture free of sexual assault, through an environment of prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered.
- (3) Focus on the victim and on doing what is necessary and appropriate to support victim recovery.
- (4) Establish SAPR minimum program standards to include training requirements, oversight responsibilities, data collection, and reports.

**Summary of Legal Basis:**

This regulation is established pursuant to all applicable congressional mandates from section 113 of title 10, United States Code (U.S.C.), and Public Laws 106-65, 108-375, 109-163, 109-364, 110-417, 111-84, 112-81, 113-66.

**Alternatives:**

The DoD will not have current guidance relating to the implementation of the provisions of law enacted by Congress critical to sexual assault prevention and response (SAPR), SAPR training standards, victim support, and reporting procedures.

**Anticipated Cost and Benefits:**

Fiscal Year 2015 Operation and Maintenance funding for DoD SAPRO was \$24.3 million with an additional Congressional allocation of \$ 25.0 million designated for the Special Victims' Counsel program and the Special Victims' Investigation and Prosecution capability that was reprogrammed to the Military Services and the National Guard Bureau. Additionally, each of the Military Services establishes its own SAPR budget for the programmatic costs arising from the implementation of the training, prevention, reporting, response, and oversight requirements established by this rule. These costs are less than those of other alternative benefits and include:

(1) A complete and up-to-date SAPR Policy consisting of this part and 32 CFR 105, to include comprehensive SAPR policy guidance on the prevention and response to sexual assaults involving members of the U.S. Armed Forces.

(2) Guidance and policy with which the DoD may establish a culture free of sexual assault, through an environment of prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered by this part and 32 CFR 105.

(3) Requirement to provide care that is gender-responsive, culturally competent, and recovery-oriented.

(4) Standardized SAPR requirements, terminology, guidelines, protocols, and guidelines for training materials shall focus on awareness, prevention, and response at all levels, as appropriate.

(5) An immediate, trained sexual assault response capability for each report of sexual assault in all locations, including in deployed locations.

(6) Victims of sexual assault shall be protected from coercion, retaliation, and reprisal.

**Risks:**

The rule does not intend physical or mental harm to individuals of the public. The rule intends to enable military readiness by establishing a culture free of sexual assault. Sexual assault poses a serious threat to military readiness because the potential costs and consequences are extremely high: chronic psychological consequences may include depression, post-traumatic stress disorder, and substance abuse. In the U.S. Armed Forces, sexual assault not only degrades individual resilience but also may erode unit integrity. An effective fighting force cannot tolerate sexual assault within its ranks. Sexual assault is incompatible with military culture and mission readiness, and the risks to mission accomplishments are unbearable. This rule aims to mitigate this risk to mission readiness.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

DoD Directive 6495.01, "Sexual Assault Prevention and Response (SAPR) Program"

**Agency Contact:**

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Defense Pentagon  
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Phone: 703 696-9422  
**RIN:** 0790-AJ40

<b>DOD—Office of Assistant Secretary for Health Affairs(DODOASHA)</b>	<b>FINAL RULE STAGE</b>
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**22. TRICARE; REIMBURSEMENT OF LONG TERM CARE HOSPITALS AND INPATIENT REHABILITATION FACILITIES**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

5 U.S.C. 301; 10 U.S.C. ch 55

**CFR Citation:**

32 CFR 199

**Legal Deadline:**

None

**Abstract:**

The Department of Defense, Defense Health Agency, is proposing to revise its reimbursement of Long Term Care Hospitals (LTCHs) and Inpatient Rehabilitation Facilities (IRFs). Proposed revisions are in accordance with the statutory provision at title 10, United States Code (U.S.C.), section 1079(i)(2) that requires TRICARE payment methods for institutional care be determined, to the extent practicable, in

accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare. 32 CFR 199.2 includes a definition for "Hospital, long-term (tuberculosis, chronic care, or rehabilitation)." This rule proposes to delete this definition and create separate definitions for "Long Term Care Hospital" and "Inpatient Rehabilitation Facility" in accordance with Centers for Medicare and Medicaid Services (CMS) classification criteria. Under TRICARE, LTCHs and IRFs (both freestanding rehabilitation hospitals and rehabilitation hospital units) are currently paid the lower of a negotiated rate (if they are a network provider) or billed charges (if they are a non-network provider). Although Medicare's reimbursement methods for LTCHs and IRFs are different, it is prudent to propose adopting both the Medicare LTCH and IRF Prospective Payment System (PPS) methods simultaneously to align with our statutory requirement to reimburse like Medicare. This proposed rule sets forth the proposed regulation modifications necessary for TRICARE to adopt Medicare's LTCH and IRF Prospective Payment Systems and rates applicable for inpatient services provided by LTCHs and IRFs to TRICARE beneficiaries. The revisions to this rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563, completed in August 2011. DoD's full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

**Statement of Need:**

The rule is necessary to meet the statutory provision to use Medicare reimbursement rules to the extent practicable.

**Summary of Legal Basis:**

Congress established enabling legislation under section 707 of the National Defense Authorization Act of Fiscal Year 2002 (NDAA-02), Public Law 107-107 (Dec. 28, 2001) changing the statutory authorization in 10 U.S.C. 1079 (j)(2) that TRICARE payment methods for institutional care shall be determined to the extent practicable, in accordance with the same reimbursement rules used by Medicare

**Alternatives:**

This rule implements statutorily required provisions for adoption and implementation of Medicare institutional reimbursement rules which are consistent with well established congressional objectives. No other alternative is applicable.

**Anticipated Cost and Benefits:**

It is projected that implementation of this rule in Fiscal Year (FY) 17 will result in a health care savings of \$77 million for LTCHs and \$53 million for IRFs.

**Risks:**

The rule implements statutorily required provisions for adoption and implementation of Medicare institutional reimbursement systems which are consistent with well established Congressional objectives. No risk to the public is applicable.

**Timetable:**

Action	Date	FR Cite
NPRM	01/26/15	80 FR 3926
NPRM Comment Period End	03/27/15	
Second NPRM	08/31/16	81 FR 59934
Second NPRM Comment Period End	10/31/16	
Final Action	06/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

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Office of Assistant Secretary for Health Affairs

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Washington, DC 20301

Phone: 303 676–3803

**RIN:** 0720–AB47

<b>DOD—DODOASHA</b>	
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**23. TRICARE: REFILLS OF MAINTENANCE MEDICATIONS THROUGH MILITARY TREATMENT FACILITY PHARMACIES OR NATIONAL MAIL ORDER PHARMACY PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

10 U.S.C. ch 55; 5 U.S.C. 301

**CFR Citation:**

32 CFR 199

**Legal Deadline:**

Other, Statutory, October 1, 2015, section 702 (c) of the NDAA 2015.

Section 702 (c) of the Carl Levin and Howard P. Buck McKeon National Defense Authorization Act for Fiscal Year 2015 states that beginning October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non–generic prescription maintenance medications through military treatment facility pharmacies or the national mail–order pharmacy program. Section 702(c) also terminates the TRICARE For Life Pilot Program on September 30, 2015.

**Abstract:**

This final rule implements section 702 (c) of the Carl Levin and Howard P. Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 which states that beginning October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. Section 702(c) of the National Defense Authorization Act for Fiscal Year 2015 also terminates the TRICARE For Life Pilot Program on September 30, 2015. The TRICARE For Life Pilot Program described in section 716 (f) of the National Defense Authorization Act for Fiscal Year 2013, was a pilot program which began in March 2014 requiring TRICARE For Life beneficiaries to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. TRICARE for Life beneficiaries are those enrolled in the Medicare wraparound coverage option of the TRICARE program. This rule includes procedures to assist beneficiaries in transferring covered prescriptions to the mail order pharmacy program.

**Statement of Need:**

The DoD interim rule established processes for the new program of refills of maintenance medications for all non-active duty TRICARE beneficiaries through military treatment facility pharmacies and the mail order pharmacy program.

**Summary of Legal Basis:**

This regulation is established under the authorities of 5 U.S.C. 301; 10 U.S.C. ch 55; 32 CFR section 199.21.

**Alternatives:**

The rule fulfills a statutory requirement, therefore there are no alternatives.

**Anticipated Cost and Benefits:**

The effect of the statutory requirement, implemented by this rule, is to shift a volume of prescriptions from retail pharmacies to the most cost-effective point-of-service venues of military treatment facility pharmacies and the mail order pharmacy program. This will produce savings to the Department of approximately \$88 million per year, and savings to beneficiaries of approximately \$16.5 million per year in reduced copayments. Updated and more in-depth economic data will be provided with the final rule.

**Risks:**

Not finalizing this rule would risk a loss of savings to both the Department and beneficiaries. There is no risk to the public.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	08/06/15	80 FR 46796
Interim Final Rule Effective	08/06/15	
Interim Final Rule Comment Period End	10/05/15	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 0720–AB64

**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 others 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 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 2016-2017 school year, about 56 million students will attend an estimated 132,000 elementary and secondary schools in approximately 13,500 districts, and about 21 million students will enroll in degree-granting postsecondary schools. All of these students may benefit from some degree of financial assistance or support from the Department.

In developing and implementing regulations, guidance, technical assistance, and monitoring related to our programs, we are committed to working closely with affected persons and groups. Specifically, we work with a broad range of interested parties and the general public, including 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 Docketing Management System (FDMS), an electronic single Government-wide access point ([www.regulations.gov](http://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 continuing to streamline information collections, reduce the burden on information providers involved in our programs, and make information easily accessible to the public.

## **II. Regulatory Priorities**

### *A. Every Student Succeeds Act*

President Obama signed the Every Student Succeeds Act (ESSA) into law on December 10, 2015. ESSA reauthorized the Elementary and Secondary Education Act of 1965 with provisions aimed at helping to ensure success for students and schools. The law:

- Advances equity by upholding critical protections for America's disadvantaged and high-need students.
- Requires—for the first time—that all students in America be taught to high academic standards that will prepare them to succeed in college and careers.
- Ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students' progress toward those high standards.
- Helps to support and grow local innovations—including evidence-based and place-based interventions developed by local leaders and educators—consistent with our Investing in Innovation and Promise Neighborhoods grant programs.
- Sustains and expands this administration's historic investments in increasing access to high-quality preschool.
- Maintains an expectation that there will be accountability and action to effect positive change in our lowest-performing schools, where groups of students are not making progress, and where graduation rates are low over extended periods of time.

The Department issued two notices of proposed rulemaking (NPRMs) that would amend existing regulations pertaining to accountability and State plans, and the innovative assessment demonstration authority. We also, following the completion of negotiated rulemaking, issued an NPRM proposing to amend regulations on academic assessments, and plan to publish an NPRM on the supplement not supplant provision in September 2016. We intend to issue final rules in all of these areas by January 2017.

*B. Higher Education Act of 1965, as Amended*

Congress is currently considering reauthorization of the Higher Education Act of 1965, as amended (HEA). When enacted, the HEA's reauthorization will likely require the Department to promulgate conforming regulations. In the meantime, we have identified several regulatory activities for Fiscal Year 2017 under the Title IV Federal Student Aid programs to improve protections for students and safeguard Federal dollars invested in postsecondary education.

*C. Perkins Act*

Congress is currently considering reauthorization of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), which focuses on increasing the quality of technical education. The priorities for reauthorization include:

- Effective alignment with today's labor market, including clear expectations for high-quality programs;
- Stronger collaboration among secondary and postsecondary institutions, employers, and industry partners;
- Meaningful accountability to improve academic and employment outcomes for students; and
- Local and State innovation in CTE, particularly the development and replication of innovative CTE models.

We anticipate regulatory activity in response to the reauthorization of the Perkins Act.

#### **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 compliance behavior.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to achieve desired results.

<b>ED—Office of Elementary and Secondary Education(OESE)</b>	<b>FINAL RULE STAGE</b>
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**24. TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965—**

**ACCOUNTABILITY AND STATE PLANS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

20 U.S.C. 1001, 1111, 1221e–3, 6303, 6311, 6394, 6601, 6611(d), 6823, 7113(c), 7801, 7842, 7844, 7845, and 8302; 42 U.S.C. 11432(g)

**CFR Citation:**

34 CFR 200

**Legal Deadline:**

None

**Abstract:**

The Secretary will amend the regulations implementing programs under title I of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015. The Secretary also will update the current ESEA general regulations to include the requirements for the submission of State plans under ESEA programs, including optional consolidated State plans.

**Statement of Need:**

These regulations are necessary to implement changes to the ESEA by the ESSA.

**Summary of Legal Basis:**

These regulations are necessary to implement changes to the ESEA by the ESSA.

**Alternatives:**

These will be discussed in the final regulations.

**Anticipated Cost and Benefits:**

These will be discussed in the final regulations.

**Risks:**

These will be discussed in the final regulations.

**Timetable:**

Action	Date	FR Cite
NPRM	05/31/16	81 FR 34539
NPRM Comment Period End	08/01/16	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

State

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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RIN: 1810-AB27

ED—OESE	
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**25. • ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT—SUPPLEMENT NOT SUPPLANT UNDER TITLE I, PART A**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

20 U.S.C. 6321(b)

**CFR Citation:**

34 CFR 200

**Legal Deadline:**

None

**Abstract:**

The Secretary proposes to establish regulations governing programs administered under title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). These proposed regulations are needed to implement recent changes to the supplement not supplant requirement of title I of the ESEA made by the ESSA.

**Statement of Need:**

These proposed regulations are needed to implement recent changes to the supplement not supplant requirement of title I of the ESEA made by the ESSA.

**Summary of Legal Basis:**

These proposed regulations are needed to implement recent changes to the supplement not supplant requirement of title I of the ESEA made by the ESSA.

**Alternatives:**

These will be discussed in the final regulations.

**Anticipated Cost and Benefits:**

These will be discussed in the final regulations.

**Risks:**

These will be discussed in the final regulations.

**Timetable:**

Action	Date	FR Cite
NPRM	09/16/16	81 FR 61148
NPRM Comment Period End	11/07/16	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

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

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

The Department's regulatory activities are essential to achieving its critical mission and to implementing major initiatives of the President's National Energy Policy. Among other things, the Regulatory Plan and the Unified Agenda contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy

conservation standards and related test procedures. The Regulatory Plan and Unified Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public.

### **Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), several regulations have been identified as associated with retrospective review and analysis in the Department's retrospective review of regulations plan. Some of the entries on this list may be completed actions, which do not appear in the Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on [www.reginfo.gov](http://www.reginfo.gov) in the Completed Actions section. These rulemakings can also be found on [www.regulations.gov](http://www.regulations.gov). The final agency plan can be found at <https://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofenergyregulatoryreformplanaugust2011.pdf>. DOE has published a number of retrospective review update reports that are available at <http://www.energy.gov/gc/services/open-government/restrospective-regulatory-review>.

### **Energy Efficiency Program for Consumer Products and Commercial Equipment**

The Energy Policy and Conservation Act (EPCA) requires DOE to set appliance efficiency standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. The Department continues to follow its schedule for setting new appliance efficiency standards. These rulemakings are expected to save American consumers billions of dollars in energy costs.

### **Estimate of Combined Aggregate Costs and Benefits**

In 2015, the Department published final rules that adopted new or amended energy conservation standards for 13 different products, including, commercial air-cooled air conditioners and heat pumps, ceiling fan light kits, commercial pre-rinse spray valves, and beverage vending machines. The 13

standards finalized in 2015 are estimated to reduce carbon dioxide emissions by over 429 million metric tons and save American families and businesses \$84 billion in electricity bills through 2030.

Since 2009, the Energy Department has finalized new efficiency standards for more than 45 household and commercial products, including dishwashers, refrigerators and water heaters, which are estimated to save consumers \$540 billion through 2030. To build on this momentum, the Department is committed to continuing to establish new efficiency standards that – when combined with the progress already made through previously finalized standards – will reduce carbon pollution by approximately 3 billion metric tons in total by 2030, equal to more than a year’s carbon pollution from the entire U.S. electricity system.

As part of the President’s Climate Action Plan, the Energy Department has committed to an ambitious goal of finalizing at least 14 additional energy efficiency standards by the end of 2016. The overall plan for implementing the schedule is contained in the Report to Congress pursuant to section 141 of EPACT 2005, which was released on January 31, 2006. This plan was last updated in the August 2016 report to Congress and now includes the requirements of the Energy Independence and Security Act of 2007 (EISA 2007), the American Energy Manufacturing Technical Corrections Act (AEMTCA), and the Energy Efficiency Improvement Act of 2015. The reports to Congress are posted at: <http://energy.gov/eere/buildings/reports-and-publications>. While each of these high priority rules will build on the progress made to date, and will continue to move the U.S. closer to a low carbon future, DOE believes that seven rulemakings are the most important of its significant regulatory actions and, therefore, comprise the Department’s Regulatory Plan.

- Walk-In Coolers and Walk-In Freezers (1904-AD59)
- Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces (1904-AD20)
- Commercial Water Heaters (1904-AD34)
- Commercial Packaged Boilers (1904-AD01)
- General Service Fluorescent Lamps (1904-AD09)
- Dedicated Purpose Pool Pumps (1904-AD52)
- Manufactured Housing (1904-AC11)

For walk-in coolers and freezers, DOE estimates that energy savings from electricity will be 0.90 quads over 30 years and the net benefit to the Nation will be between \$1.8 billion and \$4.3 billion. For non-weatherized gas furnaces and mobile home gas furnaces, DOE estimates that energy savings will be 2.78 quads over 30 years and the net benefit to the Nation will be between \$3.1 billion and \$16.1 billion. For commercial water heaters, DOE estimates that energy savings for combined natural gas and electricity will be 1.8 quads over 30 years and the net benefit to the Nation will be between \$2.26 billion and \$6.75 billion. For commercial packaged boilers, DOE estimates that energy savings will be 0.349 quads over 30 years and the net benefits to the Nation will be between \$0.414 billion and \$1,687 billion. For general service fluorescent lamps, DOE estimates that energy savings will be 0.85 quads over 30 years and the net benefit to the nation will be between \$4.4 billion and \$9.1 billion. For manufactured housing, DOE estimates that energy savings will be 0.884 quads (Single-section) and 1.428 quads (Multi-section) over 30 years and the net benefit to the Nation will be between \$1.26 billion (Single-section) and \$2.18 billion (Multi-section) and \$4.03 billion (Single-section) and \$6.75 billion (Multi-section). For dedicated purpose pool pumps, DOE has not yet proposed candidate standard levels and therefore, cannot provide an estimate of combined aggregate costs and benefits for this action. DOE will, however, in compliance with all applicable law, issue standards that provide the maximum improvement in energy efficiency that is technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notice of proposed rulemaking for dedicated purpose pool pumps.

DOE—Energy Efficiency and Renewable Energy(EE)	PROPOSED RULE STAGE
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**26. ENERGY CONSERVATION STANDARDS FOR GENERAL SERVICE LAMPS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

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

**CFR Citation:**

10 CFR 429; 10 CFR 430

**Legal Deadline:**

Final, Statutory, January 1, 2017.

**Abstract:**

Amendments to Energy Policy and Conservation Act (EPCA) in the Energy Independence and Security Act of 2007 direct DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs, the first of which must be initiated no later than January 1, 2014 (42 U.S.C. 6295(i)(6)(A)-(B)). EPCA specifically states that the scope of the rulemaking is not limited to incandescent lamp technologies. EPCA also states that DOE must consider in the first rulemaking cycle the minimum backstop requirement of 45 lumens per watt for general service lamps (GSLs) effective January 1, 2020. This rulemaking constitutes DOE's first rulemaking cycle.

**Statement of Need:**

DOE is directed under EPCA to establish standards for GSL's, and that DOE complete the rulemaking by January 1, 2017.

**Summary of Legal Basis:**

Amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA) directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSL's (42 U.S.C. 6295(i)(6)(A)-(B)). Furthermore, pursuant to EPCA, any new or amended energy conservation standard that the Department of Energy (DOE) prescribes for certain products, such as general service lamps, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)) and result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B)).

**Alternatives:**

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

**Anticipated Cost and Benefits:**

DOE finds that the benefits to the Nation of the proposed energy standards for General Service Lamps outweigh the burdens. DOE estimates that energy savings will be .85 quads over 30 years and the net benefit to the Nation will be between \$4.4 billion and \$9.1 billion.

**Risks:****Timetable:**

Action	Date	FR Cite
Framework Document Availability; Notice of Public Meeting	12/09/13	78 FR 73737
Framework Document Comment Period End	01/23/14	
Framework Document Comment Period Extended	01/23/14	79 FR 3742
Framework Document Comment Period Extended End	02/07/14	
Preliminary Analysis; Notice of Public Meeting	12/11/14	79 FR 73503

Preliminary Analysis Comment Period End	02/09/15	
Preliminary Analysis Comment Period Extended	01/30/15	80 FR 5052
Preliminary Analysis Comment Period Extended End	02/23/15	
Notice of Public Meeting; Webinar	03/15/16	81 FR 13763
NPRM	03/17/16	81 FR 14528
NPRM Comment Period End	05/16/16	
Notice of Public Meeting; Webinar	10/05/16	81 FR 69009
Proposed Definition and Data Availability	10/18/16	81 FR 71794
Proposed Definition and Data Availability Comment Period End	11/08/16	

**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:**

[www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx?ruleid=83](http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=83)

**URL For Public Comments:**

[www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051](http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051)

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**RIN:** 1904-AD09

<b>DOE-EE</b>	
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**27. ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL NON-WEATHERIZED GAS**

**FURNACES AND MOBILE HOME GAS FURNACES**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 U.S.C. 6295(f)(4)(C); 42 U.S.C. 6295(m)(1); 42 U.S.C. 6295(gg)(3)

**CFR Citation:**

10 CFR 430

**Legal Deadline:**

NPRM, Judicial, April 24, 2015, The later of 4/24/2016 or one year after the issuance of the proposed rule.

Final, Judicial, April 24, 2016.

**Abstract:**

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 furnaces. EPCA also requires the DOE to periodically determine every six years whether more-stringent amended standards would be technologically feasible and economically justified and would save a significant amount of energy. DOE is considering amendments to its energy conservation standards for residential non-weatherized gas furnaces and mobile home gas furnaces in partial fulfillment of a court-ordered remand of DOE's 2011 rulemaking for these products.

**Statement of Need:**

EPCA requires minimum energy efficiency standards for certain appliances and commercial equipment, including residential furnaces

**Summary of Legal Basis:**

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94-163 (42 U.S.C. 6291-6300, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that the U.S. Department of Energy (DOE) prescribes for certain products, such as residential furnaces, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)) and result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B)).

**Alternatives:**

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

**Anticipated Cost and Benefits:**

DOE finds that the benefits to the Nation of the proposed energy standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces (such as energy savings, consumer average lifecycle cost savings, an increase in national net present value, and emission reductions) outweigh the burdens (such as loss of industry net present value). For non-weatherized gas furnaces and mobile home gas furnaces, DOE estimates that energy savings will be 2.78 quads over 30 years and the net benefit to the Nation will be between \$3.1 billion and \$16.1 billion.

**Risks:**

**Timetable:**

Action	Date	FR Cite
Notice of Public Meeting	10/30/14	79 FR 64517
NPRM and Notice of Public Meeting	03/12/15	80 FR 13120
NPRM Comment Period Extended	05/20/15	80 FR 28851
NPRM Comment Period Extended End	07/10/15	
Notice of Data Availability (NODA)	09/14/15	80 FR 55038
NODA Comment Period End	10/14/15	
NODA Comment Period	10/23/15	80 FR 64370

Reopened		
NODA Comment Period Reopened End	11/23/15	
Supplemental NPRM and Notice of Public Meeting	09/23/16	81 FR 65720
Supplemental NPRM Comment Period End	11/22/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/72](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/72)

**URL For Public Comments:**

[www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0031](http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0031)

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**RIN:** 1904-AD20

**28. ENERGY CONSERVATION STANDARDS FOR WALK-IN COOLERS AND WALK-IN FREEZERS****Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 U.S.C. 6311; 42 U.S.C. 6313(f)

**CFR Citation:**

10 CFR 431.306

**Legal Deadline:**

Final, Judicial, Best efforts to complete the rulemaking by 12/01/2016.

**Abstract:**

In 2014, the Department of Energy (DOE) issued a rule setting performance-based energy conservation standards for a variety of walk-in cooler and freezer (walk-in) components. See 79 FR 32050 (June 3, 2014). That rule was challenged by a group of walk-in refrigeration system manufacturers and walk-in installers, which led to a settlement agreement regarding certain refrigeration equipment classes addressed in that 2014 rule and certain aspects related to that rule's analysis. See *Lennox Int'l v. DOE*, Case No. 14-60535 (5<sup>th</sup> Cir. 2014). Consistent with the settlement agreement, and in accordance with the Federal Advisory Committee Act, a working group was established under the Appliance Standards and Rulemaking Advisory Committee (ASRAC) to engage in a negotiated rulemaking to develop energy conservation standards to replace those that had been vacated by the U.S. Court of Appeals for the Fifth Circuit. As a result of those negotiations, a Term Sheet was produced containing a series of recommendations to ASRAC for its approval and submission to DOE for the agency's further consideration. Using the Term Sheet's recommendations, DOE is proposing to establish energy conservation standards for the six equipment classes of walk-in coolers and walk-in freezers that were

vacated by the Fifth Circuit and remanded to DOE for further action. Those standards at issue involve: (1) the two standards applicable to multiplex condensing refrigeration systems operating at medium and low temperatures; and (2) the four standards applicable to dedicated condensing refrigeration systems operating at low temperatures. Also consistent with the settlement agreement, DOE will consider any comments (including any accompanying data) regarding any potential impacts of these six standards on installers. DOE will also consider and substantively address any potential impacts of these six standards on installers in its Manufacturer Impact Analysis, consistent with its regulatory definition of "manufacturer," and, as appropriate, in its analysis of impacts on small entities under the Regulatory Flexibility Act. As part of this rulemaking (and consistent with its obligations under the settlement agreement), DOE will provide an opportunity for all interested parties to submit comments concerning any proposed standards. DOE will use its best efforts to issue a final rule establishing the remanded standards by December 1, 2016.

**Statement of Need:**

DOE is required under 42 U.S.C. 6313(f) to establish performance-based energy conservation standards for walk-in coolers and freezers. This rulemaking is being conducted to satisfy that requirement by setting standards related to certain classes of refrigeration systems used in walk-in applications.

**Summary of Legal Basis:**

This rulemaking is being conducted under DOE's authority pursuant to 42 U.S.C. 6311, which establishes the agency's legal authority over walk-in coolers and freezers as one type of covered equipment that DOE may regulate, and 42 U.S.C. 6313(f), which requires DOE to conduct a rulemaking to establish performance-based energy conservation standards for this equipment.

**Alternatives:**

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible

and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by statute.

**Anticipated Cost and Benefits:**

DOE finds that the benefits to the Nation of the proposed energy standards for walk-in coolers and freezers (such as energy savings, consumer average lifecycle cost savings, an increase in national net present value, and emission reductions) outweigh the burdens (such as loss of industry net present value). DOE estimates that energy savings from electricity will be 0.90 quads over 30 years and the net benefit to the Nation will be between \$1.8 billion to \$4.3 billion.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM and Notice of Public Meeting	09/13/16	81 FR 62980
NPRM Comment Period End	11/14/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=56&action=viewlive](http://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=56&action=viewlive)

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**RIN:** 1904-AD59

<b>DOE-EE</b>	<b>FINAL RULE STAGE</b>
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## **29. ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOUSING**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 17071

**CFR Citation:**

10 CFR 460

**Legal Deadline:**

Final, Statutory, December 19, 2011.

**Abstract:**

Section 413 of EISA requires that DOE establish energy conservation standards for manufactured housing. See 42 U.S.C. 17071(a)(1). DOE is directed to base the energy efficiency standards on the most recent version of the International Energy Conservation Code (IECC), except where DOE finds that the IECC is not cost effective, or a more stringent standard would be more cost effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs. DOE undertook a successful negotiated rulemaking under the Appliance Standards and Rulemaking Federal Advisory Committee in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act to negotiate proposed Federal standards for the energy efficiency of

manufactured homes. As part of the consensus reached, the negotiating group recommended that DOE conduct additional analysis to inform the selection of solar heat gain coefficient requirements in certain climate zones and seek information regarding window fenestration pertaining to manufactured housing. A request for information was issued on these topics.

**Statement of Need:**

Section 413 of EISA requires that DOE establish energy conservation standards for manufactured housing.

**Summary of Legal Basis:**

Section 413 of EISA requires that DOE establish energy conservation standards for manufactured housing. See 42 U.S.C. 17071(a)(1).

**Alternatives:**

DOE is directed to base the energy conservation standards on the most recent version of the International Energy Conservation Code (IECC), except where DOE finds that the IECC is not cost effective, or a more stringent standard would be more cost effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs.

**Anticipated Cost and Benefits:**

DOE finds that the benefits to the Nation of the proposed energy conservation standards for manufactured housing outweigh the burdens. For manufactured housing, DOE estimates that energy savings will be 0.884 quads (Single-section) and 1.428 quads (Multi-section) over 30 years and the net benefit to the Nation will be between \$1.26 billion (Single-section) and \$2.18 billion (Multi-section) and \$4.03 billion (Single-section) and \$6.75 billion (Multi-section).

**Risks:**

**Timetable:**

Action	Date	FR Cite
ANPRM	02/22/10	75 FR 7556
ANPRM Comment Period End	03/24/10	
Request for Information	06/25/13	78 FR 37995
RFI Comment Period End	07/25/13	
Extension of Term; Notice of Public Meeting	10/01/14	79 FR 59154
Request for Information	02/11/15	80 FR 7550
RFI Comment Period End	03/13/15	
NPRM	06/17/16	81 FR 39756
NPRM Comment Period End	08/16/16	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**URL For More Information:**

[www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx?ruleid=97](http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=97)

**URL For Public Comments:**

[www.regulations.gov/#!docketDetail;D=EERE-2009-BT-BC-0021](http://www.regulations.gov/#!docketDetail;D=EERE-2009-BT-BC-0021)

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**RIN:** 1904-AC11

DOE-EE	
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### **30. ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 U.S.C. 6313(a)(6)(C); 42 U.S.C. 6311(11)(B)

**CFR Citation:**

10 CFR 431.87(B)

**Legal Deadline:**

NPRM, Statutory, July 22, 2015, Either propose rule or determination.

**Abstract:**

EPCA, as amended by AEMTCA, requires the Secretary to determine whether updating the statutory energy conservation standards for commercial packaged boilers is technically feasible and economically justified and would save a significant amount of energy. If justified, the Secretary will issue amended energy conservation standards for such equipment.

**Statement of Need:**

DOE is required to conduct an evaluation of its standards for commercial packaged boilers every 6 years and to publish either a notice of determination that such standards do not need to be amended or a

NOPR including proposed amended standards, 42 U.S.C. 6313(a)(6)(C)(i). This rulemaking fulfills that requirement. Accordingly, DOE is proposing amended energy conservation standards for commercial packaged boilers.

**Summary of Legal Basis:**

This rulemaking is being conducted pursuant to DOE’s authority under 42 U.S.C. 6313(a)(6)(C)(i).

**Alternatives:**

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

**Anticipated Cost and Benefits:**

DOE finds that the benefits to the Nation of the proposed energy conservation standards for commercial packaged boilers (such as energy savings, consumer average lifecycle cost savings, an increase in national net present value, and emission reductions) outweigh the burdens (such as loss of industry net present value). DOE estimates that energy savings will be 0.39 quads over 30 years and the net benefits to the Nation will be between \$0.414 billion and \$1.687 billion.

**Risks:**

**Timetable:**

Action	Date	FR Cite
Notice of Proposed Determination (NOPD)	08/13/13	78 FR 49202
NOPD Comment Period End	09/12/13	
Notice of Public Meeting and	09/03/13	78 FR 54197

Framework Document Availability		
Framework Document Comment Period End	10/18/13	
Notice of Public Meeting and Preliminary Analysis	11/20/14	79 FR 69066
Preliminary Analysis Comment Period End	01/20/15	
Withdrawal of NOPD	08/25/15	80 FR 51487
NPRM	03/24/16	81 FR 15836
NPRM Comment Period End	05/23/16	
NPRM Comment Period Extended	05/04/16	81 FR 26747
NPRM Comment Period Extended End	06/22/16	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx/ruleid/79](http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/79)

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**RIN:** 1904-AD01

DOE-EE	
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### **31. ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 U.S.C. 6313(a)(6)(C)(i) and (vi)

**CFR Citation:**

10 CFR 431

**Legal Deadline:**

NPRM, Statutory, December 31, 2013, Either proposed rule or determination not to amend standards.

**Abstract:**

Once completed, this rulemaking will fulfill DOE's statutory obligation under EPCA to either propose amended energy conservation standards for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks or determine that the existing standards do not need to be amended. DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.

**Statement of Need:**

DOE is required under 42 U.S.C. 6313(a)(6)(C) to establish performance-based energy conservation standards for commercial water heaters. This rulemaking is being conducted to satisfy that requirement by setting standards related to certain classes of commercial water heating equipment.

**Summary of Legal Basis:**

This rulemaking is being conducted under DOE's authority pursuant to 42 U.S.C. 6311, which establishes the agency's legal authority over water heaters as one type of covered equipment that DOE may regulate, and 42 U.S.C. 6313(a)(6)(C), which requires DOE to conduct a rulemaking to establish performance-based energy conservation Standards for this equipment.

**Alternatives:**

Under EPCA, DOE shall either establish an amended uniform national standard for this equipment at the minimum level specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the Federal Register, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE/IES Standard 90.1 for this equipment would result in significant additional conservation of energy and is technologically feasible and economically justified (42 U.S.C. 6313(a)(6)(A)-(C)).

**Anticipated Cost and Benefits:**

DOE finds that the benefits to the Nation of the proposed energy conservation standards for commercial water heating equipment outweighs the burdens. DOE estimates that energy savings for combined natural gas and electricity will be 1.8 quads over 30 years and the net benefit to the Nation will be between \$2.26 billion and \$6.75 billion.

**Risks:****Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	10/21/14	79 FR 62899
RFI Comment Period End	11/20/14	
NPRM	05/31/16	81 FR 34440
NPRM Comment Period End	08/01/16	
NPRM Comment Period Reopened	08/05/16	81 FR 51812
Comment Period End	08/30/16	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/51](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/51)

**URL For Public Comments:**

[www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042](http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042)

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DOE-EE	
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### 32. ENERGY CONSERVATION STANDARDS FOR DEDICATED-PURPOSE POOL PUMPS

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 U.S.C. 6311(1)(A)

**CFR Citation:**

10 CFR 431

**Legal Deadline:**

None

**Abstract:**

Under the Energy Policy and Conservation Act, DOE may set energy conservation standards for types of pumps, including dedicated-purpose pool pumps (42 U.S.C. 3211(1)(A)). On August 8, 2015, DOE announced its intention to establish a negotiated rulemaking working group to negotiate proposed federal standards for dedicated-purpose pool pumps. The working group presented a final term sheet to the Appliance Standards and Rulemaking Advisory Committee (ASRAC) on December 8, 2015.

**Statement of Need:**

Under 42 U.S.C. 6311(a), DOE has established performance-based energy conservation standards for general-purpose pumps and created a separate category for dedicated-purpose pool pumps. DOE is now conducting this rulemaking to set energy conservation standards for dedicated-purpose pool pumps.

**Summary of Legal Basis:**

This rulemaking is being conducted under DOE's authority pursuant to 42 U.S.C. 6311, which establishes the agency's legal authority over pumps as one type of covered equipment that DOE may regulate, and 42 U.S.C. 6311(a), which allows DOE to conduct a rulemaking to establish performance-based energy conservation standards for this equipment.

**Alternatives:**

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE is conducting a full analysis by evaluating a range of standard levels to determine whether potential standards for dedicated-purpose pool pumps would save energy and whether such standards would be technologically feasible and economically justified.

**Anticipated Cost and Benefits:**

DOE has not yet proposed candidate standard levels for dedicated purpose pool pumps and therefore, cannot provide an estimate of combined aggregated costs and benefits for this action. DOE will, however, in compliance with all applicable law, issue standards that provide the maximum improvement in energy efficiency that is technologically feasible and economically justified.

**Risks:****Timetable:**

Action	Date	FR Cite
Request for information (RFI)	05/08/15	80 FR 26475
RFI Comment Period End	06/22/15	
RFI Comment Period	07/02/15	80 FR 38032

Reopened		
RFI Comment Period	08/17/15	
Reopened End		
Notice of Intent to Start Negotiated Rulemaking Working Group	08/25/15	80 FR 51483
Notice of Public Meetings for DPPP Working Group	10/15/15	80 FR 61996
Notice of Public Meetings for DPPP Working Group	02/29/16	81 FR 10152
Notice of Public Meetings for DPPP Working Group	04/18/16	81 FR 22548
Direct Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**URL For More Information:**

[www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=41&action=viewlive](http://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=41&action=viewlive)

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**BILLING CODE 6450–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Statement of Regulatory Priorities for Fiscal Year 2017*

As the Federal agency with principal responsibility for protecting the health of all Americans and for providing essential human services, especially to those least able to help themselves, the Department of Health and Human Services (HHS) implements programs that strengthen the health care system; advance scientific knowledge and innovation; and improve the health, safety, and well-being of the American people.

The Department's regulatory priorities for Fiscal Year 2017 reflect this complex mission through planned rulemakings structured to implement the Department's six arcs for implementation of its strategic plan: Leaving the Department Stronger; Keeping People Healthy and Safe; Reducing the Number of Uninsured and Providing Access to Affordable Quality Care; Leading in Science and Innovation; Delivering High Quality Care and Spending Our Health Care Dollars More Wisely; and, Ensuring the Building Blocks for Success at Every Stage of Life. This overview highlights forthcoming rulemakings exemplifying these priorities.

I. Leaving the Department Stronger

The Department's work to improve its efficiency and accountability includes its innovation agenda, program integrity and key human resources initiatives. In particular, the Department plans to issue a final regulation revising administrative appeal procedures for Medicare claims appeals to increase efficiency in the Medicare claims review and appeals process. Additionally, consistent with the President's Executive Order 13563, "Improving Regulation and Regulatory Review," the Department remains committed to reducing regulatory burden on States, health care providers and suppliers, and other regulated entities by updating current rules to align them with emerging health and safety standards, and by eliminating outdated procedural provisions. A full listing of HHS's retrospective review initiatives can be found at <http://www.hhs.gov/retrospectivereview>.

II. Keeping People Healthy and Safe

This HHS strategic priority encompasses the Department's work to enhance health, wellness and prevention; detect and respond to a potential disease outbreak or public health emergency; and prevent the spread of disease across borders.

### **Preventing and Reducing Tobacco-Related Death and Disease**

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act, authorizing the U.S. Food & Drug Administration (FDA) to regulate the manufacture, marketing, and distribution of tobacco products, to protect the public health and to reduce tobacco use by minors. Over the past year, FDA finalized the regulation deeming other tobacco products that meet the statutory definition of "tobacco product" to also be subject to the Food, Drug and Cosmetic Act (FD&C Act). This final regulation, known as the "deeming rule," affords FDA the authority to regulate additional products which include hookah, electronic cigarettes, cigars, pipe tobacco, other novel tobacco products, and future tobacco products. Over the next year, FDA plans to issue further procedural and substantive augmentation of that landmark regulation, designed to both clarify the regulatory landscape for tobacco products and enhance information available to consumers on the health risks of tobacco use.

### **Preventing the Spread of Disease Across Borders**

Over the next year, the Centers for Disease Control and Prevention (CDC) plans to finalize amendments to the foreign and interstate quarantine regulations to more efficiently and effectively respond to communicable disease threats to the public's health. The regulation adds requirements for the collection of passenger and crew information, allows for the public health screening of travelers, and revises and adds relevant definitions.

### **Drugs and Medical Devices**

FDA plans to issue a proposed rule addressing medication guide regulations to require a new form of patient labeling, Patient Medication Information, for submission to and review by FDA for human prescription drug products used, dispensed, or administered on an outpatient basis. The proposed rule would include requirements for Patient Medication Information development, consumer testing, and distribution. The proposed rule would require clear and concise written prescription drug product information presented in a consistent and easily understood format to help patients use their prescription drug products safely and effectively. FDA is also proposing to amend its regulations governing mammography. The amendments would update the Mammography Quality Standards Act of 1992. 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.

### **Improving Substance Use Treatment and Research Opportunities**

The Substance Abuse and Mental Health Services Administration (SAMHSA) is working to finalize changes to 42 CFR 2, the Confidentiality of Substance Use Disorder Patient Records. The part 2 regulation protects the confidentiality of records that are maintained in connection with any federally assisted program or activity related to substance abuse education, prevention, training, treatment, rehabilitation, or research. Under the part 2 statute and current regulations, a federally assisted substance abuse program may only release patient identifying information related to substance abuse treatment services with the individual's written consent; pursuant to a court order; or under a few other limited exceptions. These protections are more stringent than most other privacy laws, including HIPAA. SAMHSA is updating the part 2 rule in order to make it more compatible with new models of integrated care, which are based on information sharing, participation of multiple healthcare providers, and the development of an electronic infrastructure for managing and exchanging patient data. Part 2 has restricted the exchange of some of this data, to the detriment of patient care and research.

### III. Reducing the Number of Uninsured and Providing Access to Affordable Quality Care

The Affordable Care Act (ACA) expands access to health insurance through improvements in Medicaid, the establishment of Affordable Insurance Exchanges, and coordination between Medicaid, the Children's Health Insurance Program, and the Exchanges. In implementing the ACA over the next fiscal year, HHS will pursue regulations transforming the way our nation delivers care. This includes creating better ways to pay providers, incentivize quality of care and distribute information to build a health care system that is better, smarter and healthier with an engaged, educated, and empowered consumer at the center.

#### **Streamlining Medicaid Eligibility Determinations**

Forthcoming proposed and final rules will bring to completion regulatory provisions that support our efforts to assist states in implementing Medicaid eligibility and enrollment provisions stemming from the Affordable Care Act. These changes provide states more flexibility to coordinate Medicaid and CHIP eligibility notices, appeals, and other related administrative procedures with similar procedures used by the Exchanges.

#### **Updating Organ Donation Authorities**

The Health Resources and Services Administration (HRSA) is undertaking a regulation to improve and streamline the process for human organ donation. HRSA is proposing a final rule that clarifies that peripheral blood stem cells are included in the definition of bone marrow under section 30 of the National Organ Transplantation Act of 1984.

#### IV. Leading in Science and Innovation

HHS continues to expand on early successes of a number of initiatives, including the Precision Medicine Initiative, BRAIN Initiative, and the Vice President's Cancer Moonshot, specifically by updating the rules that govern research with human participants. In particular, HHS plans to finalize revisions to existing rules governing research with human subjects, often referred to as the Common Rule. This rule would apply to institutions and researchers supported by HHS as well as researchers throughout much of the Federal government who are conducting research involving human subjects. The final rule will aim to better protect human subjects while facilitating research, and also reducing burden, delay, and ambiguity for investigators.

#### **Patient-Centered Improvements to Health Technology**

HHS plans to undertake regulations designed to enhance both security and interoperability of electronic and other health records to improve access to care. These initiatives include an update to the regulations regarding confidentiality of substance abuse treatment records to align with advances in health information technology (health IT) while maintaining appropriate patient privacy protections.

#### V. Delivering High Quality Care and Spending Our Health Care Dollars More Wisely

HHS continues work to build a health care delivery system that results in better care, smarter spending, and healthier people by finding better ways to pay providers, deliver care, and distribute information all while keeping the individual patient at the center. In the coming fiscal year, the department will complete a number of regulations to accomplish this strategic objective:

#### **Medicare Payment Rules**

Nine Medicare payment rules will be updated to better reflect the current state of medical practice and to respond to feedback from providers seeking financial predictability and flexibility to better serve patients. In particular, the annual Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2018 Rates proposed rule revises the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This proposed rule would implement changes arising from our continuing experience with these systems.

#### **Improving the 340B Program**

HRSA plans to issue two regulations intended to improve transparency and operation of its 340B Drug Pricing Program. These regulations include:

- 340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation: HRSA plans to finalize this rule, which defines standards and methodology for the calculation of ceiling process for purposes of the 340B Program and imposes monetary sanctions on drug manufacturers who intentionally charge a covered entity a price above the ceiling price established for the 340B Program; and
- 340B Drug Pricing Program Omnibus Guidance: This guidance, when finalized, sets forth the responsibilities of 340B covered entities and drug manufacturers to ensure compliance with the statute establishing the 340B Program.

VI. Ensuring the Building Blocks for Success at Every Stage of Life

Over the coming year, the Department will continue its support at critical stages of people’s lives, from infancy to old age, and its support of topics including early learning, Alzheimer’s and dementia. ACF plans to finalize a regulation making child support program operations and enforcement procedures more efficient by recognizing advancements in technology and the move toward electronic communications and document management. An additional Administration for Children and Families rule, when finalized, amends the Adoption and Foster Care Analysis and Reporting Systems by modifying requirements for foster care agencies to collect and report data on children in out-of-home care and children under adoption or guardianship agreements with child welfare agencies.

<b>HHS—Substance Abuse and Mental Health Services Administration(SAMHSA)</b>	<b>FINAL RULE STAGE</b>
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**33. CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 290dd-2

**CFR Citation:**

42 CFR 2

**Legal Deadline:**

None

**Abstract:**

The final rule will amend 42 CFR part 2 to update the regulations for the modern health care context with respect to health information technology and new health care models. The goal of this rule is to balance the need for information exchange in new health care models and applications with appropriate privacy protections for those undergoing treatment for substance use disorders. The revisions to the regulations would remain consistent with 42 USC 290dd-2 (confidentiality of records)

**Statement of Need:**

The last substantive update to these regulations was in 1987. Over the last 29 years, significant changes have occurred within the U.S. health care system that were not envisioned by the current regulations, including new models of integrated care that are built on a foundation of information sharing to support coordination of patient care, the development of an electronic infrastructure for managing and exchanging patient information, and a new focus on performance measurement within the health care system. SAMHSA wants to ensure that patients with substance use disorders have the ability to participate in, and benefit from new integrated health care models without fear of putting themselves at risk of adverse consequences. These new integrated models are foundational to HHS's triple aim of improving health care quality, improving population health, and reducing unnecessary health care costs.

**Summary of Legal Basis:**

The statutory authority for the part 2 regulation is based on 42 U.S.C. 290dd-2, which protects the confidentiality of records with respect to the identity, diagnosis, prognosis, or treatment of any patient records that are maintained in connection with the performance of any federally assisted program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. [\[1\]](#) Under the part 2 statute and current regulations, a federally assisted substance abuse program may only release patient identifying information related to substance abuse treatment services with the individual's written consent; pursuant to a court order; or under a few other limited exceptions.

**Alternatives:**

Failure to finalize the rule would result in the existing regulations staying in place, with none of the changes proposed being adopted.

**Anticipated Cost and Benefits:**

Over the 10-year period of 2016-2025, the total undiscounted cost of the part 2 changes will be about \$241 million in 2016 dollars. When future costs are discounted at 3 percent or 7 percent per year, the total costs become approximately \$217,586,000 or \$193,098,000, respectively. The benefits would be improvements in the integration and coordination of substance use disorder treatment with the broader health system and improved use of data to inform the development improvement of the substance use disorder treatment system.

**Risks:**

If this rule is not finalized, it will result in significant scrutiny from a variety of stakeholders, who have been pushing for an update to the rule. It would also inhibit integrated care for substance use disorders and prevent the use of some data in research related to substance use disorder treatment at a time when the issue is a key priority to the Department as a result of the opioid crisis.

**Timetable:**

Action	Date	FR Cite
NPRM	02/09/16	81 FR 6987
NPRM Comment Period End	04/11/16	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 0930-AA21

<b>HHS—Centers for Disease Control and Prevention(CDC)</b>	<b>FINAL RULE STAGE</b>
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**34. CONTROL OF COMMUNICABLE DISEASES**

**Priority:**

Other Significant. Major under 5 USC 801.

**Legal Authority:**

sec. 361 of the Public Health Service Act (42 U.S.C. 264 to 265)

**CFR Citation:**

42 CFR 70; 42 CFR 71

**Legal Deadline:**

None

**Abstract:**

This rule clarifies data collection requirements for airline passengers and crew, codifies current practice, clarifies HHS/CDC's authority to implement non-invasive public health screenings at U.S. ports of entry and other U.S. locations; and adds appeal provisions for persons served with a Federal public health

order (e.g., quarantine) with due process, including clarification of reasons, processes, and reassessments.

**Statement of Need:**

The need for this proposed rulemaking was reinforced during HHS/CDC's response to the largest outbreak of Ebola virus disease (Ebola) on record, followed by the recent outbreak of Middle East Respiratory Syndrome (MERS) in South Korea, both quarantinable communicable diseases, and repeated outbreaks and responses to measles, a non-quarantinable communicable disease of public health concern, in the United States. The provisions contained within this proposal will enhance HHS/CDC's ability to prevent the further importation and spread of communicable diseases into the United States and interstate by clarifying and providing greater transparency regarding its response capabilities and practices.

**Summary of Legal Basis:**

The primary legal authority supporting this rulemaking is sections 361 and 362 of the Public Health Service Act (42 U.S.C. 264, 265).

**Alternatives:**

None. The main impact of the proposals within this rule is to strengthen our regulations by codifying statutory language to describe HHS/CDC's authority to prevent the introduction, transmission, and spread of communicable diseases. The intent of these proposed updates is to best protect U.S. public health and to inform the regulated community of these updates.

**Anticipated Cost and Benefits:**

The analysis of estimated costs and benefits of this rule has 4 components: 1) costs and benefits for submitting passenger and crew information to CDC; 2) costs and benefits associated with improved

transparency of how HHS/CDC uses its regulatory authorities to protect public health; 3) transfer payments by HHS/CDC for treatment and care; and 4) the impact of the proposed provision suspending the entry of animals, articles, or things from designated foreign countries and places into the United States.

**Risks:**

If this regulation is not published, HHS/CDC's ability to prevent the further importation and spread of communicable diseases into the United States and interstate will be limited; current regulatory language will not be clarified; and there will be less transparency to the public regarding HHS/CDC's response capabilities and practices.

**Timetable:**

Action	Date	FR Cite
NPRM	08/15/16	81 FR 54230
NPRM Comment Period End	10/14/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**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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<b>HHS—Food and Drug Administration(FDA)</b>	<b>PROPOSED RULE STAGE</b>
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**35. MAMMOGRAPHY QUALITY STANDARDS ACT; REGULATORY AMENDMENTS**

**Priority:**

Other Significant

**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, such as breast density reporting, that have occurred since the regulations were published in 1997.

FDA is also proposing updates to modernize the regulations by incorporating current science and mammography best practices. 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:**

If a final regulation does not publish, the potential reduction in fatalities and earlier breast cancer detection, resulting in reduction in cancer treatment costs, will not materialize to the detriment of public health

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

State

**Federalism:**

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

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**RIN:** 0910-AH04

**36. PATIENT MEDICATION INFORMATION****Priority:**

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

**Legal Authority:**

21 U.S.C. 321 et seq.; 42 U.S.C. 262; 42 U.S.C. 264

**CFR Citation:**

21 CFR 208; 21 CFR 310.501 and 310.515; 21 CFR 201.57(a)(18); 21 CFR 201.80(f)(2); 21 CFR 314.70(b)(2)(v)(B); 21 CFR 610.60(a)(7); 21 CFR 201.100; ...

**Legal Deadline:**

None

**Abstract:**

The proposed rule would amend FDA medication guide regulations to require a new form of patient labeling, Patient Medication Information, for submission to and review by the FDA for human prescription drug products used, dispensed, or administered on an outpatient basis. The proposed rule would include requirements for Patient Medication Information development, consumer testing, and distribution. The proposed rule would require clear and concise written prescription drug product information presented in a consistent and easily understood format to help patients use their prescription drug products safely and effectively.

**Statement of Need:**

Patients may currently receive one or more types of written patient information regarding prescription drug products. That information is frequently duplicative, incomplete, conflicting, or difficult to read and understand and is not sufficient to meet the needs of patients. Patient Medication Information is a new type of one-page Medication Guide that FDA is proposing to require for certain prescription drug products. Patient Medication Information is intended to improve public health by providing clear, concise,

accessible, and useful written prescription drug product information, delivered in a consistent and easily understood format, to help patients use prescription drug products safely and effectively and potentially reduce preventable adverse drug reactions and improve health outcomes.

**Summary of Legal Basis:**

FDA's proposed revisions to the regulations regarding format and content requirements for prescription drug 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).

**Risks:** The current system does not consistently provide patients with useful written information to help them use their prescription drug products safely and effectively. The proposed rule would require consumer-tested and FDA-approved Patient Medication Information for certain prescription drug products used, dispensed, or administered on an outpatient basis.

**Alternatives:**

FDA evaluated various formats for patient medication information.

**Anticipated Cost and Benefits:**

The monetary benefit of the proposed rule stems from an increase in medication adherence due to patients having more complete information about their prescription drug products. The proposed rule would impose costs that stem from developing, testing, and approving Patient Medication Information.

**Risks:**

The current system does not consistently provide patients with useful written information to help them use their prescription drug products safely and effectively. The proposed rule would require consumer-tested

and FDA-approved Patient Medication Information for certain prescription drug products used, dispensed, or administered on an outpatient basis

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 0910-AH33

<b>HHS—Health Resources and Services Administration(HRSA)</b>	<b>FINAL RULE STAGE</b>
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### **37. 340(B) CIVIL MONETARY PENALTIES FOR MANUFACTURERS AND CEILING PRICE REGULATIONS**

**Priority:**

Other Significant

**Legal Authority:**

sec 7102 of the Affordable Care Act; Pub. L. 111–148, amending subsec(d); sec 340(B) of the PHS Act

**CFR Citation:**

None

**Legal Deadline:**

Other, Statutory, September 20, 2010, ANPRM met deadline for Civil Monetary Penalties for Manufacturers.

**Abstract:**

This final rule is required under the Affordable Care Act. It amends section 340(B) of the Public Health Service Act to impose monetary sanctions (not to exceed \$5,000 per instance) on drug manufacturers who intentionally charge a covered entity a price above the ceiling price established under the procedures of the 340(B) Program and also define standards and methodology for the calculation of ceiling prices for purposes of the 340(B) Program.

**Statement of Need:**

The final rule provides a critical enforcement mechanism for the Department when drug manufacturers intentionally charge a covered entity a price above the ceiling price established under the procedures of the 340B Program. The rule also defines the standards and methodology for the calculation of ceiling prices for purposes of the 340B Program.

**Summary of Legal Basis:**

Sections 340B(d)(1)(B)(vi) and 340B(d)(1)(B)(i)(I) of the Public Health Service Act.

**Alternatives:**

None. This rule implements a statutory requirement.

**Anticipated Cost and Benefits:**

None.

**Risks:**

This final rule enables the Department to meet its statutory obligation under the Affordable Care Act to finalize regulations in these areas, which is expected to enhance the integrity of the 340B Program.

**Timetable:**

Action	Date	FR Cite
ANPRM	09/20/10	75 FR 57230
ANPRM Comment Period End	11/19/10	
NPRM	06/17/15	80 FR 34583
NPRM Comment Period End	08/17/15	
Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

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**Related RIN:**

Merged with 0906-AA92

**RIN:** 0906-AA89

HHS—HRSA	
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**38. DEFINITION OF HUMAN ORGAN UNDER SECTION 301 OF THE NATIONAL ORGAN**

**TRANSPLANT ACT OF 1984**

**Priority:**

Other Significant

**Legal Authority:**

Pub. L. 109-129; Stem Cell Therapeutic and Research Act of 2005, as amended in 2010 by Pub. L. 111-264

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, December 18, 2016, Congressional deadline.

On December 18, 2015, Public Law 114-104 was enacted and required the Secretary to issue a determination no later than December 18, 2016, as to whether peripheral blood stem cells and umbilical cord blood are “human organs” subject to NOTA section 301.

**Abstract:**

This final rule clarifies that peripheral blood stem cells are included in the definition of bone marrow under section 301 of the National Organ Transplantation Act of 1984, as amended and codified in 42 U.S.C. 274e.

**Statement of Need:**

- There are currently two methods to collect hematopoietic stem cells (HSCs) from a donor: bone marrow aspiration, and apheresis following a drug regimen. In the second category, granulocyte-colony-stimulating factors are administered over 4-5 days to stimulate the donor to produce and release HSCs from the bone marrow into the peripheral (circulating) blood, where they are collected by apheresis in one or two sessions for a total of 8 hours.
- A panel of the Ninth Circuit Court of Appeals has held that HSCs collected from peripheral blood are not human organs subject to the prohibition against transfer for valuable consideration established in section 301 of the National Organ Transplant Act of 1984 (NOTA).

Should donors begin to be compensated, that decision creates the potential for disparate compensation practices for HSCs collected by bone marrow aspiration and HSCs collected from peripheral blood. The disparity could lead to fewer donations of HSCs by bone marrow aspiration, despite clear clinical preferences for such HSCs for certain patients and conditions. It could also lead to a foreclosure of access to international donor registries, which continue to provide matched donors for patients in the United States.

**Summary of Legal Basis:**

In 2011, a panel of the Ninth Circuit Court of Appeals held that HSCs from peripheral blood are not bone marrow under the prohibition in NOTA section 301. Under this ruling, the transfer of HSCs in bone marrow would be subject to the prohibition in NOTA section 301, while HSCs obtained by mobilizing the donor to release HSCs from the bone marrow into the blood stream so that they may be recovered within days from the donor's peripheral blood would not be subject to the prohibition. The court further observed

that, although NOTA section 301 authorized the Secretary to issue a regulation identifying additional human organs subject to that provision, HHS had not yet exercised its authority to identify peripheral blood stem cells as section 301 authorizes. *Flynn v. Holder*, 684 F.3d 852 (9th Cir. 2012). On December 18, 2015, Public Law 114-104 was enacted, which required the Secretary to issue a determination as to whether peripheral blood stem cells and umbilical cord blood are human organs subject to NOTA section 301 no later than December 18, 2016.

**Alternatives:**

**Anticipated Cost and Benefits:**

This proposed rule is not expected to have significant cost implications.

**Risks:**

Although the registry for HSC donors administered under statute as the C.W. Bill Young Cell Transplantation Program has continued to advise registrants that they will not be compensated for registering or donating their HSCs, compensation may become more common if we do not complete this rulemaking. The implementation of payment for donors of peripheral blood stem cells could adversely affect the safety of donors who may proceed with donation even when they have concerns about the risks, as well as the safety of patients, if the lure of compensation leads donors to hide information about their communicable disease risks. In addition, it may make donors less willing to donate HSCs by bone marrow aspiration, if by doing so they would forego compensation for donating of peripheral blood stem cells. It could also foreclose access to international donors. Such access is currently provided by reciprocal agreements with foreign registries, which require that donors of HSCs be uncompensated volunteers.

In addition, disapproval of this action would mean that HHS would not meet the December 18, 2016, deadline Congress set for completion. As drafted, the proposed rule elicited a few comments about the inclusion of umbilical cord blood within the scope of the proposed rule. On December 18, 2015, Public Law 114-104 was enacted, which required the Secretary to issue a determination as to whether

peripheral blood stem cells and umbilical cord blood are human organs subject to NOTA section 301 no later than December 18, 2016.

**Timetable:**

Action	Date	FR Cite
NPRM	10/02/13	78 FR 60810
NPRM Comment Period End	12/02/13	
Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

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**RIN:** 0906-AB02

HHS—HRSA	
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**39. 340B PROGRAM OMNIBUS GUIDELINES**

**Priority:**

Other Significant

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

None

**Legal Deadline:**

None

**Abstract:**

This guidance addresses key policy issues raised by stakeholders for which HHS does not have statutory rulemaking authority.

**Statement of Need:**

The Omnibus Guidance addresses key policy issues raised by various stakeholders committed to ensuring the integrity of the 340B Program and assisted covered entities and manufacturers in their ability to satisfy 340B Program requirements and expectations.

**Summary of Legal Basis:**

HHS is interpreting section 340B of the Public Health Service Act and issuing final guidance in critical areas.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

Some covered entities and manufacturers may increase spending on 340B Program compliance efforts, including assessments of patients eligible for 340B drugs. HRSA does not expect any such costs to be significant

**Risks:**

Not issuing the final guidance will result in a lack of clarity in some 340B areas.

**Timetable:**

Action	Date	FR Cite
Notice	08/28/15	80 FR 52300
Notice Comment Period End	10/27/15	
Final Guidance Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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<b>HHS—Office of Assistant Secretary for Health(OASH)</b>	<b>FINAL RULE STAGE</b>
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**40. FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS; FINAL RULES**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

21 U.S.C. 289

**CFR Citation:**

45 CFR 46

**Legal Deadline:**

None

**Abstract:**

The final rules would revise current human subjects regulations in order to strengthen protections for research subjects while facilitating valuable research and reducing burden, delay, and ambiguity for investigators.

**Statement of Need:**

Since the Federal Policy for the Protection of Human Subjects (often referred to as the Common Rule) was promulgated by 15 U.S. Federal departments and agencies in 1991, the volume and landscape of research involving human subjects have changed considerably. Research with human subjects has grown in scale and become more diverse. Examples of developments include: an expansion in the number and type of clinical trials, as well as observational studies and cohort studies; a diversification of

the types of social and behavioral research being used in human subjects research; increased use of sophisticated analytic techniques for use with human biospecimens; and the growing use of electronic health data and other digital records to enable very large data sets to be analyzed and combined in novel ways. Yet these developments have not been accompanied by major change in the human subjects research oversight system, which has remained largely unchanged over the last two decades. The proposed revisions are needed to modernize, strengthen, and make more effective the Federal Policy for the Protection of Human Subjects.

**Summary of Legal Basis:**

None.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

The quantified and non-quantified benefits and costs of all proposed changes to the Common Rule are the following: (1) Over the 2016-2025 period, present value benefits of \$2,629 million and annualized benefits of \$308 million are estimated using a 3 percent discount rate; and, present value benefits of \$2,047 million and annualized benefits of \$291 million are estimated using a 7 percent discount rate; (2) present value costs of \$13,342 million and annualized costs of \$1,564 million are estimated using a 3 percent discount rate; and, present value costs of \$9,605 million and annualized costs of \$1,367 million are estimated using a 7 percent discount rate.

**Risks:**

If this regulation is not published, the rules overseeing federally funded or conducted human subjects research will not be modernized, strengthened or made more effective.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
ANPRM	07/26/11	76 FR 44512
ANPRM Comment Period End	10/26/11	
NPRM	09/08/15	80 FR 53931
NPRM Comment Period End	12/07/15	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Additional Information:**

Includes Retrospective Review under E.O. 13563.

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**RIN:** 0937-AA02

<b>HHS—Centers for Medicare &amp; Medicaid Services(CMS)</b>	<b>PROPOSED RULE STAGE</b>
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**41. ELIGIBILITY NOTICES, FAIR HEARING AND APPEAL PROCESSES FOR MEDICAID, AND OTHER PROVISIONS RELATED TO ELIGIBILITY AND ENROLLMENT FOR MEDICAID AND CHIP (CMS–2334–P2)**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 1302; Pub. L. 111–148

**CFR Citation:**

42 CFR 430; 42 CFR 431; 42 CFR 433; 42 CFR 435; 42 CFR 457

**Legal Deadline:**

None

**Abstract:**

This proposed rule proposes to implement provisions of the Medicaid statute pertaining to Medicaid eligibility and appeals. This proposed rule continues our efforts to provide guidance to assist States in implementing Medicaid and CHIP eligibility, appeals, and enrollment changes required by the Affordable Care Act.

**Statement of Need:**

On January 22, 2013, we published a proposed rule entitled "Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing" that proposed changes to provide states more flexibility to coordinate Medicaid and CHIP procedures related to eligibility notices, appeals, and other related administrative actions with similar procedures used by other health coverage programs authorized under

the Affordable Care Act. We received a number of public comments on the proposed rule suggesting alternatives that we had not originally considered and did not propose. To give the public the opportunity to comment on those options, we are now proposing revisions related to those comments. In addition, we propose to make other corrections and modifications related to delegations of eligibility determinations and appeals, and appeals procedures. We have developed these proposals through our experiences working with states and Exchanges, and Exchange appeals entities operationalizing fair hearings.

### **Summary of Legal Basis:**

The Affordable Care Act extends and simplifies Medicaid eligibility. The rule proposes alternatives not included in the previously published January 22, 2013 proposed rule, based on public comments received.

### **Alternatives:**

The majority of Medicaid and CHIP eligibility provisions proposed in this rule serve to implement the Affordable Care Act. Therefore, alternatives considered for this rule were constrained due to the statutory provisions.

### **Anticipated Cost and Benefits:**

While states will likely incur short-term increases in administrative costs, we do not anticipate that this proposed rule would have significant financial effects on state Medicaid programs. The extent of these initial costs will depend on current state policy and practices, as many states have already adopted the administrative simplifications addressed in the rule. In addition, the administrative simplifications proposed in this rule may lead to savings as states streamline their fair hearing processes, consistent with the processes used by the Marketplace, and implement timeliness and performance standards.

### **Risks:**

None. Delaying publication of this rule delays states from moving forward with implementing changes to Medicaid and CHIP, and aligning operations between Medicaid, CHIP and the Exchanges.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

State

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**Related RIN:**

Split from 0938-AS27

**RIN:** 0938-AS55

<b>HHS-CMS</b>	
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**42. • FY 2018 PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES (SNFS) (CMS–1679–P)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 U.S.C. 1302; 42 U.S.C 1395hh

**CFR Citation:**

42 CFR 483

**Legal Deadline:**

Final, Statutory, July 31, 2017.

**Abstract:**

This annual proposed rule would update the payment rates used under the prospective payment system for SNFs for fiscal year 2018.

**Statement of Need:**

This proposed rule would update the SNF prospective payment rates as required under the Social Security Act (the Act). The Act requires the Secretary to provide, before the August 1 that precedes the start of each FY, the unadjusted federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment.

**Summary of Legal Basis:**

In accordance with sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5) of the Act, the federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2017, which reflects the SNF market basket index, as adjusted by the multifactor productivity (MFP)

adjustment for FY 2018. These changes would be applicable to services furnished on or after October 1, 2017.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for FY 2018.

**Risks:**

If this regulation is not published timely, SNF services will not be paid appropriately beginning October 1, 2017.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 0938-AS96

<b>HHS—CMS</b>	
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**43. • FY 2018 INPATIENT PSYCHIATRIC FACILITIES PROSPECTIVE PAYMENT SYSTEM—RATE  
UPDATE (CMS-1673-P)**

**Priority:**

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

**Legal Authority:**

42 U.S.C. 1302; 42 U.S.C. 1395hh

**CFR Citation:**

42 CFR 412

**Legal Deadline:**

Final, Statutory, August 1, 2017.

**Abstract:**

This annual proposed rule would update the prospective payment rates for inpatient psychiatric facilities with discharges beginning on October 1, 2017.

**Statement of Need:**

This rule is required to update the prospective payment rates and wage index values for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs), which include freestanding IPFs and psychiatric units of an acute care hospital or critical access hospital.

**Summary of Legal Basis:**

Under section 1886 of the Act, rates are adjusted based on the market basket update. These changes would be applicable to services furnished on or after October 1, 2017.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for FY 2018.

**Risks:**

If this regulation is not published timely, IPFs will not receive accurate Medicare payments for furnishing inpatient psychiatric services to beneficiaries in IPFs in FY 2018.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Federal, State

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**RIN:** 0938-AS97

<b>HHS-CMS</b>	
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**44. • FY 2018 INPATIENT REHABILITATION FACILITY (IRF) PROSPECTIVE PAYMENT SYSTEM**

**(CMS-1671-P)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 U.S.C. 1302; 42 U.S.C. 1395hh

**CFR Citation:**

42 CFR 412

**Legal Deadline:**

Final, Statutory, August 1, 2017.

**Abstract:**

This annual proposed rule would update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for fiscal year 2018.

**Statement of Need:**

This proposed rule would update the prospective payment rates for IRFs for as required under the Social Security Act (the Act). As required by the Act, this rule includes the classification and weighting factors for the IRF PPS's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2018. This rule also proposes revisions and updates to the quality measures and reporting requirements under the IRF QRP.

**Summary of Legal Basis:**

The IRF prospective payment rates are updated as required under section 1886(j)(3)(C) of the Act. It responds to section 1886(j)(5) of the Act, which requires the Secretary to, on or before the August 1 that precedes the start of each fiscal year, publish the classification and weighting factors for the IRF PPS's case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for FY 2018.

**Risks:**

If this regulation is not published timely, IRF services will not be paid appropriately beginning October 1, 2017.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 0938-AS99

<b>HHS—CMS</b>	
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**45. • FY 2018 HOSPICE RATE UPDATE (CMS-1675-P)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 U.S.C. 1302

**CFR Citation:**

42 CFR 418

**Legal Deadline:**

Final, Statutory, August 1, 2017.

**Abstract:**

This annual proposed rule would update the hospice payment rates and the wage index for fiscal year 2018.

**Statement of Need:**

We are required to annually issue the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of Core-Based Statistical Areas (CBSAs) or previously used Metropolitan Statistical Areas (MSAs).

**Summary of Legal Basis:**

This rule proposes updates to the hospice payment rates for fiscal year as required under section 1814(i) of the Social Security Act (the Act). This rule also proposes new quality measures and provides an update on the hospice quality reporting program (HQRP) consistent with the requirements of section 1814(i)(5) of the Act, as added by section 3004(c) of the Affordable Care Act.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for FY 2018.

**Risks:**

If this regulation is not published timely, Hospice services will not be paid appropriately beginning October 1, 2017.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Agency Contact:**

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**RIN:** 0938-AT00

HHS—CMS	
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**46. • CY 2018 HOSPITAL OUTPATIENT PPS POLICY CHANGES AND PAYMENT RATES AND  
AMBULATORY SURGICAL CENTER PAYMENT SYSTEM POLICY CHANGES AND PAYMENT  
RATES (CMS-1678-P) (SECTION 610 REVIEW)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 U.S.C. 1302; 42 U.S.C. 1395hh

**CFR Citation:**

42 CFR 416; 42 CFR 419

**Legal Deadline:**

Final, Statutory, November 1, 2017.

**Abstract:**

This annual proposed rule would revise the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The proposed rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule proposes changes to the ambulatory surgical center payment system list of services and rates.

**Statement of Need:**

Medicare pays over 4,000 hospitals for outpatient department services under the hospital outpatient prospective payment system (OPPS). The OPPS is based on groups of clinically similar services called ambulatory payment classification groups (APCs). CMS annually revises the APC payment amounts based on the most recent claims data, proposes new payment policies, and updates the payments for inflation using the hospital operating market basket. Medicare pays roughly 5,000 Ambulatory Surgical Centers (ASCs) under the ASC payment system. CMS annually revises the payment under the ASC payment system, proposes new policies, and updates payments for inflation. CMS will issue a final rule containing the payment rates for the 2018 OPPS and ASC payment system at least 60 days before January 1, 2018.

**Summary of Legal Basis:**

Section 1833 of the Social Security Act establishes Medicare payment for hospital outpatient services and ASC services. The rule revises the Medicare hospital OPPS and ASC payment system to implement

applicable statutory requirements. In addition, the rule describes changes to the outpatient APC system, relative payment weights, outlier adjustments, and other amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system as well as changes to the rates and services paid under the ASC payment system. These changes would be applicable to services furnished on or after January 1, 2018.

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for CY 2018.

**Risks:**

If this regulation is not published timely, outpatient hospital and ASC services will not be paid appropriately beginning January 1, 2018.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

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RIN: 0938-AT03

HHS—CMS	
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**47. • CY 2018 CHANGES TO THE END-STAGE RENAL DISEASE (ESRD) PROSPECTIVE PAYMENT SYSTEM, QUALITY INCENTIVE PROGRAM, AND DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES (DMEPOS) (CMS-1674-P)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 U.S.C. 1302; 42 U.S.C. 1395d(d); 42 U.S.C. 1395f(b); 42 U.S.C. 1395g; ...

**CFR Citation:**

42 CFR 413

**Legal Deadline:**

Final, Statutory, November 1, 2017.

**Abstract:**

This annual proposed rule would update the bundled payment system for ESRD facilities by January 1, 2018. The rule would also update the quality incentives in the ESRD program and implement changes to the DMEPOS competitive bidding program.

**Statement of Need:**

On January 1, 2011, CMS implemented the ESRD prospective payment system (PPS), a case-mix adjusted, bundled prospective payment system for renal dialysis services furnished by ESRD facilities. Annually, we update and make revisions to the ESRD PPS and requirements for the ESRD Quality Incentive Program (QIP). The ESRD QIP is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by CMS. Additionally, we annually adjust the methodology for adjusting DMEPOS fee schedule amounts.

**Summary of Legal Basis:**

Section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Public Law 110-275), and section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act Public Law 111-148), established that beginning CY 2012, and each subsequent year, the Secretary will annually increase payment amounts by an ESRD market basket increase factor, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Additionally, the QIP program is authorized under section 1881(h) of the Social Security Act (the Act).

**Alternatives:**

None. This is a statutory requirement.

**Anticipated Cost and Benefits:**

Total expenditures will be adjusted for CY 2018.

**Risks:**

If this regulation is not published timely, ESRD facilities will not receive accurate Medicare payment amounts for furnishing outpatient maintenance dialysis treatments beginning January 1, 2018.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Agency Contact:**

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**RIN:** 0938-AT04

<b>HHS—CMS</b>	<b>FINAL RULE STAGE</b>
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**48. ELIGIBILITY NOTICES, FAIR HEARING AND APPEAL PROCESSES FOR MEDICAID, AND OTHER PROVISIONS RELATED TO ELIGIBILITY AND ENROLLMENT FOR MEDICAID AND CHIP (CMS–2334–F2)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

Pub. L. 111–148, secs 1411, 1413, 1557, 1943, 2102, 2201, 2004, 2303, et al

**CFR Citation:**

42 CFR 430; 42 CFR 431; 42 CFR 433; 42 CFR 435; 42 CFR 457

**Legal Deadline:**

None

**Abstract:**

This final rule implements provisions of the Affordable Care Act that expand access to health coverage through improvements in Medicaid and coordination between Medicaid, Children's Health Insurance Program (CHIP), and Exchanges. This rule finalizes the remaining provisions from the Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing; Proposed Rule that we published in the January 22, 2013, Federal Register. This final rule continues our efforts to provide guidance to assist States in implementing Medicaid and CHIP eligibility, appeals, and enrollment changes required by the Affordable Care Act.

**Statement of Need:**

This final rule will implement provisions of the Affordable Care Act and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). This rule reflects new statutory eligibility provisions; changes to provide States more flexibility to coordinate Medicaid and CHIP eligibility notices, appeals, and other related administrative procedures with similar procedures used by other health coverage

programs authorized under the Affordable Care Act; modernizes and streamlines existing rules, eliminates obsolete rules, and updates provisions to reflect Medicaid eligibility pathways; implements other CHIPRA eligibility-related provisions, including eligibility for newborns whose mothers were eligible for and receiving Medicaid or CHIP coverage at the time of birth. With publication of this final rule, we desire to make our implementing regulations available to States and the public as soon as possible to facilitate continued efficient operation of the State flexibility authorized under section 1937 of the Act.

### **Summary of Legal Basis:**

The Affordable Care Act extends and simplifies Medicaid eligibility. In the July 15, 2013, Federal Register, we issued the "Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment" final rule that finalized certain key Medicaid and CHIP eligibility provisions included in the January 22, 2013, proposed rule. In this final rule, we are addressing the remaining provisions of the January 22, 2013, proposed rule.

### **Alternatives:**

The majority of Medicaid and CHIP eligibility provisions proposed in this rule serve to implement the Affordable Care Act. All of the provisions in this final rule are a result of the passage of the Affordable Care Act and are largely self-implementing. Therefore, alternatives considered for this final rule were constrained due to the statutory provisions.

### **Anticipated Cost and Benefits:**

The March 23, 2012, Medicaid eligibility final rule detailed the impact of the Medicaid eligibility changes related to implementation of the Affordable Care Act. The majority of provisions included in this final rule were described in detail in that rule, but in summary, we estimate a total savings of \$465 million over 5 years, including \$280 million in cost savings to the Federal Government and \$185 million in savings to States.

**Risks:**

None. Delaying publication of this final rule delays States from moving forward with implementing changes to Medicaid and CHIP, and aligning operations between Medicaid, CHIP, and the Exchanges.

**Timetable:**

Action	Date	FR Cite
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

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**Related RIN:**

Related to 0938-AR04

**RIN:** 0938-AS27

**49. CY 2017 INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS (CMS-8062-N)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 U.S.C. 1395e-2(b)(2); Social Security Act, sec 1813 (b)(2)

**CFR Citation:**

None

**Legal Deadline:**

Final, Statutory, September 15, 2016.

**Abstract:**

This annual notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2017 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formula used to determine these amounts.

**Statement of Need:**

The Social Security Act (the Act) requires the Secretary to publish annually the amounts of the inpatient hospital deductible and hospital and extended care services coinsurance applicable for services furnished in the following CY.

**Summary of Legal Basis:**

Section 1813 of the Act provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and

extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

**Alternatives:**

None. This notice implements a statutory requirement.

**Anticipated Cost and Benefits:**

Total costs will be adjusted for CY 2017.

**Risks:**

None. Notice informs the public of the 2017 premium.

**Timetable:**

Action	Date	FR Cite
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 0938–AS70

<b>HHS—CMS</b>	
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**50. • CY 2018 INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS (CMS–8065–N)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 U.S.C. 1395e–2(b)(2); Social Security Act, sec. 1813 (b)(2)

**CFR Citation:**

None

**Legal Deadline:**

Final, Statutory, September 15, 2017.

**Abstract:**

This annual notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2018 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formula used to determine these amounts.

**Statement of Need:**

The Social Security Act (the Act) requires the Secretary to publish, in September each year, the amounts of the inpatient hospital deductible and hospital and extended care services coinsurance applicable for services furnished in the following CY.

**Summary of Legal Basis:**

Section 1813 of the Act provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

**Alternatives:**

None. This notice implements a statutory requirement.

**Anticipated Cost and Benefits:**

Total costs will be adjusted for CY 2018.

**Risks:**

None. Notice informs the public of the 2018 premium.

**Timetable:**

Action	Date	FR Cite
Final Action	09/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

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**RIN:** 0938-AT05

<b>HHS—Administration for Children and Families(ACF)</b>	<b>FINAL RULE STAGE</b>
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**51. ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS)**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 620 et seq.; 42 U.S.C. 670 et seq.; 42 U.S.C. 1302

**CFR Citation:**

45 CFR 1355

**Legal Deadline:**

None

**Abstract:**

This rule will amend the Adoption and Foster Care Analysis and Reporting Systems (AFCARS). It will modify requirements for title IV-E foster care agencies to collect and report data on children in out-of-home care and children under title IV-E adoption or guardianship agreements with the title IV-E agency.

**Statement of Need:**

This rule will amend the Adoption and Foster Care Analysis and Reporting Systems (AFCARS). It will modify requirements for title IV-E foster care agencies to collect and report data on children in out-of-home care and children under title IV-E adoption or guardianship agreements with the title IV-E agency.

**Summary of Legal Basis:**

Section 479 of the Social Security Act (the Act) mandates HHS regulate a data collection system for national adoption and foster care data. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

**Alternatives:**

1. ACF considered whether other existing data sets could yield similar information. ACF determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in out-of-home care under the placement and care of the title IV-E agency or who are adopted under a title IV-E adoption assistance agreement.

2. We also received state comments to the 2016 SNPRM citing they have few Indian children in foster care, if any. ACF considered alternatives to collecting ICWA-related data through AFCARS, such as providing an exemption from reporting but alternative approaches are not feasible due to:

- AFCARS data must be comprehensive per section 479(c)(3) of the Act and exempting some states from reporting the ICWA-related data elements is not consistent with this statutory mandate, and would render it difficult to use this data for development of national policies.

- Section 474(f) of the Act provides for mandatory penalties on the title IVE agency for non-compliance on AFCARS data that is based on the total amount expended by the title IV-E agency for administration of foster care activities. Therefore, we are not authorized to permit some states to be subject to a penalty and not others. In addition, allowing states an alternate submission process would complicate and/or prevent the assessment of penalties per 1355.47, including penalties for failure to submit data files free of cross-file errors, missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records.

**Anticipated Cost and Benefits:**

We estimate that costs for the final rule will be approximately \$36 million. Benefits are that we will have an updated AFCARS regulation for the first time since 1993 and we will have national data on Indian children as defined in ICWA.

**Risks:**

If we do not implement this final rule, agencies will continue to report information to AFCARS that is not up to date with revisions to the statute over the years. Further, without regulations, we are unable to implement the statutory penalty provisions. In addition, we will not collect comprehensive national data on the status of American Indian/ Alaska Native children to whom the Indian Child Welfare Act (ICWA) applies and historical data on children in foster care. We can expect criticisms from federally recognized Indian tribes and other stakeholders that the absence of ICWA data prevents understanding both how ICWA is implemented and how to address and reduce the disproportionate number of American Indian / Alaska Native children in foster care nationally.

**Timetable:**

Action	Date	FR Cite
NPRM	02/09/15	80 FR 7131
NPRM Comment Period End	04/10/15	

Final Action	12/00/16	
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**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State, Tribal

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**RIN:** 0970-AC47

HHS-ACF	
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**52. FLEXIBILITY, EFFICIENCY, AND MODERNIZATION OF CHILD SUPPORT ENFORCEMENT**

**PROGRAMS**

**Priority:**

Other Significant

**Legal Authority:**

sec. 1102 of the Social Security Act

**CFR Citation:**

45 CFR 301 to 305; 45 CFR 307

**Legal Deadline:**

None

**Abstract:**

This regulation will make child support program operations and enforcement procedures more flexible and more efficient by recognizing advancements in technology and the move toward electronic communications and document management. The regulation will improve and simplify program operations, remove outmoded limitations to program innovation to better serve families, and clarify and correct technical provisions in existing regulations.

**Statement of Need:**

This regulation will make child support program operations and enforcement procedures more flexible and more efficient by recognizing advancements in technology and the move toward electronic communications and document management. The regulation will improve and simplify program operations, remove outmoded limitations to program innovation to better serve families, and clarify and correct technical provisions in existing regulations.

**Summary of Legal Basis:**

This final rule is published under the authority granted to the Secretary of the Department of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Additionally, the Secretary has authority under section 452(a)(1) of the Act to establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support as he[she] determines to be necessary to assure that such programs will be effective. Rules promulgated under section 452(a)(1) must meet two conditions. First, the Secretary's designee must find that the rule meets one of the statutory objectives of locating noncustodial parents, establishing paternity, and

obtaining child support. Second, the Secretary's designee must determine that the rule is necessary to assure that such programs will be effective.

Section 454(13) requires a State plan to provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

While there are some costs associated with these regulations, they are not economically significant as defined under E.O. 12866. However, the regulation is significant and has been reviewed by OMB.

An area with associated Federal costs is modifying the child support statewide automated system for onetime system enhancements to accommodate new requirements such as notices, applications, and identifying noncustodial parents receiving SSI. This has a cost of approximate \$26,484,000. There is a cost of \$26,460,000 to modify statewide IVD systems for the 54 States or Territories at a cost of \$100 an hour (with an assumption that 27 States will implement the optional requirements). A cost of \$35,044 is designated to CMS' costs for State plan amendments and cooperative agreements. Another area associated with Federal costs is that of job services. We allow FFP for certain job services for noncustodial parents responsible for paying child support. The estimated total average annual net cost (over the first five years) of the job services proposal is \$26,096,596 with \$18,592,939 as the Federal cost. Thus, the total net cost of the final rule is \$52,591,640, and the total Federal costs is

\$36,074,061. These regulations will improve the delivery of child support services, support the efforts of noncustodial parents to provide for their children, and improve the efficiency of operations.

**Risks:**

**Timetable:**

Action	Date	FR Cite
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

Includes Retrospective Review under E.O. 13563.

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**DEPARTMENT OF HOMELAND SECURITY (DHS)**

**Fall 2016 Statement of Regulatory Priorities**

The Department of Homeland Security (DHS or Department) was created 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 this mission requires the dedication of more than 225,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. Our duties are wide-ranging, but our goal is clear—keeping America safe.

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 these goals, we are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the State, local, tribal, Federal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure, and we are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. For a further discussion of our mission, see the DHS Web site at <http://www.dhs.gov/our-mission>.

The regulations we have summarized below in the Department's fall 2016 regulatory plan and agenda support the Department's responsibility areas. 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 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.

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 takes particular concern 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.

#### *Retrospective Review of Existing Regulations*

Pursuant to Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), DHS identified the following regulatory actions as associated with retrospective review and analysis. Some of the regulatory actions on the below list may be completed actions, which do not appear in the regulatory plan. You can find more information about these completed rulemakings in past publications of the agenda (search the Completed Actions sections) on [www.reginfo.gov](http://www.reginfo.gov). Some of the entries on this list, however, are active rulemakings. You can find entries for these rulemakings on [www.regulations.gov](http://www.regulations.gov).

RIN	Rule
1615-AB95	Immigration Benefits Business Transformation, Increment II; Nonimmigrants Classes
1615-AC00	Enhancing Opportunities for H-1B1, CW-1, and E-3 Nonimmigrants and EB-1 Immigrants
1615-AC03	Expansion of Provisional Unlawful Presence Waivers of Inadmissibility
1625-AB80	Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners
1625-AC15	Seafarers' Access to Maritime Facilities
1651-AA96	Definition of Form I-94 to Include Electronic Format
1651-AB05	Freedom of Information Act (FOIA) Procedures

*Promoting International Regulatory Cooperation*

Pursuant to sections 3 and 4(b) of Executive Order 13609 “Promoting International Regulatory Cooperation” (May 1, 2012), DHS identified the following regulatory actions that have significant international impacts. Some of the regulatory actions on the below list may be completed actions. You can find more information about these completed rulemakings in past publications of the agenda (search the Completed Actions sections) on [www.reginfo.gov](http://www.reginfo.gov). Some of the entries on this list, however, are active rulemakings. You can find entries for these rulemakings on [www.regulations.gov](http://www.regulations.gov).

RIN	Rule
1625-AB38	Updates to Maritime Security
1651-AA70	Importer Security Filing and Additional Carrier Requirements
1651-AA98	Amendments to Importer Security Filing and Additional Carrier Requirements
1651-AA96	Definition of Form I-94 to Include Electronic Format

DHS participates in some international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations. For example, the U.S. Coast Guard is the primary U.S. representative to the International Maritime Organization (IMO) and plays a major leadership role in establishing international standards in the global maritime community. IMO's work to establish international standards for maritime safety, security, and environmental protection closely aligns with the U.S. Coast Guard regulations. As an IMO member nation, the U.S. is obliged to incorporate IMO treaty provisions not already part of U.S. domestic policy into regulations for those vessels affected by the international standards. Consequently, the U.S. Coast Guard initiates rulemakings to harmonize with IMO international standards such as treaty provisions and the codes, conventions, resolutions, and circulars that supplement them.

Also, President Obama and Prime Minister Harper created the Canada-U.S. Regulatory Cooperation Council (RCC) in February 2011. The RCC is an initiative between both Federal Governments aimed at pursuing greater alignment in regulation, increasing mutual recognition of regulatory practices and establishing smarter, more effective, and less burdensome regulations in specific sectors. The Canada-U.S. RCC initiative arose out of the recognition that high level, focused, and sustained effort would be required to reach a more substantive level of regulatory cooperation. Since its creation in early 2011, the U.S. Coast Guard has participated in stakeholder consultations with their Transport Canada counterparts and the public, drafted items for inclusion in the RCC Action Plan, and detailed work plans for each included Action Plan item.

The fall 2016 regulatory plan for DHS includes regulations from several DHS components, including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (Coast Guard), U.S. Customs and Border Protection (CBP), the U.S. Immigration and Customs Enforcement (ICE), the Federal Emergency Management Agency, the National Protection and Programs Directorate (NPPD), and the Transportation

Security Administration (TSA). Below is a discussion of the regulations that comprise the DHS fall 2016 regulatory plan.

### **United States Citizenship and Immigration Services**

U.S. Citizenship and Immigration Services (USCIS) administers immigration benefits and services while protecting and securing our homeland. USCIS has a strong commitment to welcoming individuals who seek entry through the U.S. immigration system, providing clear and useful information regarding the immigration process, promoting the values of citizenship, and assisting those in need of humanitarian protection. In the coming year, USCIS will promulgate several regulations that directly support these commitments and goals.

#### *Regulations to Facilitate Innovation and Employment Creation*

*International Entrepreneurs.* USCIS has proposed to establish a program that would allow for consideration of parole into the United States, on case-by-case basis, of certain inventors, researchers, and entrepreneurs who will establish a U.S. start-up entity, and who have been awarded substantial U.S. investor financing or otherwise hold the promise of innovation and job creation through the development of new technologies or the pursuit of cutting edge research. Based on investment, job-creation, and other factors, the entrepreneur may be eligible for temporary parole. Upon reviewing the public comments received in response to the notice of proposed rulemaking (NPRM), USCIS will develop a final rule.

*Employment Creation (EB-5) Immigrant Regulations* DHS will propose to amend its regulations governing the employment-based, fifth preference (EB-5) immigrant investor category and EB-5 regional centers to modernize the EB-5 program based on current economic realities and to reflect statutory changes made to the program. DHS will propose to update the regulations to include the following areas: priority date retention, increases to the required investment amounts, revision of the Targeted Employment Area requirements, clarification of the regional center designation and continued program participation requirements, and further definition of grounds for terminating regional centers.

### *Improvements to the Immigration System*

*Requirements for Filing Motions and Administrative Appeals.* USCIS will propose to revise the procedural regulations governing appeals and motions to reopen or reconsider before its Administrative Appeals Office. The rule will also propose to require that applicants and petitioners exhaust administrative remedies before seeking judicial review of an unfavorable decision. This rule will streamline the procedures before the Administrative Appeals Office and improve the efficiency of the adjudication process.

### *Regulatory Changes Involving Humanitarian Benefits*

*"T" and "U" Nonimmigrants.* USCIS is working on regulatory initiatives related to T nonimmigrants (victims of trafficking) and U nonimmigrants (victims of criminal activity). Through these initiatives, USCIS hopes to provide greater consistency in eligibility, application, and procedural requirements for these vulnerable groups, their advocates, and the community. These regulations will contain provisions to adjust documentary requirements for this vulnerable population and provide greater clarity to the law enforcement community.

*Special Immigrant Juvenile Petitions.* This final rule makes procedural changes and resolves interpretive issues following the amendments mandated by Congress. It will enable child aliens who have been abused, neglected, or abandoned and placed under the jurisdiction of a juvenile court or placed with an individual or entity, to obtain classification as Special Immigrant Juvenile. Such classification can regularize immigration status for these aliens and allow for adjustment of status to lawful permanent resident.

### **United States Coast Guard**

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

Effective governance in the maritime domain hinges upon an integrated approach to safety, security, and stewardship. The Coast Guard's policies and capabilities are integrated and interdependent, delivering results through a network of enduring partnerships. The Coast Guard's ability to field versatile capabilities and highly-trained personnel is 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. The regulatory projects in this fall 2016 regulatory plan and in the agenda contribute to the fulfillment of those responsibilities.

*Seafarers' Access to Maritime Facilities.* This regulatory action is necessary to implement section 811 of the Coast Guard Authorization Act of 2010, which requires facility owners and operators to ensure shore access for seafarers and other individuals. This regulation applies to owners and operators of facilities

regulated by the Coast Guard under the Maritime Transportation Safety Act of 2002. This regulation helps ensure that owners and operators provide seafarers assigned to vessels moored at the facility, pilots, and representatives of seamen's welfare and labor organizations with the ability to board and depart vessels to access the shore through the facility in a timely manner and at no cost to the seafarer.

*Commercial Fishing Vessels -- Implementation of 2010 and 2012 Legislation.* The Coast Guard is working to improve safety in the commercial fishing industry, which remains one of the most hazardous occupations in the United States. In 2016, the Coast Guard withdrew a rulemaking effort that had been superseded by statute, and instead proposed a rule to implement relevant mandatory provisions of the Coast Guard Authorization Act of 2010 and Coast Guard and Maritime Transportation Act of 2012. The proposed rule would add new requirements for safety equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. These requirements would affect an estimated 36,115 existing commercial fishing vessels. This rule is intended to reduce the risk of future fishing vessel casualties and, if a casualty does occur, to minimize the adverse impacts to crew and enable them to have the maximum opportunity to survive and to be rescued. The Coast Guard provided a public comment period of 180 days, ending in December 2016, and will consider all comments when developing the final rule.

### **United States Customs and Border Protection**

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

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

In carrying out its priority mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security. Consistent with its primary mission of homeland security, CBP intends to issue several regulations during the next fiscal year that are intended to improve security at our borders and ports of entry. CBP is also automating some procedures that increase efficiencies and reduce the costs and burdens to travelers. We have highlighted two of these regulations below.

*Air Cargo Advance Screening (ACAS).* The Trade Act of 2002, as amended, authorizes the Secretary of Homeland Security to promulgate regulations providing for the transmission, through an electronic data interchange system, of information to CBP pertaining to cargo to be brought into the United States or to be sent from the United States prior to the arrival or departure of the cargo. The cargo information required is that which the Secretary determines to be reasonably necessary to ensure cargo safety and security. CBP's current Trade Act regulations pertaining to air cargo require the electronic submission of various advance data to CBP no later than either the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations. CBP intends to propose amendments to these regulations to implement

the Air Cargo Advance Screening (ACAS) program. To improve CBP's risk assessment and targeting capabilities and to enable CBP to target, and identify, risky cargo prior to departure of the aircraft to the United States, ACAS would require the submission of certain of the advance electronic information for air cargo earlier in the process. In most cases, the information would have to be submitted as early as practicable but no later than prior to the loading of cargo onto an aircraft at the last foreign port of departure to the United States. CBP, in conjunction with TSA, has been operating ACAS as a voluntary pilot program since 2010 and intends to publish a notice of proposed rulemaking in the next fiscal year to implement ACAS as a regulatory program.

*Definition of Form I-94 to Include Electronic Format.* DHS issues the Form I-94 to certain aliens and uses the Form I-94 for various purposes such as documenting status in the United States, the approved length of stay, and departure. DHS generally issues the Form I-94 to aliens at the time they lawfully enter the United States. On March 27, 2013, CBP published an interim final rule amending existing regulations to add a new definition of the term "Form I-94." The new definition includes the collection of arrival/departure and admission or parole information by DHS, whether in paper or electronic format. The definition also clarified various terms that are associated with the use of the Form I-94 to accommodate an electronic version of the Form I-94. The rule also added a valid, unexpired nonimmigrant DHS admission or parole stamp in a foreign passport to the list of documents designated as evidence of alien registration. These revisions enabled DHS to transition to an automated process whereby DHS creates a Form I-94 in an electronic format based on passenger, passport and visa information that DHS obtains electronically from air and sea carriers and the Department of State as well as through the inspection process. CBP intends to publish a final rule during the next fiscal year.

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 (see the Department of the Treasury Regulatory Plan). In addition to its plans to continue issuing regulations to enhance border security, CBP, in the coming year, 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**

The Federal Emergency Management Agency's (FEMA's) mission is to support our citizens and first responders to ensure that as a Nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from and mitigate all hazards. FEMA's ethos is to serve the Nation by helping its people and first responders, especially when they are most in need. FEMA will promulgate several rulemakings to support its mission, one of which we highlight below.

*Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard (FFRMS).* The rule proposes to amend existing FEMA regulations to implement Executive Order 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input." FEMA is also proposing a supplementary policy that would further clarify how FEMA applies the FFRMS. FEMA published a notice of proposed rulemaking on August 22, 2016 and will work on finalizing that rule in the coming fiscal year.

## **Federal Law Enforcement Training Center**

The Federal Law Enforcement Training Center (FLETC) does not have any significant regulatory actions planned for fiscal year 2017.

## **United States Immigration and Customs Enforcement**

U.S. Immigration and Customs Enforcement (ICE) is the principal criminal investigative arm of DHS and one of the three Department components charged with the 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 the coming year, ICE will focus its rulemaking efforts on increasing security in the area of student and exchange visitor programs.

*Eligibility Checks of Nominated and Current Designated School Officials of Schools That Enroll F and M Nonimmigrant Students and of Exchange Visitor Program-Designated Sponsors of J Nonimmigrants.*

DHS will issue a rule proposing to strengthen the mechanism for approving user access to one of its data-management systems, the Student and Exchange Visitor Information System (SEVIS). DHS and the Department of State, rely on principal designated school officials, designated school officials, responsible officers, and alternate responsible officers (collectively, P/DSOs, DSOs and RO/AROs) as key links in the process to mitigate potential threats to national security and to ensure compliance with immigration law by aliens admitted into the United States in F, J, or M nonimmigrant status. Through this rule, DHS would require that anyone nominated to serve as a P/DSO, DSO, or RO/ARO receive a favorable SEVIS Access Approval Process assessment prior to their appointment and subsequent approval for access to SEVIS. The primary benefit of this rule would be to reduce the potential for fraud.

## **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.

*Chemical Facility Anti-Terrorism Standards.* Recognizing both the importance of the Nation's chemical facilities to the American way of life and the need to secure high-risk chemical facilities against terrorist attacks, in December 2014 Congress passed, and the President signed into law, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Pub. L. 113-254. This legislation provides the Department continuing authority to implement the Chemical Facility Anti-Terrorism Standards (CFATS) regulatory program, a program mandating that high-risk chemical facilities in the United States develop and implement security plans satisfying risk-based performance standards established by DHS.

The CFATS regulations have been in effect since 2007. On August 18, 2014, the Department published an advance notice of proposed rulemaking (ANPRM) seeking public comment on ways to make the program more effective. The Department will continue this rulemaking effort and intends to publish a notice of proposed rulemaking (NPRM). The NPRM will propose modifications to CFATS based on the public comments received in response to the ANPRM and on program implementation experience. The NPRM will also propose modifications to CFATS in order to align the existing regulation with the requirements of the 2014 legislation. Through the rule, NPPD seeks to harmonize the regulation with its statutory authority and to make the CFATS program more efficient and effective.

### **Transportation Security Administration**

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA is committed to continuously setting the standard

for excellence in transportation security through its people, processes, and technology as we work to meet the immediate and long-term needs of the transportation sector.

For the coming fiscal year, TSA is prioritizing regulations related to requirements for surface transportation included in the 9/11 Act. These rulemakings will include the following ones:

*Security Training for Surface Transportation Employees.* TSA will propose regulations requiring higher-risk public transportation agencies (including rail mass transit and bus systems), railroad carriers (freight and passenger), and over-the-road bus (OTRB) owner/operators to conduct security training for frontline employees. This regulation will implement sections 1408 (public transportation), 1517 (railroads), and 1531(e) and 1534 (OTRBs) of the 9/11 Act. In compliance with the definitions of frontline employees in the pertinent provisions of the 9/11 Act, the notice of proposed rulemaking (NPRM) will include identification of which employees are required to receive security training and the content of that training. The NPRM will also propose definitions for transportation security-sensitive materials, as required by section 1501 of the 9/11 Act.

*Surface Transportation Vulnerability Assessments and Security Plans.* TSA will publish an advance notice of proposed rulemaking (ANPRM) regarding a future rulemaking that will propose requiring higher-risk public transportation agencies (including rail mass transit and bus systems), railroads (freight and passenger), and OTRB owner/operators to conduct vulnerability assessments and develop/implement security plans. This regulation will propose to implement sections 1405 (public transportation), 1512 (railroads), and 1531 (OTRBs) of the 9/11 Act.

*Vetting of Certain Surface Transportation Employees.* TSA will propose regulations 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 OTRB owner/operators. The NPRM will also include proposed provisions to implement TSA’s statutory requirement to recover its cost of vetting through user fees. This regulation will implement sections 1414 (public transportation), 1522 (railroads), and 1531(e)(2) (over-the-road buses) of the 9/11 Act.

**United States Secret Service**

The United States Secret Service does not have any significant regulatory actions planned for fiscal year 2017.

**DHS Regulatory Plan for Fiscal Year 2017**

A more detailed description of the priority regulations that comprise the DHS fall regulatory plan follows.

<b>DHS—Office of the Secretary(OS)</b>	<b>PROPOSED RULE STAGE</b>
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**53. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS (CFATS)**

**Priority:**

Other Significant

**Legal Authority:**

sec 550 of the Department of Homeland Security Appropriations Act of 2007 Pub. L. 109–295, as amended

**CFR Citation:**

6 CFR 27

**Legal Deadline:**

None

**Abstract:**

The Department of Homeland Security (DHS) previously invited public comment on an advance notice of proposed rulemaking (ANPRM) for potential revisions to the Chemical Facility Anti-Terrorism Standards (CFATS) regulations. The ANPRM provided an opportunity for the public to provide recommendations for possible program changes. DHS is reviewing the public comments received in response to the ANPRM, after which DHS intends to publish a Notice of Proposed Rulemaking.

**Statement of Need:**

DHS intends to propose several potential program changes to the CFATS regulation. These changes have been identified in the nine years since program implementation. In addition, in December 2014, a new law (the Protecting and Securing Chemical Facilities From Terrorist Attacks Act of 2014) was enacted which provides DHS continuing authority to implement CFATS. DHS must make several modifications and additions to conform the CFATS regulation with the new law.

**Summary of Legal Basis:**

The Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113-254) added Title XXI to the Homeland Security Act of 2002 (HSA) to authorize in permanent law a Chemical Facility Anti-terrorism Standards (CFATS) program. See 6 U.S.C. 621 *et seq.* Title XXI supersedes section 550 of the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295, under which the CFATS program was originally established in April 2007. Section 2107(a) of the HSA specifically authorizes DHS to "promulgate regulations or amend existing CFATS regulations to implement the provisions under [Title XXI]. 6 U.S.C. 627(a). In addition, section 2107(b)(2) of the HSA requires DHS to repeal any existing CFATS regulation that [DHS] determines is duplicative of, or conflicts with, [Title XXI]. 6 U.S.C. 627(b)(2).

**Alternatives:**

**Anticipated Cost and Benefits:**

The ANPRM provided an opportunity for the public to provide recommendations for possible program changes. DHS is reviewing the public comments received in response to the ANPRM, after which DHS intends to publish a Notice of Proposed Rulemaking (NPRM).

**Risks:**

**Timetable:**

Action	Date	FR Cite
ANPRM	08/18/14	79 FR 48693
ANPRM Comment Period End	10/17/14	
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, Local, State

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1601-AA69

<b>DHS—U.S. Citizenship and Immigration Services(USCIS)</b>	<b>PROPOSED RULE STAGE</b>
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**54. NEW CLASSIFICATION FOR VICTIMS OF CRIMINAL ACTIVITY; ELIGIBILITY FOR THE U  
NONIMMIGRANT STATUS**

**Priority:**

Other Significant

**Legal Authority:**

5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1101 (note); 8 U.S.C. 1102; Pub. L. 113-4

**CFR Citation:**

8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

**Legal Deadline:**

None

**Abstract:**

This rule proposes new application and eligibility requirements for U nonimmigrant status. The U classification is for non-U.S. citizen/lawful permanent resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per fiscal year. This rule would propose to establish new procedures to be followed to petition for the U nonimmigrant classifications. Specifically, the rule would address the essential elements that must be demonstrated to

receive the nonimmigrant classification, procedures that must be followed to file a petition and evidentiary guidance to assist in the petitioning process. Eligible victims would be allowed to remain in the United States if granted U nonimmigrant status. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, and the Violence Against Women Reauthorization Act (VAWA) of 2013, Public Law 113-4, made amendments to the U nonimmigrant status provisions of the Immigration and Nationality Act. The Department of Homeland Security had issued an interim final rule in 2007.

**Statement of Need:**

This regulation is necessary to allow alien victims of certain crimes to petition for U nonimmigrant status. U nonimmigrant status is available to eligible victims of certain qualifying criminal activity who: (1) have suffered substantial physical or mental abuse as a result of the qualifying criminal activity; (2) the alien possesses information about the crime; (3) the alien has been, is being, or is likely to be helpful in the investigation or prosecution of the crime; and (4) the criminal activity took place in the United States, including military installations and Indian country, or the territories or possessions of the United States. This rule addresses the eligibility requirements that must be met for classification as a U nonimmigrant alien and implements statutory amendments to these requirements, streamlines the procedures to petition for U nonimmigrant status, and provides evidentiary guidance to assist in the petition process.

**Summary of Legal Basis:**

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA) to provide immigration relief for alien victims of certain qualifying criminal activity and who are helpful to law enforcement in the investigation or prosecution of these crimes.

**Alternatives:**

To provide victims with immigration benefits and services and keeping in mind the purpose of the U visa as a law enforcement tool, DHS is considering and using suggestions from stakeholders in developing this regulation. These suggestions came in the form of public comment from the 2007 interim final rule as

well as USCIS' six years of experience with the U nonimmigrant status program, including regular meetings and outreach events with stakeholders and law enforcement.

**Anticipated Cost and Benefits:**

DHS estimated the total annual cost of the interim rule to petitioners to be \$6.2 million in the interim final rule published in 2007. This cost included the biometric services fee, the opportunity cost of time needed to submit the required forms, the opportunity cost of time required and cost of traveling to visit a USCIS Application Support Center. DHS is currently in the process of updating our cost estimates since U nonimmigrant visa petitioners are no longer required to pay the biometric services fee. The anticipated benefits of these expenditures include assistance to victims of qualifying criminal activity and their families and increases in arrests and prosecutions of criminals nationwide. Additional benefits include heightened awareness by law enforcement of victimization of aliens in their community, and streamlining the petitioning process so that victims may benefit from this immigration relief.

**Risks:**

There is a statutory cap of 10,000 principal U nonimmigrant visas that may be granted per fiscal year at 8 U.S.C. 1184(p)(2). Eligible petitioners who are not granted principal U-1 nonimmigrant status due solely to the numerical limit will be placed on a waiting list maintained by U.S. Citizenship and Immigration Services (USCIS). To protect U-1 petitioners and their families, USCIS will use various means to prevent the removal of U-1 petitioners and their eligible family members on the waiting list, including exercising its authority to allow deferred action, parole, and stays of removal, in cooperation with other DHS components.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	09/17/07	72 FR 53013
Interim Final Rule Effective	10/17/07	
Interim Final Rule Comment	11/17/07	

Period End		
NPRM	08/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

Transferred from RIN 1115-AG39

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1615-AA67

## 55. REQUIREMENTS FOR FILING MOTIONS AND ADMINISTRATIVE APPEALS

**Priority:**

Other Significant

**Legal Authority:**

5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1304; 6 U.S.C. 112

**CFR Citation:**

8 CFR 103; 8 CFR 204; 8 CFR 205; 8 CFR 210; 8 CFR 214; 8 CFR 245a; 8 CFR 320; 8 CFR 105

(new); ...

**Legal Deadline:**

None

**Abstract:**

This proposed rule proposes to revise the requirements and procedures for the filing of motions and appeals before the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and its Administrative Appeals Office (AAO). The proposed changes are intended to streamline the existing processes for filing motions and appeals and will reduce delays in the review and appellate process. This rule also proposes additional changes necessitated by the establishment of DHS and its components. The proposed changes are intended to promote simplicity, accessibility, and efficiency in the administration of USCIS appeals. The Department also solicits public comment on proposed changes to the AAO's appellate jurisdiction.

**Statement of Need:**

This rule proposes to make numerous changes to streamline the current appeal and motion processes which: (1) Will result in cost savings to the Government, applicants, and petitioners; and (2) will provide for a more efficient use of USCIS officer and clerical staff time, as well as more uniformity with Board of Immigration Appeals appeal and motion processes.

**Summary of Legal Basis:**

5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101 and notes 1102, 1103, 1151, 1153, 1154, 1182, 1184, 1185 note (sec. 7209 of Pub. L. 108-458; title VII of Pub. L. 110-229), 1186a, 1187, 1221,1223, 1225 to 1227, 1255a, and 1255a note, 1281, 1282, 1301 to 1305, 1324a ,1356, 1372, 1379, 1409(c), 1443 to 1444, 1448, 1452, 1455, 1641, 1731 to 1732; 31 U.S.C. 9701; 48 U.S.C. 1901, 1931 note; section 643, Public Law 104-208, 110, Stat. 3009-708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau; title VII of Public Law 110-229; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); Public Law 82-414, 66 Stat. 173, 238, 254, 264; title VII of Public Law 110-229; Executive Order 12356.

**Alternatives:**

The alternative to this rule would be to continue under the current process without change.

**Anticipated Cost and Benefits:**

As a result of streamlining the appeal and motion process, DHS anticipates quantitative and qualitative benefits to DHS and the public. We also anticipate cost savings to DHS and applicants as a result of the proposed changes.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Governmental Jurisdictions

**Government Levels Affected:**

None

**Additional Information:**

Previously 1615-AB29 (CIS 2311-04), which was withdrawn in 2007.

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**Related RIN:**

Duplicate of 1615–AB29

**RIN:** 1615–AB98

DHS—USCIS	
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**56. IMPROVEMENT OF THE EMPLOYMENT CREATION IMMIGRANT REGULATIONS**

**Priority:**

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

**Legal Authority:**

8 U.S.C. 1153(b)(5)

**CFR Citation:**

8 CFR 204.6

**Legal Deadline:**

None

**Abstract:**

DHS proposes to amend its regulations governing the employment-based, fifth preference (EB-5) immigrant entrepreneur category and EB-5 regional centers to modernize the EB-5 program based on current economic realities and to reflect statutory changes made to the program. DHS is proposing to update the regulations to include the following areas: priority date retention, increases to the required investment amounts, revision of the Targeted Employment Area requirements, clarification of the regional center designation and continued program participation requirements, and further definition of grounds for terminating regional centers.

**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 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 107-273.

**Alternatives:**

**Anticipated Cost and Benefits:**

As a result of these amendments and resulting modernized program, DHS believes that regional centers, entrepreneurs, and the Federal each benefit. This rule would benefit regional centers by clarifying the requirements for designation and continued participation in the EB-5 program, making the application process more transparent for regional centers and streamlined to improve DHS operational efficiencies. The rule would benefit entrepreneurs seeking to participate in the program by providing the opportunity to mitigate the harsh consequences of unexpected changes to business conditions through priority date retention in limited circumstances. This rule would also provide a more transparent process for entrepreneurs seeking to participate in the regional center program by providing increased consistency and predictability of adjudications through the clarified regional center continued program participation requirements. These changes will also streamline the adjudication process and improve DHS operational efficiencies, resulting in improved adjudication times. Finally, the Federal Government will benefit from clarifications and enhancements to the EB-5 program to strengthen program integrity, reducing the risk of fraud and national security concerns in the program, as well as improving operational efficiencies to reduce overall program costs.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**Related RIN:**

Related to 1205–AB69

**RIN:** 1615–AC07

DHS—USCIS	FINAL RULE STAGE
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**57. CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS;**

**ELIGIBILITY FOR T NONIMMIGRANT STATUS**

**Priority:**

Other Significant

**Legal Authority:**

5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101 to 1104; 8 U.S.C. 1182; 8 U.S.C. 1184; 8 U.S.C. 1187; 8 U.S.C. 1201; 8 U.S.C. 1224 to 1227; 8 U.S.C. 1252 to 1252a; 22 U.S.C. 7101; 22 U.S.C. 7105; Pub. L.

113–4

**CFR Citation:**

8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

**Legal Deadline:**

None

**Abstract:**

The T nonimmigrant classification was created by the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386. The classification was designed for eligible victims of severe forms of trafficking in persons who aid law enforcement with their investigation or prosecution of the traffickers, and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States. The rule streamlines application procedures and responsibilities for the Department of Homeland Security (DHS) and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status. Several reauthorizations, including the Violence Against Women Reauthorization Act of 2013, Public Law 113-4, have made amendments to the T nonimmigrant status provisions in the Immigration and Nationality Act. This rule implements those amendments.

**Statement of Need:**

This rule addresses the essential elements that must be demonstrated for classification as a T nonimmigrant alien and implements statutory amendments to these elements, streamlines the procedures to be followed by applicants to apply for T nonimmigrant status, and provides evidentiary guidance to assist in the application process.

**Summary of Legal Basis:**

Section 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 Public Law 106-386, as amended, established the T classification to provide immigration relief for certain eligible victims of severe forms of trafficking in persons who assist law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.

**Alternatives:**

To provide victims with immigration benefits and services, keeping in mind the purpose of the T visa to also serve as a law enforcement tool, DHS is considering and using suggestions from stakeholders in developing this regulation. These suggestions came in the form of public comment to the 2002 interim final rule, as well as from over 10 years of experience with the T nonimmigrant status program, including regular meetings with stakeholders and regular outreach events.

**Anticipated Cost and Benefits:**

Applicants for T nonimmigrant status do not pay application or biometric fees. The anticipated benefits of this rule include: assistance to trafficked victims and their families; an increase in the number of cases brought forward for investigation and/or prosecution of traffickers in persons; heightened awareness by the law enforcement community of trafficking in persons; and streamlining the application process for victims.

**Risks:**

There is a 5,000-person limit to the number of individuals who can be granted T-1 status per fiscal year. Eligible applicants who are not granted T-1 status due solely to the numerical limit will be placed on a waiting list maintained by U.S. Citizenship and Immigration Services (USCIS). To protect T-1 applicants and their families, USCIS will use various means to prevent the removal of T-1 applicants on the waiting list, and their family members who are eligible for derivative T status, including its existing authority to grant deferred action, parole, and stays of removal, in cooperation with other DHS components.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	01/31/02	67 FR 4784
Interim Final Rule Effective	03/04/02	
Interim Final Rule Comment	04/01/02	

Period End		
Interim Final Rule	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

Transferred from RIN 1115-AG19

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1615-AA59

## 58. SPECIAL IMMIGRANT JUVENILE PETITIONS

**Priority:**

Other Significant

**Legal Authority:**

8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1151; 8 U.S.C. 1153; 8 U.S.C. 1154

**CFR Citation:**

8 CFR 204; 8 CFR 205; 8 CFR 245

**Legal Deadline:**

None

**Abstract:**

The Department of Homeland Security (DHS) is amending its regulations governing the Special Immigrant Juvenile (SIJ) classification and related applications for adjustment of status to permanent resident. Special Immigrant Juvenile classification is a humanitarian-based immigration protection for children who cannot be reunified with one or both parents because of abuse, neglect, abandonment, or a similar basis found under State law. This final rule implements updates to eligibility requirements and other changes made by the Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457. DHS received comments on the proposed rule in 2011 and intends to issue a final rule in the coming year.

**Statement of Need:**

This rule would address the eligibility requirements that must be met for SIJ classification and related adjustment of status, implement statutory amendments to these requirements, and provide procedural and evidentiary guidance to assist in the petition process.

**Summary of Legal Basis:**

Congress established the SIJ classification in the Immigration Act of 1990 (IMMACT). The 1998 Appropriations Act amended the SIJ classification by limiting eligibility to children declared dependent on a juvenile court because of abuse, abandonment, or neglect and creating consent functions. The Trafficking Victims Protection Reauthorization Act of 2008 made many changes to the SIJ classification including: (1) creating a requirement that the petitioner's reunification with one or both parents not be viable due to abuse, abandonment, neglect, or a similar basis under State law; (2) expanding the population of children who may be eligible to include those placed by a juvenile court with an individual or entity; (3) modifying the consent functions; (4) providing age-out protection; and (5) creating a timeframe for adjudications.

**Alternatives:**

DHS is considering and using suggestions from stakeholders to keep in mind the vulnerable nature of abused, abandoned and neglected children in developing this regulation. These suggestions came in the form of public comment from the 2011 proposed rule.

**Anticipated Cost and Benefits:**

In the 2011 proposed rule, DHS estimated there would be no additional regulatory compliance costs for petitioning individuals or any program costs for the Government as a result of the proposed amendments. Qualitatively, DHS estimated that the proposed rule would codify the practices and procedures currently implemented via internal policy directives issued by USCIS, thereby establishing clear guidance for petitioners. DHS is currently in the process of updating our final cost and benefit estimates.

**Risks:**

The failure to promulgate a final rule in this area presents significant risk of further inconsistency and confusion in the law. The Government's interests in fair, efficient, and consistent adjudications would be compromised.

**Timetable:**

Action	Date	FR Cite
NPRM	09/06/11	76 FR 54978
NPRM Comment Period End	11/07/11	
Final Rule	05/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1615-AB81

**59. INTERNATIONAL ENTREPRENEUR****Priority:**

Other Significant

**Legal Authority:**

8 U.S.C. 1182(d)(5)(A)

**CFR Citation:**

8 CFR 212.5

**Legal Deadline:**

None

**Abstract:**

The Department of Homeland Security (DHS) proposed to amend its regulations implementing the Secretary of Homeland Security's discretionary parole authority to increase and enhance entrepreneurship, innovation, and job creation in the United States. The rule would add new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities whose entry into the United States would provide a significant public benefit through the substantial and demonstrated potential for rapid business growth and job creation. Such potential would be indicated by, among other things, the receipt of significant capital investment from U.S. investors with established records of successful investments, or obtaining significant awards or grants from certain Federal, State or local government entities.

**Statement of Need:**

The Immigration and Nationality Act (INA) authorizes the Secretary, in the exercise of discretion, to parole arriving aliens into the United States on a case-by-case basis for urgent humanitarian reasons or significant public benefit. INA section 212(d)(5), 8 U.S.C. 1182(d)(5). This regulation explains and clarifies

how DHS determines what provides, per the INA, a significant public benefit to the U.S. economy with respect to entrepreneur parolees.

This regulation focuses specifically on the significant economic public benefit provided by foreign entrepreneurs because of the particular benefit they bring to the U.S. economy. However, the full potential of foreign entrepreneurs to benefit the U.S. economy is limited by the fact that many foreign entrepreneurs do not qualify under existing nonimmigrant and immigrant classifications. Given the technical nature of entrepreneurship, and the limited guidance to date on what constitutes a significant public benefit, DHS believes that it is necessary to establish the conditions of such an economically-based significant public benefit parole by regulation. Combined with a unique application process, the goal is to ensure that the high standard set by the statute authorizing significant public benefit parole is uniformly met across adjudications.

In this rule, DHS is proposing to establish the conditions for significant public benefit parole with respect to certain entrepreneurs and start-up founders backed by U.S. investors or grants. DHS believes that this proposal, once implemented, would encourage entrepreneurs to create and develop start-up entities in the United States with high growth potential to create jobs for U.S. workers and benefit the U.S. economy. U.S. competitiveness would increase by attracting more entrepreneurs to the United States. This proposal provides a fair, transparent, and predictable framework by which DHS will exercise its discretion to adjudicate, on a case-by-case basis, such parole requests under the existing statutory authority at INA section 212(d)(5), 8 U.S.C. 1182(d)(5).

Lastly, this proposed rule provides a pathway, based on authority currently provided to the Secretary, for entrepreneurs to develop businesses in the United States, create jobs for U.S. workers, and, at the same time, establish a track record of experience and/or accomplishments. Such a track record may lead to meeting eligibility requirements for existing nonimmigrant or immigrant classifications.

**Summary of Legal Basis:**

The Secretary's 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 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 INA section 212(d)(5), 8 U.S.C. 1182(d)(5), which refers to the Secretary's discretionary authority to grant parole and provides DHS with regulatory authority to establish terms and conditions for parole once authorized.

**Alternatives:**

**Anticipated Cost and Benefits:**

DHS estimates the costs of the rule are directly linked to the application fee and opportunity costs associated with requesting significant public benefit parole. DHS does not estimate there will be any negative impacts to the U.S. economy as a result of this rule. Economic benefits can be expected from this rule, because some number of new ventures and research endeavors will be conducted in the United States that otherwise would not. It is reasonable to assume that investment and research spending on new firms associated with this proposed rule will directly and indirectly benefit the U.S. economy and job creation. In addition, innovation and research and development spending are likely to generate new patents and new technologies, further enhancing innovation. Some portion of the immigrant entrepreneurs likely to be attracted to this parole program may develop high impact firms that can be expected to contribute disproportionately to job creation.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	08/31/16	81 FR 60129
NPRM Comment Period End	10/17/16	
Final Action	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1615-AC04

DHS—USCIS	
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**60. RETENTION OF EB-1, EB-2, AND EB-3 IMMIGRANT WORKERS AND PROGRAM IMPROVEMENTS AFFECTING HIGHLY-SKILLED H-1B NONIMMIGRANT WORKERS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

6 U.S.C. 112; 8 U.S.C. 1154 and 1155; 8 U.S.C. 1184; 8 U.S.C. 1255; 8 U.S.C. 1324a

**CFR Citation:**

8 CFR 204 to 205; 8 U.S.C. 214; 8 CFR 245; 8 CFR 274a

**Legal Deadline:**

None

**Abstract:**

In December 2015, the Department of Homeland Security (DHS) proposed to amend its regulations affecting certain employment-based immigrant and nonimmigrant classifications. This rule proposes to amend current regulations to provide stability and job flexibility for the beneficiaries of approved employment-based immigrant visa petitions while they wait to become lawful permanent residents. DHS is also proposing to conform its regulations with the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act (the 21<sup>st</sup> Century DOJ Appropriations Act), as well as the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The rule also seeks to clarify several interpretive questions raised by ACWIA and AC21 regarding H-1B petitions, and incorporate relevant AC21 policy memoranda and an Administrative Appeals Office precedent decision, and would ensure that DHS practice is consistent with them.

**Statement of Need:**

This rule provides needed stability and flexibility to certain employment-based immigrants while they wait to become lawful permanent residents. These amendments would support U.S. employers by better enabling them to hire and retain highly skilled and other foreign workers. DHS proposes to accomplish this, in part, by implementing certain provisions of ACWIA and AC21, as amended by the 21st Century DOJ Appropriations Act. The 21st Century DOJ Appropriations Authorization Act, which will impact certain foreign nationals seeking permanent residency in the United States, as well as H-1B workers. Further, by

clarifying interpretive questions related to these provisions, this rulemaking would ensure that DHS practice is consistent with statute.

**Summary of Legal Basis:**

The authority of the Secretary of Homeland Security (Secretary) for these regulatory amendments can be found in 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 pertinent part, ACWIA authorized the Secretary to impose a fee on certain H-1B petitioners which would be used to train American workers, and AC21 provides authority to increase access to foreign workers as well as to train U.S. workers. In addition, section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), recognizes the Secretary's authority to extend employment to noncitizens in the United States, and section 205 of the INA, 8 U.S.C. 1155, recognizes the Secretary's authority to exercise discretion in determining the revocability of any petition approved by him under section 204 of the INA.

**Alternatives:**

The alternative would be to continue under current procedures without change.

**Anticipated Cost and Benefits:**

The proposed amendments would increase the incentive of highly-skilled and other foreign workers who have begun the immigration process to remain in and contribute to the U.S. economy as they complete the process to adjust status to or otherwise acquire lawful permanent resident status, thereby minimizing disruptions to petitioning U.S. employers. Attracting and retaining highly-skilled persons is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which are highly correlated with overall economic growth and job creation.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	12/31/15	80 FR 81900
NPRM Comment Period End	02/29/16	
Final Rule	11/00/16	
Final Rule Effective	01/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Organizations

**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:**

1615-AB97 will be merged under this rule, 1615-AC05.

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Related to 1615-AB97

**RIN:** 1615-AC05

DHS—U.S. Coast Guard(USCG)	PROPOSED RULE STAGE
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**61. COMMERCIAL FISHING VESSELS—IMPLEMENTATION OF 2010 AND 2012 LEGISLATION**

**Priority:**

Other Significant

**Legal Authority:**

Pub. L. 111-281

**CFR Citation:**

46 CFR 28; 46 CFR 42

**Legal Deadline:**

Other, Statutory, CGAA 2010 Requirements in effect since 10/15/2010.

**Abstract:**

The Coast Guard proposes to implement those requirements of 2010 and 2012 legislation that pertain to uninspected commercial fishing industry vessels and that took effect upon enactment of the legislation but that, to be implemented, require amendments to Coast Guard regulations affecting those vessels. The applicability of the regulations is being changed, and new requirements are being added to safety training, equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. This rulemaking promotes the Coast Guard's maritime safety mission.

**Statement of Need:**

The Coast Guard proposes to align its commercial fishing industry vessel regulations with the mandatory provisions of 2010 and 2012 legislation passed by Congress that took effect upon enactment. The alignments would change the applicability of current regulations, and add new requirements for safety equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. This rule only proposes to implement these legislative mandates, would exercise no Coast Guard regulatory discretion, and would promote the Coast Guard's maritime safety mission.

**Summary of Legal Basis:****Alternatives:****Anticipated Cost and Benefits:**

We estimate that, as a result of this rulemaking, owners and operators of certain commercial fishing vessels would incur additional annualized costs, discounted at 7 percent, of \$34.2 million. We estimate the annualized cost, discounted at 7 percent, to government of \$5.4 million, for a total annualized cost of \$39.7 million. For commercial fishing vessels that operate beyond 3 nautical miles, the cost of this rulemaking would involve provisions for carriage of survival craft, recordkeeping of lifesaving and fire equipment maintenance, and dockside safety examinations once every 5 years. Also, certain newly built commercial fishing vessels would have to undergo survey and classification. We believe that the rule based on Congressional mandates will address a wide range of causes of commercial fishing vessel accidents and supports the main goal of improving safety and survivability in the commercial fishing industry. The primary benefit of the proposed rule is an increase in safety and a resulting decrease in the risk of accidents and their consequences, primarily fatalities. We estimate an annualized benefit of \$7.1 to \$9.4 million from this rule, discounted at 7 percent.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	06/21/16	81 FR 40437
NPRM Comment Period Extended	08/15/16	81 FR 53986
NPRM Comment Period End	10/19/16	
Second NPRM Comment Period End	12/18/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

Docket ID USCG-2012-0025.

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**Related RIN:**

Related to 1625-AA77

DHS—USCG	FINAL RULE STAGE
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**62. SEAFARERS' ACCESS TO MARITIME FACILITIES**

**Priority:**

Other Significant

**Legal Authority:**

33 U.S.C. 1226; 33 U.S.C. 1231; Pub. L. 111-281, sec 811

**CFR Citation:**

33 CFR 101.112(b); 33 CFR 105.200; 33 CFR 105.237; 33 CFR 105.405

**Legal Deadline:**

None

**Abstract:**

This regulatory action will implement section 811 of the Coast Guard Authorization Act of 2010 (Pub. L. 111-281), which requires the owner/operator of a facility regulated by the Coast Guard under the Maritime Transportation Security Act of 2002 (Pub. L. 107-295) (MTSA) to provide a system that enables seafarers and certain other individuals to transit between vessels moored at the facility and the facility gate in a timely manner at no cost to the seafarer or other individual. Ensuring that such access through a facility is consistent with the security requirements in MTSA is part of the Coast Guard's Ports, Waterways, and Coastal Security (PWCS) mission.

**Statement of Need:**

The Coast Guard's final rule would require each owner or operator of a facility regulated by the Coast Guard to implement a system that provides seafarers and other individuals with access between vessels moored at the facility and the facility gate, in a timely manner and at no cost to the seafarer or other individual. Generally, transiting through a facility is the only way that a seafarer or other individual can

egress to shore beyond the facility to access basic shoreside businesses and services, and meet with family members and other personnel that do not hold a Transportation Worker Identification Credential. This proposed rule would help to ensure that no facility owner or operator denies or makes it impractical for seafarers or other individuals to transit through the facility, and would require them to document their access procedures in their Facility Security Plans. This final rule would implement section 811 of the Coast Guard Authorization Act of 2010.

**Summary of Legal Basis:**

**Alternatives:**

**Anticipated Cost and Benefits:**

We estimate that, as a result of this rulemaking, owners or operators of a facility regulated by the Coast Guard would incur additional annualized costs, discounted at 7 percent, of \$2.82 million. We estimate the annualized cost, discounted at 7 percent, to government of \$8,000 for a total annualized cost of \$2.83 million. Owners and operators of a facility regulated by the Coast Guard will incur costs to implement a system that provides seafarers and other individuals with access between the shore and vessels moored at the facility. We believe that the rule based on Congressional mandates will provide access through facilities for an average of 907 seafarers and other covered individuals that were otherwise denied access annually, thus ensuring the safety, health and welfare of seafarers. The rule will also reduce regulatory uncertainty by harmonizing regulations with Sec. 811 of Pub. L. 111281 and conforms to the intent of the ISPS Code.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	12/29/14	79 FR 77981
NPRM Comment Period	05/27/15	80 FR 30189

Reopened		
NPRM Comment Period End	07/01/15	
Final Rule	08/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

Includes Retrospective Review under Executive Order 13563.

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1625-AC15

<b>DHS—U.S. Customs and Border Protection(USCBP)</b>	<b>PROPOSED RULE STAGE</b>
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### **63. AIR CARGO ADVANCE SCREENING (ACAS)**

**Priority:**

Other Significant

**Legal Authority:**

19 U.S.C. 2071 note

**CFR Citation:**

19 CFR 122

**Legal Deadline:**

None

**Abstract:**

U.S. Customs and Border Protection (CBP) is proposing to amend the implementing regulations of the Trade Act of 2002 regarding the submission of advance electronic information for air cargo and other provisions to provide for the Air Cargo Advance Screening (ACAS) program. ACAS would require the submission of certain advance electronic information for air cargo. This will allow CBP to better target and identify dangerous cargo and ensure that any risk associated with such cargo is mitigated before the aircraft departs for the United States. CBP, in conjunction with Transportation Security Administration, has been operating ACAS as a voluntary pilot program since 2010 and would like to implement ACAS as a regulatory program.

**Statement of Need:**

DHS has identified an elevated risk associated with cargo being transported to the United States by air. This rule will help address this risk by giving DHS the data it needs to improve targeting of the cargo prior to takeoff.

**Summary of Legal Basis:**

The Trade Act of 2002 authorizes CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation. Under the Trade Act, the required cargo information is that which is reasonably necessary to ensure cargo safety and security pursuant to the laws enforced and administered by CBP.

**Alternatives:**

In addition to the proposed rule, CBP analyzed two alternatives - Requiring the data elements to be transmitted to CBP further in advance than the proposed rule requires; and requiring fewer data elements. CBP concluded that the proposal rule provides the most favorable balance between security outcomes and impacts to air transportation.

**Anticipated Cost and Benefits:**

To improve CBP's risk assessment and targeting capabilities and to enable CBP to target and identify risk cargo prior to departure of the aircraft to the United States, ACAS would require the submission of certain of the advance electronic information for air cargo earlier in the process. In most cases, the information would have to be submitted as early as practicable, but no later than prior to the loading of cargo onto an aircraft at the last foreign port of departure to the United States. CBP, in conjunction with TSA, has been operating ACAS as a voluntary pilot program since 2010. CBP believes this pilot program has proven successful by not only mitigating risks to the United States, but also minimizing costs to the private sector. As such, CBP is proposing to transition the ACAS pilot program into a permanent program. Costs of this program to carriers include one-time costs to upgrade systems to facilitate transmission of these data to CBP and recurring per transmission costs. Benefits of the program include improved security that will result from having these data further in advance.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**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:** 1651-AB04

<b>DHS—USCBP</b>	<b>FINAL RULE STAGE</b>
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**64. DEFINITION OF FORM I-94 TO INCLUDE ELECTRONIC FORMAT**

**Priority:**

Other Significant

**Legal Authority:**

8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1201; 8 U.S.C. 1301; 8 U.S.C. 1303 to 1305; 5 U.S.C. 301; Pub. L. 107–296, 116 stat 2135; 6 U.S.C. 1 et seq.

**CFR Citation:**

8 CFR 1.4; 8 CFR 264.1(b)

**Legal Deadline:**

None

**Abstract:**

The Form I-94 is issued to certain aliens upon arrival in the United States or when changing status in the United States. The Form I-94 is used to document arrival and departure and provides evidence of the terms of admission or parole. Customs and Border Protection (CBP) is transitioning to an automated process whereby it will create a Form I-94 in an electronic format based on passenger, passport, and visa information currently obtained electronically from air and sea carriers and the Department of State as well as through the inspection process. Prior to this rule, the Form I-94 was solely a paper form that was completed by the alien upon arrival. After the implementation of the Advance Passenger Information System (APIS) following 9/11, CBP began collecting information on aliens traveling by air or sea to the United States electronically from carriers in advance of arrival. For aliens arriving in the United States by air or sea, CBP obtains almost all of the information contained on the paper Form I-94 electronically and in advance via APIS. The few fields on the Form I-94 that are not collected via APIS are either already collected by the Department of State and transmitted to CBP or can be collected by the CBP officer from the individual at the time of inspection. This means that CBP no longer needs to collect Form I-94 information as a matter of course directly from aliens traveling to the United States by air or sea. At this time, the automated process will apply only to aliens arriving at air and sea ports of entry.

**Statement of Need:**

This rule makes the necessary changes to the regulations to enable CBP to transition to an automated process whereby CBP will create an electronic Form I-94 based on the information in its databases.

**Summary of Legal Basis:**

Section 103(a) of the Immigration and Nationality Act (INA) generally authorizes the Secretary of Homeland Security to establish such regulations and prescribe such forms of reports, entries, and other papers necessary to carry out his or her authority to administer and enforce the immigration and nationality laws and to guard the borders of the United States against illegal entry of aliens.

**Alternatives:**

CBP considered two alternatives to this rule: eliminating the paper Form I-94 in the air and sea environments entirely and providing the paper Form I-94 to all travelers who are not B-1/B-2 travelers. Eliminating the paper Form I-94 option for refugees, applicants for asylum, parolees, and those travelers who request one would not result in a significant cost savings to CBP and would harm travelers who have an immediate need for an electronic Form I-94 or who face obstacles to accessing their electronic Form I-94. A second alternative to the rule is to provide a paper Form I-94 to any travelers who are not B-1/B-2 travelers. Under this alternative, travelers would receive and complete the paper Form I-94 during their inspection when they arrive in the United States. The electronic Form I-94 would still be automatically created during the inspection, but the CBP officer would need to verify that the information appearing on the form matches the information in CBP's systems. In addition, CBP would need to write the Form I-94 number on each paper Form I-94 so that their paper form matches the electronic record. As noted in the analysis, 25.1 percent of aliens are non-B-1/B-2 travelers. Filling out and processing this many paper Forms I-94 at airports and seaports would increase processing times considerably. At the same time, it would only provide a small savings to the individual traveler.

**Anticipated Cost and Benefits:**

With the implementation of this rule, CBP will no longer collect Form I-94 information as a matter of course directly from aliens traveling to the United States by air or sea. Instead, CBP will create an electronic Form I-94 for foreign travelers based on the information in its databases. This rule makes the necessary changes to the regulations to enable CBP to transition to an automated process. Both CBP

and aliens would bear costs as a result of this rule. CBP would bear costs to link its data systems and to build a Website so aliens can access their electronic Forms I-94. CBP estimates that the total cost for CBP to link data systems, develop a secure Website, and fully automate the Form I-94 fully will equal about \$1.3 million in calendar year 2012. CBP will incur costs of \$0.09 million in subsequent years to operate and maintain these systems. Aliens arriving as diplomats and students would bear costs when logging into the Website and printing electronic I-94s. The temporary workers and aliens in the "Other/Unknown" category bear costs when logging into the Website, traveling to a location with public Internet access, and printing a paper copy of their electronic Form I-94. Using the primary estimate for a traveler's value of time, aliens would bear costs between \$36.6 million and \$46.4 million from 2013 to 2016. Total costs for this rule for 2013 would range from \$34.2 million to \$40.1 million, with a primary estimate of costs equal to \$36.7 million. CBP, carriers, and foreign travelers would accrue benefits as a result of this rule. CBP would save contract and printing costs of \$15.6 million per year of our analysis. Carriers would save a total of \$1.3 million in printing costs per year. All aliens would save the eight-minute time burden for filling out the paper Form I-94 and certain aliens who lose the Form I-94 would save the \$330 fee and 25-minute time burden for filling out the Form I-102. Using the primary estimate for a traveler's value of time, aliens would obtain benefits between \$112.6 million and \$141.6 million from 2013 to 2016. Total benefits for this rule for 2013 would range from \$110.7 million to \$155.6 million, with a primary estimate of benefits equal to \$129.5 million. Overall, this rule results in substantial cost savings (benefits) for foreign travelers, carriers, and CBP. CBP anticipates a net benefit in 2013 of between \$59.7 million and \$98.7 million for foreign travelers, \$1.3 million for carriers, and \$15.5 million for CBP. Net benefits to U.S. entities (carriers and CBP) in 2013 total \$16.8 million. CBP anticipates the total net benefits to both domestic and foreign entities in 2013 range from \$76.5 million to \$115.5 million. In our primary analysis, the total net benefits are \$92.8 million in 2013. For the primary estimate, annualized net benefits range from \$78.1 million to \$80.0 million, depending on the discount rate used. More information on costs and benefits can be found in the interim final rule.

**Risks:**

N/A

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	03/27/13	78 FR 18457
Interim Final Rule Comment Period End	04/26/13	
Interim Final Rule Effective	04/26/13	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**Additional Information:**

Includes Retrospective Review under E.O. 13563.

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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RIN: 1651-AA96

<b>DHS—Transportation Security Administration(TSA)</b>	<b>PRERULE STAGE</b>
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## **65. SURFACE TRANSPORTATION VULNERABILITY ASSESSMENTS AND SECURITY PLANS**

### **Priority:**

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

### **Legal Authority:**

49 U.S.C. 114; Pub. L. 110-53, secs 1405, 1512, and 1531

### **CFR Citation:**

49 CFR 1520; 49 CFR 1570; 49 CFR 1580; 49 CFR 1582 (new); 49 CFR 1584 (new); ...

### **Legal Deadline:**

Final, Statutory, August 3, 2008, Rule for freight railroads and passenger railroads is due no later than 12 months after date of enactment.

Final, Statutory, February 3, 2009, Rule for over-the-road buses is due no later than 18 months after the date of enactment of the 9/11 Act.

According to sec. 1512 of Pub. L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (121 Stat. 266, Aug. 3, 2007), a final regulation for freight railroads and passenger railroads is due no later than 12 months after the date of enactment. According to sec. 1531 of the 9/11 Act, a final regulation for over-the-road buses is due no later than 18 months after the date of enactment.

### **Abstract:**

The Transportation Security Administration (TSA) will propose a new regulation to address the security of higher-risk freight railroads, public transportation agencies, passenger railroads, and over-the-road buses in accordance with requirements of the Implementing Recommendations of the 9/11 Commission

Act of 2007 (9/11 Act). The regulation will take into consideration any current security assessment and planning requirements or best practices.

**Statement of Need:**

Vulnerability assessments and security planning are important and effective tools for averting or mitigating potential attacks by those with malicious intent that 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 1405, 1512, and 1531 of Pub. L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (121 Stat. 266, Aug. 3, 2007).

**Alternatives:**

**Anticipated Cost and Benefits:**

TSA is in the process of determining the costs and benefits of this rulemaking.

**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 vulnerability assessments and security planning of higher-risk surface transportation operations, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

**Timetable:**

Action	Date	FR Cite
ANPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Local

**Federalism:**

Undetermined

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Related to 1652–AA55, Merged with 1652–AA58, Merged with 1652–AA60

**RIN:** 1652–AA56

DHS—TSA	PROPOSED RULE STAGE
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**66. SECURITY TRAINING FOR SURFACE TRANSPORTATION EMPLOYEES**

**Priority:**

Other Significant

**Legal Authority:**

49 U.S.C. 114; Pub. L. 110–53, secs 1402, 1408, 1501, 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 six 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 1 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:**

This rule would require security awareness training for front-line employees for potential terrorism-related security threats and conditions pursuant to the 9/11 Act. This rule would apply to higher-risk public transportation, freight rail, and over-the-road bus owner/operators and take into consideration the many actions higher-risk owner/operators have already taken since 9/11 to enhance the baseline of security through training of their employees. The rulemaking will also propose extending security coordinator and reporting security incident requirements applicable to rail operators under current 49 CFR part 1580 to the non-rail transportation components of covered public transportation agencies and over-the-road buses.

**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 (Aug. 3, 2007; 121 Stat. 266).

**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 will seek public comment on the alternative ways in which the final rule could carry out the requirements of the statute.

**Anticipated Cost and Benefits:**

Owner/operators would incur costs training their employees, developing a training plan, maintaining training records, and participating in inspections for compliance. Some owner/operators would also incur additional costs associated with assigning security coordinators and reporting significant security incidents to TSA. TSA would incur costs associated with reviewing owner/operators' training plans, registering owner/operators' security coordinators, responding to owner/operators' reported significant security incidents, and conducting inspection for compliance with this rule. 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
NPRM	11/00/16	
NPRM Comment Period End	02/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Local

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**Related RIN:**

Related to 1652-AA56, Merged with 1652-AA57, Merged with 1652-AA59

**RIN:** 1652-AA55

DHS—TSA	
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**67. • VETTING OF CERTAIN SURFACE TRANSPORTATION EMPLOYEES**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

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 1 year from the date of enactment. Requirement will be met through regulatory action.

**Abstract:**

The Implementing Recommendations of the 9/11 Commission Act of 2007 (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 this required vetting. TSA previously intended to include vetting requirements for these populations in a related rulemaking called Standardized Vetting, Adjudication, and Redress Services (SVAR). However, TSA now plans to proceed with a separate rulemaking in order to provide vetting more expediently for these populations. 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
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NPRM	09/00/17	
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**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Split from 1652–AA61, Related to 1652–AA55

**RIN:** 1652–AA69

<b>DHS—U.S. Immigration and Customs Enforcement(USICE)</b>	<b>PROPOSED RULE STAGE</b>
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**68. ELIGIBILITY CHECKS OF NOMINATED AND CURRENT DESIGNATED SCHOOL OFFICIALS OF  
SCHOOLS THAT ENROLL F AND M NONIMMIGRANT STUDENTS AND OF EXCHANGE VISITOR  
PROGRAM–DESIGNATED SPONSORS OF J NONIMMIGRANTS**

**Priority:**

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

**Legal Authority:**

8 U.S.C. 1101; 8 U.S.C. 1102; 8 U.S.C. 1003

**CFR Citation:**

8 CFR 214.3

**Legal Deadline:**

None

**Abstract:**

The rule would improve the capability of the Student and Exchange Visitor Program (SEVP) to oversee access to the Student and Exchange Visitor Information System (SEVIS) for designated school officials (DSOs) at schools certified to enroll F and M nonimmigrant students and for responsible officers (ROs) and alternate responsible officers (AROs) that oversee designated sponsors' J nonimmigrant participants in exchange programs. Establishment of an eligibility check process for certain officials would improve oversight prior to permitting access to SEVIS and prior to appointment or continued eligibility as such an official. This rule would better position DHS to identify, intervene and prevent possible criminal activities or threats to national security that could result from non-compliance.

**Statement of Need:**

The rule would strengthen the mechanism for approving user access to SEVIS. DHS, as well as the Department of State (DOS), rely on principal designated school officials, designated school officials, responsible officers, and alternate responsible officers (collectively, P/DSOs P/DSOs and ROs/AROs) as key links in the process to mitigate potential threats to national security and ensure compliance with immigration law from aliens admitted into the United States in F, J, or M nonimmigrant status. Through this rule, DHS would require that anyone nominated to serve as a P/DSO or RO/ARO receive a favorable SEVIS Access Approval Process (SAAP) assessment prior to their appointment and subsequent approval for access to SEVIS.

**Summary of Legal Basis:**

- Sections 101(a)(15)(F), (J) and (M), of the Immigration and Nationality Act of 1952, as amended (INA) 8 U.S.C. 1101(a)(15)(F), (J) and (M), which establish the F-1, J-1, and M-1 classifications (and associated derivative classifications).
- Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1372, which authorized the following:

- Creation of a program to collect current and ongoing information provided by schools and EVP sponsors regarding F, J, or M nonimmigrants during their stays in the United States;
  - Use of electronic reporting technology where practicable; and
  - DHS certification of schools to participate in F-1 or M-1 student enrollment.
- Homeland Security Presidential Directive No. 2 (HSPD-2), Combating Terrorism Through Immigration Policies, which, following the USA PATRIOT Act, requires DHS to conduct periodic reviews of all institutions certified to receive nonimmigrant students and exchange visitor program students that include checks for compliance with record keeping and reporting requirements, and authorizes termination of certification for institutions that fail to comply. See 37 Weekly Comp. Pres. Docs. 1570, 1571-72 (October 29, 2001).
  - Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, 8 U.S.C. 1762, which directs DHS to review compliance with recordkeeping and reporting requirements under 8 U.S.C. 1372 and INA section 101(a)(15)(F), (J) and (M), 8 U.S.C. 1101(a)(15)(F), (J) and (M), of all schools approved to receive F, J or M nonimmigrants within two years of enactment and every two years thereafter.

**Alternatives:**

**Anticipated Cost and Benefits:**

DHS is in the process of determining the costs and benefits which would be incurred by regulated individuals with access to SEVIS, as well as the costs and benefits to DHS and DOS, to comply with the requirements of this rule. The rule would impose new vetting requirements for individuals prior to permitting access to SEVIS or continued eligibility for such access, which include an application process for the individuals and an approval process for DHS and DOS. The primary benefit of this rule would be to reduce the potential for fraud.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 1653–AA71

<b>DHS—Federal Emergency Management Agency(FEMA)</b>	<b>FINAL RULE STAGE</b>
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**69. UPDATES TO FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS**

**REGULATIONS TO IMPLEMENT EXECUTIVE ORDER 13690 AND THE FEDERAL FLOOD RISK  
MANAGEMENT STANDARD**

**Priority:**

Other Significant

**Legal Authority:**

E.O. 11988, as amended; E.O. 13690

**CFR Citation:**

44 CFR 9

**Legal Deadline:**

None

**Abstract:**

The Federal Emergency Management Agency (FEMA) proposes to amend its regulations at 44 CFR part 9 "Floodplain Management and Protection of Wetlands" to implement Executive Order 13690, which establishes the Federal Flood Risk Management Standard (FFRMS). 44 CFR part 9 describes FEMA's process for determining whether the proposed location for an action falls within a floodplain. In addition, for those projects that would fall within a floodplain, part 9 describes FEMA's framework for deciding whether and how to complete the action in the floodplain, in light of the risk of flooding. Consistent with Executive Order 13690 and the FFRMS, the proposed rule would change how FEMA defines a "floodplain" with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating a proposed action in the floodplain.

**Statement of Need:**

It is the policy of the United States to improve the resilience of communities and Federal assets against the impacts of flooding. These impacts are anticipated to increase over time due to the effects of climate change and other threats. Losses caused by flooding affect the environment, our economic prosperity, and public health and safety, each of which affects our national security.

The Federal Government must take action, informed by the best-available and actionable science, to improve the Nation's preparedness and resilience against flooding. Executive Order 11988 of May 24, 1977, Floodplain Management; requires executive departments and agencies (agencies) to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. FEMA has implemented Executive Order 11988 through its regulations in 44 CFR Part 9.

On January 30, 2015, the President issued Executive Order 13690, Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input. Executive Order 13690 amended Executive Order 11988 and established the FFRMS. The FFRMS is a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains. Under the FFRMS, an agency may establish the floodplain for Federally Funded Projects using any of the following approaches: (1) Climate-Informed Science Approach (CISA): Utilizing the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science; (2) Freeboard Value Approach (FVA): Freeboard (base flood elevation + X, where X is 3 feet for critical actions and 2 feet for other actions); (3) 0.2 percent annual chance Flood Approach (0.2PFA): 0.2 percent annual chance flood (also known as the 500-year flood); or (4) the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.

When Executive Order 13690 was issued, FEMA evaluated the application of Executive Order 13690 and the FFRMS with respect to its existing authorities and programs. The FFRMS establishes a flexible standard to improve resilience against the impact of flooding to design for the intended life of the Federal investment. FEMA supports this principle. With more than \$260 billion in flood damages across the Nation since 1980, it is necessary to take action to responsibly use Federal funds, and FEMA must ensure it does not needlessly make repeated Federal investments in the same structures after flooding events. In addition, the FFRMS will help support the thousands of communities across the Country that have strengthened their State and local floodplain management codes and standards to ensure that infrastructure and other community assets are resilient to flood risk. FEMA recognizes that the need to make structures resilient also requires a flexible approach to adapt for the needs of the Federal agency, local community, and the circumstances surrounding each project or action.

### **Summary of Legal Basis:**

### **Alternatives:**

FEMA proposes to use the FFRMS-FVA to establish the floodplain for non-critical actions. For critical actions, FEMA would allow the use of the FFRMS-FVA floodplain or the FFRMS-CISA, but only if the elevation established under the FFRMS-CISA is higher than the elevation established under the FFRMS-FVA.

FEMA considered proposing the use of the FFRMS-CISA instead of FFRMS-FVA to reflect the FFRMS's designation of the FFRMS-CISA as the preferred approach and to reflect that the FFRMS-FVA sets a general level of protection, whereas FFRMS-CISA uses a more site-specific approach to predict flood risk based on future conditions.

FEMA also considered whether it should alter its proposal for use of the FFRMS-CISA in relation to the FFRMS-FVA (or FFRMS-0.2PFA). FEMA could choose a more protective approach in which it would determine the elevations established under FFRMS-CISA, FFRMS-FVA and the FFRMS-0.2PFA for critical actions and only allow the applicant to use the highest of the three elevations. This approach would ensure that applicants were building to the most protective level, would avoid potential inconsistencies with FEMA's policy to encourage adoption of freeboard standards by local communities, and would prevent a scenario where an applicant was allowed to build to a lower elevation than previously required for critical actions under FEMA's implementation of Executive Order 11988.

Also alternatively, FEMA could choose to allow use of the FFRMS-CISA, even if the resulting elevation is lower than the application of the FFRMS-FVA. This approach would give FEMA and its grantees more flexibility in implementing the standard, would enable FEMA and its grantees to build to an elevation based on the best available science taking criticality into account, and would provide a pathway to relief for those areas that experience declining flood risks.

**Anticipated Cost and Benefits:**

The anticipated costs of the proposed rule would be from FEMA's Individual Assistance, Public Assistance, and Hazard Mitigation Assistance grant programs, as well as administrative costs. FEMA expects minimal costs associated with its Grants Program Directorate and Integrated Public Alert Warning System programs because these programs do not fund new construction or substantial improvement projects as defined in 44 CFR part 9. These projects are also by nature, typically resilient from flooding. FEMA facilities may also be subject to additional requirements due to the implementation of the proposed rule.

FEMA estimates that the total additional grants costs as a result of the proposed rule would be between \$906,696 and \$7.8 million per year for FEMA and between \$301,906 and \$2.6 million per year for grant recipients due to the increased elevation or floodproofing requirements of FEMA Federally Funded Projects.

In addition, FEMA expects to incur some administrative costs as a result of this proposed rule. FEMA estimates initial training costs of around \$100,000 the first two years after the rule is implemented, and administrative and training costs of around \$16,000 per year thereafter.

FEMA estimates that the total annual cost of this rule after year two would be between \$6.1 million and \$39.5 million.

FEMA estimates the quantified cost of this proposed rule over the next 10 years would range between \$60.1 million and \$394.7 million. The present value (PV) of these estimated costs using a 7 percent

discount rate would range between \$42.9 million and \$277.3 million. The PV using a 3 percent discount rate would range between \$52.0 million and \$336.7 million. These costs would be split between FEMA (75 percent) and recipients (25 percent) of FEMA grants in the floodplain.

FEMA anticipates that the benefits of the proposed rule would justify the costs. FEMA is has provided qualitative benefits, including the reduction in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding.

FEMA believes this proposed rule would result in savings in time and money from a reduced recovery period after a flood and increased safety of individuals. Generally, if properties are protected, there would be less damage, resulting in less cleanup time. In addition, higher elevations help to protect people, leading to increased safety. FEMA is unable to quantify these benefits, but improving the resiliency of bridges has significant qualitative benefits, including: protecting evacuation and escape routes; limiting blockages of floodwaters passing under the bridge that may lead to more severe flooding upstream; and, avoiding the cost of replacing the bridge again if it is damaged during a subsequent flood. Any estimates of these savings would be dependent on the specific circumstances and FEMA is not able to provide a numeric value on these savings.

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	08/22/16	81 FR 57401
NPRM Comment Period End	10/21/16	
Final Rule	01/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Governmental Jurisdictions, Organizations

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

Docket ID FEMA-2015-0006

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1660-AA85

**BILLING CODE 9110-9B-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**FALL 2016 STATEMENT OF REGULATORY PRIORITIES**

**FOR FISCAL YEAR 2017**

## Introduction

As the nation's housing agency, HUD is committed to promoting decent affordable housing and addressing housing conditions that threaten the health of residents. There are still too many homes in the U.S. with hazards that endanger the health and safety of occupants – hazards within a home and hazards outside of a home.<sup>1</sup> HUD's Regulatory Plan for Fiscal Year (FY 2017) focuses on two regulatory actions; one to address lead-based paint hazards within homes subsidized by HUD and a second to require that building or substantially rehabilitating HUD subsidized homes be at new Federal Flood Risk Management Standards.

In 2012, the Centers for Disease Control and Prevention (CDC) revised its guidance on childhood lead poisoning in response to recommendations by CDC's Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP), which concluded that a growing number of scientific studies show that even low blood lead levels can cause lifelong health effects. CDC accepted this recommendation. The elevated blood lead level, established in 2012 as part of CDC's response to ACCLPP, is lower than CDC's former blood lead level of concern. HUD's lead-based paint hazard control regulations, which address lead-based paint hazards in pre-1978 homes subsidized by HUD are based on the CDC's former blood lead level of concern. With CDC's issuance of new guidelines, HUD recognized that it was necessary to update HUD's lead-based paint regulations. HUD commenced working to update its regulations, but in the meantime, HUD revised its own guidelines for evaluation and control of lead-based paint hazards in housing. HUD also implemented CDC's recommended revised elevated blood lead level in its lead hazard control programs – the Lead-Based Paint Hazard Control grant program and the Lead Hazard Reduction Demonstration grant program – in the annual notices of funding availability (NOFAs) issued for these programs commencing in fiscal year 2013.

On September 1, 2016, (81 FR 60304), HUD issued its proposed rule that would formally adopt the approach used by CDC in its definition of elevated blood lead level, and provides for more

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<sup>1</sup>Language modeled on language from page 4 of HUD's 2009 Healthy Homes Strategic Plan. [http://www.hud.gov/offices/lead/library/hhi/hh\\_strategic\\_plan.pdf](http://www.hud.gov/offices/lead/library/hhi/hh_strategic_plan.pdf).

comprehensive testing and evaluation where for housing where children under the age of 6 with an elevated blood lead level reside.

On January 30, 2015, President Obama issued an Executive Order (Executive Order 12690) establishing a flood management standard (the Federal Flood Risk-Management Standard) that will reduce the risk and cost of future flood disasters by requiring all Federal investments in and affecting floodplains to meet higher flood risk standards. In the United States, floods caused 4,586 deaths from 1959 to 2005. With climate change and associated sea-level rise, flooding risks have increased over time, and are anticipated to continue increasing. The National Climate Assessment (May 2014), for example, projects that extreme weather events, such as severe flooding, will persist throughout the 21st century. Severe flooding can cause significant damage to infrastructure, including buildings, roads, ports, industrial facilities, and even coastal military installations. With more than \$260 billion in flood damage across the Nation since 1980, it is necessary to take action to responsibly use Federal funds, and HUD must ensure it does not wastefully make Federal investments in the same structures after repeated flooding events.

In response to the President's Executive Order, HUD commenced work on a proposed rule to revise its regulations governing floodplain management to require, as part of the decision making process established to ensure compliance with applicable Executive Orders 11988 and 13690, that HUD assisted or financed (including mortgage insurance) project involving new construction or substantial improvement that is situated in an area subject to floods be elevated or floodproofed between 2 and 3 feet above the base flood elevation (BFE), as determined by best available information. The proposed rule would also revise HUD's Minimum Property Standards for one-to-four unit housing under HUD mortgage insurance and low-rent public housing programs to require that the lowest floor in both newly constructed and substantially improved structures be built at least 2 feet above the BFE base flood elevation as determined by best available information. Building to these standards will, consistent with the executive orders, increase resiliency to flooding, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of flood risk that takes into account possible sea level rise and increased development associated with population growth.

On October 28, 2016 (81 FR 74967), HUD issued its proposed rule that would revise its regulations governing floodplain management to implement the Federal Flood Risk Management Standard.

This Statement of Regulatory Priorities highlights these two rules, which are HUD priority actions to complete during FY 2017.

### **Regulatory Priority: Responding to Elevated Blood Lead Levels in Children under the Age of 6**

Childhood lead poisoning has long been recognized as causing reduced intelligence, low attention span, reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and many other adverse health effects. Current reviews by the U.S. Department of Health and Human Services (HHS), including by its Agency for Toxic Substances and Disease Registry (ATSDR) and National Institute of Environmental Health Sciences (NIEHS) and by the U.S. Environmental Protection Agency (EPA) Office of Research and Development have described these effects in detail. The removal of lead-based gasoline and paint from commerce has drastically reduced the number of children exposed to levels of lead associated with the most significant among these problems. Data from the CDC's National Center for Health Statistics show that mean blood lead levels among children ages 1 to 5 have dropped over the years. However, national statistics mask the fact that blood lead monitoring continues to find some children exposed to elevated blood lead levels due to their specific housing environment

Continued progress in lead paint abatement and interim control over the last decade, such as through HUD's Lead Hazard Control Grant programs, and HUD's enforcement of the Lead Disclosure statute has meant further significant decreases in lead exposure among children. Even so, there are a considerable number of assisted housing units that have lead-based paint in which children under age 6 reside. In 2012, the CDC issued guidance revising its definition of elevated blood lead level in children under age 6 to be a blood lead level based on the distribution of blood lead levels in the national population. Since CDC's revision of its definition, HUD has applied the revised definition to funds awarded under its Lead-Based Paint Hazard Control grant program and its Lead Hazard Reduction

Demonstration grant program, and has updated its Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing to reflect this definition.

To further address this issue, as noted above, HUD issued a proposed rule on September 1, 2016 that would amend HUD's lead-based paint regulations on reducing blood lead levels in children under age 6 who reside in federally-owned or -assisted pre-1978 housing and formally adopt the revised definition of "elevated blood lead levels" in children under the age of 6 in accordance with guidance of CDC, and establish more comprehensive testing and evaluation procedures for the housing where such children with an elevated blood lead level reside.

HUD intends to complete this rulemaking in Fiscal Year 2017.

### **Aggregate Costs and Benefits**

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be made pursued in FY 2016. HUD expects that the neither the total economic costs nor the total efficiency gains will exceed \$100 million.

### **Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels**

**HUD Office:** Office of Lead Hazard Control and Healthy Homes

**Rulemaking Stage:** Final Rule

**Priority:** Significant

**Legal Authority:** 42 U.S.C. 3535(d), 4821, and 4851.

**CFR Citation:** 24 CFR 35

**Legal Deadline:** None

**Abstract:**

This rule will amend HUD's lead-based paint regulations on reducing blood lead levels in children under age 6 who reside in federally-owned or -assisted pre-1978 housing and formally adopt the revised definition of "elevated blood lead levels" in children under the age of 6 in accordance with 2012 CDC guidance, and establish more comprehensive testing and evaluation procedures for the housing where such children with an elevated blood lead level reside. Since CDC's 2012 revision of its definition of elevated blood lead level in children under the age of 6, and pending HUD's commencement and completion of rulemaking to formally adopt CDC's revised definition, HUD applied the revised definition to funds awarded under its Lead-Based Paint Hazard Control grant program and its Lead Hazard Reduction Demonstration grant program, and HUD updated its own Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing to reflect this definition. CDC is continuing to consider, with respect to evolution of scientific and medical understanding, how best to identify childhood blood lead levels for which environmental interventions are recommended.

Through this rulemaking, HUD intends to formally adopt, through regulation, the CDC's approach to the definition of "elevated blood lead levels" in children under the age of 6 and addresses the additional elements of the CDC guidance pertaining to assisted housing. The final rule takes into consideration public comments received on HUD's September 2016 proposed rule.

**Statement of Need**

Although HUD is already applying the CDC's 2012 revised definition of elevated blood level in its lead hazard control notices of funding availability and in HUD guidelines, HUD's Lead Safe Housing rule has not yet been updated to reflect the CDC's revised definition of elevated blood lead levels, and to

mandate adherence to this definition by owners and managers of federally-owned or -assisted pre-1978 housing requires rulemaking.

#### **Alternatives:**

Title X of the Housing and Community Development Act of 1992, also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), prescribes specific lead-based paint hazard evaluation and reduction activities for federally-supported housing. To mandate compliance with revised elevated blood lead levels procedures requires rulemaking. While HUD issued updated guidelines in 2012 to encourage compliance with CDC's revised guidelines on elevated blood lead levels, it takes rulemaking to require compliance with CDC's revised definition of elevated blood lead levels in federally-supported housing.

#### **Anticipated Costs and Benefits**

The costs and benefits associated with the units affected during the first year of hazard evaluation and reduction activities under the final rule include the present value of future benefits associated with first year hazard reduction activities. For example, the benefits from costs expended for first year activities include the present value of lifetime earnings benefits for children living in the affected unit during the first year, whether that child continues living in that unit during the second and subsequent years after hazard reduction activities does not affect the benefit calculation, because the lowered lead exposure benefits all children under age 6 who reside there during the effective period of the hazard control measures (as noted above, typically 6 or 12 or more years). The costs of ongoing lead-based paint maintenance in units covered by this rulemaking are not considered in this analysis, because it is already required by the original Lead Safe Housing Rule for housing covered by this rulemaking.

Although many benefits of lead-based pain hazard reduction cannot be quantified or monetized, such as quality of life considerations such as adolescents' and adults' dissatisfaction with lower intelligence, fewer skills, reduced education and job potential, criminal behavior, unwed pregnancies, etc., HUD does not address monetized estimates of the cognitive benefits of preventing children under age 6

from developing elevated blood lead levels. Such benefits include avoiding the costs of medical treatment for children with elevated blood lead levels as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels. In addition, blood lead levels of older children and adults living in the affected housing units would be expected to fall as a result of this rulemaking, although quantifying their blood lead changes is outside the scope of analysis for this rulemaking. Thus, the estimates of benefits represent a lower bound on the economic benefits of LBP hazard reduction because there are many other health impacts for both adults and children from lead exposure that are not quantified or monetized here. The analysis of net benefits reflects benefits over time associated with the costs incurred in the first year of hazard evaluation and reduction activities under the final rule. For example, the benefits of costs incurred in first year activities include the present value of lifetime earnings benefits for children living in the affected unit during that first year, and for children living in that unit during the second and subsequent years after hazard reduction activities.

HUD's regulatory impact analysis published with its September 2016 proposed rule more fully addresses the costs and benefits of this rulemaking, as of the proposed rulemaking stage.

**Risks:**

While this rule addresses a public health issue, but poses no risk to public health, safety, or the environment.

**TIMETABLE:**

Action	Date	FR CITE
NPRM	09/01/2016	81 FR 60304
Final	12/00/2016	

Regulatory Flexibility Analysis Required:	No
Small Entities Affected:	No
Government Levels Affected:	State, Local

Federalism Affected: No  
Energy Affected: No  
International Impacts: No

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**Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard**

**HUD Office:** Office of the Secretary.

**Rulemaking Stage:** Final Rule

**Priority:** Significant

**Legal Authority:** 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p.123.

**CFR Citation:** 24 CFR 50, 58, and 200

**Legal Deadline:** None

**Abstract:**

This rule will revise HUD's regulations governing floodplain management to require, as part of the decision making process established to ensure compliance with Executive Order 11988 (Floodplain Management) as amended by Executive Order 13690 (Establishing a Federal Flood Risk Management

Standard and a Process for Further Soliciting and Considering Stakeholder Input), that a HUD assisted or financed (including mortgage insurance) project involving new construction or substantial improvement that is situated in an area subject to floods be elevated or floodproofed between 2 and 3 feet above the base flood elevation (BFE), as determined by best available information. The revision to 24 CFR part 55 uses the framework of E.O. 11988 which HUD has implemented for almost 40 years and does not change the requirements and guidance specifying which actions require elevation and floodproofing of structures. Specifically, the rule would require that non-critical actions be elevated 2 feet above the BFE. In addition, the rule would require that critical actions be elevated above the greater of the 500-year floodplain or 3 feet above the BFE. This rule also would enlarge the horizontal area of interest commensurate with the vertical increase, but the rule does not change the scope of actions to which the floodplain review process or elevation requirements in 24 CFR part 55 apply. The rule would also revise HUD's Minimum Property Standards for one-to-four unit housing under HUD mortgage insurance and low-rent public housing programs to require that the lowest floor in both newly constructed and substantially improved structures be built at least 2 feet above the BFE as determined by best available information. Building to these standards will, consistent with the executive orders, increase resiliency to flooding, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of flood risk that takes into account possible sea level rise and increased development associated with population growth. This rule also would revise a categorical exclusion available when HUD performs the environmental review under the National Environmental Policy Act and related Federal laws by making it consistent with changes to a similar categorical exclusion that is available to HUD grantees or other responsible entities when they perform these environmental reviews. This change will make the review standard identical regardless of whether HUD or a grantee is performing the review. Elevation standards for manufactured housing receiving mortgage insurance are not covered in this rule.

**Statement of Need:**

This rule revises HUD's floodplain management regulations in response to Executive Order 13690 and recommendations of the Mitigation Framework Leadership Group (MitFLG). Executive Order

13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, called for a new floodplain standard established with stakeholder input. In addition to addressing risks identified by MitFLG associated with the predicted sea level rise, the standards presented in this rule also address a market failure of information regarding flood risk and moral hazard associated with flood insurance and federal disaster assistance. HUD is promulgating these new standards, which it must do through rulemaking, in order to protect HUD's investments and ensure uninterrupted provision of affordable housing.

Executive Order 13690 directed Federal agencies to avoid, to the extent possible, adverse impacts associated with floodplain development. Based on evidence from the National Climate Assessment and the Intergovernmental Panel on Climate Change, MitFLG, consisting of representatives from various federal agencies, proposed the establishment of the Federal Flood Risk Management Standard (FFRMS). These standards, at least two feet of freeboard above base flood elevation for non-critical actions and three feet of freeboard for critical actions, address the Executive Order's directive of reducing adverse impact development in floodplains which, as many studies indicate, are expanding fairly rapidly. The explicit standards provided in this rule are needed because developers, homeowners and renters do not fully internalize the risk and costs of potential flooding. There is evidence that many homeowners are either not fully aware of the risk of a flood occurring or that they discount the cost of a flood if it occurs. In some cases, owners simply underestimate the risk of flooding.

**Alternatives:**

In developing new floodplain management standards, HUD considered several alternative approaches to establishing the standard: climate-informed science approach (CISA); freeboard value approach (FVA); and the 0.2 percent annual chance flood approach (0.2PFA). HUD chose the FVA over the CISA and 0.2PFA for a variety of reasons. First, the FVA can be applied consistently to any area participating in the NFIP. The FVA can be calculated using existing flood maps. This is not true for the CISA standard unless HUD were to establish criteria for every community regarding the application of particular climate and greenhouse gas scenarios and associated impacts. Rather than requiring this level of review and analysis, HUD chose the more direct FVA. Second, the two alternative approaches to FVA

require expertise that may not be available to all communities. The 0.2 Percent Flood is not mapped in all communities and requires a significant degree of expertise to map over an area or for an individual site. The same is also true for the CISA standard, which requires not just historical analysis but a greater anticipation of trends and future conditions. Third, HUD determined that it is not practicable to establish the CISA or the 0.2 Percent Flood for all projects. HUD funds or assists tens of thousands of small projects each year. For example, repaving a road or rehabilitating a single family home may not necessitate the extra amounts of cost required by the CISA and 0.2 Percent Flood approaches. Fourth, many states and communities already have success applying a freeboard approach to floodplains. Due to the familiarity that many communities have with freeboard, the FVA was seen as a very practical approach with documented history of application.

In addition, HUD, as part of MitFLG working group, considered varying levels of elevation above base flood elevation, specifically 1, 2 and 3 feet above BFE. Based on expected sea level rise and the cost of elevation, HUD is providing the standard recommended by MitFLG, which requires at least 2 feet above freeboard, or for critical actions, at least 3 feet above freeboard.

**Anticipated Costs and Benefits:**

The standards provided under this rule, requiring at least two feet of freeboard above base flood elevation, will increase the construction cost HUD's assisted and insured new construction and substantially improved properties located in the 1 percent annual chance floodplain. This rule amends HUD's current standard which requires elevation to at least the base flood elevation. Thus, the elevation standards are not new, but rather revised to an increased height. In addition, 20 states, plus the District of Columbia and Puerto Rico, already require elevation exceeding HUD's current standard of elevation to the base flood level (BFE+1). Further, four states - Indiana, Montana, New York and Wisconsin - already require residential structures elevated with a minimum of at least two of freeboard (BFE+2). Thus, the cost of compliance in these states would be less than those that have no minimum elevation requirements in the floodplain.

Developers receiving HUD assistance who are not currently building to the proposed standard of 2 feet above base flood elevation (BFE+2) can meet the proposed standards by either elevating the lowest floor of the structure or by floodproofing to the new standard and limiting the first floor to non-residential uses. Alternatively, developers could choose to locate outside of the floodplain and the affected horizontal expansion, or reduce substantial improvement projects to less than 50 percent of the market or pre-disaster value of the structure, which would no longer classify the project as “substantial”.

The standards to be provide in this rule are intended to protect HUD-assisted and insured structures and the owners and tenants in these units. Thus, the benefits of the rule include reduced building damage and decreased costs to tenants temporarily displaced due to flooding, including avoided search costs for temporary replacement housing and lost wages. The annual reduction in insurance premiums provides an adequate measure of the reduction in expected damages, assuming that the NFIP rates are calculated in order to maintain a non-negative balance. In this case, the premiums for catastrophic insurance would be slightly higher than, but similar to, the expected value of the claim to pay for administrative costs.

HUD’s regulatory impact analysis published with its September 2016 proposed rule more fully addresses the costs and benefits of this rulemaking, as of the proposed rulemaking stage.

**Risks:**

While the rule addresses a rule, the rule poses no risk to public health, safety, or the environment.

**TIMETABLE:**

<b>Action</b>	<b>Date</b>	<b>FR CITE</b>
NPRM	10/28/2016	81 FR 74967
Final	12/00/2016	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism Affected: No

Energy Affected: Yes

International Impacts: No

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**RIN:** 2501- AD62

HUD—Office of the Secretary(HUDSEC)	PROPOSED RULE STAGE
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**70. FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS; MINIMUM PROPERTY STANDARDS FOR FLOOD HAZARD EXPOSURE; BUILDING TO THE FEDERAL FLOOD RISK MANAGEMENT STANDARD (FR-5717)**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 3535(d); 42 U.S.C. 3001, et seq., E.O. 11990; E.O. 11988

**CFR Citation:**

24 CFR 50; 24 CFR 55

**Legal Deadline:**

None

**Abstract:**

As communities begin to recover from the devastating effects of Hurricane Sandy, HUD has determined that it is important to recognize lessons learned to employ mitigation actions that ensure that structures located in floodplains are built or rebuilt stronger, safer, and less vulnerable to future flooding events. This commitment to resiliency is now required of all agencies that use federal funds for construction under Executive Order 13690 (Establishing a Federal Flood Risk Management Standard) and the associated "Guidelines for Implementing Executive Order 11988 (Floodplain Management) and Executive Order 13690."

Based on Executive Order 13690 and the Guidelines, this proposed rule would require, as part of the decisionmaking process established to ensure compliance with Executive Order 11988 (Floodplain Management) that new construction or substantial improvement in a floodplain be elevated or floodproofed 2 feet above the base flood elevation for non-critical actions and 3 feet above the base flood elevation for critical actions based on the Federal Emergency Management Agency's best available data. This rule also proposes to revise a categorical exclusion available when HUD performs the environmental review by making it consistent with changes to a similar categorical exclusion that is available to HUD grantees or other responsible entities when they perform the environmental review. The rule is also part of HUD's commitment under the President's Climate Action plan.

**Statement of Need:**

This rule revises HUD's floodplain management regulations in response to Executive Order 13690 and recommendations of the Mitigation Framework Leadership Group (MitFLG). Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, called for a new floodplain standard established with stakeholder input. In addition to addressing risks identified by MitFLG associated with the predicted sea level rise, the

standards presented in this rule also address a market failure of information regarding flood risk and moral hazard associated with flood insurance and federal disaster assistance. HUD is promulgating these new standards, which it must do through rulemaking, in order to protect HUD's investments and ensure uninterrupted provision of affordable housing.

### **Summary of Legal Basis:**

Executive Order 13690 directed Federal agencies to avoid, to the extent possible, adverse impacts associated with floodplain development. Based on evidence from the National Climate Assessment and the Intergovernmental Panel on Climate Change, MitFLG, consisting of representatives from various federal agencies, proposed the establishment of the Federal Flood Risk Management Standard (FFRMS). These standards, at least two feet of freeboard above base flood elevation for non-critical actions and three feet of freeboard for critical actions, address the Executive Order's directive of reducing adverse impact development in floodplains which, as many studies indicate, are expanding fairly rapidly. The explicit standards provided in this rule are needed because developers, homeowners and renters do not fully internalize the risk and costs of potential flooding. There is evidence that many homeowners are either not fully aware of the risk of a flood occurring or that they discount the cost of a flood if it occurs. In some cases, owners simply underestimate the risk of flooding.

### **Alternatives:**

In developing new floodplain management standards, HUD considered several alternative approaches to establishing the standard: climate-informed science approach (CISA); freeboard value approach (FVA); and the 0.2 percent annual chance flood approach (0.2PFA). HUD chose the FVA over the CISA and 0.2PFA for a variety of reasons. First, the FVA can be applied consistently to any area participating in the NFIP. The FVA can be calculated using existing flood maps. This is not true for the CISA standard unless HUD were to establish criteria for every community regarding the application of particular climate and greenhouse gas scenarios and associated impacts. Rather than requiring this level of review and

analysis, HUD chose the more direct FVA. Second, the two alternative approaches to FVA require expertise that may not be available to all communities. The 0.2 Percent Flood is not mapped in all communities and requires a significant degree of expertise to map over an area or for an individual site. The same is also true for the CISA standard, which requires not just historical analysis but a greater anticipation of trends and future conditions. Third, HUD determined that it is not practicable to establish the CISA or the 0.2 Percent Flood for all projects. HUD funds or assists tens of thousands of small projects each year. For example, repaving a road or rehabilitating a single family home may not necessitate the extra amounts of cost required by the CISA and 0.2 Percent Flood approaches. Fourth, many states and communities already have success applying a freeboard approach to floodplains. Due to the familiarity that many communities have with freeboard, the FVA was seen as a very practical approach with documented history of application.

In addition, HUD, as part of MitFLG working group, considered varying levels of elevation above base flood elevation, specifically 1, 2 and 3 feet above BFE. Based on expected sea level rise and the cost of elevation, HUD is providing the standard recommended by MitFLG, which requires at least 2 feet above freeboard, or for critical actions, at least 3 feet above freeboard.

**Anticipated Cost and Benefits:**

The standards provided under this rule, requiring at least two feet of freeboard above base flood elevation, will increase the construction cost HUD's assisted and insured new construction and substantially improved properties located in the 1 percent annual chance floodplain. This rule amends HUD's current standard which requires elevation to at least the base flood elevation. Thus, the elevation standards are not new, but rather revised to an increased height. In addition, 20 states, plus the District of Columbia and Puerto Rico, already require elevation exceeding HUD's current standard of elevation to the base flood level (BFE+0). Further, four states - Indiana, Montana, New York and Wisconsin - already require residential structures elevated with a minimum of at least two of freeboard (BFE+2). Thus, the cost of compliance in these states would be less than those that have no minimum elevation requirements in the floodplain.

Developers receiving HUD assistance who are not currently building to the proposed standard of 2 feet above base flood elevation (BFE+2) can meet the proposed standards by either elevating the lowest floor of the structure or by floodproofing to the new standard and limiting the first floor to non-residential uses. Alternatively, developers could choose to locate outside of the floodplain and the affected horizontal expansion, or reduce substantial improvement projects to less than 50 percent of the market or pre-disaster value of the structure, which would no longer classify the project as substantial.

The standards to be provide in this rule are intended to protect HUD-assisted and insured structures and the owners and tenants in these units. Thus, the benefits of the rule include reduced building damage and decreased costs to tenants temporarily displaced due to flooding, including avoided search costs for temporary replacement housing and lost wages. The annual reduction in insurance premiums provides an adequate measure of the reduction in expected damages, assuming that the NFIP rates are calculated in order to maintain a non-negative balance. In this case, the premiums for catastrophic insurance would be slightly higher than, but similar to, the expected value of the claim to pay for administrative costs.

HUD's regulatory impact analysis published with its September 2016 proposed rule more fully addresses the costs and benefits of this rulemaking, as of the proposed rulemaking stage.

**Risks:**

While the rule addresses a rule, the rule poses no risk to public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2501-AD62

<b>HUD—HUDSEC</b>	<b>FINAL RULE STAGE</b>
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**71. NOTIFICATION, EVALUATION AND REDUCTION OF LEAD-BASED PAINT HAZARDS IN  
FEDERALLY OWNED RESIDENTIAL PROPERTY AND HOUSING RECEIVING FEDERAL  
ASSISTANCE; RESPONSE TO ELEVATED BLOOD LEAD LEVEL (FR-5816)**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 3535(d); 42 U.S.C. 4821; 42 U.S.C. 4851

**CFR Citation:**

24 CFR 35

**Legal Deadline:**

None

**Abstract:**

This proposed rule would amend HUD's lead-based paint regulations on reducing blood-lead levels in children under age 6 who reside in federally-owned or assisted housing constructed prior to 1978. Specifically, the rule would formally adopt the revised definition of elevated blood lead levels in children under the age of 6 based on the definition issued by the Centers for Disease Control and Prevention (CDC). The rule would also establish more comprehensive testing and evaluation procedures for the housing where such children reside. In 2012, the CDC issued guidance revising its definition of elevated blood lead level in children under age 6 to be a blood lead level based on the distribution of blood lead levels in the national population. Since CDC revised its definition, HUD has applied it to funds awarded under its Lead-Based Paint Hazard Control grant program and its Lead Hazard Reduction Demonstration grant program, and has updated its Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing to reflect this definition. Through this rule, HUD formally adopts in regulation the CDC's definition on elevated blood lead levels in children under the age of 6 and addresses the additional elements of the CDC guidance pertaining to assisted housing.

**Statement of Need:**

Although HUD is already applying the CDC's 2012 revised definition of elevated blood level in its lead hazard control notices of funding availability and in HUD guidelines, HUD's Lead Safe Housing rule has not yet been updated to reflect the CDC's revised definition of elevated blood lead levels, and to mandate adherence to this definition by owners and managers of federally-owned or -assisted pre-1978 housing requires rulemaking.

**Summary of Legal Basis:**

Codified in Title 24 of the Code of Federal Regulations (CFR) part 35, HUD's Lead-Based Paint regulation, commonly referred to as the Lead Safe Housing Rule (LSHR), is designed to reduce lead exposure in federally-owned and federally-assisted housing (or assisted housing). The LSHR implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title

X of the Housing and Community Development Act of 1992 (Public Law 102-550, approved October 28, 1992), codified at 42 U.S.C. 4822. Under Title X, HUD has specific authority to control lead-based paint and lead-based paint hazards in HUD-assisted target housing. The LSHR aims in part to ensure that federally-owned or federally-assisted housing that may have lead-based paint--most housing constructed prior to 1978, called target housing does not have lead-based paint hazards. Lead-based paint hazards are lead-based paint and all residential lead-containing dusts and soils, regardless of the source of the lead, which, due to their condition and location, would result in adverse human health effects. As reflected in the LSHR, and consistent with Title X, HUD's primary focus is on minimizing childhood lead exposures, rather than on waiting until children have elevated blood lead levels to undertake actions to eliminate the lead-based paint hazards. This rule continues HUD's efforts to spearhead major efforts in lead poisoning prevention by taking all actions feasible and authorized by law to reduce lead exposure in children.

**Alternatives:**

Title X of the Housing and Community Development Act of 1992, also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), prescribes specific lead-based paint hazard evaluation and reduction activities for federally-supported housing. To mandate compliance with revised elevated blood lead levels procedures requires rulemaking. While HUD issued updated guidelines in 2012 to encourage compliance with CDC's revised guidelines on elevated blood lead levels, it takes rulemaking to require compliance with CDC's revised definition of elevated blood lead levels in federally-supported housing.

**Anticipated Cost and Benefits:**

The costs and benefits associated with the units affected during the first year of hazard evaluation and reduction activities under the final rule include the present value of future benefits associated with first year hazard reduction activities. For example, the benefits from costs expended for first year activities include the present value of lifetime earnings benefits for children living in the affected unit during the first year, whether that child continues living in that unit during the second and subsequent years after hazard reduction activities does not affect the benefit calculation, because the lowered lead exposure benefits all

children under age 6 who reside there during the effective period of the hazard control measures (as noted above, typically 6 or 12 or more years). The costs of ongoing lead-based paint maintenance in units covered by this rulemaking are not considered in this analysis, because it is already required by the original Lead Safe Housing Rule for housing covered by this rulemaking.

Although many benefits of lead-based paint hazard reduction cannot be quantified or monetized, such as quality of life considerations such as adolescents' and adults' dissatisfaction with lower intelligence, fewer skills, reduced education and job potential, criminal behavior, unwed pregnancies, etc., HUD does not address monetized estimates of the cognitive benefits of preventing children under age 6 from developing elevated blood lead levels. Such benefits include avoiding the costs of medical treatment for children with elevated blood lead levels as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels. In addition, blood lead levels of older children and adults living in the affected housing units would be expected to fall as a result of this rulemaking, although quantifying their blood lead changes is outside the scope of analysis for this rulemaking. Thus, the estimates of benefits represent a lower bound on the economic benefits of LBP hazard reduction because there are many other health impacts for both adults and children from lead exposure that are not quantified or monetized here. The analysis of net benefits reflects benefits over time associated with the costs incurred in the first year of hazard evaluation and reduction activities under the final rule. For example, the benefits of costs incurred in first year activities include the present value of lifetime earnings benefits for children living in the affected unit during that first year, and for children living in that unit during the second and subsequent years after hazard reduction activities.

HUD's regulatory impact analysis published with its September 2016 proposed rule more fully addresses the costs and benefits of this rulemaking, as of the proposed rulemaking stage.

**Risks:**

While this rule addresses a public health issue, but poses no risk to public health, safety, or the environment.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
NPRM	09/01/16	81 FR 60304
Comment Due Deadline	10/31/16	
Final Rule	03/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**DEPARTMENT OF THE INTERIOR**

**Statement of Regulatory Priorities**

The Department of the Interior (Interior) is the principal Federal steward of our Nation's public lands and resources, including many of our cultural treasures. Interior serves as trustee to American Indians' and Alaska Natives' trust assets and is responsible for relations with the island territories under United States jurisdiction. The Department of the Interior manages more than 500 million acres of Federal lands, including 412 park units and 563 wildlife refuges, and more than a billion submerged offshore acres. On public lands and the Outer Continental Shelf (OCS), Interior provides access for renewable and conventional energy development and manages the protection and restoration of surface-mined lands.

Interior protects and recovers endangered species; protects natural, historic, and cultural resources; manages water projects that are a lifeline and economic engine for many communities in the West; manages forests and fights wildfires; manages Federal energy resources; regulates surface coal mining operations; reclaims abandoned coal mines; educates children in Indian schools; and provides recreational opportunities for over 400 million visitors annually in the Nation's national parks, public lands, national wildlife refuges, and recreation areas.

Interior will continue to review and update its regulations and policies to ensure that they are effective and efficient, and that they promote accountability and sustainability. Interior will emphasize regulations and policies that:

- Promote environmentally responsible, safe, and balanced development of renewable and conventional energy on our public lands and the OCS;
- Use the best available science to ensure that public resources are protected, conserved, and used wisely;
- Preserve America's natural treasures for future generations;
- Improve the nation-to-nation relationship with American Indian tribes and promote tribal self-determination and self-governance;

- Promote partnerships with states, tribes, local governments, other groups, and individuals to achieve common goals; and
- Promote transparency, fairness, accountability, and the highest ethical standards while maintaining performance goals.

## **Major Regulatory Areas**

Interior's bureaus implement congressionally mandated programs through their regulations. Some of these regulatory programs include:

- Overseeing the development of onshore and offshore energy, including renewable, mineral, oil and gas, and other energy resources;
- Regulating surface coal mining and reclamation operations on public and private lands;
- Managing migratory birds and preserving marine mammals and endangered species;
- Managing dedicated lands such as national parks, wildlife refuges, National Conservation Lands, and American Indian trust lands;
- Managing public lands open to multiple use;
- Managing revenues from American Indian and Federal minerals;
- Fulfilling trust and other responsibilities pertaining to American Indians and Alaska Natives; and
- Managing natural resource damage assessments.

## **Regulatory Policy**

Interior's regulatory programs seek to operate programs transparently, efficiently, and cooperatively while maximizing protection of our land, resources, and environment in a fiscally responsible way by:

(1) Protecting Natural, Cultural, and Heritage Resources.

Interior's mission includes protecting and providing access to our Nation's natural and cultural heritage and honoring our trust responsibilities to Indian tribes. We are committed to this mission, and to applying laws and regulations fairly and effectively. Our priorities include protecting public health and safety, restoring and maintaining public lands, protecting threatened and endangered species, ameliorating land- and resource-management problems on public lands, and ensuring accountability and compliance with Federal laws and regulations.

(2) Sustainably Using Energy, Water, and Natural Resources.

Since the beginning of the Obama Administration, Interior has focused on renewable energy issues and has established priorities for environmentally responsible development of renewable energy on public lands and the OCS. Industry has responded by investing in the development of wind farms off the Atlantic seacoast and solar, wind, and geothermal energy facilities throughout the West. Power generation from these new energy sources produces virtually no greenhouse gases and, when done in an environmentally responsible manner, harnesses with minimum impact abundant renewable energy. Interior will continue its intra- and inter-departmental efforts to move forward with the environmentally responsible review and permitting of renewable energy projects on public lands and the Outer Continental Shelf, and will identify how its regulatory processes can be improved to facilitate the responsible development of these resources.

In implementing these priorities through its regulations, Interior will create jobs and contribute to a healthy economy while protecting our signature landscapes, natural resources, wildlife, and cultural resources.

### (3) Empowering People and Communities.

Interior strongly encourages public participation in the regulatory process and will continue to actively engage the public in the implementation of priority initiatives. Throughout Interior, individual bureaus and offices are ensuring that the American people have an active role in managing our Nation's public lands and resources.

For example, every year the U.S. Fish and Wildlife Service (FWS) establishes migratory bird hunting seasons in partnership with Flyway Councils composed of state fish and wildlife agencies. The FWS also holds a series of public meetings to provide interested parties, including hunters and other groups, opportunities to participate in establishing the upcoming season's regulations. Similarly, the Bureau of Land Management (BLM) uses Resource Advisory Councils to provide advice on the management of public lands and resources. These citizen-based groups allow individuals from all backgrounds and interests to have a voice in management of public lands.

#### **Retrospective Review of Regulations**

President Obama's Executive Order 13563 directs agencies to make the regulatory system work better for the American public. Regulations should "...protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." Interior's plan for retrospective regulatory review identifies specific efforts to relieve regulatory burdens, add jobs to the economy, and make regulations work better for the American public while protecting our environment and resources.

Interior routinely meets with stakeholders to solicit feedback and input on ways to modernize our regulatory programs, through efforts such as incorporating performance based standards and removing outdated and unnecessary requirements. Interior bureaus continue efforts to make our regulations easier to comply with and understand. Our regulatory process ensures that bureaus share ideas to reduce regulatory burdens while meeting the requirements of the laws they enforce and improving their stewardship of the environment and resources. Results include:

- Effective stewardship of our Nation's resources that is responsive to the needs of small businesses;
- Increased benefits per dollar spent by careful evaluation of the economic effects of planned rules; and
- Improved compliance and transparency by use of plain language in our regulations and guidance documents.

The Department of the Interior's Final Plan for Retrospective Review and biannual status reports can be viewed at <http://www.doi.gov/open/regsreview>.

### **Bureaus and Offices within the Department of the Interior**

The following sections give an overview of some of the major regulatory priorities of DOI bureaus and offices.

#### *Indian Affairs*

Indian Affairs, including the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE), provides services to approximately 1.9 million American Indians and Alaska Natives, and maintains a government-to-government relationship with the 567 federally recognized tribes. Indian Affairs 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 tribes. Indian Affairs's mission is to enhance the quality of life, promote economic opportunity, and protect and improve the trust assets of Indian tribes, American Indians, and Alaska Natives, as well as to provide quality education opportunities to students in Indian schools.

In the coming year, BIA will continue its focus on improved management of trust responsibilities with each regulatory review and revision. The Bureau will also continue to promote economic development in Indian communities by ensuring the regulations support, rather than hinder, productive land management

and businesses. In addition, Indian Affairs will focus on updating Indian education regulations and on other regulatory changes to increase transparency in support of the President's Open Government Initiative.

In the coming year, Indian Affairs regulatory priorities are to:

- Develop regulatory changes necessary for improved Indian education.

Indian Affairs is reviewing regulations that require the Bureau of Indian Education to follow adequate yearly progress standards for 23 different states. The review will determine whether a uniform standard would better meet the needs of students at BIE-funded schools. With regard to undergraduate education, the BIE plans to finalize regulations that address grants to tribally controlled community colleges and other Indian education regulations. These reviews identify provisions that need to be updated to comply with applicable statutes and ensure that the proper regulatory framework is in place to support students in BIE-funded schools.

- Revise regulations to reflect updated statutory provisions and increase transparency.

BIA is making a concentrated effort to improve the readability and precision of its regulations. Because trust beneficiaries often turn to the regulations for guidance on how a given BIA process works, BIA is ensuring that each revised regulation is written as clearly as possible and accurately reflects the current organization of the Bureau. The BIA is also simplifying language and eliminating obsolete provisions. In the past year, the BIA has finalized revisions to regulations regarding rights-of-way (25 CFR 169); Secretarial elections (25 CFR 81); the Housing Improvement Program (25 CFR 256); Indian Reservation Roads (25 CFR 170); and Indian Child Welfare Act proceedings (25 CFR 23). In the coming year, the BIA also plans to finalize revisions to regulations regarding the Tribal Transportation Program (formerly known as Indian Reservation Roads) (25 CFR 170).

- Solicit comment on potential regulatory changes to Indian trader regulations.

BIA is considering whether to propose an administrative rule that would comprehensively update 25 CFR part 140 (Licensed Indian Traders) in an effort to modernize the implementation of the Indian Trader statutes consistent with the Federal policies of tribal self-determination and self-governance. The current regulations were promulgated in 1957 and have not been comprehensively updated since 1965. BIA will solicit comments on its Indian Trader regulations including how the regulations could be improved, who should be permitted to trade on Indian land, and what may be traded on Indian land, in a manner more consistent with tribal self-governance and self-determination.

### *Bureau of Land Management*

The Bureau of Land Management manages the 245-million-acre National System of Public Lands, located primarily in the Western States, including Alaska, and the 700 million acre subsurface mineral estate located throughout the Nation. In doing so, BLM manages such varied uses as energy and mineral development, outdoor recreation, livestock grazing, and forestry and woodlands products. BLM's complex multiple-use mission affects the lives of millions of Americans, including those who live near or visit the public lands, as well as those who benefit from the commodities, such as minerals, energy, or timber, produced from the lands' rich resources. In undertaking its management responsibilities, BLM seeks to conserve our public lands' natural and cultural resources, and sustain the health and productivity of the public lands for the use and enjoyment of present and future generations.

The BLM is updating and improving the current versions of Onshore Oil and Gas Orders (Orders) for □ Site Security (Order 3), □ Oil Measurement (Order 4), and □ Gas Measurement (Order 5). These Orders were last updated in 1989. The primary purpose for these updates is to keep pace with changing industry practices, emerging and new technologies, respond to recommendations from the Government Accountability Office (GAO), the Department of the Interior Office of the Inspector General, and the Department of the Interior's Subcommittee on Royalty Management. The proposed changes address findings and recommendations that in part formed the basis for the GAO's inclusion of Interior's oil and gas program on the GAO's High Risk List in 2011 (GAO-11-278) and for its continuing to keep the

program on the list in the 2013 and 2015 updates. The Orders will be published as proposed rules in 43 Code of Federal Regulations (CFR) 3173, 3174, and 3175, respectively.

- Preventing waste of produced natural gas and ensuring fair return to the taxpayer.

BLM's current requirements regarding venting and flaring of natural gas from oil and gas operations are over 3 decades old. The agency intends to finalize a rule to address emissions reductions and minimize waste through improved standards for venting, flaring, and fugitive losses of methane from oil and gas production facilities on Federal and Indian lands.

- Ensuring that taxpayers receive a fair return from energy resources developed on the public lands, those resources are diligently and responsibly developed, and that adequate financial measures exist to address the risks.

The GAO recommended that BLM take necessary steps to revise its regulations regarding onshore royalty rates to provide flexibility to change those rates. On April 21, 2015, the BLM issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking public comment on potential updates to BLM rules governing oil and gas royalty rates, rental payments, lease sale minimum bids, civil penalty caps, and financial assurances. Over 82,000 comments were received during the comment period ending on June 19, 2015. Most of the comments focused on fiscal lease terms – royalty rates, rentals, and minimum bids. There were a few comments on bonding and very few on civil penalties.

With respect to royalties rates generally, based on comments received on the ANPRM, the BLM proposed an amendment to its regulations governing royalty rates as part of its “Waste Prevention, Production Subject to Royalties, and Resource Conservation” rulemaking, 81 Fed. Reg. 6616 (Feb. 8, 2016). The proposed regulatory amendment, if adopted, would give the Secretary flexibility to adjust onshore oil and gas royalty rates in response to market conditions.

Regarding financial measures to address risks, on June 28, 2016, the BLM published a rule to adjust civil monetary penalties contained in the Bureau of Land Management’s regulations governing onshore oil and gas operations. This rule responded to the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The adjustments made by this interim final rule constitute the initial catch-up adjustments contemplated by the Act, and are consistent with applicable Office of Management and Budget (OMB) guidance. The initial adjustments will be followed by annual adjustments for inflation thereafter. The purpose of these adjustments is to maintain the deterrent effect of civil penalties found in existing regulations.

- Creating a competitive process for offering lands for solar and wind energy development.

The BLM will finalize a rule to establish an efficient competitive process for leasing public lands for solar and wind energy development. The regulations will establish competitive bidding procedures for lands within designated solar and wind energy development leasing areas, define qualifications for potential bidders, and structure the financial arrangements necessary for the process. The rule will enhance BLM's ability to capture fair market value for the use of public lands, ensure fair access to leasing opportunities for renewable energy development, and foster the growth and development of the renewable energy sector of the economy.

#### *Bureau of Ocean Energy Management*

The Bureau of Ocean Energy Management (BOEM) promotes energy independence, environmental protection, and economic development through responsible, science-based management of offshore conventional and renewable energy resources. It is dedicated to offering opportunities to develop the conventional and renewable energy and the underlying mineral resources of the OCS in an efficient and effective manner, balancing the need for economic growth with the protection of the environment. BOEM oversees the expansion of domestic energy production, enhancing the potential for domestic energy independence and the generation of revenue to support the economic development of the country. BOEM thoughtfully considers and balances the potential environmental impacts associated with exploring and extracting OCS resources with the critical need for domestic energy production. BOEM's near-term regulatory agenda will focus on a number of issues, including:

- Enhancing the regulatory efficiency of the offshore renewables program.

BOEM is finalizing two rules to address this goal. In consultation with stakeholders, a proposed rule would update, simplify, and clarify BOEM's current regulations for awarding renewable energy leases and grants. It would reorganize, simplify, and clarify BOEM's pre- and post-auction procedures and better describe the use of bidding credits. It also would deter bidder collusion and provide incentives to

encourage a provisional winner to fulfill its obligations. The second is a final rule that reassigns current safety and environmental oversight and enforcement responsibilities for off-shore renewable energy projects from BOEM to the Bureau of Safety and Environmental Enforcement. The Secretary of the Interior and the Assistant Secretary for Land and Mineral Management mandated this administrative reassignment to ensure that safety and environmental oversight of offshore renewable energy activities is independent of program management and leasing functions. BOEM is proposing to amend the scope of an existing proposed rulemaking that remains in early development. The amended scope will incorporate changes to the offshore renewable regulatory framework suggested by the public and the regulated community and may include provisions addressing regulatory gaps and inconsistencies arising from the Title 30 reorganization.

- Updating BOEM's Air Quality Program.

BOEM's original air quality rules date largely from 1980 and have not been updated substantially since that time. From 1990 to 2011, Interior exercised jurisdiction only for OCS sources operating in the Gulf of Mexico. In Fiscal Year 2011, Congress expanded Interior's authority by transferring to it responsibility for monitoring OCS air quality off the North Slope Borough of the State of Alaska, including the Beaufort Sea, and the Chukchi Sea. BOEM intends to finalize updated regulations to reflect changes that have occurred over the past 34 years and the new regulatory jurisdiction.

- Promoting Effective Financial Assurance and Risk Management.

BOEM has the responsibility to ensure that lessees and operators on the OCS do not engage in activities that could generate an undue risk of financial loss to the Government. BOEM formally established a program office to review these issues, and is working with industry and others to determine how to improve the regulatory regime to better align with the realities of aging offshore infrastructure, hazard risks, and increasing costs of decommissioning. In order to minimize the potential adverse impact of any

proposed regulations, and in an effort to take all issues and views into proper account, BOEM published an Advance Notice of Proposed Rulemaking (ANPRM) in 2014, and has engaged with industry on the subject. BOEM has since issued a Notice to Lessees to its stakeholders, effective September 12, 2016, to address the concerns.

#### *Bureau of Safety and Environmental Enforcement*

The Bureau of Safety and Environmental Enforcement (BSEE) mission is to regulate safety, emergency preparedness, environmental responsibility and appropriate development and conservation of offshore oil and natural gas resources. BSEE's priorities in fulfillment of its mission are to: (1) regulate, enforce, and respond to OCS development using the full range of authorities, policies, and tools to compel safety and environmental responsibility and appropriate development of offshore oil and natural gas resources; and (2) build and sustain the organizational, technical, and intellectual capacity within and across BSEE's key functions - capacity that keeps pace with OCS industry technology improvements, innovates in regulation and enforcement, and reduces risk through systemic assessment and regulatory and enforcement actions.

BSEE has identified the following areas of regulatory priorities:

- Improving Crane and Helicopter Safety on Offshore Facilities

BSEE will finalize a rule regarding crane safety on fixed offshore platforms and will propose a rule for helicopter/helideck safety.

- Improving Oil Spill Response Plans and Procedures

BSEE will update regulations for offshore oil spill response plans by incorporating requirements for improved procedures. The procedures that will be required are based on lessons learned from the

Deepwater Horizon spill, as well as nearly two decades of agency oversight and applicable BSEE research.

- Updating Cost Reporting and Cost Recovery Rules

BSEE expects to finalize its proposal for expanding the existing requirements for reporting of actual decommissioning costs to include the costs of decommissioning pipelines subject to BSEE's authority. The Bureau will use that information to estimate future decommissioning costs. BSEE will also propose, and expects to finalize, updates to the existing regulations for recovery of the costs of services provided by BSEE (such as reviewing permit applications) to reflect increases in those costs.

#### *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 2016 through March 2017 includes proposing new regulations to implement the provisions of the Energy Policy Act of 2005 (EPAAct) governing the payment of advance royalty on coal resources produced from Federal leases. ONRR is also adding information collection requirements that are applicable to all solid minerals leases and also are necessary to implement the EPAAct Federal coal advance royalty provisions. Additionally, ONRR expects to issue a proposed rulemaking to amend ONRR's service of official correspondence regulations, providing necessary clarifications and a simpler process for the service of official correspondence.

#### *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.” In response to its statutory mandate, OSMRE has sought to develop and maintain a stable regulatory program that is safe, cost-effective, and environmentally sound. A stable regulatory program ensures that the coal mining industry has clear guidelines for operation and reclamation, and that citizens know how the program is being implemented.

OSMRE's Federal regulatory program sets minimum requirements for obtaining a permit for surface and underground coal mining operations, sets performance standards for those operations, requires reclamation of lands and waters disturbed by mining, and requires enforcement to ensure that the standards are met OSMRE is the primary regulatory authority for SMCRA enforcement until a State or Indian tribe develops its own regulatory program, which is no less effective than the Federal program. When a State or Indian tribe achieves “primacy,” it assumes direct responsibility for permitting, inspection, and enforcement activities under its federally approved regulatory program. The regulatory standards in Federal program States and in primacy States are essentially the same with only minor, non-substantive differences. Today, 24 States have primacy, including 23 of the 24 coal producing States. OSMRE's regulatory priorities for the coming year will focus on:

- Stream Protection.

Protect streams and related environmental resources from the adverse effects of surface coal mining operations. OSMRE plans to finalize regulations to improve the balance between environmental protection and the Nation's need for coal by better protecting streams from the adverse impacts of surface coal mining operations.

- Coal Combustion Residues.

Establish Federal standards for the beneficial use of coal combustion residues on active and abandoned coal mines.

- Cost Recovery.

Revise OSMRE existing permit fees and impose new fees to recover OSMRE's costs for permit administration and enforcement services provided to the coal industry. The proposed fees would be applicable to permits for mining on lands where regulatory jurisdiction has not been delegated to the States and would include OSMRE's Federal program, States, and Indian lands.

- Bond Requirements.

Update OSMRE bonding regulations to ensure there are sufficient funds to complete all of the required reclamation in the reclamation plan if the regulatory authority has to perform the work in the event of forfeiture.

#### *U.S. Fish and Wildlife Service*

The mission of the U.S. Fish and Wildlife Service (FWS) is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

FWS also provides opportunities for Americans to enjoy the outdoors and our shared natural heritage.

FWS fulfills its responsibilities through a diverse array of programs that:

- Protect and recover endangered and threatened species;
- Monitor and manage migratory birds;
- Restore native aquatic populations and nationally significant fisheries;

- Enforce Federal wildlife laws and regulate international trade;
- Conserve and restore wildlife habitat such as wetlands;
- Help foreign governments conserve wildlife through international conservation efforts;
- Distribute Federal funds to States, territories, and tribes for fish and wildlife conservation projects;  
and
- Manage the more than 150 million acre National Wildlife Refuge System, which protects and conserves fish and wildlife and their habitats, and allows the public to engage in outdoor recreational activities.

During the next year, FWS regulatory priorities will include:

- Regulations under the Endangered Species Act (ESA).

We will issue multiple rules under the ESA to conserve both domestic and foreign animal and plant species. Accordingly, we will add species to, remove species from, and reclassify species on the Lists of Endangered and Threatened Wildlife and Plants and designate critical habitat for certain listed species. We will issue a comprehensive compensatory mitigation policy that sets standards for compensatory mitigation and minimum criteria that should provide better ecological outcomes for listed and at-risk species through effective management of the risks associated with compensatory mitigation. The policy will encourage a proactive approach that will take advantage of economies of scale and provide greater regulatory certainty and predictability for the regulated community.

- Regulations under the Migratory Bird Treaty Act (MBTA).

In carrying out our responsibility to manage migratory bird populations, we 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. Additionally, FWS is considering whether to issue a proposed rulemaking to address various approaches to regulating incidental take of migratory birds, including issuing individual permits, general permits, and Federal agency authorizations. The rulemaking would establish appropriate standards for any such regulatory approach to ensure that incidental take of migratory birds is appropriately mitigated, which may include requiring measures to avoid or minimize take or securing compensation.

The FWS is also refining its management objectives for bald eagles and golden eagles and revising the regulations pertaining to issuing permits for nonpurposeful take of eagles and eagle nest take. The revisions will add clarity to the eagle permit regulations, improve their implementation, and increase compliance, while providing strong protection for eagles.

Regulations to administer the National Wildlife Refuge System (NWRS).

In carrying out our statutory responsibility to provide wildlife-dependent recreational opportunities on NWRS lands, we issue an annual rule to update the hunting and fishing regulations on specific refuges. To protect NWRS resources, we will issue a rule to ensure that businesses conducting oil or gas operations on NWRS lands do so in a manner that prevents or minimizes damage to the lands, visitor values, and management objectives.

- Regulations to carry out the Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts (Acts).

Under the Acts, the FWS distributes annual apportionments to States from trust funds derived from excise tax revenues and fuel taxes. We continue to direct state fish and wildlife agencies on how to use these funds to implement conservation projects. To strengthen our partnership with State conservation organizations, we are working on several rules to update and clarify our regulations. Planned regulatory

revisions will help to reflect several new decisions agreed upon by state conservation organizations, we are working on several rules to update and clarify our regulations. Planned regulatory revision will help to reflect several new decisions agreed upon by State and Federal partners. We will also expand on existing regulations that prescribe processes that applicants and grantees must follow when applying for and managing grants from FWS.

- 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 Executive Order 13609 (Promoting International Regulatory Cooperation), we will update our CITES regulations to incorporate provisions resulting from the 16th Conference of the Parties to CITES. The revisions will help us more effectively promote species conservation and help U.S. importers and exporters of wildlife products understand how to conduct lawful international trade.

#### *National Park Service*

The National Park Service (NPS) preserves unimpaired the natural and cultural resources and values within more than 400 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 natural and resource conservation and outdoor recreation throughout the United States and the world.

To achieve this mission NPS adheres to the following guiding principles:

- *Excellent Service*: Providing the best possible service to park visitors and partners.
- *Productive Partnerships*: Collaborating with Federal, State, tribal, and local governments, private organizations, and businesses to work toward common goals.

- *Citizen Involvement*: Providing opportunities for citizens to participate in the decisions and actions of the National Park Service.
- *Heritage Education*: Educating park visitors and the general public about their history and common heritage.
- *Outstanding Employees*: Empowering a diverse workforce committed to excellence, integrity, and quality work.
- *Employee Development*: Providing developmental opportunities and training so employees have the “tools to do the job” safely and efficiently.
- *Wise Decisions*: Integrating social, economic, environmental, and ethical considerations into the decisionmaking process.
- *Effective Management*: Instilling a performance management philosophy that fosters creativity, focuses on results, and requires accountability at all levels.
- *Research and Technology*: Incorporating research findings and new technologies to improve work practices, products, and services.

The NPS regulatory priorities for the coming year include:

- Managing Off-Road Vehicle Use.

Rules for Fire Island National Seashore, Glen Canyon National Recreation Area, and Cape Lookout National Seashore would allow for management of off-road vehicle (ORV) use, to protect and preserve natural and cultural resources, and provide a variety of visitor use experiences while minimizing conflicts among user groups. Further, the rules would designate ORV routes and establish operational requirements and restrictions.

- Managing Disposition of Archeological Materials.

The rule will establish definitions, standards, procedures, and guidelines to be followed by Federal agencies to dispose of particular archeological material remains that are in collections recovered during Federal projects and programs under certain Federal statutes. This rule is necessary because, at present, there is no procedure to dispose of material remains that are determined to be of insufficient archeological interest.

- Implementing the Native American Graves Protection and Repatriation Act (NAGPRA).

A rule revising the existing regulations would describe the NAGPRA process in plain language, eliminate ambiguity, clarify terms, and include Native Hawaiians in the process. The rule would eliminate unnecessary requirements for museums and would not add processes or collect additional information.

- Regulating Non-Federal Oil and Gas Activity on NPS Lands.

NPS will revise its existing regulations to account for new technology and industry practices, eliminate regulatory exemptions, update new legal requirements, remove caps on bond amounts, and allow the NPS to recover compliance costs associated with administering the regulations.

- Managing Service Animals.

The rule will define and differentiate service animals from pets, and will describe the circumstances under which service animals would be allowed in a park area. The rule will ensure NPS compliance with section 504 of the Rehabilitation Act of 1973 (28 U.S.C 794) and better align NPS regulations with the Americans with Disabilities Act of 1990 (42 U.S.C. 1211 *et seq.*) and the Department of Justice Service Animal regulations of 2011 (28 CFR 36.104).

- Managing Subsistence Collection – NPS Units – Alaska Region.

The rule will allow qualified subsistence users to collect and use non-edible fish and wildlife parts and plant materials for the creation and subsequent disposition (use, barter, or sale) of handicrafts. The rule will also (1) clarify that collecting or possessing living wildlife is generally prohibited, and (2) limit the types of bait that may be used to take bears for subsistence uses.

- Managing Sale and Distribution of Printed Matter and Other Message Bearing Items – NPS Units Nationwide

The rule would allow the free distribution of message-bearing items that do not meet the definition of “printed matter” in existing regulations. These items include readable electronic media, clothing and accessories, buttons, pins, and bumper stickers. The rule would implement current NPS policy.

#### *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. We have continued to focus on increased security at our facilities.

Our regulatory program focus in Fiscal Year 2017 is to publish a proposed minor amendment to 43 CFR part 429 to bring it into compliance with the requirements of 43 CFR part 5, Commercial Filming and Similar Projects and Still Photography on Certain Areas under Department Jurisdiction. Publishing this rule will implement the provisions of Public Law 106-206, which directs the establishment of permits and reasonable fees for commercial filming and certain still photography activities on public lands.

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**DEPARTMENT OF JUSTICE (DOJ) -- FALL 2016**

**Statement of Regulatory Priorities**

The mission of the Department of Justice is to enforce the law and defend the interests of the United States according to the law, to ensure public safety against foreign and domestic threats, to provide Federal leadership in preventing and controlling crime, to seek just punishment for those guilty of unlawful behavior, and to ensure the fair and impartial administration of justice for all Americans. In carrying out its mission, the Department is guided by four core values: (1) equal justice under the law; (2) honesty and integrity; (3) commitment to excellence; and (4) respect for the worth and dignity of each human being. The Department of Justice is primarily a law enforcement agency, not a regulatory agency; it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

The regulatory priorities of the Department include initiatives in the areas of civil rights, criminal law enforcement and immigration. 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.

## Civil Rights

The Department is planning to publish a rule amending the Department's section 504 regulations for federally assisted programs and activities to incorporate changes adopted by the ADA Amendments Act of 2008 and other legal developments (RIN 1105-AB50). In addition, the Civil Rights Division is including the following disability nondiscrimination rulemaking initiatives in the Department's Regulatory Plan: (1) Nondiscrimination on the Basis of Disability by Public Accommodations: Movie Captioning and Audio Description (RIN 1190-AA63); (2) Accessibility of Web Information and Services of State and Local Governments (RIN 1190-AA65); and (3) Implementation of the ADA Amendments Act of 2008 in the Department's section 504 Federal Coordination regulation (RIN 1190-AA72).

The Civil Rights Division will also be revising its regulations for Coordination of Enforcement of Non-Discrimination in Federally Assisted Programs under title VI of the Civil Rights Act (RIN 1190-AA70), as well as revising regulations implementing section 274B of the Immigration and Nationality Act with respect to unfair immigration-related employment practices (RIN 1190-AA71).

Other disability nondiscrimination rulemaking initiatives, while important priorities for the Department's rulemaking agenda, will be included in the Department's long-term actions for fiscal years 2017 and 2018. As will be discussed more fully below, these initiatives include: (1) Next Generation 9-1-1 Services (RIN 1190-AA62); (2) Accessibility of Web Information and Services of Public Accommodations (RIN 1190-AA61); (3) Accessibility of Equipment and Furniture (RIN 1190-AA64), including Accessibility of Medical Equipment and Furniture (RIN 1190-AA66), and Accessibility of Beds in Guestrooms with Mobility Features in Places of Lodging (RIN 1190-AA67); and (4) Implementation of the ADA Amendments Act of 2008 in the Department's section 504 regulation with respect to federally conducted programs and activities (RIN 1190-AA73).

### Regulatory Plan Initiatives

*Captioning and Audio Description in Movie Theaters (RIN 1190-AA63).* Title III of the ADA requires public accommodations to take "such steps as may be necessary to ensure that no individual with a disability is treated differently because of the absence of auxiliary aids and services, unless the

covered entity can demonstrate that taking such steps would cause a fundamental alteration or would result in an undue burden.” 42 U.S.C. section 12182(b)(2)(A)(iii). Both open and closed captioning and audio recordings are examples of auxiliary aids and services that should be provided by places of public accommodations, 28 CFR section 36.303(b)(1)-(2). The Department stated in the preamble to its 1991 rule that “[m]ovie theaters are not required...to present open-captioned films,” 28 CFR part 36, app. C (2011), but did not address closed captioning and audio description in movie theaters. In the movie theater context, “closed captioning” refers to captions that only the patron requesting the closed captions can see because the captions are delivered to the patron at or near the patron’s seat. Audio description is a technology that enables individuals who are blind or have low vision to enjoy movies by providing a spoken narration of key visual elements of a visually delivered medium, such as actions, settings, facial expressions, costumes, and scene changes.

Since 1991, there have been many technological advances in the area of closed captioning and audio description for first-run movies. In June 2008, the Department issued an NPRM to revise the ADA title III regulation, 73 FR 34466, in which the Department stated that it was considering options for requiring that movie theater owners or operators exhibit movies that are captioned or that provide video (narrative) description. The Department issued an ANPRM on July 26, 2010, to obtain more information regarding issues raised by commenters; to seek comment on technical questions that arose from the Department’s research; and to learn more about the status of digital conversion. In addition, the Department sought information regarding whether other technologies or areas of interest (e.g., 3D) have developed or are in the process of development that would either replace or augment digital cinema or make any regulatory requirements for captioning and audio description more difficult or expensive to implement. The Department received approximately 1,171 public comments in response to its movie captioning and video description ANPRM. On August 1, 2014, the Department published its NPRM proposing to revise the ADA title III regulation to require movie theaters to have the capability to exhibit movies with closed movie captioning and audio description (which was described in the ANPRM as video description) for all showings of movies that are available with closed captioning or audio description, to require theaters to provide notice to the public about the availability of these services, and to ensure that theaters have staff available who can provide information to patrons about the use of these services. In

response to a request for an extension of the public comment period, the Department issued a notice extending the comment period for 60 days until December 1, 2014. The Department received approximately 435 public comments in response to the movie captioning and audio description NPRM and expects to publish a final rule during fiscal year 2016.

*Web Site Accessibility: State and Local Governments (RIN 1190-AA65).* The Internet as it is known today did not exist when Congress enacted the ADA, yet today the Internet plays a critical role in the daily personal, professional, civic, and business lives of Americans. The ADA's expansive nondiscrimination mandate reaches public entities' programs, services, or activities offered on or through their web sites. Being unable to access web sites puts individuals at a great disadvantage in today's society, which is driven by a dynamic electronic marketplace and unprecedented access to information. For individuals with disabilities who experience barriers to their ability to travel or to leave their homes, the Internet may be their only way to access certain government programs and services. In this regard, the Internet is dramatically changing the way that governmental entities serve the public. Public entities are increasingly providing their constituents access to government services and programs through their web sites. Information available on the Internet has become a gateway to education and participation in many other public programs and activities. Through Government web sites, the public can obtain information or correspond with local officials without having to wait in line or be placed on hold. They can also pay fines, apply for benefits, renew State-issued identification, register to vote, file taxes, request copies of vital records, and complete numerous other everyday tasks. The availability of these services and information online not only makes life easier for the public but also often enables governmental entities to operate more efficiently and at a lower cost.

The ADA's promise to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of American civic and economic life will be achieved in today's technologically advanced society only if it is clear to State and Local governments that their web sites must be accessible. Consequently, the Department is planning to amend its regulation implementing title II of the ADA to require public entities that provide services, programs or activities to the public through Internet web sites to make their sites accessible to and usable by individuals with disabilities.

The Department, in its 2010 ANPRM on web site accessibility, indicated that it was considering amending its regulations implementing titles II and III of the ADA to require web site accessibility and it sought public comment regarding what standards, if any, it should adopt for web site accessibility, whether the Department should adopt coverage limitations for certain entities, and what resources and services are available to make existing web sites accessible to individuals with disabilities. The Department also solicited comments on the costs of making web sites accessible and on the existence of any other effective and reasonably feasible alternatives to making web sites accessible. The Department received approximately 440 public comments and is in the process of reviewing these comments. The Department will be publishing separate NPRMs addressing web site accessibility pursuant to titles II and III of the ADA.

On May 9, 2016 the Department published a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) titled *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities* addressing the potential application of technical accessibility requirements to the web sites of title II entities. 81 FR 28657. Through the SANPRM, the Department intends to solicit additional public comment on various issues to help the Department shape and further its rulemaking efforts. The SANPRM asks 123 multipart questions, seeking public comment on a wide range of complex issues related to the potential technical accessibility requirements as well as any proposed title II web rule's costs and benefits.

*Implementation of the ADA Amendments Act of 2008: Federally Assisted Programs (Section 504 of the Rehabilitation Act of 1973) (RIN 1105-AB50)*. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability in programs and activities receiving Federal financial assistance or in programs and activities conducted by an Executive agency. This rule would propose to revise the Department's regulation implementing section 504 of the Rehabilitation Act with respect to recipients of Federal financial assistance from the Department, 28 CFR part 42, subpart G, to reflect statutory amendments made by the ADA Amendments Act of 2008, Public Law 110-325, 122 Stat. 3553 (Sep. 25, 2008), and other legal developments since the current regulations were adopted.

The ADA Amendments Act, which took effect on January 1, 2009, revised 29 U.S.C. 705 to make the definition of disability used in the nondiscrimination provisions in title V of the Rehabilitation Act consistent with the amended ADA requirements. Specifically, these amended ADA requirements: (1) clarify that the term “disability” shall be interpreted broadly and without extensive analysis; (2) add rules of construction to be applied when determining whether an impairment substantially limits a major life activity; (3) expand the definition of “major life activities” by providing a non-exhaustive list of “major life activities” that includes the operation of “major bodily functions;” and (4) modify the “regarded as” prong of the definition of disability by stating that an individual may be “regarded as” having an impairment even if that impairment does not limit or is not perceived to limit a major life activity, and clarifying that individuals covered only under the “regarded as” prong are not entitled to reasonable modifications. An update to 28 CFR part 42, subpart G, would, therefore, incorporate these changes and harmonize the regulation with the ADA Amendments Act and the revisions to title V of the Rehabilitation Act.

*Implementation of the ADA Amendments Act of 2008: Federal Coordination (Section 504 of the Rehabilitation Act of 1973) (RIN 1190-AA72)* Executive Order 12250 delegated the authority to coordinate the enforcement and implementation of section 504 of the Rehabilitation Act by Executive agencies to the Attorney General. Pursuant to this authority, the Department proposes to revise its regulation implementing Executive Order 12250, 28 CFR part 41, to reflect statutory amendments to section 504 of the Rehabilitation Act made by the ADA Amendments Act of 2008. The proposed revisions to the Department’s Federal Coordination regulation would be consistent with the proposed revisions to the Department’s Federally Assisted regulation discussed above. .

*Coordination of Enforcement of Non-Discrimination in Federally Assisted Programs (RIN 1190-AA70)*. In addition, the Department is planning to revise the coordination regulations implementing title VI of the Civil Rights Act, which have not been updated in over 30 years. Among other things, the updates will revise outdated provisions, streamline procedural steps, streamline and clarify provisions regarding information and data collection, promote opportunities to encourage public engagement, and incorporate current law regarding meaningful access for individuals who are limited English proficient.

*Implementation of Section 274B of the Immigration and Nationality Act (RIN 1190-AA71).* The Department also proposes to revise regulations implementing section 274B of the Immigration and Nationality Act, and to reflect the new name of the office within the Department charged with enforcing this statute. The proposed revisions are appropriate to conform the regulations to the statutory text as amended, simplify and add definitions of statutory terms, update and clarify the procedures for filing and processing charges of discrimination, ensure effective investigations of unfair immigration-related employment practices, and update outdated references.

### Long-term Actions

The remaining disability nondiscrimination rulemaking initiatives from the 2010 ANPRMs are included in the Department's long-term priorities projected for fiscal years 2017 and 2018:

*Next Generation 9-1-1 (RIN 1190-AA62).* This ANPRM sought information on possible revisions to the Department's regulation to ensure direct access to Next Generation 9-1-1 (NG 9-1-1) services for individuals with disabilities. In 1991, the Department of Justice published a regulation to implement title II of the Americans with Disabilities Act of 1990 (ADA). That regulation requires public safety answering points (PSAPs) to provide direct access to persons with disabilities who use analog telecommunication devices for the deaf (TTYs), 28 CFR 35.162. Since that rule was published, there have been major changes in the types of communications technology used by the general public and by people who have disabilities that affect their hearing or speech. Many individuals with disabilities now use the Internet and wireless text devices as their primary modes of telecommunications. At the same time, PSAPs are planning to shift from analog telecommunications technology to new Internet-Protocol (IP)-enabled NG 9-1-1 services that will provide voice and data (such as text, pictures, and video) capabilities. As PSAPs transition from the analog systems to the new technologies, it is essential that people with communication disabilities be able to use the new systems. Therefore, the Department published this ANPRM to begin to develop appropriate regulatory guidance for PSAPs that are making this transition. The Department is in the process of completing its review of the approximately 146 public comments it received in response to its NG 9-1-1 ANPRM.

*Web Site Accessibility: Public Accommodations (RIN 1190-AA61).* The ADA's expansive nondiscrimination mandate reaches the goods and services provided by public accommodations using Internet web sites. The inability to access web sites puts individuals at a great disadvantage in today's society, which is driven by a dynamic electronic marketplace and unprecedented access to information. On the economic front, electronic commerce, or "e-commerce," often offers consumers a wider selection and lower prices than traditional, "brick-and-mortar" storefronts, with the added convenience of not having to leave one's home to obtain goods and services. And, for individuals with disabilities who experience barriers to their ability to travel or to leave their homes, the Internet may be their only way to access certain goods and services. Beyond goods and services, information available on the Internet has become a gateway to education, socializing, and entertainment

The Department's 2010 ANPRM on web site accessibility sought public comment regarding what standards, if any, it should adopt for web site accessibility, whether the Department should adopt coverage limitations for certain entities, including small businesses, and what resources and services are available to make existing web sites accessible to individuals with disabilities. The Department also solicited comments on the costs of making web sites accessible and on the existence of any other effective and reasonably feasible alternatives to making web sites accessible. The Department is reviewing the public comments received in response to the ANPRM and, as noted above, plans to publish the title II NPRM on web site accessibility in fiscal year 2017. The Department believes that the title II web site accessibility rule will facilitate the creation of an important infrastructure for web accessibility that will be very important in the Department's preparation of the title III web site accessibility NPRM. Consequently, the Department has decided to extend the time period for development of the proposed title III web site accessibility rule and include it among its long-term rulemaking priorities.

*Equipment and Furniture.* Both title II and title III of the ADA require covered entities to make reasonable modifications in their programs or services to facilitate participation by persons with disabilities. In addition, covered entities are required to ensure that people are not excluded from participation because facilities are inaccessible or because the entity has failed to provide auxiliary aids. The use of accessible equipment and furniture is often critical to an entity's ability to provide a person with

a disability equal access to its services. Changes in technology have resulted in the development and improved availability of accessible equipment and furniture that benefit individuals with disabilities. The 2010 ADA Standards include accessibility requirements for some types of fixed equipment (e.g., ATMs, washing machines, dryers, tables, benches and vending machines) and the Department plans to look to these standards for guidance, where applicable, when it proposes accessibility standards for equipment and furniture that is not fixed. The ANPRM sought information about other categories of equipment, including beds in accessible guest rooms, and medical equipment and furniture. The Department received approximately 420 comments in response to its ANPRM and is in the process of reviewing these comments. The Department plans to publish an NPRM pursuant to title III of the ADA on beds in accessible guest rooms (RIN 1190-AA67), and also a separate NPRM pursuant to titles II and III of the ADA that focuses solely on accessible medical equipment and furniture (RIN 1190-AA66). The remaining items of equipment and furniture addressed in the 2010 ANPRM will be the subject of a subsequent NPRM.

*Implementation of the ADA Amendments Act of 2008: Federally Conducted Programs (Section 504 of the Rehabilitation Act of 1973) (RIN 1190-AA73).* As noted above, section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability in programs and activities conducted by an Executive agency. The Department plans to revise its 504 federally conducted regulation at 28 CFR part 39 to update outdated terminology and reflect statutory amendments to the definition of disability applicable to section 504 of the Rehabilitation Act, as made by the ADA Amendments Act of 2008, Public Law 110-325, 122 Stat. 3553 (Sep. 25, 2008).

### **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 to, among other objectives, curb illegal traffic in, and criminal use of, firearms and explosives, and to assist State, local, and other Federal law enforcement agencies in reducing crime and violence. ATF will continue, as a priority during fiscal year 2017, to seek modifications to its regulations governing commerce in firearms and explosives.

ATF plans to issue regulations to finalize the current interim rules implementing the provisions of the Safe Explosives Act, title XI, subtitle C, of Public Law 107-296, the Homeland Security Act of 2002 (enacted Nov. 25, 2002) (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 would clarify the administrative hearing processes for explosives licenses and permits.

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, and 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. DEA promulgates the CSA implementing regulations in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. 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 continuously evaluates new and emerging substances to determine whether such substances should be controlled under the CSA. During fiscal year 2016, in addition to initiating temporary scheduling actions to prevent imminent hazard to the public safety, DEA will also consider petitions to control or reschedule various substances. Among other regulatory reviews and initiatives, DEA plans to update its regulations for the import and export of tableting and encapsulating machines, controlled substances, and listed chemicals, and its regulations relating to reports required for domestic transactions in listed chemicals, gamma-hydroxybutyric acid, and tableting and encapsulating machines. In accordance with Executive Order 13563, the DEA has published an NPRM proposing to amend these regulations and plans to finalize these proposals promptly (RIN 1117-AB41).

### **Bureau of Prisons**

The Federal Bureau of Prisons issues regulations to enforce the Federal laws relating to its mission: to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. During the next 12 months, in addition to other regulatory objectives aimed at accomplishing its mission, the Bureau will continue its ongoing efforts to: streamline regulations, eliminating unnecessary language and improving readability; improve disciplinary procedures through a revision of the subpart relating to the disciplinary process (RIN 1120-AB71); improve safety in facilities through the use of less-than-lethal force instead of traditional weapons (RIN 1120-AB67); and provide effective literacy programming which serves both general and specialized inmate needs (RIN 1120-AB64).

### **Executive Office for Immigration Review (EOIR)**

On March 1, 2003, pursuant to the Homeland Security Act of 2002 (HSA), the responsibility for immigration enforcement and border security and for providing immigration-related services and benefits, such as naturalization, immigrant petitions, and work authorization, was transferred from the Justice Department's former Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). However, the immigration judges and the Board of Immigration Appeals (Board) in EOIR

remain part of the Department of Justice. The immigration judges adjudicate approximately 300,000 cases each year to determine whether aliens should be ordered removed from the United States or should be granted some form of relief from removal. The Board 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 conducting 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 several pending rulemaking actions, the Department is working to revise and update the regulations relating to immigration proceedings in order to further EOIR's primary mission to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. These pending regulations include but are not limited to: a final regulation to establish procedures for the filing and adjudication of motions to reopen removal, deportation, and exclusion proceedings based upon a claim of ineffective assistance of counsel (1125-AA68); a final regulation to improve the recognition and accreditation process for organizations and representatives that appear in immigration proceedings before EOIR (RIN 1125-AA72); and a proposed regulation to implement procedures that address the specialized needs of unaccompanied alien children in removal proceedings pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (RIN 1125-AA70). In response to Executive Order 13653, the Department is retrospectively reviewing EOIR's regulations to eliminate regulations that unnecessarily duplicate DHS's regulations and update outdated references to the pre-2003 immigration system (RIN 1125-AA71).

### **Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in *The Regulatory Plan*. However, more information can be found about these completed rulemakings in past publications of the

Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final Justice Department plan can be found at:

<http://www.justice.gov/open/doj-rr-final-plan.pdf>

RIN	Title	Description
1125-AA62	List of Pro Bono Legal Service Providers for Aliens in Immigration Proceedings	The Department has published a Final rule amending the EOIR regulations to enhance the eligibility requirements for organizations, private attorneys, and referral services to be included on the List of Pro Bono Legal Service Providers.
1125-AA71	Retrospective Regulatory Review Under E.O. 13563 of 8 CFR Parts 1003, 1103, 1211, 1212, 1215, 1216, 1235	Advance notice of future rulemaking concerning appeals of DHS decisions (8 C.F.R. part 1103), documentary requirements for aliens (8 C.F.R. parts 1211 and 1212), control of aliens departing from the United States (8 C.F.R. part 1215), procedures governing conditional permanent resident status (8 C.F.R. part 1216), and inspection of individuals applying for admission to the United States (8 C.F.R. part 1235). A number of attorneys, firms, and organizations in immigration practice are small entities. EOIR believes this rule will improve the efficiency and fairness of adjudications before EOIR by, for example, eliminating duplication, ensuring consistency with the Department of Homeland Security's regulations in chapter I of title 8 of the CFR, and delineating more clearly the authority and jurisdiction of each agency. The ANPRM was published on 9/28/2012. The comment period closed on 11/27/2012. EOIR is currently in the process of reviewing the comments received and drafting two follow-

		up NPRMs.
1125-AA72	Recognition of Organizations and Accreditations of Non-Attorney Representatives	This rule amends the regulations governing the requirements and procedures for authorizing representatives of non-profit religious, charitable, social service, or similar organizations to represent persons in proceedings before the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS).
1125-AA78	Separate Representation for Custody and Bond Proceedings	The Department has published a Final rule amending the Executive Office for Immigration Review (EOIR) regulations relating to the representation of aliens in custody and bond proceedings by allowing a representative to enter an appearance in custody and bond proceedings before EOIR without committing to appear on behalf of the alien for all proceedings before the Immigration Court.
1117-AB37	Transporting to Dispense Controlled Substances on an As-Needed and Random Basis	DEA proposes to amend its regulations to clearly delineate how to transport, dispense, and store controlled substances away from registered locations when such activities are for the purpose of dispensing controlled substances on an as-needed and random basis. These proposed amendments include changes necessary to implement the Veterinary Medicine Mobility Act of 2014 and to clarify controlled substance handling requirements for emergency response operations.
1117-	Implementation of the	DEA plans to update its regulations for the import and

AB41	International Trade Data System	<p>export of tableting and encapsulating machines, controlled substances, and listed chemicals, and its regulations relating to reports required for domestic transactions in listed chemicals, gammy-hydroxybutyric acid, and tableting and encapsulating machines. In accordance with Executive Order 13563, the DEA has plans to review its import and export regulations and reporting requirements for domestic transactions in listed chemicals (and gammy-hydroxybutyric acid) and tableting and encapsulating machines, and evaluate them for clarity, consistency, continued accuracy, and effectiveness. The proposed amendments would clarify certain policies and reflect current procedures and technological advancements. The amendments would also allow for the implementation, as applicable to tableting and encapsulating machines, controlled substances, and listed chemicals, of the President's Executive Order 13659 on streamlining the export/import process and requiring the government-wide utilization of the International Trade Data System.</p>
1121-AA85;  1121-AA86	Public Safety Officers' Benefits (PSOB) Program	<p>These two related rules are a priority because certain key provisions of the PSOB rule have been superseded by statutory change, a need exists to improve the overall efficiency of the program, and the last significant update to the rules was in 2008. The first rule proposes to update the existing regulation to address issues related to injuries and deaths of public safety officers asserted to have been caused by 9/11 services, and offset issues with the 9/11</p>

		<p>Victim Compensation Fund. The second rule proposes a more comprehensive update of the PSOB regulation.</p> <p>These revisions are necessary as a result of significant changes to the Program following the enactment of the Dale Long Public Safety Officers' Benefits Improvements Act of 2012 (signed into law in January 2013), as well as recommendations from an OIG Audit finalized in July 2015, and other internal reviews that identified the need to streamline the claims review process to reduce delays and increase transparency.</p>
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Executive Order 13609 – Promoting International Regulatory Cooperation

The Department is not currently engaged in international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.

Executive Order 13659

Executive Order 13659, "Streamlining the Export/Import Process for America's Businesses," provided new directives for agencies to improve the technologies, policies, and other controls governing the movement of goods across our national borders. This includes additional steps to implement the International Trade Data System as an electronic information exchange capability, or "single window," through which businesses will transmit data required by participating agencies for the importation or exportation of cargo.

At the Department of Justice, stakeholders must obtain pre-import and pre-export authorizations from the Drug Enforcement Administration (DEA) (relating to controlled substances and listed chemicals), or from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) (relating to firearms, ammunition, and explosives). The ITDS "single window" will work in conjunction with these pre-import and pre-export authorizations. Because the ITDS excludes applications for permits, licenses, or certifications, the ITDS single window will not be used by DEA registrants, regulated persons, or brokers or traders applying for permits or filing import/export declarations, notifications or reports. The DEA import/export application

and filing processes will continue to remain separate from (and in advance of) the ITDS single window. Entities will continue to use the DEA application and filing processes; however, the processes will be electronic rather than paper. After DEA's approval or notification of receipt as appropriate, the DEA will transmit the necessary information electronically to the ITDS and the registrant or regulated person.

Pursuant to section 6 of E.O. 13659, DEA and ATF have consulted with U.S. Customs and Border Protection (CBP) and are continuing to study what modifications and technical changes to their existing regulations and operational systems are needed to achieve the goals of E.O. 13659.

<b>DOJ—Civil Rights Division(CRT)</b>	<b>PROPOSED RULE STAGE</b>
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**72. NONDISCRIMINATION ON THE BASIS OF DISABILITY: ACCESSIBILITY OF WEB INFORMATION AND SERVICES OF STATE AND LOCAL GOVERNMENTS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 U.S.C. 12101 et seq.

**CFR Citation:**

28 CFR 35

**Legal Deadline:**

None

**Abstract:**

The Department published an ANPRM on July 26, 2010, RIN 1190-AA61, that addressed issues relating to proposed revisions of both the title II and title III ADA regulations in order to provide guidance on the obligations of covered entities to make programs, services and activities offered over the Web accessible

to individuals with disabilities. The Department has now divided the rulemakings in the next step of the rulemaking process so as to proceed with separate notices of proposed rulemakings for title II and title III. The title III rulemaking on Web accessibility will continue under RIN 1190-AA61 and the title II rulemaking will continue under the new RIN 1190-AA65. This rulemaking will provide specific guidance to State and local governments in order to make services, programs, or activities offered to the public via the Web accessible to individuals with disabilities. The ADA requires that State and local governments provide qualified individuals with disabilities equal access to their programs, services, or activities unless doing so would fundamentally alter the nature of their programs, services, or activities or would impose an undue burden. 42 U.S.C. 12132. The Internet as it is known today did not exist when Congress enacted the ADA; yet today the Internet is dramatically changing the way that governmental entities serve the public. Taking advantage of new technology, citizens can now use State and local government websites to correspond online with local officials; obtain information about government services; renew library books or driver's licenses; pay fines; register to vote; obtain tax information and file tax returns; apply for jobs or benefits; and complete numerous other civic tasks. These Government websites are important because they allow programs and services to be offered in a more dynamic, interactive way in order to increase citizen participation; increase convenience and speed in obtaining information or services; reduce costs in providing information about Government services and administering programs; reduce the amount of paperwork; and expand the possibilities of reaching new sectors of the community or offering new programs or services. Many States and localities have begun to improve the accessibility of portions of their websites. However, full compliance with the ADA's promise to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of the programs, services, and activities provided by State and local governments in today's technologically advanced society will only occur if it is clear to public entities that their websites must be accessible. Consequently, the Department intends to publish a Notice of Proposed Rulemaking (NPRM) to amend its title II regulations to expressly address the obligations of public entities to make the websites they use to provide programs, activities, or services or information to the public accessible to and usable by individuals with disabilities under the legal framework established by the ADA. The proposed regulation will propose the scope of the obligation

to provide accessibility when persons with disabilities access public websites, as well as propose the technical standards necessary to comply with the ADA.

**Statement of Need:**

Many people with disabilities use “assistive technology” to enable them to use computers and access the Internet. Individuals who are blind or have low vision who cannot see computer monitors may use screen readers—devices that speak the text that would normally appear on a monitor. People who have difficulty using a computer mouse can use voice recognition software to control their computers with verbal commands. People with other types of disabilities may use still other kinds of assistive technology. New and innovative assistive technologies are being introduced every day.

Websites that do not accommodate assistive technology, for example, can create unnecessary barriers for people with disabilities, just as buildings not designed to accommodate people with disabilities prevent some individuals from entering and accessing services. Web designers may not realize how simple features built into a website will assist someone who, for instance, cannot see a computer monitor or use a mouse. In addition, in many cases, these websites do not provide captioning for videos or live events streamed over the web, leaving persons who are deaf or hard of hearing unable to access the information that is being provided. Although an increasing number of State and local Governments are making efforts to provide accessible websites, because there are no specific ADA standards for website accessibility, these websites vary in actual usability.

**Summary of Legal Basis:**

The ADA requires that State and local Governments provide qualified individuals with disabilities equal access to their programs, services, or activities unless doing so would fundamentally alter the nature of their programs, services, or activities or would impose an undue burden. 42. U.S.C. 12132.

**Alternatives:**

The Department intends to consider various alternatives for ensuring full access to websites of State and local Governments and will solicit public comment addressing these alternatives.

**Anticipated Cost and Benefits:**

The Department anticipates that this rule will be “economically significant,” that is, that 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. However, the Department believes that revising its title II rule to clarify the obligations of State and local Governments to provide accessible websites will significantly increase the opportunities for citizens with disabilities to participate in, and benefit from, State and local Government programs, activities, and services. It will also ensure that individuals have access to important information that is provided over the Internet, including emergency information. The Department also believes that providing accessible websites will benefit State and local Governments as it will increase the numbers of citizens who can use these websites, and thus improve the efficiency of delivery of services to the public. In drafting this NPRM, the Department will attempt to minimize the compliance costs to State and local Governments while ensuring the benefits of compliance to persons with disabilities.

**Risks:**

If the Department does not revise its ADA title II regulations to address website accessibility, persons with disabilities in many communities will continue to be unable to access their State and local governmental services in the same manner available to citizens without disabilities, and in some cases will not be able to access those services at all.

**Timetable:**

Action	Date	FR Cite
ANPRM	07/26/10	75 FR 43460
ANPRM Comment Period End	01/21/11	
Supplemental ANPRM	05/09/16	81 FR 28657
Supplemental ANPRM Comment Period Extended	07/29/16	81 FR 49908
Supplemental ANPRM Comment Period End	08/08/16	
Supplemental ANPRM Extended Comment Period End	10/07/16	

NPRM	07/00/17	
NPRM Comment Period End	09/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**Additional Information:**

Split from RIN 1190-AA61.

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**RIN:** 1190-AA65

DOJ—CRT	FINAL RULE STAGE
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**73. NONDISCRIMINATION ON THE BASIS OF DISABILITY; MOVIE CAPTIONING AND AUDIO**

**DESCRIPTION**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 12101, et seq.

**CFR Citation:**

28 CFR 36

**Legal Deadline:**

None

**Abstract:**

Following its advance notice of proposed rulemaking published on July 26, 2010, the Department plans to publish a proposed rule addressing the requirements for captioning and video description of movies exhibited in movie theatres under title III of the Americans with Disabilities Act of 1990 (ADA). Title III prohibits discrimination on the basis of disability in the activities of places of public accommodation (private entities whose operations affect commerce and that fall into one of twelve categories listed in the ADA). 42 U.S.C. 12181-12189. Title III makes it unlawful for places of public accommodation, such as movie theaters, to discriminate against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation (42 U.S.C. 12182[a]). Moreover, title III prohibits places of public accommodation from affording an unequal or lesser service to individuals or classes of individuals with disabilities than is offered to other individuals (42 U.S.C. 12182(b)(1)(A)(ii)). Title III requires places of public accommodation to take "such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently because of the absence of auxiliary aids and services, such as captioning and video description, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden," (42 U.S.C. 12182(b)(2)(A)(iii)).

**Statement of Need:**

A significant-and increasing-proportion of Americans have hearing or vision disabilities that prevent them from fully and effectively understanding movies without captioning or audio description. For persons with hearing and vision disabilities, the unavailability of captioned or audio-described movies inhibits their

ability to socialize and fully take part in family outings and deprives them of the opportunity to meaningfully participate in an important aspect of American culture. Many individuals with hearing or vision disabilities who commented on the Department's 2010 ANPRM remarked that they have not been able to enjoy a commercial movie unless they watched it on TV, or that when they took their children to the movies they could not understand what they were seeing or discuss what was happening with their children. Today, more and more movies are produced with captions and audio description. However, despite the underlying ADA obligation, the advancement of digital technology and the availability of captioned and audio-described films, many movie theaters are still not exhibiting captioned or audio-described movies, and when they do exhibit them, they are only for a few showings of a movie, and usually at off-times. Recently, a number of theater companies have committed to provide greater availability of captioning and audio description. In some cases, these have been nationwide commitments; in other cases it has only been in a particular State or locality. A uniform Federal ADA requirement for captioning and audio description is necessary to ensure that access to movies for persons with hearing and vision disabilities is not dictated by the individual's residence or the presence of litigation in their locality. In addition, the movie theater industry is in the process of converting its movie screens to use digital technology, and the Department believes that it will be extremely helpful to provide timely guidance on the ADA requirements for captioning and audio description so that the industry may factor this into its conversion efforts and minimize costs.

**Summary of Legal Basis:**

The summary of the legal basis of authority for this regulation is set forth above in the abstract.

**Alternatives:**

The Department will consider any public comments that propose achievable alternatives that will still accomplish the goal of providing access to movies for persons with hearing and vision disabilities. However, the Department believes that the baseline alternative of not providing such access would be inconsistent with the provisions of title III of the ADA.

**Anticipated Cost and Benefits:**

The Department's preliminary analysis indicates that the proposed rule would not be "economically significant," that is, that the rule will not 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. In the NPRM, the Department solicited public comment in response to its preliminary analysis regarding the costs imposed by the rule.

**Risks:**

Without the proposed changes to the Department's title III regulation, persons with hearing and vision disabilities will continue to be denied access to movies shown in movie theaters and movie theater owners and operators will not understand what they are required to do in order to provide auxiliary aids and services to patrons with hearing and vision disabilities.

**Timetable:**

Action	Date	FR Cite
ANPRM	07/26/10	75 FR 43467
ANPRM Comment Period End	01/24/11	
NPRM	08/01/14	79 FR 44975
NPRM Comment Period Extended	09/08/14	79 FR 53146
NPRM Comment Period End	09/30/14	
NPRM Extended Comment Period End	12/01/14	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 1190-AA63

DOJ—CRT	
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**74. REVISION OF STANDARDS AND PROCEDURES FOR THE ENFORCEMENT OF SECTION 274B OF THE IMMIGRATION AND NATIONALITY ACT**

**Priority:**

Other Significant

**Legal Authority:**

5 U.S.C. 301; 8 U.S.C. 1103(a)(1); 8 U.S.C. 1103(g); 8 U.S.C. 1324b; 28 U.S.C. 509; 28 U.S.C. 510; 28 U.S.C. 515-519

**CFR Citation:**

28 CFR 0; 28 CFR 44

**Legal Deadline:**

None

**Abstract:**

The Department of Justice proposes to revise regulations implementing section 274B of the Immigration and Nationality Act and to reflect the new name of the office within the Department charged with enforcing this statute. The proposed revisions are appropriate to conform the regulations to the statutory text as amended, simplify and add definitions of statutory terms, update and clarify the procedures for filing and processing charges of discrimination, ensure effective investigations of unfair immigration-related employment practices, and update outdated references.

**Statement of Need:**

The regulatory revisions are necessary to conform the regulations to section 274B of the Immigration and Nationality Act (INA), as amended. The regulatory revisions also simplify and add definitions of statutory terms, update and clarify the procedures for filing and processing charges of discrimination, ensure effective investigations of unfair immigration-related employment practices, replace outdated references, and reflect the new name of the office within the Department charged with enforcing this statute.

**Summary of Legal Basis:**

Statutory Authority: 8 U.S.C. 1324b; 8 U.S.C. 1103(a)(1), (g)

**Alternatives:**

The Department believes that an NPRM is the most appropriate, and for some revisions a necessary, method for achieving the goals of the revisions. Issuing this NPRM is necessary to correct outdated regulatory provisions and incorporate statutory changes to section 274B of the INA. Likewise, revising the regulations to be consistent with longstanding agency guidance and relevant case law is appropriate and will reduce potential confusion about the law. Further, because the regulations already include procedures for filing and processing charges, it is appropriate to revise the regulations to reflect updates to these processes and procedures. Finally, it is appropriate to update the regulations to reflect the new name of the office charged with enforcing the statute.

**Anticipated Cost and Benefits:**

The Department has determined that this rule is not economically significant, that is, that the rule will not 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. Any estimated costs to the public relate to costs employers may incur familiarizing themselves with the rule, updating their relevant policies if needed, and participating in a voluntary training webinar. In the NPRM, the Department will be soliciting public comment in response to its preliminary analysis regarding the costs imposed by the rule. While not easily quantifiable due to data limitations, the Department identified several benefits of the rule, including: 1) helping employers understand the law more efficiently, 2) increasing public access to government services, and 3) eliminating public confusion regarding two offices in the Federal government with the same name.

**Risks:**

Failure to update the regulations to conform to the statutory amendments will interfere with the Department’s enforcement efforts. Further, failure to revise the regulations to reflect changes to the filing and processing of charges and the new name of the office charged with enforcing the law will lead to confusion among the public, most specifically employers subject to the law’s requirements and workers whose rights are guaranteed by the law.

**Timetable:**

Action	Date	FR Cite
NPRM	08/15/16	81 FR 53965
NPRM Comment Period End	09/14/16	
Final Action	09/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

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**RIN:** 1190-AA71

<b>DOJ—Executive Office for Immigration Review(EOIR)</b>	<b>FINAL RULE STAGE</b>
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**75. MOTIONS TO REOPEN REMOVAL, DEPORTATION, OR EXCLUSION PROCEEDINGS BASED  
UPON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL**

**Priority:**

Other Significant

**Legal Authority:**

5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1252, 1254a, 1255, 1282, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec 2 Reorg Plan No 2 of 1950; 3 CFR, 1949-1953, Comp, p 1002; sec 203 of Pub. L. 105-100, 111 Stat 2196-200; sec 1506 and 1510 of Pub. L. 106-386, 114 Stat 1527-29, 1531-32; sec 1505 of Pub. L. 106-554, 114 Stat 2763A-326-328; title VII of Pub. L. 110-229

**CFR Citation:**

8 CFR 1003; 8 CFR 1208

**Legal Deadline:**

None

**Abstract:**

The Department of Justice (Department) is planning to amend the regulations of the Executive Office for Immigration Review (EOIR) by establishing procedures for the filing and adjudication of motions to reopen removal, deportation, and exclusion proceedings based upon a claim of ineffective assistance of counsel. This proposed rule is in response to *Matter of Compean, Bangaly & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009), in which the Attorney General directed EOIR to develop such regulations. The Department is also planning to propose to amend the EOIR regulations to provide that ineffective assistance of counsel may constitute extraordinary circumstances that may excuse the failure to file an asylum application within one year after the date of arrival in the United States.

**Statement of Need:**

This regulation is necessary to comply with *Matter of Compean, Bangaly & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009), in which the Attorney General directed EOIR to develop regulations governing claims of ineffective assistance of counsel in proceedings before the immigration judges and the Board of Immigration Appeals. The purpose of this proposed rule is to establish uniform procedural and substantive requirements for the filing of motions to reopen based upon a claim of ineffective assistance of counsel and to provide a uniform standard for adjudicating such motions.

**Summary of Legal Basis:**

The summary of the legal basis for the authority for this regulation is set forth in the above abstract.

**Alternatives:**

The Department will consider any public comments it may receive regarding achievable alternatives that will still accomplish the goal of setting forth a framework for claims of ineffective assistance of counsel that supports the integrity of immigration proceedings.

**Anticipated Cost and Benefits:**

The Department’s preliminary analysis indicates that the proposed rule would not be economically significant, that is, that the rule will not 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.

**Risks:**

Without the proposed changes to the Department’s regulations, the Department will not have complied with the Attorney General’s directive in Matter of Compean, Bangaly & J-E-C-, 25 I&N Dec. 1 (A.G. 2009) and the procedural and substantive requirements for filing - and the standards for adjudicating - motions to reopen based upon a claim of ineffective assistance of counsel will lack uniformity.

**Timetable:**

Action	Date	FR Cite
NPRM	07/28/16	81 FR 49556
NPRM Comment Period End	09/26/16	
Final Action	05/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1125-AA68

DOJ—EOIR	
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## **76. RECOGNITION OF ORGANIZATIONS AND ACCREDITATION OF NON-ATTORNEY**

### **REPRESENTATIVES**

**Priority:**

Other Significant

**Legal Authority:**

5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1154; 8 U.S.C. 1155; 8 U.S.C. 1158; 8 U.S.C. 1182; 8 U.S.C. 1226; 8 U.S.C. 1229; 8 U.S.C. 1229a; 8 U.S.C. 1229b; 8 U.S.C. 1229c; 8 U.S.C. 1231; 8 U.S.C. 1232; 8 U.S.C. 1252b; 8 U.S.C. 1254a; 8 U.S.C. 1255; 8 U.S.C. 1324d; 8 U.S.C. 1330; 8 U.S.C. 1361; 8 U.S.C. 1362; 28 U.S.C. 509; 28 U.S.C. 510; 28 U.S.C. 1746; sec 2 Reorg Plan No 2 of 1950; 3 CFR, 1949-1953 Comp, 1002; sec 203 of Pub. L. 105-100, 111 Stat 2196-200; sec 1506 and 1510 of Pub. L. 106-386, 114 Stat 1527-29, 1531-1532; sec 1505 of Pub. L. 106-554, 114 Stat 2763 A-326 to -328

**CFR Citation:**

8 CFR 1001; 8 CFR 1003; 8 CFR 1292

**Legal Deadline:**

None

**Abstract:**

This rule would amend the regulations governing the requirements and procedures for authorizing the representatives of nonprofit religious, charitable, social service, or similar organizations to represent aliens in proceedings before the Executive Office for Immigration Review and the Department of Homeland Security.

**Statement of Need:**

The Recognition and Accreditation (R&A) program addresses the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before federal administrative agencies. Through the R&A program, EOIR permits qualified non-attorneys to represent persons before the DHS, the immigration courts, and the Board of Immigration Appeals (Board). For over 30 years, the R&A regulations have remained largely unchanged, despite structural changes in the government, the changing realities of the immigration system, the inability of non-profit organizations to meet the increased need for legal representation under the current regulations, and the surge in fraud and abuse by unscrupulous organizations and individuals preying on indigent and vulnerable populations.

The proposed rule seeks to address the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before federal administrative agencies by revising the eligibility requirements and procedures for recognizing organizations and accrediting their representatives to provide immigration legal services to underserved populations. The proposed rule also imposes greater oversight over recognized organizations and their representatives in order to protect against potential abuse of vulnerable immigrant populations by unscrupulous organizations and individuals.

**Summary of Legal Basis:**

The proposed rule is a revision of current regulations that are authorized under 8 U.S.C. 292, regarding authorization to practice before the immigration courts and the Board.

**Alternatives:**

The R&A regulations have been comprehensively examined in light of various issues that have arisen and input has been solicited from the public on how to address in amended regulations various developments over the past 30 years. The proposed rule is the product of both internal and external deliberations, and the proposed rule directly addresses alternatives approaches to the current regulations that the Department has either decided to adopt or reject in the proposed rule. The Department will consider any public comments that propose achievable alternatives that will still accomplish the goals of this proposed rule.

**Anticipated Cost and Benefits:**

The Department’s preliminary analysis indicates that the proposed rule would not be economically significant, that is, that the rule will not 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. The proposed rule, like the current regulations, does not assess any fees on an organization to apply for initial recognition or accreditation, to renew recognition or accreditation, or to extend recognition.

**Risks:**

The purpose of this proposed rule is to promote effective and efficient administration of justice before DHS and EOIR by increasing the availability of competent non-lawyer representation for underserved immigrant populations. The proposed rule seeks to accomplish this goal by amending the requirements for recognition and accreditation to increase the availability of qualified representation for primarily low-income and indigent persons while protecting the public from fraud and abuse by unscrupulous organizations and individuals. Without the proposed changes, the Department will be limited in its ability to expand the availability of non-lawyer representation and to provide increased oversight over recognized organizations and their representatives.

**Timetable:**

Action	Date	FR Cite
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NPRM	10/01/15	80 FR 59514
NPRM Comment Period End	11/30/15	
Final Action	11/00/16	

**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:**

Public Meeting notice 77 FR 9590 (Feb. 17, 2012)

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1125-AA72

**77. • IMPLEMENTATION OF THE ADA AMENDMENTS ACT OF 2008 FEDERALLY ASSISTED PROGRAMS (SECTION 504 OF THE REHABILITATION ACT OF 1973)****Priority:**

Other Significant

**Legal Authority:**

Pub. L. 110–325; 29 U.S.C. 794 (sec. 504 of the Rehabilitation Act of 1973, as amended); E.O. 12250 (45 FR 72855); 11/04/1980

**CFR Citation:**

28 CFR 42, subpart G

**Legal Deadline:**

None

**Abstract:**

The Department of Justice is issuing this notice of proposed rulemaking to revise its regulation implementing section 504 of the Rehabilitation Act of 1973, as applicable to programs and activities receiving financial assistance from the Department, in order to: (1) incorporate amendments to the statute, including the changes in the meaning and interpretation of the applicable definition of disability required by the ADA Amendments Act of 2008; (2) incorporate requirements stemming from judicial decisions; (3) update accessibility standards applicable to new construction and alteration of buildings and facilities; (4) update certain provisions to promote consistency with comparable provisions implementing title II of the Americans with Disabilities Act; and (5) make other nonsubstantive clarifying edits, including updating outdated terminology and references that currently exist in 28 CFR part 42, such as changing the word handicapped and similar variations of that word to language referencing individuals with disabilities, modifying the order of the regulatory provisions to group like provisions together, and adding some headings to make the regulation more user-friendly.

**Statement of Need:**

This rule is necessary to bring the Department's prior section 504 regulations into compliance with the ADA Amendments Act of 2008, which became effective on January 1, 2009.

**Summary of Legal Basis:**

The summary of the legal basis of authority for this regulation is set forth above in the abstract.

**Alternatives:**

Because this NPRM implements statutory changes to the section 504 definition of disability, there are no appropriate alternatives to issuing this NPRM.

**Anticipated Cost and Benefits:**

The Department's preliminary assessment in this early stage of the rulemaking process is that this rule will not be "economically significant," that is, that the rule will not 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. The Department's section 504 rule for federally assisted programs will incorporate the same changes made by the ADA Amendments Act to the definition of disability as are included in the proposed changes to the ADA title II and title III rules (1190-AA59), was published in the Federal Register on August 11, 2016. 81 FR 53203.

Because most public and private entities that receive federal financial assistance from the Department are also likely to be subject to titles II or III of the ADA we do not believe that the revisions to the Department's existing section 504 federally assisted regulations will have a significant economic impact.

**Risks:**

Failure to update the Department's section 504 regulations to conform to statutory changes will interfere with the Department's enforcement efforts and lead to confusion about the law's requirements among entities that receive Federal financial assistance from the Department.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/16	
NPRM Comment Period End	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**Federalism:**

Undetermined

**Additional Information:**

Transferred from RIN 1190-AA60.

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**RIN: 1105-AB50**

**BILLING CODE 4410-BP-P**

**U.S. Department of Labor**

## **Fall 2016 Statement of Regulatory Priorities**

### **Introduction**

The Department's Fall 2016 Regulatory Agenda continues to advance the Department's mission to foster, promote, and develop the welfare of wage earners, job seekers, and retirees; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. These rules will provide greater opportunity for workers to acquire the skills they need to succeed, to earn a fair day's pay for a fair day's work, for veterans to thrive in the civilian economy, for workers to retire with dignity, for workers and employers to compete on a level playing field, and for people to work in a safe environment with the full protection of our anti-discrimination laws.

Since the beginning of the Obama Administration, the Department of Labor has completed historic rulemakings on issues that are central to America's workers and their families: worker safety, wages, and retirement security.

We finalized regulations to limit worker exposure to deadly silica dust that can lead to lung cancer, silicosis, chronic obstructive pulmonary disease and kidney disease, providing important new protections to 2.3 million workers and preventing hundreds of deaths each year.

We finalized updates to our overtime regulations to ensure that middle class jobs pay middle class wages, extending important overtime pay protections to over 4.2 million workers and raising their pay by an estimated \$12 billion in the next 10 years.

We issued final regulations that will enable employees of Federal contractors to earn seven days of paid sick and safe leave per year, for the first time guaranteeing these workers have paid leave to care for themselves, family members, or loved ones, without fear of losing their paychecks or their jobs.

We finalized our Conflict of Interest Rule, establishing a fundamental principle of consumer protection in the American retirement marketplace -- that retirement advisors must put their clients' interests before their own profits.

Along with the Department of Education, we finalized regulations to implement the Workforce Innovation and Opportunity Act -- the most significant legislative reform to the public workforce system in nearly 20 years -- that will expand workers' opportunities to develop the skills they need and provide employers with the skilled workforce they need to succeed in the 21<sup>st</sup> century economy.

We finalized new regulations that establish equity and transparency in employer/consultant reporting requirements when employers engage consultants to persuade employees on their rights to organize and bargain collectively.

Working with the Federal Acquisition Regulatory Council, we finalized regulations and guidance implementing the President's Fair Pay and Safe Workplaces Executive Order, holding Federal contractors accountable when they put workers' safety, hard-earned wages and basic workplace rights at risk. The rule ensures that taxpayer dollars do not reward companies that break the law and that contractors who meet their legal responsibilities do not have to compete with those who do not.

We updated sex discrimination regulations for Federal contractors for the first time in 40 years, to reflect the current state of the law and the reality of a modern and diverse workforce. Updated rules on workplace sex discrimination will mean clarity for Federal contractors and subcontractors and equal opportunities for both men and women applying for jobs with, or already working for, these employers.

We will update and simplify the equal opportunity regulations implementing the National Apprenticeship Act to help employers and other apprenticeship sponsors attract a larger and more diverse applicant pool and provide greater opportunities to women, people of color, and other individuals regardless of disability, age, sexual orientation, or gender identity, to take part in Registered Apprenticeship programs. And, we finalized regulations clarifying how states can establish retirement savings arrangements to automatically enroll employees, and offer coverage that is consistent with Federal laws governing employee benefit plans.

The 2016 Regulatory Plan highlights the Labor Department's most noteworthy and significant rulemaking efforts, with each addressing the top priorities of its regulatory agencies: Employee Benefits Security Administration (EBSA), Employment and Training Administration (ETA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), Occupational Safety and Health Administration (OSHA), Office of Workers' Compensation Programs (OWCP), and Wage and

Hour Division (WHD). These regulatory priorities exemplify the five components of the Secretary's opportunity agenda:

- training more people, including veterans and people with disabilities, to have the skills they need for the in-demand jobs of the 21st century;
- ensuring that individuals have the peace of mind that comes with access to health care, retirement, and Federal workers' compensation benefits when they need them;
- safeguarding a fair day's pay for a fair day's work for all hardworking Americans, regardless of race, gender, religion, disability, national origin, veteran's status, sexual orientation, or gender identity;
- giving workers a voice in their workplaces; and
- protecting the safety and health of workers so they do not have to risk their lives for a paycheck.

Under Secretary Perez's leadership, the Department continues its commitment to ensuring that collaboration, consensus-building, strong foundation of evidence, and extensive stakeholder outreach, are integral to all of our regulatory efforts. Successful rulemaking requires that we build a big table and keep an open mind.

### **Training More Workers and Job-Seekers for 21st Century Jobs**

The Department continues to implement the Workforce Innovation and Opportunity Act (WIOA), the first major reform to Federal job training programs in almost 20 years, building new partnerships, engaging employers, emphasizing proven strategies like apprenticeship and preparing people for the demands of the 21st century economy. The Department's regulatory priorities reflect the Secretary's

vision for a modern job-driven workforce system that helps businesses stay on the competitive cutting edge and helps workers punch their ticket to the middle class.

- The Department’s Civil Rights Center (CRC) will issue a final rule to implement the nondiscrimination provisions in section 188 of WIOA. The rule will update nondiscrimination and equal opportunity provisions to be consistent with current law and address its application to current workforce development and workplace practices and issues. To ensure no gap in coverage between the effective date of WIOA and this rulemaking, CRC issued a final rule that makes only technical revisions to the WIA section 188 rule, changing references from “WIA” to “WIOA.”<sup>2</sup> The current final rule ultimately will be superseded by the final rule arising from the earlier NPRM.

To further meet the demands of the 21st century workforce, the Department will also explore options to modernize and provide flexibilities to employers and workers, without sacrificing important worker protections in the permanent labor certification program.

- The permanent labor certification requirements and process have not been comprehensively examined or modified since 2004. ETA proposes to consider options to modernize the PERM program to be more responsive to changes in the national workforce in order to further align the program design with the objectives of the U.S. Immigration system, and needs of workers and employers, and to enhance the integrity of the labor certification process.<sup>3</sup>
- ETA also proposes to engage the public on whether the Schedule A of the permanent labor certification process serves as an effective tool for addressing current labor shortages, and how the

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<sup>2</sup> Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation Act of 2014 (RIN: 1291-A37).

<sup>3</sup> Modernizing the Permanent Labor Certification Program (PERM) (RIN: 1205-AB76).

Department may create a timely, coherent, and transparent methodology for identifying occupations that are experiencing labor shortages.<sup>4</sup>

## **Ensuring Access to Health Care, Retirement, and Workers' Compensation Benefits**

Workplace benefits ensure that workers have the opportunity to remain in the middle class if they face a health and welfare challenge, retire from their jobs, or experience a workplace accident or illness. In addition, a financially secure retirement is a fundamental pillar of the middle class. The Department has a regulatory program designed to improve health benefits and retirement security for all workers.

- EBSA plans to finalize regulations that describe how political subdivisions (e.g. cities and counties) may design and operate payroll deduction savings programs, using automatic enrollment, for private-sector employees without causing the political subdivisions or private-sector employers to establish employee pension benefit plans under the Employee Retirement Income Security Act of 1974.<sup>5</sup>
- EBSA plans to finalize regulations that strengthen, improve and update the current disability benefit claims and appeals process under section 503 of ERISA.<sup>6</sup>

EBSA will also continue to issue guidance implementing the health coverage provisions of Parts 6 and 7 of ERISA, including the provisions of COBRA, HIPAA, GINA, mental health parity, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, and the Affordable Care Act

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<sup>4</sup> Labor Certification for Permanent Employment of Foreign Workers in the United States; Revising Schedule A (RIN: 1205-AB77).

<sup>5</sup> Savings Arrangements Established by Political Subdivisions for Non-Governmental Employees (RIN: 1210-AB76).

<sup>6</sup> Amendment to Claims Procedure Regulation (RIN: 1210-AB39).

group market protections. Much of this guidance involves joint work with the Departments of Health and Human Services and Treasury.

The Department also promulgates regulations to ensure that Federal workers' compensation benefits programs are fairly administered:

- OWCP will issue an NPRM under the Black Lung Benefits Act to address how medical providers are reimbursed for covered services rendered to coal miners totally disabled by pneumoconiosis, including the possibility of modernizing and standardizing payment methodologies and fee schedules.<sup>7</sup>

### **Safeguarding Fair Pay for All Americans**

The Department's regulatory agenda prioritizes ensuring that all Americans receive a fair day's pay for a fair day's work, and are not discriminated against with respect to hiring, employment, or benefits on the basis of race, gender, religion, disability, national origin, veteran's status, sexual orientation, or gender identity. The Department continues to take a robust approach to implementing its wage-and-hour and nondiscrimination regulations through education, outreach and strategic enforcement across industries. The regulations in this area are grounded in a commitment to an inclusive and diverse workforce and rewarding hard work with a fair wage to provide workers with a real pathway to middle class jobs.

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<sup>7</sup> Black Lung Benefits Act: Benefit Payments (RIN: 1240-AA11).

- WHD will propose revisions to its regulations implementing section 14(c) of the Fair Labor Standards Act to reflect the changes in employment laws affecting workers with disabilities.<sup>8</sup>

### ***Protecting the Safety and Health of Workers***

The Department's safety and health regulatory proposals are based on the responsibility of employers to provide workers with workplaces that do not threaten their safety or health. We reject the false choice between worker safety and economic growth. Through our rulemakings, we are committed to protecting workers in all kinds of workplaces, including above- and below-ground coal and metal/nonmetal mines. So many workplace injuries, illnesses and fatalities are preventable. They not only put workers in harm's way, they jeopardize their economic security, often forcing families out of the middle class and into poverty. Our efforts are to prevent workers from having to choose between their lives and their livelihood.

- MSHA will build on the knowledge gained through the OSHA silica rulemaking process to develop regulations that would provide essential protections to miners from silica exposure in mines.<sup>9</sup>
- OSHA is developing an NPRM that will look at how to provide stronger protections for workers exposed to infectious diseases in healthcare and other related high risk environments.<sup>10</sup>
- OSHA will finalize regulations that address occupational exposure to beryllium in the workplace.<sup>11</sup>

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<sup>8</sup> Employment of Workers with Disabilities under Special Certificates (RIN: 1235-AA14).

<sup>9</sup> Respirable Crystalline Silica (RIN: 1219-AB36).

<sup>10</sup> Infectious Diseases (RIN: 1218-AC46).

<sup>11</sup> Occupational Exposure to Beryllium (RIN: 1218-AB76).

- Building upon its history of addressing workplace violence in health care facilities, OSHA will solicit information from health care employers, workers and other experts on preventing workplace violence in the workplace. The request for information will seek public input on the impacts of violence, prevention strategies, and other information that will be useful to OSHA.<sup>12</sup>
- After more than 25 years, OSHA will update and finalize regulations that address slip, trip and fall hazards and establish requirements for personal fall protection systems. Slips, trips and falls are among the leading causes of work-related injuries and fatalities.<sup>13</sup>

### **Regulatory Review and Burden Reduction**

On January 18, 2011, the President issued Executive Order (E.O.) 13563, entitled “Improving Regulation and Regulatory Review.” The Department is committed to smart regulations that ensure the health, welfare and safety of all working Americans and foster economic growth, job creation, and competitiveness of American business. The Department’s Fall 2016 Regulatory Agenda also aims to achieve more efficient and less burdensome regulations through a retrospective review of the Labor Department regulations.

In August 2011, as part of a government-wide response to the E.O., the Department published its “Plan for Retrospective Analysis of Existing Rules.” (This plan, and each subsequent update, can be found at [www.dol.gov/regulations/](http://www.dol.gov/regulations/).) The current regulatory agenda includes 14 retrospective review projects, which are listed below pursuant to section 6 of E.O. 13563. More information about completed rulemakings no longer included in the plan can be found on [www.reginfo.gov](http://www.reginfo.gov).

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<sup>12</sup> Preventing Violence in Healthcare (RIN: 1218-AD08).

<sup>13</sup> Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention) (RIN: 1218-AA11).

Agency	Regulatory Identifier Number (RIN)	Title of Rulemaking	Whether it is Expected to Significantly Reduce Burdens on Small Businesses
EBSA	1210-AB47	Amendment of Abandoned Plan Program	Yes
EBSA	1210-AB63	21st Century Initiative to Modernize the Form 5500 Series and Implementing and Related Regulations	To Be Determined
ETA	1205-AB59	Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations	To Be Determined
ETA	1205-AB75	Modernizing the Permanent Labor Certification Program (PERM)	To Be Determined
OSHA	1218-AC34	Bloodborne Pathogens	To Be Determined
OSHA	1218-AC67	Standard Improvement Project – Phase IV (SIP IV)	To Be Determined

Agency	Regulatory Identifier Number (RIN)	Title of Rulemaking	Whether it is Expected to Significantly Reduce Burdens on Small Businesses
OSHA	1218-AC74	Chemical Management and Permissible Exposure Limits (PELs)	To Be Determined
OSHA	1218-AC81	Cranes and Derricks in Construction: Amendments	Yes
OSHA	1218-AC82	Process Safety Management and Flammable Liquids	To Be Determined
OSHA	1218-AD01	Revocation of Obsolete PELs	To Be Determined
OSHA	1218-AC99	Powered Industrial Trucks	To Be Determined
OSHA	1218-AC98	Mechanical Power Presses Update	To Be Determined
OSHA	1218-AD00	Lock-Out/Tag-Out Update	To Be Determined
OSHA	1218-AD12	Technical Correction to 16 OSHA Standards	To Be Determined
OWCP	1240-AA11	Black Lung Benefits Act: Medical Benefit Payments	To Be Determined

Agency	Regulatory Identifier Number (RIN)	Title of Rulemaking	Whether it is Expected to Significantly Reduce Burdens on Small Businesses
WHD	1235-AA17	Updating Regulations Issued Under Various Wage and Hour Division Statutes Consistent with Rosa's Law	To be Determined
WHD	1235-AA18	Technical Updates to Regulations Issued Under Various Wage and Hour Division Statutes	To Be Determined

DOL—Wage and Hour Division(WHD)	PROPOSED RULE STAGE
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**78. EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES**

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 U.S.C. 201 et seq.; 29 U.S.C. 214; Pub. L. 113–128

**CFR Citation:**

29 CFR 525

**Legal Deadline:**

None

**Abstract:**

Section 14(c) of the FLSA, 29 U.S.C. 214(c), provides that the Secretary of Labor may, to the extent necessary to prevent the curtailment of opportunities for employment, issue certificates to permit the payment of subminimum wages to individuals with disabilities whose earning or productive capacities are affected by their disability. The Department is proposing to revise the regulations implementing section 14(c) to reflect changes in employment laws affecting workers with disabilities enacted since the Department's last update to the regulations.

**Statement of Need:**

For some time, WHD has been conducting a comprehensive review of the section 14(c) program. This review was designed to develop strategies to better protect workers in the program, to promote WHD's vision of supporting competitive and integrated employment of individuals with disabilities, and to assist with efforts to make section 14(c) employment an option of last resort for workers where feasible. The Workforce Innovation and Opportunity Act (WIOA) created a new section 511 of the Rehabilitation Act, which imposes certain new conditions on the payment of subminimum wages by section 14(c) certificate holders. The current section 14(c) regulations are in need of improvement. The regulations have not been updated since 1989 and lack comprehensive, detailed information regarding the issuance, renewal, and revocation of 14(c) certificates as well as WHD's enforcement of the program. The regulations will be updated as the Department considers the new requirements of WIOA, and suggestions from workers with disabilities and their advocates.

**Summary of Legal Basis:**

These regulations are authorized by section 14(c) of the Fair Labor Standards Act, 29 U.S.C. 214.

**Alternatives:**

Alternatives will be developed in considering proposed revisions to the current regulations. The public will be invited to provide comments on the 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	04/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Undetermined

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**RIN:** 1235-AA14

<b>DOL—Employment and Training Administration(ETA)</b>	<b>FINAL RULE STAGE</b>
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**79. EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AMENDMENT OF REGULATIONS**

**Priority:**

Other Significant

**Legal Authority:**

sec 1, 50 stat 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No 14 of 1950, 64 stat 1267 (5 U.S.C. app p 534)

**CFR Citation:**

29 CFR 30 (revision)

**Legal Deadline:**

None

**Abstract:**

Revisions to the equal opportunity regulatory framework for the National Apprenticeship Act are a critical element in the Department's vision to promote and expand Registered Apprenticeship opportunities in the 21st century while continuing to safeguard the welfare and safety of apprentices. In October 2008, the Agency issued a Final Rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. These regulations, codified at title 29 CFR 29, have not been updated since 1977. The companion regulations, 29 CFR 30, Equal Employment Opportunity (EEO) in Apprenticeship and Training, have not been amended since 1978. The Agency proposes to update 29 CFR 30 to ensure that the National Registered Apprenticeship System is consistent and in alignment with EEO law, as it has developed since 1978, and recent revisions to 29 CFR 29. This second phase of regulatory updates ensures that Registered Apprenticeship is positioned to continue to provide economic opportunity for millions of Americans while keeping pace with these new requirements.

**Statement of Need:**

Federal regulations for Equal Employment Opportunity (EEO) in Apprenticeship have not been updated since 1978. Updates to these regulations are necessary to ensure that DOL regulatory requirements governing the National Registered Apprenticeship System are consistent with the current state of EEO law and recent revisions to 29 CFR 29.

**Summary of Legal Basis:**

These regulations are authorized by the National Apprenticeship Act of 1937 (29 U.S.C. 50) and the Copeland Act (40 U.S.C. 276(c)). These regulations will set forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor or in State Apprenticeship Agencies recognized by the U.S. Department of Labor.

**Alternatives:**

The public was afforded an opportunity to provide comments on the proposed amendment to Apprenticeship EEO regulations when the Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. A Final Rule was issued after analysis and incorporation of public comments to the NRPM.

**Anticipated Cost and Benefits:**

The proposed changes are thought to raise "novel legal or policy issues" but are not economically significant within the context of Executive Order 12866 and are not a "major rule" under section 804 of the Small Business Regulatory Enforcement Fairness Act.

**Risks:**

This action does not affect the public health, safety, or the environment.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
NPRM	11/06/15	80 FR 68908
NPRM Comment Period End	01/05/16	
NPRM Comment Period Extended	12/24/15	
NPRM Comment Period Extended End	01/20/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Tribal

**Federalism:**

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

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**RIN:** 1205-AB59

<b>DOL—Employee Benefits Security Administration(EBSA)</b>	<b>FINAL RULE STAGE</b>
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**80. AMENDMENT TO CLAIMS PROCEDURE REGULATION**

**Priority:**

Other Significant

**Legal Authority:**

29 U.S.C. 1135; ERISA sec 505; 29 U.S.C. 1133

**CFR Citation:**

29 CFR 2550.503–1

**Legal Deadline:**

None

**Abstract:**

Section 503 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1133, provides that, in accordance with regulations promulgated by the Secretary of Labor, each employee benefit plan must provide "adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied." The notice must set forth the specific reasons for the denial and must be written in a manner calculated to be understood by the claimant. Each plan must also afford "a reasonable opportunity" for any participant or beneficiary whose claim has been denied to obtain "full and fair review" of the denial by the "appropriate named fiduciary of the plan." The Department has issued a regulation pursuant to the above authority that establishes the minimum requirements for benefit claims procedures of employee benefit plans covered by title 1 of ERISA. See 29 CFR 2560.503-1. This rulemaking is intended to strengthen, improve, and update the current disability benefit claims and appeals process under the section 503 regulations.

**Statement of Need:**

Because of the volume and constancy of disability benefits litigation, the Department recognizes a need to revisit, reexamine, and revise the current regulations to ensure that disability claimants receive a fair review of denied claims as provided by section 503 of ERISA. The rulemaking would revise and strengthen the current claims procedure rules primarily by adopting certain procedural protections and safeguards for disability benefit claims that are currently applicable to claims for group health benefits pursuant to the Affordable Care Act (ACA).

**Summary of Legal Basis:**

Section 503 of ERISA, 29 USC 1133, requires every employee benefit plan to provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant and to afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim. Section 503 also provides the Secretary of Labor with broad authority to prescribe regulations governing a plan's claims procedure.

**Alternatives:**

On November 18, 2015, the Department published in the Federal Register a proposed rule revising the claims procedure regulations for plans providing disability benefits under ERISA. The Department received 145 public comments in response to the proposed rule from plan participants, consumer groups representing disability benefit claimants, employer groups, individual insurers and trade groups representing disability insurance providers. In addition to the approach set forth in the proposal, the Department will consider all meaningful alternative rules and standards presented in these comment letters.

**Anticipated Cost and Benefits:**

The Department expects that these final regulations will improve the procedural protections for workers who become disabled and make claims for disability benefits from ERISA-covered employee benefit

plans. This would result in some participants receiving benefits they might otherwise have been denied absent the fuller protections provided by the final regulations. In other circumstances, expenditures by plans may be reduced as a fuller and fairer disability claims processing helps facilitate participant acceptance of cost management efforts. Greater certainty and consistency in the handling of disability benefit claims and appeals and improved access to information about the manner in which claims and appeals are adjudicated may lead to efficiency gains in the system, both in terms of the allocation of spending at a macro-economic level as well as operational efficiencies among individual plans.

The Department believes that these requirements have modest costs associated with them, since many chiefly clarify provisions of the current claims procedure regulations or require provision of notices to plan participants.

**Risks:**

Undetermined.

**Timetable:**

Action	Date	FR Cite
NPRM	11/18/15	80 FR 72014
NPRM Comment Period End	01/19/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 1210-AB39

<b>DOL-EBSA</b>	
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**81. • SAVINGS ARRANGEMENTS ESTABLISHED BY POLITICAL SUBDIVISIONS FOR NON-  
GOVERNMENTAL EMPLOYEES**

**Priority:**

Other Significant

**Legal Authority:**

29 U.S.C. 1135 (ERISA sec 505) ; 29 U.S.C. 1002 (ERISA sec 3(2))

**CFR Citation:**

29 CFR 2510.3-2

**Legal Deadline:**

None

**Abstract:**

The Department proposes to amend a regulation (29 CFR 2510.3-2(h)) that describes how states may design and operate payroll deduction savings programs, using automatic enrollment, for private-sector employees without causing the states or private-sector employers to establish employee pension benefit plans under the Employee Retirement Income Security Act of 1974. The proposed amendments would expand the current regulation to cover programs of political subdivisions of states that otherwise comply with the current regulation.

**Statement of Need:**

On November 18, 2015, the Department published in the Federal Register a proposed safe harbor regulation describing specific circumstances in which state (but not state political subdivisions, such as cities and counties) payroll deduction savings programs with automatic enrollment would not give rise to the establishment of employee pension benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA). Several commenters on that proposal asserted that the scope of the safe harbor regulation was too narrow and requested that the Department broaden it beyond states to cover payroll deduction savings programs of state political subdivisions, such as counties and cities. These commenters asserted that such an expansion would promote broader access to workplace retirement savings opportunities for employees, especially in states that do not themselves establish state-level programs but do have political subdivisions that would be willing to do so. The Department agrees with commenters that there may be good reasons for expanding the safe harbor to cover political subdivisions. Accordingly, on August 30, 2016, the Department published a notice of proposed rulemaking soliciting further comments on whether and how the safe harbor should be expanded to state political subdivisions.

**Summary of Legal Basis:**

Section 505 of ERISA, 29 U.S.C. 1135, provides the Secretary of Labor with broad authority to prescribe such regulations as he finds necessary and appropriate to carry out the provisions of Title I of the Act. Section 3(2) of ERISA, 29 U.S.C. 1002, defines the term employee pension benefit plan. The Department's regulations at 29 CFR 2510.3-2 clarify the term employee pension benefit plan by identifying certain specific plans, funds and programs that do not constitute employee pension benefit plans.

**Alternatives:**

The notice of proposed rulemaking would expand the safe harbor to cover payroll deduction savings programs of a limited number of large (in terms of population) cities and other political subdivisions. The

Department considered three alternative criteria suggested by commenters that it could use to narrow the universe of eligible political subdivisions. The first suggested alternative criterion is that a political subdivision would have a population equal to or greater than the population of the least populous state. The second suggested alternative criterion is that the state in which the political subdivision exists does not have a state-wide retirement savings program for private-sector employees. The third suggested alternative criterion is that a political subdivision would have demonstrated capacity to design and operate a payroll deduction savings program, such as by maintaining a pension plan with substantial assets for employees of the political subdivision. All of these alternatives are under consideration. In addition, the Department will consider other alternatives presented by commenters.

**Anticipated Cost and Benefits:**

In analyzing benefits and costs associated with this proposed rule, the Department focuses on the direct effects, which include both benefits and costs directly attributable to the rule. These benefits and costs are limited, because as stated above, the proposed rule would merely establish a safe harbor describing the circumstances under which a qualified political subdivision with authority under state law could establish payroll deduction savings programs that would not give rise to ERISA-covered employee pension benefit plans. It does not require qualified political subdivisions to take any actions nor employers to provide any retirement savings programs to their employees. The Department also addresses indirect effects associated with the proposed rule, which include: (1) Potential benefits and costs directly associated with the requirements of qualified political subdivision payroll deduction savings programs; and (2) the potential increase in retirement savings and potential cost burden imposed on covered employers to comply with the requirements of such programs. Indirect effects vary by qualified political subdivisions depending on their program requirements and the degree to which the proposed rule might influence political subdivisions to design their payroll deduction savings programs.

**Risks:**

Undetermined.

**Timetable:**

Action	Date	FR Cite
NPRM	08/30/16	81 FR 59581
NPRM Comment Period End	09/29/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Undetermined

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**RIN:** 1210-AB76

<b>DOL—Mine Safety and Health Administration(MSHA)</b>	<b>PROPOSED RULE STAGE</b>
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**82. RESPIRABLE CRYSTALLINE SILICA**

**Priority:**

Other Significant

**Legal Authority:**

30 U.S.C. 811

**CFR Citation:**

30 CFR 58

**Legal Deadline:**

None

**Abstract:**

Current MSHA standards limit exposures to quartz (crystalline silica) in respirable dust. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. The metal and nonmetal mining industry standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula:  $10 \text{ mg/m}^3$  divided by the percentage of quartz plus 2. The formula is designed to limit exposures to  $0.1 \text{ mg/m}^3$  ( $100 \text{ ug/m}^3$ ) of silica. The National Institute for Occupational Safety and Health (NIOSH) recommends a  $50 \text{ ug/m}^3$  exposure limit for respirable crystalline silica. MSHA will publish a proposed rule to address miners' exposure to respirable crystalline silica.

**Statement of Need:**

MSHA standards have not been updated since 1985; current regulations may not protect workers from developing silicosis. Evidence indicates that miners continue to develop silicosis. MSHA's proposed regulatory action exemplifies the Agency's commitment to protecting the most vulnerable populations while assuring broad-based compliance. MSHA will regulate based on sound science to eliminate or reduce the hazards with the broadest and most serious consequences. MSHA intends to use OSHA's work on the health effects and risk assessment of silica, adapting it as necessary for the mining industry.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:**

This rulemaking would improve health protection from that afforded by the existing standards. MSHA will consider alternative methods of addressing miners' exposures based on the capabilities of the sampling and analytical methods.

**Anticipated Cost and Benefits:**

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

**Risks:**

For over 70 years, toxicology information and epidemiological studies have shown that exposure to respirable crystalline silica presents potential health risks to miners. These potential adverse health effects include simple silicosis and progressive massive fibrosis (lung scarring). Evidence indicates that exposure to silica may cause cancer. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposures to respirable crystalline silica.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**URL For More Information:**

[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)

**URL For Public Comments:**

www.regulations.gov

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**RIN:** 1219-AB36

<b>DOL—MSHA</b>	
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**83. PROXIMITY DETECTION SYSTEMS FOR MOBILE MACHINES IN UNDERGROUND MINES**

**Priority:**

Other Significant

**Legal Authority:**

30 U.S.C. 811

**CFR Citation:**

30 CFR 75

**Legal Deadline:**

None

**Abstract:**

This final rule addresses hazards miners face when working near mobile equipment in underground mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that action is needed to protect miner safety. Mobile equipment can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. The proposed rule would strengthen the protection for underground miners by reducing the potential of pinning, crushing, or striking hazards associated with working close to mobile equipment.

**Statement of Need:**

Mining is one of the most hazardous industries in this country. Miners continue to be injured or killed from pinning, crushing, or striking accidents involving mobile equipment. Equipment is available to help prevent accidents that cause debilitating injuries and accidental death.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by section 101(a) of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

No reasonable alternatives to this regulation would be as comprehensive or as effective in eliminating hazards and preventing injuries.

**Anticipated Cost and Benefits:**

MSHA's proposed rule included an estimate of the anticipated cost and benefits.

**Risks:**

The lack of proximity detection systems on mobile equipment in underground mines contributes to a higher incidence of debilitating injuries and accidental deaths.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
Request for Information (RFI)	02/01/10	75 FR 5009
RFI Comment Period End	04/02/10	
NPRM	09/02/15	80 FR 53070
Scheduling of Public Hearing	09/28/15	80 FR 58229
Public Hearing – Denver, Colorado 10/06/2015	10/06/15	
Public Hearing – Birmingham, Alabama 10/08/2015	10/08/15	
Public Hearing – Beaver, West Virginia 10/19/2015	10/19/15	
Public Hearing – Indianapolis, Indiana 10/29/2015	10/29/15	
NPRM Comment Period Extended	11/30/15	80 FR 74740
NPRM Comment Period Extended End	12/15/15	
Reopening of Record	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)

**URL For Public Comments:**

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**Related RIN:**

Related to 1219-AB65

**RIN:** 1219-AB78

<b>DOL—Occupational Safety and Health Administration(OSHA)</b>	<b>PRERULE STAGE</b>
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**84. PREVENTING WORKPLACE VIOLENCE IN HEALTHCARE**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The RFI will provide OSHA's history with the issue of workplace violence in healthcare, including a discussion of the Guidelines that were initially published in 1996, a 2014 update to the Guidelines, and the recently published tools and strategies that were shared with OSHA by healthcare facilities with effective violence prevention programs. It will also discuss the Agency's use of 5(a)(1) in enforcement cases in healthcare. The RFI solicits information primarily from health care employers, workers and other subject matter experts on impacts of violence, prevention strategies, and other information that will be useful to the Agency if it decides to move forward in rulemaking. OSHA will also solicit information from stakeholders, including state officials, employers and workers, in the nine states that require certain health healthcare facilities to have some type of workplace violence prevention program.

**Statement of Need:**

Workplace violence is a widespread problem, and there is growing recognition that workers in healthcare occupations face unique risks and challenges. In 2013, the rate of serious workplace violence incidents (those requiring days off for an injured worker to recuperate) was more than four times greater in healthcare than in private industry on average. Healthcare accounts for nearly as many serious violent injuries as all other industries combined. Workplace violence comes at a high cost. It harms workers often both physically and emotionally and makes it more difficult for them to do their jobs.

In 2013, 80 percent of serious violent incidents reported in healthcare settings were caused by interactions with patients. Other incidents were caused by visitors, coworkers, or other people. Some medical professions and settings are more at risk than others. According to the Bureau of Labor Statistics, in 2013 psychiatric aides experienced the highest rate of violent injuries that resulted in days away from work, at approximately 590 injuries per 10,000 full-time employees (FTEs). This rate is more than 10 times higher than the next group, nursing assistants (about 55 violent injuries per 10,000 FTEs,

and registered nurses (about 14 violent injuries per 10,000 FTEs), compared with a rate of 4.2 violent injuries per 10,000 FTEs in U.S. private industry as a whole. High-risk areas include emergency departments, geriatrics, and behavioral health, among others.

**Summary of Legal Basis:**

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
Request For Information (RFI)	11/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

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**RIN:** 1218–AD08

<b>DOL—OSHA</b>	<b>PROPOSED RULE STAGE</b>
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**85. INFECTIOUS DISEASES**

**Priority:**

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

**Legal Authority:**

5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 660; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 673

**CFR Citation:**

29 CFR 1910

**Legal Deadline:**

None

**Abstract:**

Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles (rubeola), as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS) and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-resistant Staphylococcus aureus (MRSA), and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is concerned about the ability of employees to continue to provide health care and other critical services without unreasonably jeopardizing their health. OSHA is developing a standard to ensure that employers establish a comprehensive infection control program and control measures to

protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

**Statement of Need:**

OSHA is considering the need for regulatory action to address the risk to workers exposed to infectious diseases in healthcare and other related high-risk environments. Especially given recent events necessitating the careful treatment of individuals with life-threatening infectious diseases, OSHA is concerned about the risk posed to healthcare workers with the movement of healthcare delivery from the traditional hospital setting into more diverse and smaller workplace settings. The Agency initiated the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel process in the spring of 2014.

**Summary of Legal Basis:**

5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 673

**Alternatives:**

OSHA offered several alternatives to the SBREFA panel when presenting the proposed Infectious Disease(ID) rule. OSHA considered a specification oriented rule rather than a performance oriented rule, but this type of rule would provide less flexibility and would likely fail to anticipate all of the potential hazards and necessary controls for every type and every size of facility and would under-protect workers. Exempting small entities from the rule was considered, but approximately 1.5 million of the estimated 9 million workers affected by the rule as outlined in the regulatory framework work in very small entities, leaving these workers under-protected. OSHA also considered changing the scope of the rule restricting the ID rule to workers who have occupational exposure during the provision of direct patient care in institutional settings but based on the evidence thus far analyzed, those workers performing other

covered tasks in both institutional and non-institutional settings face a risk of infection because of their occupational exposure. Per the proposed rule, employers would be required to provide medical removal protection (MRP) benefits. If OSHA eliminated the requirement for MRP benefits, workers might be deterred from reporting signs and symptoms that could be indicative of infection and might work while sick (due to concerns about loss of pay or other such punitive consequences), potentially resulting in further infections to co-workers and/or patients. OSHA also considered the option of not requiring employers to make vaccinations available to workers. Vaccination is generally considered an important component of an effective infection control program, as it protects inoculated workers from infections, lessens chances of outbreaks by minimizing transmission of infections from workers to other workers and patients, and may also lessen the duration and severity of infections, depending on the efficacy of the vaccine.

**Anticipated Cost and Benefits:**

Undetermined.

**Risks:**

During provision of direct patient care and the performance of other covered tasks as outlined in the scope of the proposed rule, workers are at risk for exposure to infectious agents. The peer-reviewed literature suggests that HCWs are especially susceptible to exposures during the early stages of the emergence of novel infectious agents or novel strains of known infectious agents. While the patients who are the most ill with infectious diseases are most likely being treated in hospitals, many patients with infectious diseases are treated in ambulatory care settings during the early stages of the disease while they are asymptomatic or have mild symptoms. An increasing number of patients who are ill and symptomatic with an infectious disease are getting initial treatment at clinics that have urgent care or immediate care services, rather than being treated at hospital emergency rooms. Many patients with childhood illnesses such as measles, mumps and pertussis are being treated at clinics, not hospitals, unless they have severe cases. Currently, outbreaks of measles, mumps and pertussis are occurring in various countries, including the U.S. Workers in laboratories are tasked with the identification of infectious

agents causing outbreaks and are similarly susceptible to exposures. OSHA believes that the 1998 and 2007 CDC/HICPAC guidelines, along with other authoritative guidance documents (e.g., CDC/NIH, 2009), and hundreds of peer-reviewed publications, demonstrate a well-recognized risk of occupational exposure to infectious agents for workers providing direct patient care and/or performing other covered tasks.

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	05/06/10	75 FR 24835
RFI Comment Period End	08/04/10	
Analyze Comments	12/30/10	
Stakeholder Meetings	07/05/11	76 FR 39041
Initiate SBREFA	06/04/14	
Complete SBREFA	12/22/14	
NPRM	10/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**Federalism:**

Undetermined

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**RIN:** 1218-AC46

<b>DOL—OSHA</b>	
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**86. STANDARDS IMPROVEMENT PROJECT IV**

**Priority:**

Other Significant

**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, 76 FR 33590), thus reducing costs or paperwork burden on affected employers. The Agency is initiating a fourth rulemaking effort to identify unnecessary or duplicative provisions or paperwork requirements that are focused primarily on its construction standards in 29 CFR 1926, as long as they do not diminish employee protections.

**Statement of Need:**

OSHA's Standard 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, thus reducing costs or paperwork burden on affected employers. The Agency is initiating a fourth rulemaking effort to identify unnecessary or duplicative provisions or paperwork requirements that are focused primarily on its construction standards in 29 CFR 1926, as long as they do not diminish employee protections.

**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). SIP-IV will update three standards to align with current medical practice, including a reduction to the number of necessary employee x-rays, updates to requirements for pulmonary function testing, and updates to the table used for decompression of employees during underground construction. Additionally, the proposed revisions include an update to the consensus standard incorporated by reference for signs and devices used to protect workers near automobile traffic, a revision to the requirements for roll-over protective structures to comply with current consensus standards, updates for storage of digital x-rays and the method of calling emergency services to allow for use of current technology, and a revision to lockout/tagout requirements in response to a court decision, among others. OSHA is also proposing 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.

**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:**

The Agency has estimated that one revision (updating the method of identifying and calling emergency medical services) may increase construction employers costs by about \$28,000 per year while two provisions (reduction in the number of necessary employee x-rays and elimination of posting requirements for residential construction employers) provide estimated costs savings of \$3.2 million annually. The Agency has not estimated or quantified benefits to employees from reduced exposure to x-ray radiation or to employers for the reduced cost of storing digital x-rays rather than x-ray films, among others. The Agency has preliminarily concluded that the proposed revisions are economically feasible and do not have any significant economic impact on small businesses. The Preliminary Economic Analysis in this preamble provides an explanation of the economic effects of the proposed revisions.

**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 End	12/05/16	
Analyze Comments	06/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

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**RIN:** 1218-AC67

<b>DOL—OSHA</b>	<b>FINAL RULE STAGE</b>
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**87. OCCUPATIONAL EXPOSURE TO BERYLLIUM**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

29 U.S.C. 655(b); 29 U.S.C. 657

**CFR Citation:**

29 CFR 1910

**Legal Deadline:**

None

**Abstract:**

In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard for permissible exposure limit (PEL) to beryllium by the United Steel Workers (formerly the Paper Allied-Industrial, Chemical, and Energy Workers Union), Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage. On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium, including: current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected worksites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008. OSHA also completed a scientific peer review of its draft risk assessment.

**Statement of Need:**

Exposure to beryllium causes a disabling and potentially fatal chronic lung disease called Chronic Beryllium Disease (CBD). Exposure to beryllium has also been linked to lung cancer. OSHA proposed to reduce the permissible exposure limit (PEL) by 10 times to 0.2 micrograms of beryllium per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) over an 8-hour time weighted average (TWA) and a short term exposure limit (STEL) of 2.0  $\mu\text{g}/\text{m}^3$  over 15 minutes. The proposal also included important requirements such as medical surveillance, medical removal protection, regulated areas, training, and engineering controls.

**Summary of Legal Basis:**

29 U.S.C. 655(b); 29 U.S.C. 657

**Alternatives:**

OSHA also proposed regulatory alternatives to its proposed beryllium rule. These include: scope alternatives to address exposures in the construction and maritime industries; changes to the proposed PEL and STEL; and changes to the proposed ancillary provisions for exposure assessment, personal protective clothing and equipment, medical surveillance, and medical removal.

**Anticipated Cost and Benefits:**

The proposed rule for beryllium covers approximately 35,000 workers in General Industry, and OSHA estimated that the proposed rule when fully implemented would produce \$575.8 million in annualized benefits over 60 years, far outweighing the expected cost of \$37.6 million annually for workplaces in General Industry.

**Risks:**

Prevent 92 deaths from chronic beryllium disease, 4 deaths from lung cancer, and 50 non-fatal cases of chronic beryllium disease each year.

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	11/26/02	67 FR 70707
RFI Comment Period End	02/24/03	
SBREFA Report Completed	01/23/08	
Initiated Peer Review of Health Effects and Risk Assessment	03/22/10	

Complete Peer Review	11/19/10	
NPRM	08/07/15	80 FR 47565
NPRM Comment Period End	11/05/15	
Notice of Public Hearing; Date 02/29/2016	12/30/15	80 FR 81475
Notice of Public Hearing; Date Change 03/21/2016	02/16/16	81 FR 7717
Final Rule	01/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 1218-AB76

**BILLING CODE** 4510-HL-P

## **DEPARTMENT OF TRANSPORTATION (DOT)**

### **Introduction: Department Overview and Summary of Regulatory Priorities**

The Department of Transportation (DOT) consists of nine operating administrations and the Office of the Secretary, each of which has statutory responsibility for a wide range of regulations. DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, public transportation, and pipeline transportation areas. DOT also regulates aviation consumer and economic issues and provides financial assistance for programs involving highways, airports, public transportation, the maritime industry, railroads, and motor vehicle safety. In addition, the Department writes regulations to carry out a variety of statutes ranging from the Americans With Disabilities Act to the Uniform Time Act. Finally, DOT develops and implements a wide range of regulations that govern internal DOT programs such as acquisitions and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, and the use of aircraft and vehicles.

### **The Department's Regulatory Priorities**

The Department's regulatory priorities respond to the challenges and opportunities we face. Our mission generally is as follows:

The national objectives of general welfare, economic growth and stability, and the security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

To help us achieve our mission, we have five goals in the Department's Strategic Plan for Fiscal Years 2014-2018:

- Safety: Improve public health and safety by “reducing transportation-related fatalities, injuries, and crashes.”
- State of Good Repair: Ensure the U.S. “proactively maintains critical transportation infrastructure in a state of good repair.”
- Economic Competitiveness: Promote “transportation policies and investments that bring lasting and equitable economic benefits to the Nation and its citizens.”
- Quality of Life: Foster quality of life in communities by “integrating transportation policies, plans, with coordinated housing and economic development policies to increase transportation choices and access to transportation services for all.”
- Environmental Sustainability: Advance “environmental sustainable policies and investments that reduce carbon and other harmful emissions from transportation sources.”

In identifying our regulatory priorities for the next year, the Department considered its mission and goals and focused on a number of factors, including the following:

- The relative risk being addressed
- Requirements imposed by law
- Actions on the National Transportation Safety Board “Most Wanted List”
- The costs and benefits of the regulations
- The advantages of nonregulatory alternatives
- Opportunities for deregulatory action
- The enforceability of any rule, including the effect on agency resources

This regulatory plan identifies the Department’s regulatory priorities—the 19 pending rulemakings chosen, from among the dozens of significant rulemakings listed in the Department’s broader regulatory agenda, that the Department believes will merit special attention in the upcoming year. The rules included in the regulatory plan embody the Department’s focus on our strategic goals.

The regulatory plan reflects the Department’s primary focus on safety—a focus that extends across several modes of transportation. For example:

- The Federal Aviation Administration (FAA) will continue its efforts to implement safety management systems.
- The Federal Motor Carrier Safety Administration (FMCSA) continues its work to strengthen the requirements for Electronic Logging Devices and revise motor carrier safety fitness determination procedures.
- The National Highway Traffic Safety Administration (NHTSA) will continue its rulemaking efforts to reduce death and injury resulting from motor vehicle crashes.

Each of the rulemakings in the regulatory plan is described below in detail. In order to place them in context, we first review the Department's regulatory philosophy and our initiatives to educate and inform the public about transportation safety issues. We then describe the role of the Department's retrospective reviews and its regulatory process and other important regulatory initiatives of OST and of each of the Department's components. Since each transportation "mode" within the Department has its own area of focus, we summarize the regulatory priorities of each mode and of OST, which supervises and coordinates modal initiatives and has its own regulatory responsibilities, such as consumer protection in the aviation industry.

#### The Department's Regulatory Philosophy and Initiatives

The Department has adopted a regulatory philosophy that applies to all its rulemaking activities. This philosophy is articulated as follows: DOT regulations must be clear, simple, timely, fair, reasonable, and necessary. They will be issued only after an appropriate opportunity for public comment, which must provide an equal chance for all affected interests to participate, and after appropriate consultation with other governmental entities. The Department will fully consider the comments received. It will assess the risks addressed by the rules and their costs and benefits, including the cumulative effects. The Department will consider appropriate alternatives, including nonregulatory approaches. It will also make every effort to ensure that regulation does not impose unreasonable mandates.

The Department stresses the importance of conducting high-quality rulemakings in a timely manner and reducing the number of old rulemakings. To implement this, the Department has required the following actions: (1) regular meetings of senior DOT officials to ensure effective policy leadership and timely decisions, (2) effective tracking and coordination of rulemakings, (3) regular reporting, (4) early briefings of interested officials, (5) regular training of staff, and (6) adequate allocations of resources.

The Department has achieved significant success because of this effort. It allows the Department to use its resources more effectively and efficiently.

The Department's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. DOT continually seeks to improve its regulatory process. A few examples include: the Department's development of regulatory process and related training courses for its employees; creation of an electronic rulemaking tracking and coordination system; the use of direct final rulemaking; the use of regulatory negotiation; a continually expanding and improved Internet page that provides important regulatory information, including "effects" reports and status reports (<http://www.dot.gov/regulations>); and the continued exploration and use of Internet blogs and other Web 2.0 technology to increase and enhance public participation in its rulemaking process.

In addition, the Department continues to engage in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. The Department's agencies also have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

### **The Department's Retrospective Review of Existing Regulations**

In accordance with Executive Order (E.O.) 13563 (Improving Regulation and Regulatory Review), the Department actively engaged in a special retrospective review of our existing rules to determine whether they need to be revised or revoked. This review was in addition to those reviews in accordance with section 610 of the Regulatory Flexibility Act, E.O. 12866, and the Department's Regulatory Policies and

Procedures. As part of this effort, we also reviewed our processes for determining what rules to review and ensuring that the rules are effectively reviewed. As a result of the review, we identified many rules for expedited review and changes to our retrospective review process. Pursuant to section 6 of E.O. 13563, the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department’s final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. If a retrospective review action has been completed it will no longer appear on the list below. However, more information can be found about these completed rulemakings on the Unified Agenda publications at [Reginfo.gov](http://Reginfo.gov) in the Completed Actions section for that agency. These rulemakings can also be found on [Regulations.gov](http://Regulations.gov). The final agency retrospective review plan can be found at <http://www.dot.gov/regulations>.

	<b>RIN</b>	<b>RETROSPECTIVE REVIEW OF EXISTING REGULATIONS</b>  <b>Rulemaking Title</b>	<b>Significantly Reduces Costs on Small Businesses</b>
1.	2105-AE29	Transportation Services for Individuals with Disabilities: Over-the-Road Buses (RRR)	TBD
2.	2120-AJ94	Enhanced Flight Vision System (EFVS) (RRR)	
3.	2120-AK24	Fuel Tank and System Lightning Protection (RRR)	
4.	2120-AK28	Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; Other Provisions (RRR)	
5.	2120-AK32	Acceptance Criteria for Portable Oxygen Concentrators Used Onboard Aircraft (RRR)	
6.	2120-	Flammability Requirements for Transport Category	

	<b>RIN</b>	<b>RETROSPECTIVE REVIEW OF EXISTING REGULATIONS</b>  <b>Rulemaking Title</b>	<b>Significantly Reduces Costs on Small Businesses</b>
	AK34	Airplanes (RRR)	
7.	2120-AK44	Reciprocal Waivers of Claims for Non-Party Customer Beneficiaries, Signature of Waivers of Claims by Commercial Space Transportation Customers. And Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer (RRR)	
8.	2125-AF62	Acquisition of Right-of-Way (RRR) (MAP-21)	N
9.	2125-AF65	Buy America (RRR)	TBD
10.	2126-AB46	Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (RRR)	
11.	2126-AB47	Electronic Signatures and Documents (E-Signatures) (RRR)	
12.	2126-AB49	Elimination of Redundant Maintenance Rule (RRR)	
13.	2127-AK98	Pedestrian Safety Global Technical Regulation (RRR)	
14.	2127-AL03	Part 571 FMVSS No. 205, Glazing Materials, GTR (RRR)	
15.	2127-	Amend FMVSS No. 210 to Incorporate the Use of a New	Y

	<b>RIN</b>	<b>RETROSPECTIVE REVIEW OF EXISTING REGULATIONS</b>  <b>Rulemaking Title</b>	<b>Significantly Reduces Costs on Small Businesses</b>
	AL05	Force Application Device (RRR)	
16.	2127-AL20	Upgrade of LATCH Usability Requirements (MAP-21) (RRR)	
17.	2127-AL24	Rapid Tire Deflation Test in FMVSS No. 110 (RRR)	
18.	2127-AL58	Upgrade of Rear Impact Guard Requirements for Trailers and Semitrailers (RRR)	
19.	2130-AC40	Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions (RRR)	
20.	2130-AC41	Hours of Service Recordkeeping; Electronic Recordkeeping Amendments (RRR)	
21.	2130-AC43	Safety Glazing Standards; Miscellaneous Revisions (RRR)	
22.	2137-AE72	Pipeline Safety: Gas Transmission (RRR)	Y
23.	2137-AE80	Hazardous Materials: Miscellaneous Pressure Vessel Requirements (DOT Spec Cylinders) (RRR)	Y
24.	2137-AE81	Hazardous Materials: Reverse Logistics (RRR)	Y
25.	2137-AE86	Hazardous Materials: Requirements for the Safe Transportation of Bulk Explosives (RRR)	
26.	2137-	Pipeline Safety: Operator Qualification, Cost Recovery,	

	<b>RIN</b>	<b>RETROSPECTIVE REVIEW OF EXISTING REGULATIONS</b>  <b>Rulemaking Title</b>	<b>Significantly Reduces Costs on Small Businesses</b>
	AE94	Accident and Incident Notification, and Other Changes (RRR)	
27.	2137-AF00	Hazardous Materials: Adoption of Special Permits (MAP-21) (RRR)	Y
28.	2137-AF04	Hazardous Materials: Miscellaneous Amendments (RRR)	
29.	2137-AF09	Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)	
30.	2137-AF10	Hazardous Materials: Revision of the Requirements for Carriage by Aircraft (RRR)	
31.	2137-AF18	Hazardous Materials: Harmonization with International Standards (RRR)	
32.	2137-AF19	Hazardous Materials: Revisions to Hazardous Materials Emergency Preparedness Grants Requirements (RRR)	

### **International Regulatory Cooperation**

Executive Order 13609 (Promoting International Regulatory Cooperation) stresses that “[i]n an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of” Executive Order 13563 to “protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” DOT has long recognized the value of international regulatory cooperation and has engaged in a variety of activities with both foreign

governments and international bodies. These activities have ranged from cooperation in the development of particular standards to discussions of necessary steps for rulemakings in general, such as risk assessments and cost-benefit analyses of possible standards. Since the issuance of Executive Order 13609, we have increased our efforts in this area. For example, many of DOT's Operating Administrations are active in groundbreaking government-wide Regulatory Cooperation Councils (RCC) with Canada, Mexico, and the European Union. These RCC working groups are setting a precedent in developing and testing approaches to international coordination of rulemaking to reduce barriers to international trade. We also have been exploring innovative approaches to ease the development process.

Examples of the many cooperative efforts we are engaged in include the following:

The FAA maintains ongoing efforts with foreign civil aviation authorities, including in particular the European Aviation Safety Agency and Transport Canada, to harmonize standards and practices where doing so will improve the safety of aviation and aviation-related activities. The FAA also plays an active role in the standard-setting work of the International Civil Aviation Organization (ICAO), particularly on the Air Navigation Commission and the Legal Committee. In doing so, the FAA works with other Nations to shape the standards and recommended practices adopted by ICAO. The FAA's rulemaking actions related to safety management systems are examples of the FAA's harmonization efforts.

NHTSA is actively engaged in international regulatory cooperative efforts on both a multilateral and a bilateral basis, exchanging information on best practices and otherwise seeking to leverage its resources for addressing vehicle issues in the U.S. As noted in Executive Order 13609: "(i)n meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international

regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation” and “can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.”

As the representative, for vehicle safety matters, of the United States, one of 33 contracting parties to the 1998 Agreement on the Harmonization of Vehicle Regulations, NHTSA is an active participant in the World Forum for Vehicle Regulations (WP.29) at the UN. Under that umbrella, NHTSA is currently working on the development of harmonized regulations for the safety of electric vehicles; hydrogen and fuel cell vehicles; advanced head restraints; pole side impact test procedures; pedestrian protection; the safety risks associated with quieter vehicles, such as electric and hybrid electric vehicles; and advancements in tires.

In recognition of the large cross-border market in motor vehicles and motor vehicle equipment, NHTSA is working bilaterally with Transport Canada under the Motor Vehicles Working Group of the U.S. – Canada Regulatory Cooperation Council (RCC) to facilitate implementation of the initial RCC Joint Action Plan. Under this Plan, NHTSA and Transport Canada are working on the development of international standards on quieter vehicles, electric vehicle safety, and hydrogen and fuel cell vehicles.

Building on the initial Joint Action Plan, the U.S. and Canada issued a Joint Forward Plan on August 29, 2014. The Forward Plan provided that regulators would develop Regulatory Partnership Statements (RPSs) outlining the framework for how cooperative activities will be managed between agencies. Since that time, regulators have been developing and completing detailed work plans to address the commitments in the Forward Plan. To facilitate future cooperation, the RCC will continue to work on cross-cutting issues in areas such as: “sharing information with foreign governments, joint funding of new initiatives and our respective rulemaking processes.”

To broaden and deepen its cooperative efforts with the European Union, NHTSA is participating in ongoing negotiations regarding the Transatlantic Trade and Investment Partnership which is “aimed at providing greater compatibility and transparency in trade and investment regulation, while maintaining high levels of health, safety, and environmental protection.” NHTSA is seeking to build on existing levels of safety and lay the groundwork for future cooperation in addressing emerging safety issues and technologies.

PHMSA’s hazardous material group works with ICAO, the UN Subcommittee of Experts on Dangerous Goods, and the International Maritime Organization. Through participation in these international bodies, PHMSA is able to advocate on behalf of U.S. safety and commercial interests to guide the development of international standards with which U.S. businesses have to comply when shipping in international commerce. PHMSA additionally participates in the RCC with Canada and has a Memorandum of Cooperation in place to ensure that cross-border shipments are not hampered by conflicting regulations. The pipeline group at PHMSA incorporates many standards by reference into the Pipeline Safety Regulations, and the development of these standards benefit from the participation of experts from around the world.

In the areas of airline consumer protection and civil rights regulation, OST is particularly conscientious in seeking international regulatory cooperation. For example, the Department participates in the standard-setting activities of ICAO and meets and works with other governments and international airline associations on the implementation of U.S. and foreign aviation rules.

For a number of years the Department has also provided information on which of its rulemaking actions have international effects. This information, updated monthly, is available at the Department’s

regulatory information website, <http://www.dot.gov/regulations>, under the heading “Reports on Rulemakings and Enforcement.” (The reports can be found under headings for “EU,” “NAFTA” (Canada and Mexico) and “Foreign.”) A list of our significant rulemakings that are expected to have international effects follows; the identifying RIN provided below can be used to find summary and other information about the rulemakings in the Department’s Regulatory Agenda published along with this Plan:

<b>RIN</b>	<b>DOT SIGNIFICANT RULEMAKINGS WITH INTERNATIONAL IMPACTS</b>  <b>Rulemaking Title</b>
2105-AD91	Accessibility of Airports
2105-AE06	E-Cigarette
2120-AJ38	Airport Safety Management System
2120-AJ60	Small Unmanned Aircraft
2120-AJ69	Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan
2120-AK09	Drug & Alcohol Testing for Repair Stations
2120-AK65	Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes
2126-AA34	Mexico-Domiciled Motor Carriers
2126-AA35	Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States
2124-AA70	Limitations on the Issuance of Commercial Driver Licenses with a Hazardous Materials Endorsement
2126-AB56	MAP-21 Enhancements and Other Updates to the Unified Registration System
2127-AK76	Tire Fuel Efficiency Part 2

2127-AK93	Quieter Vehicles Sound Alert
2133-AB74	Cargo Preference
2137-AF18	Hazardous Materials: Harmonization with International Standards (RRR)

As we identify rulemakings arising out of our ongoing regulatory cooperation activities that we reasonably anticipate will lead to significant regulations, we will add them to our website report and subsequent Agendas and Plans.

#### The Department's Regulatory Process

The Department will also continue its efforts to use advances in technology to improve its rulemaking management process. For example, the Department created an effective tracking system for significant rulemakings to ensure that either rules are completed in a timely manner or delays are identified and fixed. Through this tracking system, a monthly status report is generated. To make its efforts more transparent, the Department has made this report Internet accessible at <http://www.dot.gov/regulations>. By doing this, the Department is providing valuable information concerning our rulemaking activity and is providing information necessary for the public to evaluate the Department's progress in meeting its commitment to completing quality rulemakings in a timely manner.

The Department continues to place great emphasis on the need to complete high-quality rulemakings by involving senior departmental officials in regular meetings to resolve issues expeditiously.

#### **Office of the Secretary of Transportation (OST)**

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with the Administrative Procedure Act, Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563, DOT's Regulatory Policies and Procedures, and other legal and policy requirements affecting rulemaking. Although OST's principal role concerns the review of the Department's significant rulemakings, this office has the lead role in the substance of such projects as those 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.

OST also leads and coordinates the Department's response to the Office of Management and Budget's (OMB) intergovernmental review of other agencies' significant rulemaking documents and to Administration and congressional proposals that concern the regulatory process. The General Counsel's office 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.

During Fiscal Year 2017, OST will focus its efforts on voice communications on passengers' mobile wireless devices on scheduled flights within, to and from the United States (2105-AE30).

OST will also continue its efforts on the following rulemaking initiatives:

- Airline Passenger Protections III (2105-AE11)
- In-Flight Medical Oxygen and other ACAA issues (2105-AE12)
- In-Flight Entertainment (2105-AE32)
- Reporting of Statistics for Mishandled Baggage and Wheelchairs (2105-AE41)

OST will also continue its efforts to help coordinate the activities of several operating administrations that advance various departmental efforts that support the Administration's initiatives on promoting safety, stimulating the economy and creating jobs, sustaining and building America's transportation infrastructure, and improving quality of life for the people and communities who use transportation systems subject to the Department's policies. It will also continue to oversee the Department's rulemaking actions to implement the "Moving Ahead for Progress in the 21<sup>st</sup> Century Act" (MAP-21).

### **Federal Aviation Administration (FAA)**

The Federal Aviation Administration is charged with safely and efficiently operating and maintaining the most complex aviation system in the world. 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. The changing technological and industry environment compels us to transform the agency. And the challenging fiscal environment we face only increases the need to prioritize our goals.

We have identified four major strategic initiatives where we will focus our efforts: 1) Risk-based Decision Making – Build on safety management principles to proactively address emerging safety risk by

using consistent, data-informed approaches to make smarter, system-level, risk-based decisions; 2) NAS Initiative -- Lay the foundation for the National Airspace System of the future by achieving prioritized NextGen benefits, enabling the safe and efficient integration of new user entrants including Unmanned Aircraft Systems (UAS) and Commercial Space flights, and deliver more efficient, streamlined air traffic management services; 3) Global Leadership -- Improve safety, air traffic efficiency, and environmental sustainability across the globe through an integrated, data-driven approach that shapes global standards, enhances collaboration and harmonization, and better targets FAA resources and efforts; and (4) Workforce of the Future – Prepare FAA’s human capital for the future, by identifying, recruiting, and training a workforce with the leadership, technical, and functional skills to ensure the U.S. has the world’s safest and most productive aviation sector.

FAA activities that may lead to rulemaking in Fiscal Year 2017 include continuing to:

- Promote and expand safety information-sharing efforts, such as FAA-industry partnerships and data-driven safety programs that prioritize and address risks before they lead to accidents. Specifically, FAA will continue implementing Commercial Aviation Safety Team projects related to controlled flight into terrain, loss of control of an aircraft, uncontained engine failures, runway incursions, weather, pilot decision making, and cabin safety. Some of these projects may result in rulemaking and guidance materials.
- Respond to the FAA Modernization and Reform Act of 2012 (the Act), which directed the FAA to initiate a rulemaking proceeding to issue guidelines and regulations relating to ADS-B In technology and recommendations from an Aviation Rulemaking Committee on ADS-B-In capabilities in consideration of the FAA’s evolving thinking on how to provide an integrated suite of communication, navigation, and surveillance (CNS) capabilities to achieve full NextGen performance.
- Respond to the Act, which also recommended we complete the rulemaking for small Unmanned

Aircraft Systems, and consider how to fully integrate UAS operations in the NAS, which will require future rulemaking.

- Respond to the Airline Safety and Federal Aviation Administration Extension Act of 2010 (H.R. 5900), which requires the FAA to develop and implement Safety Management Systems (SMS) where these systems will improve safety of aviation and aviation-related activities. An SMS proactively identifies potential hazards in the operating environment, analyzes the risks of those hazards, and encourages mitigation prior to an accident or incident. In its most general form, an SMS is a set of decision-making tools that can be used to plan, organize, direct, and control activities in a manner that enhances safety.

- Respond to the Small Airplane Revitalization Act of 2013 (H.R. 1848), which requires the FAA adopt the recommendations from part 23 Reorganization Aviation Rulemaking Aviation Rulemaking Committee (ARC) for improving safety and reducing certification costs for general aviation. The ARC recommendations include a broad range of policy and regulatory changes that it believes could significantly improve the safety of general aviation aircraft while simultaneously reducing certification and modification costs for these aircraft. Among the ARC's recommendations is a suggestion that compliance with part 23 requirements be performance-based, focusing on the complexity and performance of an aircraft instead of the current regulations based on weight and type of propulsion. In announcing the ARC's recommendations, the Secretary of Transportation said "Streamlining the design and certification process could provide a cost-efficient way to build simple airplanes that still incorporate the latest in safety initiatives. These changes have the potential to save money and maintain our safety standing – a win-win situation for manufacturers, pilots and the general aviation community as a whole." Further, these changes are consistent with directions to agencies in Executive Order 13610 "*Identifying and Reducing Regulatory Burdens*," we continue to find ways to make our regulatory program more effective or less burdensome; provide quantifiable monetary savings or

quantifiable reductions in paperwork burdens, and modify and streamline regulations in light of changed circumstances.

- Work cooperatively to harmonize the U.S. aviation regulations with those of other countries, without compromising rigorous safety standards, or our requirements to develop cost benefit analysis. The differences worldwide in certification standards, practice and procedures, and operating rules must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operators, some of which are small businesses. Standardization should help the U.S. aerospace industry remain internationally competitive. The FAA continues to publish regulations based on internal analysis, public comment, and recommendations of Aviation Rulemaking Committees that are the result of cooperative rulemaking between the U.S. and other countries.

FAA top regulatory priorities for Fiscal Year 2017 include:

- Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes (2120-AK65)
  - Airport Safety Management System (2120-AJ38)
  - Flight Crewmember Mentoring, Leadership and Professional Development (2120-AJ87)

The Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes rulemaking would:

- Reorganize part 23 into performance-based requirements by removing the detailed design requirements from part 23;
- Promote the adoption of the newly created performance-based airworthiness design standard

as an internationally accepted standard by the majority of other civil aviation authorities;

- Re-align the part 23 requirements to promote the development of entry-level airplanes similar to those certified under Certification Specification for Very Light Aircraft (CS-VLA);

- Enhance the FAA's ability to address new technology;
- Increase the general aviation (GA) level of safety provided by new and modified airplanes;
- Amend the stall, stall warning, and spin requirements to reduce fatal accidents and increase crashworthiness by allowing new methods for occupant protection; and

- Address icing conditions that are currently not included in part 23 regulations.

The Airport Safety Management System rulemaking would:

- Require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system (SMS) for its aviation related activities.

The Flight Crewmember Mentoring, Leadership and Professional Development rulemaking would:

- Ensure air carriers establish or modify training programs to address mentoring, leadership and professional development of flight crewmembers in part 121 operations.

### **Federal Highway Administration (FHWA)**

The Federal Highway Administration (FHWA) carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. The FHWA's mission is to improve continually the quality and performance of our Nation's highway system and its intermodal connectors.

Consistent with this mission, the FHWA will continue:

- With ongoing regulatory initiatives in support of its surface transportation programs;

- To implement legislation in the most cost-effective way possible; and
- To pursue regulatory reform in areas where project development can be streamlined or

accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of our State and local partners can be increased.

MAP-21 authorizes the Federal surface transportation programs for highways, highway safety, and transit for the two-year period from 2012-2014. The FHWA has analyzed MAP-21 to identify Congressionally directed rulemakings. These rulemakings will be the FHWA's top regulatory priorities for the coming year.

Additionally, the FHWA is in the process of reviewing all FHWA regulations to ensure that they are consistent with MAP-21 and will update those regulations that are not consistent with the recently enacted legislation.

The Fixing America's Surface Transportation (FAST) Act authorizes the Federal surface transportation programs for highways, highway safety, and transit for the five-year period from 2016-2020. The FHWA has analyzed the FAST Act to identify Congressionally directed rulemakings. These rulemakings will be the FHWA's top regulatory priorities for the coming year.

Additionally, the FHWA is in the process of reviewing all FHWA regulations to ensure that they are consistent with the FAST Act and will update those regulations that are not consistent with the recently enacted legislation.

During Fiscal Year 2017, FHWA will continue its focus on improving the quality and performance of our Nation's highway systems by creating national performance management measures and standards to be used by the States to meet the national transportation goals identified in section 1203 of MAP-21 under the following rulemaking initiatives:

- National Goals and Performance Management Measures (Bridges and Pavement) (RIN: 2125-AF53)
- National Goals and Performance Management Measures (Congestion Reduction, CMAQ, Freight, and Performance of Interstate/Non-Interstate NHS) (RIN: 2125-AF54).

#### **Federal Motor Carrier Safety Administration (FMCSA)**

The mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. A strong regulatory program is a cornerstone of FMCSA's compliance and enforcement efforts to advance this safety mission. FMCSA develops new and more effective safety regulations based on three core priorities: Raising the safety bar for entry, maintaining high standards, and removing high-risk behavior. In addition to Agency-directed regulations, FMCSA develops regulations mandated by Congress, through legislation such as MAP-21. FMCSA regulations establish 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 plan for FY 2017 includes completion of a number of rulemakings that are high priorities for the Agency because they would have a positive impact on safety. Among the rulemakings

included in the plan are: (1) Carrier Safety Fitness Determination (RIN 2126-AB11), (2) Entry Level Driver Training (RIN 2126-AB66), and (3) Commercial Driver's License Drug and Alcohol Clearinghouse (RIN 2126-AB18).

Together, these priority rules could improve substantially commercial motor vehicle (CMV) safety on our Nation's highways by increasing FMCSA's ability to provide safety oversight of motor carriers and commercial drivers.

In FY 2017, FMCSA plans to issue a final rule on Carrier Safety Fitness Determination (RIN 2126-AB11) to establish a new safety fitness determination standard that will enable the Agency to prohibit "unfit" carriers from operating on the Nation's highways and contribute to the Agency's overall goal of decreasing CMV-related fatalities and injuries.

In FY 2017, FMCSA plans to issue a final rule on Entry Level Driver Training (RIN 2126-AB66). This rule would establish training requirements for individuals before they can obtain their CDL or certain endorsements. It will define curricula for training providers and establish requirements and procedures for the schools.

Also in FY 2017, FMCSA plans to issue a final rule on the Commercial Driver's License Drug and Alcohol Clearinghouse (RIN 2126-AB18). The rule would establish a clearinghouse requiring employers and service agents to report information about current and prospective employees' drug and alcohol test results. It would require employers and certain service agents to search the Clearinghouse for current and prospective employees' positive drug and alcohol test results as a condition of permitting those employees to perform safety-sensitive functions. This would provide FMCSA and employers the

necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before resuming safety-sensitive functions.

### **National Highway Traffic Safety Administration**

The statutory responsibilities of the National Highway Traffic Safety Administration (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. NHTSA pursues policies that encourage the development of nonregulatory approaches when feasible in meeting its statutory mandates. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

NHTSA plans to issue a final rule on vehicle-to-vehicle (V2V) communications in Fiscal Year 2017. V2V communications are currently perceived to become a foundational aspect of vehicle automation. NHTSA will publish a final rule on heavy vehicle speed limiters in response to petitions for rulemaking and recommendations from the National Transportation Safety Board. In Fiscal Year 2017 NHTSA will also finalize rulemaking for Tire Fuel Efficiency in response to requirements of the Energy Independence & Security Act of 2007. In response to requirements in MAP-21, NHTSA plans to continue work toward a final rule that would require automobile manufacturers to install a seat belt reminder system for the front passenger and rear designated seating positions in passenger vehicles. The seat belt reminder

system is intended to increase belt usage and thereby improve the crash protection of vehicle occupants who would otherwise have been unbelted.

In addition to numerous programs that focus on the safe performance of motor vehicles, the Agency is engaged in a variety of programs to improve driver and occupant behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. NHTSA has identified two high-priority areas: Safety belt use and impaired driving. To address these issue areas, the Agency is focusing especially on three strategies—conducting highly visible, well-publicized enforcement; supporting prosecutors who handle impaired driving cases and expanding the use of DWI/Drug Courts, which hold offenders accountable for receiving and completing treatment for alcohol abuse and dependency; and adopting alcohol screening and brief intervention by medical and health care professionals. Other behavioral efforts encourage child safety-seat use; combat excessive speed, driver distraction, and aggressive driving; improve motorcycle, bicycle, and pedestrian safety; and provide consumer information to the public.

#### **Federal Railroad Administration (FRA)**

FRA's current regulatory program reflects 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 Fixing America's Surface Transportation Act of 2015 (FAST Act), as well as actions under its general safety rulemaking authority and actions supporting a high-performing passenger rail network and to address the safe and effective movement of energy products, particularly crude oil. RSIA08 alone has required 21 rulemaking actions, 19 of which have been completed. The FAST Act requires an additional 13 rulemaking actions, 4 of which are complete and 6 others are in the developmental or proposal stage. FRA continues to prioritize its rulemakings according

to the greatest effect on safety while promoting economic growth, innovation, competitiveness, and job creation, as well as expressed congressional interest, while working to complete as many mandated rulemakings as quickly as possible.

FRA is working to complete its on-going development of requirements related to the creation and implementation of railroad risk reduction programs (RIN 2130-AC11). FRA is finalizing initial rulemaking documents based on the recommendations of a Railroad Safety Advisory Committee (RSAC) working group containing the fatigue management provisions related to risk reduction and system safety programs. FRA is also in the process of producing a final regulatory action related to the transportation of crude oil and ethanol by rail, focusing on the appropriate crew size requirements when transporting such commodities. FRA's crew size activity will also address other freight and passenger operations to ensure FRA will have appropriate oversight if a railroad chooses to alter its standard method of operation. FRA continues its work to produce a rulemaking containing RSAC-supported actions that advance high-performing passenger rail to propose standards for alternative compliance with FRA's Passenger Equipment Safety Standards for the operation of Tier III passenger equipment (RIN 2130-AC51). Through RSAC, FRA is developing recommendations for proposed rules regarding track inspections aimed at improving rail integrity to allow continuous rail integrity testing and to address rail head wear. Finally, FRA is developing proposed rules related to the use of inward and outward facing locomotive-mounted cameras and other recording devices in response to a FAST Act mandate for such devices on passenger locomotives.

### **Federal Transit Administration (FTA)**

FTA helps communities support public transportation by making grants of Federal funding for transit vehicles, construction of transit facilities, and planning and operation of transit and other transit-related

purposes. FTA regulatory activity implements the laws that apply to recipients' uses of Federal funding and the terms and conditions of FTA grant awards. 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;
- Incorporate principles of sound management into the grant management process.

As the needs for public transportation have changed over the years, the Federal transit programs have grown in number and complexity often requiring implementation through the rulemaking process. FTA is currently implementing many of its public transportation programs authorized under MAP-21 through the regulatory process. To that end, FTA's regulatory priorities include implementing the newly authorized Public Transportation Safety Program (49 U.S.C. 5329), such as the Public Transportation Safety Plan and updating the State Safety Oversight rule, as well as, implementing requirements for Transit Asset Management Systems (49 U.S.C. 5326). The joint FTA/FHWA planning rule which will be merged with FTA/FHWA's Additional Authorities for Planning and Environmental Linkages rule and FTA's Bus Testing rule round out its regulatory priorities.

### **Maritime Administration (MARAD)**

The 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 primary regulatory activities in Fiscal Year 2017 will be to continue the update of existing regulations as part of the Department's Retrospective Regulatory Review effort, and to propose new regulations where appropriate.

### **Pipeline and Hazardous Materials Safety Administration (PHMSA)**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has responsibility for rulemaking under two programs. Through the Associate Administrator for the Office of Hazardous Materials Safety (OHMS), PHMSA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of

1990. Through the Associate Administrator for the Office of Pipeline Safety (OPS), PHMSA administers regulatory programs under the Federal pipeline safety laws and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 included a number of rulemaking studies and mandates and additional enforcement authorities that continue to impact PHMSA's regulatory activities in Fiscal Year 2016.<sup>14</sup>

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. We will concentrate on the prevention of high-risk incidents identified through the findings of the National Transportation Safety Board (NTSB) and 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.

### OHMS

On December 4, 2015, President Barack Obama signed legislation entitled, "Fixing America's Surface Transportation Act of 2015," or the "FAST Act." See Pub. L. 114-94. The FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" (Sections 7001 through 7311) which instructs the Secretary of Transportation ("Secretary") to make specific regulatory amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). PHMSA has been very effective in implementing the FAST Act provisions. For example, PHMSA recently issued a final rule to expand

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<sup>14</sup>

[http://www.phmsa.dot.gov/pv\\_obj\\_cache/pv\\_obj\\_id\\_7FD46010F0497123865B976479CFF3952E990200/filename/Pipeline%20Reauthorization%20Bill%202011.pdf](http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_7FD46010F0497123865B976479CFF3952E990200/filename/Pipeline%20Reauthorization%20Bill%202011.pdf)

requirements for the use of the DOT Specification 117 tank car to all flammable liquids, regardless of train make-up. This change will promote consistency for all flammable liquid tank cars and simplify compliance for shippers and carriers. As a result of these actions, all retrofitted and newly constructed DOT Specification 117 tank cars will be equipped with top fittings protection, jackets, thermal protection systems, full height head shields, and better outlet valves. The expanded use of the enhanced tank car will reduce the likelihood of a flammable liquid release in the event of a derailment.

PHMSA will continue to focus on the streamlining of 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, petitions for rulemaking, special permits, enforcement actions, approvals, and international standards to identify inconsistencies, outdated provisions, and barriers to regulatory compliance.

PHMSA aims to reduce the risks related to the transportation of hazardous materials by rail. Preventing tank car incidents and minimizing the consequences when an incident does occur are not only DOT priorities, but are also shared by our Federal and international partners, the NTSB, industry, and the general public. Expansion in United States energy production has led to significant challenges in the transportation system. Expansion in oil production has led to increasing volumes of energy products transported to refineries. With a growing domestic supply, rail transportation, in particular, has emerged as an alternative to transportation by pipeline or vessel. The growing reliance on trains to transport large volumes of flammable liquids raises risks that have been highlighted by the recent instances of trains carrying crude oil that have derailed. PHMSA issued a Notice of Proposed Rulemaking on July 29, 2016 (81 FR 50067), seeking comment on potential revisions to its regulations that would

expand the applicability of comprehensive oil spill response plans (OSRPs) for crude oil trains and require railroads to share information about high-hazard flammable train operations with state and tribal emergency response commissions to improve community preparedness. PHMSA will continue to take regulatory actions to enhance the safe transportation of energy products.

PHMSA is also looking to reduce the risk of transporting lithium batteries by air. The safe transport of lithium batteries by air has been an ongoing concern due to the unique challenges they pose to safety in a transportation environment. Unlike other hazardous materials, lithium batteries contain both a chemical and an electrical hazard. This combination of hazards, when involved in a fire encompassing significant quantities of lithium batteries, may exceed the fire suppression capability of the aircraft and lead to a catastrophic lithium battery event. PHMSA is developing regulatory actions that will: (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) limits the use of alternative provisions for small lithium cell or battery shipments under 49 CFR § 173.185(c). These amendments will predominately affect air carriers (both passenger and cargo-only) and shippers offering lithium ion cells and batteries for transport as cargo by aircraft. The amendments will not restrict passengers or crew members from bringing personal items or electronic devices containing lithium batteries aboard aircraft in carry-on or checked baggage.

### OPS

President Obama signed the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (or the “PIPES Act of 2016”) on June 22, 2016. The 2016 Act reauthorizes the pipeline safety program and requires a number of reports and mandates. Under the 2016 Act, PHMSA is required to take regulatory actions to establish minimum safety standards for underground natural gas storage facilities, and to update the minimum safety standards for liquefied natural gas pipeline facilities for

permanent, small scale liquefied natural gas pipeline facilities. The Act also contains regulatory mandates regarding emergency order authority, unusually sensitive areas, and hazardous materials identification numbers. PHMSA is in the process of taking the necessary steps to address these mandates.

On October 13, 2015 [80 FR 61609], PHMSA issued an NPRM proposing changes to the regulations covering hazardous liquid onshore pipelines. Specifically, the agency proposed regulatory changes relative to High Consequence Areas (HCAs) for integrity management (IM) protections, repair timeframes, and reporting for all hazardous liquid gathering lines. The agency also addressed public safety and environmental aspects of any new requirements, as well as the cost implications and regulatory burden.

Also, on April 8, 2016 [81 FR 20722], PHMSA proposed to revise the requirements in the Pipeline Safety Regulations to address integrity management principles for Gas Transmission pipelines. In particular, PHMSA proposed requirements to address repair criteria for both HCA and non-HCA areas, assessment methods, validating and integrating pipeline data, risk assessments, knowledge gained through the IM program, corrosion control, management of change, gathering lines, and safety features on launchers and receivers.

**QUANTIFIABLE COSTS AND BENEFITS OF RULEMAKINGS**

**ON THE 2016 to 2017 DOT REGULATORY PLAN**

(This chart does not account for benefits and costs that could not be monetized, which may be substantial.)

<b>Agency/ RIN Number</b>	<b>Title</b>	<b>Stage</b>	<b>Quantifiable Costs Discounted 2013 \$ (Millions)</b>	<b>Quantifiable Benefits Discounted 2013 \$ (Millions)</b>
<b>FAA</b>				
2120-AJ38	Airport Safety Management System	SNPRM (Analyzing Comments 12/16)	\$157.5	\$225.9
2120-AJ87	Pilot Professional Development	Published: Comment Period End 01/05/17	\$46.8	\$46.3
2120-AK65	Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes	FR 12/16	\$3.9	\$11.6
<b>FHWA</b>				
2125-AF53	Performance Management 2	FR 11/16	\$21.2 <i>Note: These are preliminary agency estimates only. They have not been reviewed by others outside of DOT. The estimates could change after interagency review.</i>	Breakeven Analysis
2125-AF54	Performance Management 3	NPRM (Analyzing Comments 08/16) FR TBD	\$15.3 – 21.1 <i>Note: These are preliminary agency estimates only. They have not</i>	Breakeven Analysis

			<i>been reviewed by others outside of DOT. The estimates could change after interagency review.</i>	
<b>FMCSA</b>				
2126-AB11	Carrier Safety Fitness Determination	NPRM (Analyzing Comments) FR TBD	TBD	TBD
2126-AB66	Entry Level Driver Training	FR 11/16	TBD	TBD
<b>NHTSA</b>				
2127-AL55	Light Vehicle V2V Communications	FR 10/17	TBD	TBD
2127-AK92	Heavy Vehicle Speed Limiters	FR 10/17	TBD	TBD
2127-AK76	Tire Fuel Efficiency Part 2	FR10/17	\$10.6	\$21.5
<b>FRA</b>				
2130-AC11	Risk Reduction Program	FR 12/16	TBD	TBD
2130-AC51	Locomotive Recording Devices	NPRM 11/16	TBD	TBD
<b>PHMSA</b>				
2137-AE66	Pipeline Safety: Safety of On-Shore Liquid Hazardous Pipelines	FR 12/16	TBD	TBD
2137-AE72	Pipeline Safety: Gas Transmission (RRR)	NPRM (Analyzing Comments) FR TBD	TBD	TBD
2137-AF08	Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains	FR 07/17	\$2.9m per year	Breakeven Analysis  Cost-effective if this requirement reduces risk by 3.7%

*Notes:*

Costs and benefits of rulemakings may be forecast over varying periods. Although the forecast periods will be the same for any given rulemaking, comparisons between proceedings should be made cautiously.

Costs and benefits are generally discounted at a 7 percent discount rate over the period analyzed.

The Department of Transportation generally assumes that there are economic benefits to avoiding a fatality of \$9.4 million. That economic value is included as part of the benefits estimates shown in the chart. As noted above, we have not included the non-quantifiable benefits.

<b>DOT—Federal Aviation Administration(FAA)</b>	<b>PROPOSED RULE STAGE</b>
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**88. +AIRPORT SAFETY MANAGEMENT SYSTEM**

**Priority:**

Other Significant

**Legal Authority:**

49 U.S.C. 44706; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701 to 44706; 49 U.S.C. 44709; 49 U.S.C. 44719

**CFR Citation:**

14 CFR 139

**Legal Deadline:**

Final, Statutory, November 5, 2012, Final rule.

**Abstract:**

This rulemaking would require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system (SMS) for its aviation-related activities. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.

**Statement of Need:**

In the NPRM published on October 7, 2010, the FAA proposed to require all part 139 certificate holders to develop and implement an SMS to improve the safety of their aviation-related activities. The FAA received 65 comment documents from a variety of commenters. Because of the complexity of the issues and concerns raised by the commenters, the FAA began to reevaluate whether deployment of SMS at all certificated airports was the most effective approach. The FAA continues to believe that an SMS can address potential safety gaps that are not completely eliminated through effective FAA regulations and technical operating standards. While the comments generated some changes to the proposal in this document, most of the proposed core elements of the SMS program remain in the SNPRM. The FAA now proposes to require an SMS be developed, implemented, maintained, and adhered to at any certificated airport that is: (i) classified as a Small, Medium, or Large hub airport in the National Plan of Integrated Airport Systems; (ii) identified by the U.S. Customs and Border Protection as a port-of-entry, designated international airport, landing rights airport, or user fee airport; or (iii) identified as having more than 100,000 total annual operations (according to best available data).

**Summary of Legal Basis:**

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. The FAA is proposing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44706, "Airport operating certificates."

Under that section, Congress charges the FAA with issuing airport operating certificates (AOC) that contain terms that the Administrator finds necessary to ensure safety in air transportation. This proposed rule is within the scope of that authority because it requires certain certificated airports to develop and maintain an SMS. The development and implementation of an SMS ensures safety in air transportation by assisting these airports in proactively identifying and mitigating safety hazards.

**Alternatives:**

The FAA explored various alternatives to determine how to apply an SMS requirement to a group of airports that gains the most benefit in a cost-effective manner. The FAA focused on airports with the highest passenger enplanements and largest total operations so that safety benefits would flow to the overwhelming majority of aircraft operations in the United States. The FAA also focused on incorporating airports with international passenger operations to ensure conformity with international standards and recommended practices. To that end, the FAA developed the following alternatives for additional analysis: (i) all part 139 airports (as originally proposed); (ii) airport operators holding a Class I airport operating certificate; (iii) certificated international airports regardless of certificate class; (iv) Large, Medium, and Small hub airports (as identified in the National Plan of Integrated Airport Systems) and certificated airports with more than 100,000 total annual operations; and (v) Large, Medium, and Small hub airports, certificated airports with more than 100,000 total annual operations, and certificated international airports.

**Anticipated Cost and Benefits:**

Benefits are estimated at \$370,788,457 (\$225,850,869 present value) and total costs are estimated at \$238,865,692 (\$157,496,312 present value), with benefits exceeding costs. These are preliminary estimates subject to change based on further review and analysis.

**Risks:**

An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. An

SMS provides an organization's management with a set of decisionmaking tools that can be used to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. Adherence to standard operating procedures, proactive identification and mitigation of hazards and risks, and effective communications are crucial to continued operational safety. The FAA envisions an SMS would provide an airport with an added layer of safety to help reduce the number of near-misses, incidents, and accidents. An SMS also would ensure that all levels of airport management understand safety implications of airfield operations.

**Timetable:**

Action	Date	FR Cite
NPRM	10/07/10	75 FR 62008
NPRM Comment Period Extended	12/10/10	75 FR 76928
NPRM Comment Period End	01/05/11	
End of Extended Comment Period	03/07/11	
Second Extension of Comment Period	03/07/11	76 FR 12300
End of Second Extended Comment Period	07/05/11	
Second NPRM	07/14/16	81 FR 45871
Second NPRM Comment Period End	09/12/16	
Analyzing Comments	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

State

**Additional Information:**

The estimated costs of this rule do not include the costs of mitigations that operators could incur as a result of conducting the risk analysis proposed in this rule. Given the range of mitigation actions possible, it is difficult to provide a quantitative estimate of both the costs and benefits of such mitigations. However, we anticipate that operators will only implement mitigations where benefits exceeded costs. As such, the FAA believes that the costs of this rule would be justified by the anticipated benefits of the rule, if adopted as proposed.

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Related to 2120-AJ15

**RIN:** 2120-AJ38

DOT—FAA	
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**89. +PILOT PROFESSIONAL DEVELOPMENT**

**Priority:**

Other Significant

**Legal Authority:**

49 U.S.C. 44701(a)(5); P.L. 111–216, sec 206

**CFR Citation:**

14 CFR 121

**Legal Deadline:**

NPRM, Statutory, April 20, 2015, NPRM.

**Abstract:**

This rulemaking would amend the regulations for air carrier training programs under part 121. The action is necessary to ensure that air carriers establish or modify training programs to address mentoring, leadership and professional development of flight crewmembers in part 121 operations. This rulemaking is required by the Airline Safety and Federal Aviation Administration Act of 2010.

**Statement of Need:**

On August 1, 2010, the President signed the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Public Law 111-216). Section 206 of Public Law 111-216 directed the FAA to convene an aviation rulemaking committee (ARC) to develop procedures for each part 121 air carrier pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations and to issue a Notice of Proposed Rulemaking (NPRM) based on the ARC recommendations. This NPRM is necessary to satisfy a requirement of section 206 of Public Law 111-216.

**Summary of Legal Basis:**

The FAA 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 general authority described in 49 U.S.C. 106(f) and 44701(a) and the specific authority found in section 206 of

Public Law 111-216, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (49 U.S.C. 44701 note), which directed the FAA to convene an aviation rulemaking committee (ARC) and conduct a rulemaking proceeding based on this ARC's recommendations pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations. Section 206 further required that the FAA include in leadership and command training, instruction on compliance with flightcrew member duties under 14 CFR 121.542.

**Alternatives:**

The Flight Crewmember Mentoring, Leadership, and Professional Development ARC presented recommendations to the FAA in its report dated November 2, 2010.

**Anticipated Cost and Benefits:**

For the timeframe 2015 to 2024 (Millions of 2013 Dollars), the total cost saving benefits is \$72.017 (\$46.263 present value) and the total compliance costs is \$67.632 (\$46.774 present value).

**Risks:**

As recognized by the National Transportation Safety Board (NTSB), the overall safety and reliability of the National Airspace System demonstrates that most pilots conduct operations with a high degree of professionalism. Nevertheless, a problem still exists in the aviation industry with some pilots acting unprofessionally and not adhering to standard operating procedures, including sterile cockpit. The NTSB has continued to cite inadequate leadership in the flight deck, pilots' unprofessional behavior, and pilots' failure to comply with the sterile cockpit rule as factors in multiple accidents and incidents including Pinnacle Airlines flight 3701 and Colgan Air, Inc. flight 3407. The FAA intends for this proposal to mitigate unprofessional pilot behavior which would reduce pilot errors that can lead to a catastrophic event.

**Timetable:**

Action	Date	FR Cite
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NPRM	10/07/16	81 FR 69908
NPRM Comment Period End	01/05/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Related to 2120-AJ00

**RIN:** 2120-AJ87

<b>DOT—FAA</b>	<b>FINAL RULE STAGE</b>
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**90. +REVISION OF AIRWORTHINESS STANDARDS FOR NORMAL, UTILITY, ACROBATIC, AND  
COMMUTER CATEGORY AIRPLANES (RRR)**

**Priority:**

Other Significant

**Legal Authority:**

49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44704

**CFR Citation:**

14 CFR 23

**Legal Deadline:**

Final, Statutory, December 15, 2015, NPRM (Pub. L. 113–53).

**Abstract:**

This rulemaking would revise Title 14, Code of Federal Regulations (14 CFR) part 23 as a set of performance based regulations for the design and certification of small transport category aircraft. This rulemaking would: (1) reorganize part 23 into performance-based requirements by removing the detailed design requirements from part 23. The detailed design provisions that would assist applicants in complying with the new performance-based requirements would be identified in means of compliance (MOC) documents to support this effort; (2) promote the adoption of the newly created performance-based airworthiness design standard as an internationally accepted standard by the majority of other civil aviation authorities; (3) re-align the part 23 requirements to promote the development of entry-level airplanes similar to those certified under Certification Specification for Very Light Aircraft (CS-VLA); (4) enhance the FAA's ability to address new technology; (5) increase the general aviation (GA) level of safety provided by new and modified airplanes; (6) amend the stall, stall warning, and spin requirements to reduce fatal accidents and increase crashworthiness by allowing new methods for occupant protection; and (7) address icing conditions that are currently not included in part 23 regulations.

**Statement of Need:**

The FAA's strategic vision – Destination 2025, communicates FAA goals to increase safety throughout general aviation by enabling and facilitating innovation and development of safety enhancing products. This project intends to provide an appropriate and globally competitive regulatory structure that allows

small transport category airplanes to achieve FAA safety goals through innovation and compliance with performance-based safety standards. One focus area is Loss of Control (LOC) accidents, which continues to be the largest source of fatal GA accidents. To address LOC accidents, the Small Airplane Directorate is focused on establishing standards based on a safety continuum that balances the level of certitude, appropriate level of safety, and acceptable risk for each segment of GA. This risk-based approach to certification has already served the FAA and public well, with the application of section 23.1309 to avionics equipment in part 23 airplanes, leading to the successful introduction of glass cockpits in small GA airplanes. To improve the GA fleet's safety level over that of today's aging fleet, the FAA needs to allow industry to build new part 23 certificated airplanes with today's safety enhancing technologies. Although a number of new small airplanes are being built, many are certified to the Civil Air Regulations (CAR 3) part 3, or very early amendment levels of part 23, and reflect the level of safety technology available when they were designed decades ago. Without new airplanes and improved existing airplanes, we will not see the safety improvements in GA that are possible with the technology developed since the 1970's. This rulemaking effort targets: increasing the safety level in new airplanes; reducing the cost of certification to encourage newer and safer airplane development; and create new opportunities to address safety related issues, not just in new airplanes, but eventually with the existing fleet.

#### **Summary of Legal Basis:**

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44704. Additionally, Public Law 113-53, Small Airplane Revitalization Act of 2013 (Nov. 27, 2013), requires that the FAA issue a final rule revising these standards by December 15, 2015.

#### **Alternatives:**

Several alternatives are considering. 1. Retaining part 23 in its current form without adopting the recommendations of the ARC and the CPS. 2. Revising part 23 using a tiered approach and adopting a performance and complexity tiering structure instead of the propulsion and weight-based approach used today, but retaining the detailed design requirements in the rule. 3. Allowing an industry standard for part

23 entry-level airplanes as an alternative to part 23. Airplanes other than entry-level would still be regulated within the confines of the existing part 23.

**Anticipated Cost and Benefits:**

For the timeframe 2017 to 2036 (2014 \$ Millions), the total costs are \$3.9 (\$3.9 present value) and the total benefits are \$30.8 (\$11.6 present value).

**Risks:**

To be determined

**Timetable:**

Action	Date	FR Cite
NPRM	03/14/16	81 FR 13452
NPRM Comment Period End	05/13/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**Additional Information:**

Additionally, Public Law 113-53, Small Airplane Revitalization Act of 2013 states: "SEC. 3. SAFETY AND REGULATORY IMPROVEMENTS FOR GENERAL AVIATION. (a) IN GENERAL.-Not later than December 15, 2015, the Administrator of the Federal Aviation Administration shall issue a final rule-"

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

www.regulations.gov

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**RIN:** 2120–AK65

<b>DOT—Federal Highway Administration(FHWA)</b>
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<b>FINAL RULE STAGE</b>
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**91. +NATIONAL GOALS AND PERFORMANCE MANAGEMENT MEASURES 2 (MAP–21)**

**Priority:**

Other Significant

**Legal Authority:**

Sec. 1203 P.L. 112–141; 49 CFR 1.85.

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

NPRM, Statutory, April 1, 2014, NPRM.

Section 1203 of MAP–21 requires the Secretary to promulgate a rulemaking within 18 months after the date of enactment.

**Abstract:**

This rulemaking would create national performance management measures and standards to be used by the States to meet the national transportation goals identified in section 1203 of MAP-21. This rulemaking would also establish the process to be used by States to set performance targets that reflect their performance measures. The FHWA anticipates issuing up to three rulemakings in this area. This rulemaking, number two, will cover the bridges and pavement.

**Statement of Need:**

The Moving Ahead for Progress in the 21st Century Act (MAP-21) transforms the Federal-aid highway program by establishing new requirements for performance management to ensure the most efficient investment of Federal transportation funds. Performance management refocuses attention on national transportation goals, increases the accountability and transparency of the Federal-aid highway program, and improves project decisionmaking through performance-based planning and programming. This rulemaking is the second of three that would propose the establishment of performance measures for State DOTs and MPOs to use to carry out Federal-aid highway programs and to assess performance in each of the 12 areas mandated by MAP-21. This rulemaking would establish performance measures for State DOTs to use to carry out the National Highway Performance Program (NHPP) and to assess: condition of pavements on the National Highways System (NHS) (excluding the Interstate System), condition of pavements on the Interstate System, and condition of bridges on the NHS. This rulemaking would also propose: the definitions that will be applicable to the new 23 CFR 490; the process to be used by State DOTs and MPOs to establish performance targets that reflect the measures proposed in this rulemaking; a methodology to be used to assess State DOTs compliance with the target achievement provision specified under 23 U.S.C. 119(e)(7); and the process to be followed by State DOTs to report on progress towards the achievement of pavement and bridge condition-related performance targets.

**Summary of Legal Basis:**

Section 1203 of MAP-21 requires the Secretary of Transportation to establish performance measures and standards through a rulemaking to assess performance in 12 areas.

**Alternatives:**

N/A

**Anticipated Cost and Benefits:**

The FHWA estimated the incremental costs associated with the new requirements proposed in this regulatory action that represent a change to current practices for State DOTs and MPOs. Following this approach, the estimated 10-year undiscounted incremental costs to comply with this rule are \$196.4 million. The FHWA could not directly quantify the expected benefits due to data limitations and the amorphous nature of the benefits from the proposed rule. Therefore, in order to evaluate the benefits, FHWA used a break-even analysis as the primary approach to quantify benefits. For both pavements and bridges, FHWA focused its break-even analysis on Vehicle Operating Costs (VOC) savings. The FHWA estimated the number of road miles of deficient pavement that would have to be improved and the number of posted bridges that would have to be avoided in order for the benefits of the rule to justify the costs. The results of the break-even analysis quantified the dollar value of the benefits that the proposed rule must generate to outweigh the threshold value, the estimated cost of the proposed rule, which is \$196.4 million in undiscounted dollars. The FHWA believes that the proposed rule would surpass this threshold and, as a result, the benefits of the rule would outweigh the costs.

**Risks:**

N/A

**Timetable:**

Action	Date	FR Cite
NPRM	01/05/15	80 FR 326
NPRM Comment Period Extended	02/17/15	80 FR 8250
NPRM Comment Period End	04/06/15	
NPRM Extended Comment Period End	05/08/15	
Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2125-AF53

DOT-FHWA	
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**92. +NATIONAL GOALS AND PERFORMANCE MANAGEMENT MEASURES 3 (MAP-21)**

**Priority:**

Other Significant

**Legal Authority:**

sec. 1203, P.L. 112-141; 49 FR 1.85.

**CFR Citation:**

23 CFR 490

**Legal Deadline:**

NPRM, Statutory, April 1, 2014, NPRM.

Section 1203 of MAP–21 requires the Secretary to promulgate a rulemaking within 18 months after the date of enactment.

**Abstract:**

This rulemaking would create national performance management measures and standards to be used by the States to meet the national transportation goals identified in section 1203 of MAP-21. This rulemaking would also establish the process to be used by States to set performance targets that reflect their performance measures. The FHWA anticipates issuing up to three rulemakings in this area. This rulemaking covers Congestion Mitigation and Air Quality (CMAQ) and Freight issues.

**Statement of Need:**

The Moving Ahead for Progress in the 21st Century Act (MAP-21) transforms the Federal-aid highway program by establishing new requirements for performance management to ensure the most efficient investment of Federal transportation funds. Performance management refocuses attention on national transportation goals, increases the accountability and transparency of the Federal-aid highway program, and improves project decisionmaking through performance-based planning and programming. This rulemaking is the third of three that would propose the establishment of performance measures for State DOTs and MPOs to use to carry out Federal-aid highway programs and to assess performance in each of the 12 areas mandated by MAP-21. This rulemaking would establish performance measures for State DOTs to use in the areas of Congestion Reduction, Congestion mitigation and air quality improvement program (CMAQ), Freight, and Performance of Interstate/Non-Interstate National Highway System.

**Summary of Legal Basis:**

Section 1203 of MAP-21 requires the Secretary of Transportation to establish performance measures and standards through a rulemaking to assess performance in 12 areas.

**Alternatives:**

N/A

**Anticipated Cost and Benefits:**

Not yet determined.

**Risks:**

N/A

**Timetable:**

Action	Date	FR Cite
NPRM	04/22/16	81 FR 23806
NPRM Comment Period End	08/20/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2125-AF54

<b>DOT—Federal Motor Carrier Safety Administration(FMCSA)</b>	<b>FINAL RULE STAGE</b>
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**93. +ENTRY-LEVEL DRIVER TRAINING (SECTION 610 REVIEW)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

49 USC 31136

**CFR Citation:**

49 CFR 380; 49 CFR 383; 49 CFR 384

**Legal Deadline:**

None

**Abstract:**

FMCSA establishes new minimum training standards for certain individuals applying for their commercial driver's license (CDL) for the first time; an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time. These individuals are subject to the entry-level driver training (ELDT) requirements and must complete a prescribed program of instruction provided by an entity that is listed on FMCSA's Training Provider Registry (TPR). FMCSA will submit training certification information to State driver licensing agencies (SDLAs), who may only administer CDL skills tests to applicants for the Class A and B CDL, and/or the P or S endorsements, or knowledge test for the H endorsement, after verifying the information is present in the driver's record. This final rule responds to a Congressional mandate imposed under the Moving Ahead for Progress in the 21st Century Act (MAP-21). The rule is based on consensus recommendations from the Agency's Entry-Level Driver Training Advisory Committee (ELDTAC), a negotiated rulemaking committee that held a series of meetings between February and May 2015.

**Statement of Need:**

This final rule enhances the safety of commercial motor vehicle (CMV) operations on our Nation's highways by establishing a minimum standard for entry-level driver training (ELDT) and increasing the number of drivers who receive ELDT. It replaces existing mandatory training requirements for entry-level operators of CMVs in interstate and intrastate operations required to possess a CDL. The minimum training standards established in today's rule are for certain individuals applying for a CDL for the first time, an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL), or a hazardous materials, passenger, or school bus endorsement for the first time. These individuals are subject to the ELDT requirements and must complete a prescribed program of instruction provided by an entity listed on FMCSA's Training Provider Registry (TPR).

### **Summary of Legal Basis:**

FMCSA's legal authority to propose this rulemaking is derived from the Motor Carrier Act of 1935, the Motor Carrier Safety Act of 1984, the Commercial Motor Vehicle Safety Act of 1986, and the Moving Ahead for Progress in the 21st Century Act.

### **Alternatives:**

The Agency considered several alternatives in developing the NPRM, but fully evaluated the alternative adopted by the negotiated rulemaking committee in the NPRM analysis.

### **Anticipated Cost and Benefits:**

While FMCSA believes that this final rule would at minimum achieve cost-neutrality, the net of quantified costs and benefits results in an annualized net cost of \$142 million at a 7% discount rate. A 3.91% improvement in safety performance (that is, a 3.91% reduction in the frequency of crashes involving those new entry-level drivers who would receive additional pre-CDL training as a result of this final rule during the period for which the benefits of training are estimated to remain intact) is necessary to offset the \$142 million (annualized at 7%) net cost of this final rule.

### **Risks:**

A risk of a driver not receiving adequate training before applying for a CDL.

**Timetable:**

Action	Date	FR Cite
NPRM	03/07/16	81 FR 11944
NPRM Comment Period End	04/06/16	
Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Related to 2126-AB06

<b>DOT—National Highway Traffic Safety Administration(NHTSA)</b>	<b>PROPOSED RULE STAGE</b>
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**94. +TIRE FUEL EFFICIENCY CONSUMER INFORMATION—PART 2**

**Priority:**

Other Significant

**Legal Authority:**

49 USC 32304

**CFR Citation:**

49 CFR 575

**Legal Deadline:**

None

**Abstract:**

This rulemaking would respond to requirements of the Energy Independence & Security Act of 2007 to establish a national tire fuel efficiency consumer information program for replacement tires designed for use on motor vehicles. On March 30, 2010, NHTSA published a final rule specifying the test procedures to be used to rate the performance of replacement passenger car tires for this new program (75 FR 15893). This rulemaking would address how this information would be made available to consumers.

**Statement of Need:**

The EISA mandated the TFECIP to be finalized by December 2009. In 2010, NHTSA finalized a regulation to require the testing of replacement tires for rolling resistance (fuel efficiency), wet traction (safety) and treadwear (durability). In December 2014, the White House announced that the agency would publish the final rule by 2017.

**Summary of Legal Basis:**

This rulemaking is mandated by Public Law 110140, 121 Stat. 1492.

**Alternatives:**

This rule is statutorily mandated.

**Anticipated Cost and Benefits:**

The agency estimates that annual net benefits, in millions of 2013 dollars, will range between \$1.2 and \$12.7 at a 3% discount rate, and between \$0.2 and \$10.9 at a 7% discount rate.

**Risks:**

The agency believes there are no significant risks related to this rulemaking.

**Timetable:**

Action	Date	FR Cite
Second NPRM	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**International Impacts:**

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

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

www.regulations.gov

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**Related RIN:**

Related to 2127-AK83

**RIN:** 2127-AK76

<b>DOT—NHTSA</b>	
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**95. +HEAVY VEHICLE SPEED LIMITERS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

49 USC 30111; 49 USC 30115; 49 USC 30116; 49 USC 30117; 49 USC 322; delegation of authority at

49 CFR 1.95

**CFR Citation:**

49 CFR 571

**Legal Deadline:**

None

**Abstract:**

This rulemaking would respond to petitions from ATA and Roadsafe America to require the installation of speed limiting devices on heavy trucks. In response to the petitions, NHTSA requested public comment on the subject and received thousands of comments supporting the petitioner's request. Based on the available safety data and the ancillary benefit of reduced fuel consumption, this rulemaking would consider a new Federal Motor Vehicle Safety Standard that would require the installation of speed limiting devices on heavy trucks. We believe this rule would have minimal cost, as all heavy trucks already have these devices installed, although some vehicles do not have the limit set. This rule would decrease the estimated 1,115 fatal crashes annually involving vehicles with a GVWR of over 11,793.4 kg (26,000 lbs) on roads with posted speed limits of 55 mph or above.

**Statement of Need:**

Based on the agencies' review of the available data, limiting the speed of heavy vehicles would reduce the severity of crashes involving these vehicles and reduce the resulting fatalities and injuries. We expect that, as a result of the joint rulemaking, virtually all of these vehicles would be limited to that speed.

**Summary of Legal Basis:**

NHTSA's authority is the National Traffic and Motor Vehicle Safety Act. Motor Vehicle Safety Standards must be practicable and meet the need for motor vehicle safety while stated in objective terms. FMCSA's authority is based on the Motor Carrier Act. They are authorized to prescribe requirements for 1 qualifications and maximum hours of service of employees of, and safety of operation and equipment of, motor carrier; and 2 qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety operations.

**Alternatives:**

Other technologies limiting speed such as GPS, visions systems, vehicle infrastructure communications, or some other autonomous vehicle technology.

**Anticipated Cost and Benefits:**

Annual net benefit estimates vary with changing assumptions of the speed limit that is set. At a 7% discount rate in millions of 2013 dollars, net benefits range between \$1,136 and \$4,964 at a speed of 60 mph. At a speed of 65 mph, that range is between \$1,039 and \$2,757. At 68 mph, that range is between \$475 and \$1,260.

**Risks:**

The agency believes there are no significant risks related to this rulemaking.

**Timetable:**

Action	Date	FR Cite
NPRM	09/07/16	81 FR 61941
NPRM Comment Period End	11/07/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:**

Related to 2126-AB63

**RIN:** 2127-AK92

DOT-NHTSA	
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**96. +FEDERAL MOTOR VEHICLE SAFETY STANDARD (FMVSS) 150—VEHICLE TO VEHICLE (V2V)**

**COMMUNICATION**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

49 U.S.C. 30101

**CFR Citation:**

49 CFR 571.150

**Legal Deadline:**

None

**Abstract:**

V2V communications uses on-board dedicated short-range radio communication (DSRC) devices to broadcast messages about a vehicle's speed, heading, brake status, and other information to other vehicles and receive the same information from the messages, with extended range and 'line-of-sight' capabilities. V2V's enhanced detection distance and ability to 'see' around corners or "through" other vehicles helps V2V-equipped vehicles uniquely perceive some threats and warn their drivers accordingly. V2V technology can also be fused with vehicle-resident technologies to potentially provide greater benefits than either approach alone. V2V can augment vehicle-resident systems by acting as a complete

system, extending the ability of the overall safety system to address other crash scenarios not covered by V2V communications, such as lane and road departure. Additionally, V2V communication is currently perceived to become a foundational aspect of vehicle automation.

**Statement of Need:**

STATEMENT OF NEED: V2V communications uses on-board dedicated short-range radio communication (DSRC) devices to broadcast messages about a vehicle's speed, heading, brake status, and other information to other vehicles and receive the same information from the messages, with extended range and line-of-sight capabilities. V2V's enhanced detection distance and ability to see around corners or "through" other vehicles helps V2V-equipped vehicles uniquely perceive some threats and warn their drivers accordingly. V2V technology can also be fused with vehicle-resident technologies to potentially provide greater benefits than either approach alone. V2V can augment vehicle-resident systems by acting as a complete system, extending the ability of the overall safety system to address other crash scenarios not covered by V2V communications, such as lane and road departure. Additionally, V2V communication is currently perceived to become a foundational aspect of vehicle automation.

**Summary of Legal Basis:**

49 U.S.C. 30101.

**Alternatives:**

No other alternatives are currently endorsed by the agency.

**Anticipated Cost and Benefits:**

Annualized monetized net benefit estimates over 40 years, in millions of 2014 Dollars, range between \$20,058 and \$23,487.

**Risks:**

Timing, Public Acceptance.

**Timetable:**

Action	Date	FR Cite
ANPRM	08/20/14	79 FR 49270
ANPRM Comment Period End	10/20/14	
NPRM	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2127-AL55

**97. +LOCOMOTIVE RECORDING DEVICES****Priority:**

Other Significant

**Legal Authority:**

49 CFR 1.89; 49 U.S.C. 20103; 49 U.S.C. 20107; 49 U.S.C. 20168

**CFR Citation:**

49 CFR 217; 49 CFR 218; 49 CFR 229

**Legal Deadline:**

NPRM, Statutory, December 4, 2017, FAST Act.

**Abstract:**

This rulemaking would require the installation of inward- and outward-facing locomotive video cameras on controlling locomotives of trains traveling over 30 mph. The recordings would be used to help determine the cause of railroad accidents in order to prevent the occurrence of similar accidents. They would also be used to ensure railroad employee compliance with applicable Federal railroad safety regulations and railroad rules, particularly regulations prohibiting the use of personal electronic devices. This rulemaking attempts to fulfill NTSB recommendations urging FRA to adopt regulations requiring locomotive-mounted audio and video recording devices. FRA is requesting comments regarding whether audio recording devices should be required. This rulemaking would amend 49 CFR parts 217, 218, and 229.

**Statement of Need:**

FRA is proposing to require the installation and use of inward- and outward-facing recording devices in train locomotives under section 11411 of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94, 129 Stat. 1686 (Dec. 4, 2015)) (codified at 48 U.S.C. 20168) and the Federal Railroad Safety Act of 1970, 49 U.S.C. 20103. Section 11411 of the FAST Act requires FRA (as the Secretary of Transportation's delegate) to promulgate regulations requiring each railroad carrier that provides regularly

scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward-facing image recording devices in all controlling locomotives of passenger trains. Section 20103 contains FRA's general rulemaking authority "for every area of railroad safety."

**Summary of Legal Basis:**

As stated above, FRA is publishing this proposed rule as mandated by the FAST Act and under its general railroad safety rulemaking authority at 49 U.S.C. 20103.

**Alternatives:**

TBD

**Anticipated Cost and Benefits:**

FRA will determine the estimated costs and benefits associated with this proposed rule before publication.

**Risks:**

TBD

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State

**URL For More Information:**

www.regulations.gov

**URL For Public Comments:**

www.regulations.gov

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**RIN:** 2130-AC51

<b>DOT—FRA</b>	<b>FINAL RULE STAGE</b>
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**98. +RISK REDUCTION PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

Pub. L. No. 110-432, Div. A, 122 Stat. 4848 et seq.; Rail Safety Improvement Act of 2008; sec. 103, 49

U.S.C. 20156 "Railroad Safety Risk Reduction Program"

**CFR Citation:**

49 CFR 237

**Legal Deadline:**

Final, Statutory, October 16, 2012, Final Rule.

**Abstract:**

This rulemaking would consider appropriate contents for Risk Reduction Programs and how they should be implemented and reviewed by FRA.

**Statement of Need:**

Rulemaking required by section 103 of the Rail Safety Improvement Act of 2008.

**Timetable:**

Action	Date	FR Cite
ANPRM	12/08/10	75 FR 76345
ANPRM Comment Period End	02/07/11	
NPRM	02/27/15	80 FR 10950
NPRM Comment Period End	04/28/15	
NPRM Comment Period Reopened	07/30/15	80 FR 45500
NPRM Comment Period End	09/10/15	
Final Rule	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

SB - N, IC - N, SLT - N A comment on this rulemaking was received during the RRR process. Following publication of an ANPRM, hearings were held on July 19, 2011 (Chicago, IL) and July 21, 2011 (Washington, DC).

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

www.regulations.gov

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**RIN:** 2130-AC11

<b>DOT—Pipeline and Hazardous Materials Safety Administration(PHMSA)</b>	<b>FINAL RULE STAGE</b>
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**99. +PIPELINE SAFETY: SAFETY OF HAZARDOUS LIQUID PIPELINES**

**Priority:**

Other Significant

**Legal Authority:**

49 U.S.C. 60101 et seq.

**CFR Citation:**

49 CFR 195

**Legal Deadline:**

None

**Abstract:**

In recent years, there have been significant hazardous liquid pipeline accidents, most notably the 2010 crude oil spill near Marshall, Michigan, during which almost one million gallons of crude oil were spilled into the Kalamazoo River. In response to accident investigation findings, incident report data and trends, and stakeholder input, PHMSA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on October 13, 2015. Previously, Congress had enacted the Pipeline Safety, Regulatory Certainty, and Job Creation Act that included several provisions that are relevant to the regulation of hazardous liquid pipelines. Shortly after the Pipeline Safety, Regulatory Certainty, and Job Creation Act was passed, the National Transportation Safety Board (NTSB) issued its accident investigation report on the Marshall, Michigan accident. In this rulemaking action, PHMSA is amending 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:**

PHMSA is proposing to make the following changes to the hazardous liquid pipeline safety regulations:

(1) Repeal the exception for gravity lines; (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 pipelines that are not already covered under the integrity management (IM) program requirements; (5) Expand the use of leak detection systems on hazardous liquid 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, and apply those same criteria to pipelines that are not subject to the IM requirements, with an adjusted schedule for performing non-immediate repairs; (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) Other regulations will also be clarified to improve compliance and enforcement. These changes will protect the public, property, and the environment by ensuring that additional pipelines are subject to regulation, increasing the detection

and remediation of unsafe conditions, and mitigating the adverse effects of pipeline failures. This rule responds to a Congressional mandate in the 2011 Pipeline Reauthorization Act (sections 5, 8, 21, 29, 14); NTSB recommendation P-12-03 and P-12-04; and GAO recommendation 12-388.

**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). Like its predecessor, the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 90-481), the HLPSA provided the Secretary of Transportation (Secretary) with 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:**

The various alternatives analyzed included no action "status quo" and individualized alternatives based on the proposed amendments.

**Anticipated Cost and Benefits:**

PHMSA cannot estimate costs or benefits precisely, but based on the information, the present value of costs and benefits over a 20-year period is approximately \$56 million and \$98 million, respectively at 7 percent. Thus, net benefits are approximately \$46 million (\$102 million - \$56 million) over 20 years.

**Risks:**

The proposed rule will provide increased safety for the regulated entities and reduce pipeline safety 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	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2137-AE66

**100. +HAZARDOUS MATERIALS: OIL SPILL RESPONSE PLANS AND INFORMATION SHARING FOR HIGH-HAZARD FLAMMABLE TRAINS**

**Priority:**

Other Significant

**Legal Authority:**

33 U.S.C. 1321; 49 USC 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, developed in consultation with the Federal Railroad Administration, would revise PHMSA's regulations to expand the applicability of comprehensive oil spill response plans (OSRPs) based on thresholds of liquid petroleum oil that apply to an entire train. We are also proposing to revise the format and clarify requirements of a comprehensive OSRP and to require railroads to share information about high-hazard flammable train operations with state and tribal emergency response organizations (i.e., State Emergency Response Commissions and Tribal Emergency Response Commissions) to improve community preparedness. Lastly, PHMSA is proposing an update to boiling point testing procedures to provide regulatory flexibility and promotes enhanced safety in transport through accurate packing group assignment.

**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 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 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 ORSPs.

**Alternatives:**

PHMSA and FRA are committed to a comprehensive approach to addressing the risk and consequences of derailments involving flammable liquids by addressing not only oil spill response plans, but communication requirements between railroads and communities. Obtaining information and comments in a NPRM will provide the greatest opportunity for public participation in the development of regulatory amendments, and promote greater exchange of information and perspectives among the various stakeholders to promote future regulatory action on these issues.

**Anticipated Cost and Benefits:**

The ANPRM requested comments on both the path forward and the economic impacts. We have evaluated and accounted for comments in development of the NPRM, and once the NPRM is published the costs and benefits will be detailed.

**Risks:**

DOT analyzed recent incidents, National Transportation Safety Board (NTSB) Safety Recommendations, received input from stakeholder outreach efforts (including first responders) to determine amending the applicability and requirements of comprehensive oil spill response plans and codifying requirements for information sharing is important. DOT will continue to research these topics and evaluate comment feedback prior to the final rule. DOT expects the highest ranked options will be low cost and most effective at providing better preparedness and planning to mitigate the effects of a derailment.

**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 Action	07/00/17	

**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](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://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 missions of the Department of the Treasury are:

- To promote prosperous and stable American and world economies, including promoting domestic economic growth and maintaining our Nation’s leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream.
- To manage the Government’s finances by protecting the revenue and collecting the correct amount of revenue under the Internal Revenue Code, overseeing customs revenue policies, financing the Federal Government and managing its fiscal operations, and producing our Nation’s coins and currency.

- To safeguard the U.S. and international financial systems from those who would use these systems for illegal purposes or to compromise U.S. national security interests, while keeping them free and open to legitimate users.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. It is the policy of the Department to comply with 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, and 13609 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.

### **Alcohol and Tobacco Tax and Trade Bureau**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to implement and enforce the 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, 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.

As part of TTB's ongoing efforts to modernize its regulations, TTB continuously identifies changes in the industries it regulates, as well as new technologies available in compliance enforcement. TTB's modernization efforts focus on removing outdated requirements and revising the regulations to facilitate industry growth and reduce burdens where possible, while at the same time ensuring that TTB collects revenue due and protects consumers from deceptive labeling and advertising of alcohol beverages.

On June 21, 2016, TTB published a notice of proposed rulemaking (81 FR 40404) to clarify and streamline import procedures, and support the implementation of the International Trade Data System (ITDS) and the filing of import information electronically in conjunction with an electronic import filing with U.S. Customs and Border Protection (CBP). The proposed amendments include providing the option for importers to file TTB-specific import-related data electronically when filing entry or entry summary data electronically with CBP, as an alternative to current TTB requirements that importers submit paper documents to CBP upon importation.

On August 30, 2016, TTB published a final rule to amend its regulations governing specially denatured alcohol (SDA) and completely denatured alcohol (CDA) to, among other things, eliminate the need for industry members to submit certain formulas to TTB for approval. Under the authority of the Internal Revenue Code of 1986 (IRC), TTB regulates denatured alcohol that is unfit for beverage use, which may be removed from a regulated distilled spirits plant free of tax. SDA and CDA are widely used in the American fuel, medical, and manufacturing sectors. The industrial alcohol industry far exceeds the beverage alcohol industry in size and scope, and it is a rapidly growing industry in the United States. Some concerns had been raised that the existing regulations may create significant roadblocks for industry members in getting products to the marketplace quickly and efficiently. TTB determined that it could amend its regulations to address these concerns and reduce regulatory burdens, while posing no

added risk to the revenue. The final rule eliminates outdated formulas, reclassifies certain SDA formulas as CDA, and provides new general-use formulas for articles made with SDA. TTB estimates that these changes will result in an 80 percent reduction in the formula approval submissions currently required from industry members.

On July 1, 2016, TTB published an interim final rule (81 FR 43062) to implement the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This rulemaking increases the maximum civil monetary penalty for violations of the Alcoholic Beverage Labeling Act of 1988 from \$10,000 to \$19,787, in accordance with Federal law. The increased maximum penalty will help maintain the deterrent effect of the penalty, which is a stated goal of the Inflation Adjustment Act. As authorized under the law, TTB will announce future cost-of-living adjustments to the penalty by publishing a notice in the Federal Register and updating its Web site.

On June 21, 2016, TTB published a final rule (81 FR 40183) to adopt temporary regulations it had issued on June 27, 2013 (78 FR 38555) concerning permit and other requirements related to importers and manufacturers of tobacco products and processed tobacco. The regulatory amendments adopted in the final rule include an extension in the duration of new permits for importers of tobacco products and processed tobacco from three years to five years. Importers who wish to continue to engage in the business beyond the duration of the permit must renew their permits before expiration. Less frequent renewal reduces the regulatory burden on the importers. Temporary regulations issued under the IRC expire three years after the date of issuance, and publication of the final rule made permanent this extension of the duration of new importer permits.

In FY 2017, TTB will continue its multi-year Regulations Modernization effort by prioritizing projects that will update its Import and Export regulations, Labeling Requirements regulations,

Nonbeverage Products regulations, and Distilled Spirits Plant Reporting requirements. Priority projects also include implementing new statutory provisions that go into effect in FY 2017 as a result of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

This fiscal year TTB plans to give priority to the following regulatory matters:

Revisions to Import and Export Regulations Related to ITDS. TTB is currently preparing for the implementation of ITDS and, specifically, the transition to an all-electronic import and export environment. ITDS, as described in section 405 of the Security and Accountability for Every Port Act of 2006 (the "SAFE Port Act") (Pub. L. 109-347), is an electronic information exchange capability, or "single window," through which businesses will transmit data required by participating Federal agencies for the importation or exportation of cargo. To enhance Federal coordination associated with the development of ITDS and put in place specific deadlines for implementation, President Obama, on February 19, 2014, signed an Executive Order on Streamlining the Export/Import Process for America's Businesses. In line with section 3(e) of the Executive Order, TTB was required to develop a timeline for ITDS implementation. Updating the regulations for transition to the all-electronic environment is part of the implementation process.

TTB completed its review of the relevant regulatory requirements and identified those that it intends to update. With regard to imports, as noted above, TTB published a notice of proposed rulemaking in June 2016 to amend its import regulations to support the implementation of ITDS and incorporate needed updates. TTB also continues to operate a pilot program (originally announced in August 2015) for importers who want to gain experience with the ITDS "single window" functionality for providing data on the TTB-regulated commodities. This pilot program helps familiarize both TTB and the public with the new environment and assists TTB and the public to refine the implementation of ITDS. The pilot program also provides valuable information for TTB's ongoing efforts to amend its regulations. In FY 2017, TTB intends to publish a final rule on the proposed changes to its import regulations.

In addition, in recent years, TTB has identified selected sections of its export regulations (27 CFR parts 28 and 44) that it intends to amend to clarify and update the requirements. Under the IRC, the products taxed by TTB may be removed for exportation without payment of tax or with drawback of any excise tax previously paid, subject to the submission of proof of export. However, the current export regulations require industry members to follow procedures that do not adequately reflect current technology or take into account current industry business practices. In FY 2017, TTB intends to publish a notice of proposed rulemaking that will address electronic submission of information through ITDS for exports and will include proposals to amend the regulations to provide industry members with clear and updated procedures for removal of alcohol and tobacco products for exportation, thus facilitating exportation of those products. Increasing U.S. exports benefits the U.S. economy and is consistent with Treasury and Administration priorities.

Revisions to the Regulations to Implement the PATH Act. On December 18, 2015, the President signed into law the 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 IRC regarding excise tax due dates, bond requirements, and the definition of wine eligible for the hard cider tax rate. These amendments take effect beginning in January 2017, and TTB is currently working on two separate rulemaking projects to be published in FY 2017 that will implement these changes. First, TTB is implementing provisions that allow certain small alcohol beverage excise taxpayers to file tax returns less frequently and to qualify for an exemption from certain bond requirements. These provisions will reduce regulatory burdens on small businesses. Second, TTB is implementing changes to the definition of wine that is eligible for the hard cider tax rate. These changes will increase the allowable alcohol content and carbonation level of such wines and authorize the use of pears, pear juice concentrate, and pear products and flavorings.

Revisions to the Labeling Requirements (Parts 4 (Wine), 5 (Distilled Spirits), and 7 (Malt Beverages)). 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 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, TTB plans to propose in FY 2017 revisions to 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 projects that it will receive over 160,000 label applications in FY 2016.

Revision of the Part 17 Regulations, Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products, to Allow Self-Certification of Nonbeverage Product Formulas. TTB is considering revisions to the regulations in 27 CFR part 17 governing nonbeverage products made with taxpaid distilled spirits. These nonbeverage products include foods, medicines, and flavors. This proposal, which TTB intends to publish in FY 2017, offers a new method of formula certification by incorporating quantitative standards into the regulations and establishing new voluntary procedures that would further streamline the formula review process for products that meet the standards. This proposal would provide adequate protection to the revenue because TTB would continue to receive submissions of certified formulas; however, TTB would not take action on certified formula submissions unless TTB discovered that the formulas require correction. By allowing for self-certification of certain nonbeverage product formulas, this proposal would eliminate the requirement for TTB to formally approve such formulas. These changes would result in significant cost savings for the nonbeverage alcohol industry, which

currently must obtain formula approval from TTB, and reduce the number of formulas that TTB must review.

Revisions to Distilled Spirits Plant Reporting Requirements. In FY 2012, TTB published a notice of proposed rulemaking (NPRM) proposing to revise regulations in 27 CFR part 19 to replace the current four report forms used by distilled spirits plants to report their operations on a monthly basis with two new report forms that would be submitted on a monthly basis. (Plants that file taxes on a quarterly basis would submit the new reports on a quarterly basis.) This project will address concerns the distilled spirits industry has raised about reporting, and result in cost savings to industry and TTB by significantly reducing the number of monthly plant operations reports that must be completed and filed by industry members and processed by TTB. TTB preliminarily estimates that this project will result in a reduction of paperwork burden hours for industry members, as well as savings in processing hours and contractor time for TTB. In addition, TTB estimates that this project will result in additional savings in staff time because of the more efficient and effective processing of reports and the use of report data to reconcile industry member tax accounts. In FY 2017, TTB intends to publish a supplemental notice of proposed rulemaking that will include new proposals to address comments received in response to the initial notice of proposed rulemaking and incorporate additional improvements identified by TTB in the interim.

### **Community Development Financial Institutions Fund**

The Community Development Financial Institutions Fund (CDFI Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.). The mission of the CDFI Fund is to expand economic opportunity for underserved people and communities by supporting the growth and capacity of a national network of community development lenders, investors, and financial service providers. The CDFI Fund currently administers the following programs: The Community Development Financial Institutions (CDFI) Program, the Bank Enterprise Award (BEA)

Program, the Native American CDFI Assistance (NACA) Program, the New Markets Tax Credit (NMTC) Program, the Capital Magnet Fund (CMF), and the CDFI Bond Guarantee Program (BGP).

In FY 2017, the CDFI Fund will publish updated regulations for the Capital Magnet Fund and the CDFI Program to incorporate a variety of technical and policy changes.

### **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.

Significant rules issued during fiscal year 2016 include:

Margin and Capital Requirements for Covered Swap Entities (12 CFR part 45). The banking agencies, Farm Credit Administration (FCA), and Federal Housing Finance Agency (FHFA) issued a final rule to establish minimum margin and capital 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. The rule implements sections 731 and 764 of the Dodd-Frank Act, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared. The Agencies also issued an interim final rule that exempts

certain non-cleared swaps and non-cleared security-based swaps with certain counterparties that qualify for an exception or exemption from clearing from the initial and variation margin requirements promulgated under sections 731 and 764 of the Dodd-Frank Act. The rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015, which exempts from the Agencies' swap margin rules non-cleared swaps and non-cleared security-based swaps in which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act. The final and interim final rules were issued on November 30, 2015, 81 FR 74839 and 74915 and the interim final rule was finalized on August 2, 2016, 81 FR 50605.

Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured FSAs, and Insured Federal Branches (12 CFR part 30). The OCC issued a proposed rule setting forth enforceable guidelines establishing standards for recovery planning by insured national banks, insured FSAs, and insured Federal branches of foreign banks with average total consolidated assets of \$50 billion or more (Guidelines). The Guidelines would be issued as an appendix to the OCC's 12 CFR part 30 safety and soundness standards regulations and would be enforceable by the terms of the Federal statute that authorizes the OCC to prescribe operational and managerial standards for national banks and FSAs. The proposed rule was issued on December 17, 2015, 80 FR 78681 and the final rule was issued on October 29, 2016, 81 FR 66791.

Incentive-Based Compensation Arrangements (12 CFR part 42). Section 956 of the Dodd-Frank Act requires the banking agencies, National Credit Union Administration (NCUA), Securities and Exchange Commission (SEC), and 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 to jointly 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 proposed rule was issued on June 10, 2016, 81 FR 37669.

Net Stable Funding Ratio (12 CFR part 50). The banking agencies issued a proposed 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 proposed rule was issued on June 1, 2016, 81 FR 35123.

Economic Growth and Regulatory Paperwork Reduction Act of 1996 Amendments (12 CFR parts 4 to 5, 7, 9 to 12, 16, 18, 31, 150 to 151, 155, 162 to 163, 194, and 197). The OCC issued a proposed rule with the goal of removing provisions that are outdated, unnecessary, or unduly burdensome. The proposal would revise certain licensing rules related to chartering applications, business combinations involving Federal mutual savings associations, and notices for changes in permanent capital; clarify national bank director oath requirements; revise certain fiduciary activity requirements for national banks and FSAs; remove certain financial disclosure regulations for national banks; remove certain unnecessary regulatory reporting, accounting, and management policy regulations for FSAs; update the electronic activities regulation for FSAs; integrate and update OCC regulations for national banks and FSAs relating to municipal securities dealers, Securities Exchange Act disclosure rules, and securities offering disclosure rules; update and revise recordkeeping and confirmation requirements for national banks' and FSAs' securities transactions; integrate and update regulations relating to insider and affiliate transactions; and make other technical and clarifying changes. The proposed rule was issued on March 14, 2016, 81 FR 13608.

Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks (12 CFR part 4). The banking agencies issued an interim final rule to implement section 83001 of the Fixing America's Surface Transportation Act (the FAST Act). Section 83001 of the FAST Act permits a qualifying insured depository institution (institution) with up to \$1 billion in total assets to be examined by its appropriate Federal banking agency no less than once during each 18-month period. The OCC's interim final rule expands eligibility for the 18-month examination cycle to qualifying national banks, Federal savings associations, and Federal branches and agencies with less than \$500 million in total assets to those with less than \$1 billion in total assets. The interim final rule was issued on February 29, 2016, 81 FR 10063.

Civil Money Penalty Inflation Adjustments (12 CFR parts 19 and 109). The OCC issued an interim final rule implementing the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Pub. L. 114-74, title VII, section 701(b), November 2, 2015) and Office of Management and Budget guidance issued on February 24, 2016. The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified at 28 U.S.C. 2461 note). The 2015 Act changed the formula for calculating inflation adjustments and required agencies to adjust penalties for inflation on an annual basis. The interim final rule was issued on July 1, 2016, 81 FR 43021.

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold (12 CFR part 34). The OCC, the FRB, and the CFPB issued a proposed rule amending the official interpretations for their regulations that implement section 129H of the Truth in Lending Act, which establishes special appraisal requirements for "higher-risk mortgages." The banking agencies, the CFPB, the NCUA and the FHFA issued joint final rules implementing these requirements, which exempted, among other loan types, transactions of \$25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the OCC, the FRB and the CFPB will

not adjust this exemption threshold from the prior year. The proposal would memorialize this as well as the calculation method for determining the adjustment in years following a year in which there is no annual percentage increase in the CPI-W. The proposed rule was issued on August 4, 2016, 81 FR 51394.

Mandatory Contractual Stay Requirements for Qualified Financial Contracts (12 CFR parts 3, 47, and 50). The OCC issued a proposed rule to promote U.S. financial stability by enhancing the safety and soundness of the national banking system by mitigating potential negative impacts that could result from the disorderly resolution of certain systemically important national banks, FSAs, Federal branches and agencies, and the subsidiaries of these entities. A covered bank would be required to ensure that a covered qualified financial contract contains a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under Title II of the Dodd-Frank Act and in the Federal Deposit Insurance Act and limits the exercise of default rights based on the insolvency of an affiliate of the covered bank. The proposed rule was issued on August 19, 2016, 81 FR 55381.

Regulatory priorities for fiscal year 2017 include finalizing any proposals listed above as well as the following rulemakings:

Automated Valuation Models (parts 34 and 164). The banking agencies, NCUA, FHFA and Consumer Financial Protection Bureau (CFPB), in consultation with the Appraisal Subcommittee (ASC) and the Appraisal Standards Board of the Appraisal Foundation, are required to promulgate regulations to implement quality-control standards required under the statute. Section 1473(q) of the Dodd-Frank Act requires that automated valuation models used to estimate collateral value in connection with mortgage origination and securitization activity, comply with quality-control standards designed to ensure a high level of confidence in the estimates produced by automated valuation models; protect against manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and

account for other factors the agencies deem appropriate. The agencies plan to issue a proposed rule to implement the requirement to adopt quality-control standards.

Source of Strength (12 CFR part 47). The banking agencies plan to issue a proposed rule to implement section 616(d) of the Dodd-Frank Act. Section 616(d) requires that bank holding companies, savings and loan holding companies and other companies that directly or indirectly control an insured depository institution serve as a source of strength for the insured depository institution. The appropriate Federal banking agency for the insured depository institution may require that the company submit a report that would assess the company's ability to comply with the provisions of the statute and its compliance.

Reporting and Recordkeeping Requirements for Covered Trading Activities (12 CFR part 44). The banking agencies, the Commodity Futures Trading Commission (CFTC), and the SEC are planning to issue a proposed rule that would modify the reporting and recordkeeping requirements for covered trading activities under Appendix A of the final rule implementing section 13 of the Bank Holding Company Act of 1956, which was added by section 619 of the Dodd-Frank Act.

Loans in Areas Having Special Flood Hazards-Private Flood Insurance (12 CFR part 22). The banking agencies, the FCA, and the NCUA are planning to issue a proposed 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 Biggert-Waters Act). The proposed rule was issued on November 7, 2016, 81 FR 78063.

Receiverships for Uninsured National Banks (12 CFR part 51). The OCC is planning to issue a proposed rule addressing the conduct of receiverships of national banks that are not insured by the FDIC and for which the FDIC would not be appointed as receiver.

Enhanced Cyber Risk Management Standards (12 CFR part 30). The banking agencies are considering issuing an advance notice of proposed rulemaking setting forth enhanced cyber risk management standards for the largest and most interconnected financial organizations in the United States.

The banking agencies and the NCUA plan to issue interim final rules to clarify the applicability of recent amendments to the Financial Crimes Enforcement Network (FinCEN) customer due diligence rules to the depository institutions under their supervision. FinCEN clarified and strengthened its customer due diligence requirements for covered financial institutions, including banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities (FinCEN Rule). As part of that rulemaking, FinCEN amended the elements of the anti-money laundering program financial institutions must implement and maintain in order to satisfy program requirements under 31 U.S.C. 5318(h)(1). The banking agencies and the NCUA are amending their anti-money laundering program rules to maintain consistency with the FinCEN Rule.

### **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. This Order further provided that the Secretary of the Treasury retained the sole authority to approve such regulations.

During the past fiscal year, among the customs-revenue function regulations issued were the Customs and Border Protection's Bond Program final rule, the United States-Australia Free Trade Agreement final rule, Investigation of Claims of Evasion of Antidumping and Countervailing Duties interim final rule, and the North American Free Trade Agreement Preference Override notice of proposed rulemaking. On November 13, 2015, U.S. Customs and Border Protection (CBP) published the final rule (80 FR 70154) to the CBP regulations which amended CBP regulations to reflect the centralization of the continuous bond program at CBP's Revenue Division. The changes support CBP's bond program by ensuring an efficient and uniform approach to the approval, maintenance, and periodic review of continuous bonds, as well as accommodating the use of information technology and modern business practices. On January 15, 2016, CBP published the United States-Australia Free Trade Agreement final rule (81 FR 2086) to the CBP regulations, which finalized the implementation of the preferential tariff treatment and other customs-related provisions of the United States-Australia Free Trade Agreement Implementation Act. In addition, on August 22, 2016, CBP and Treasury issued an interim final rule titled "Investigation of Claims of Evasion of Antidumping and Countervailing Duties" which amended CBP regulations implementing section 421 of the Trade Facilitation and Trade Enforcement Act of 2015. CBP and Treasury also issued on July 8, 2016, a proposed rule (81 FR 44555) titled "North American Free Trade Agreement Preference Override" which proposed amending CBP regulations to liberalize provisions of the North American Free Trade Agreement (NAFTA) preference rules of origin that relate to certain goods, including certain spices.

This past fiscal year, Treasury and CBP worked towards the implementation of the International Trade Data System (ITDS). The ITDS, as described in section 405 of the Security and Accountability for Every Port Act of 2006 (the "SAFE Port Act") (Pub. L. 109-347), is an electronic information exchange

capability, or "Single Window," through which businesses will transmit data required by participating agencies for the importation or exportation of cargo. To enhance Federal coordination associated with the development of the ITDS, Treasury and CBP issued an interim regulation (80 FR 61278) in connection with the establishment of the Automated Commercial Environment (ACE) as a CBP-authorized Electronic Data Interchange (EDI) System. This regulatory document informed the public that the Automated Commercial System (ACS) is being phased out as a CBP-authorized EDI System for the processing electronic entry and entry summary filings (also known as entry filings). CBP issued subsequent Federal Register notices announcing the dates when ACE replaced the Automated Commercial System (ACS) as the CBP-authorized EDI system for processing commercial trade data.

During fiscal year 2017, CBP and Treasury also plan to give priority to the following regulatory matters involving the customs revenue functions:

Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border.

Treasury and CBP plan to finalize interim amendments to the CBP regulations which provides a pre-seizure notice procedure for disclosing information appearing on the imported merchandise and/or its retail packing suspected of bearing a counterfeit mark to an intellectual property right holder for the limited purpose of obtaining the right holder's assistance in determining whether the mark is counterfeit or not.

Free Trade Agreements. Treasury and CBP also plan to issue final regulations this fiscal year to implement the preferential trade benefit provisions of the United States-Singapore Free Trade Agreement Implementation Act. Treasury and CBP also expect to issue final regulations implementing the liberalization of the NAFTA preference rules of origin that relate to certain goods, including certain spices.

In-Bond Process. Consistent with the practice of continuing to move forward with Customs Modernization provisions of the North American Free Trade Implementation Act to improve its regulatory procedures, Treasury and CBP plan to finalize this fiscal year the proposal to change the in-bond process by issuing final regulations to amend the in-bond regulations that were proposed on February 22, 2012 (77 FR 10622). The proposed changes, including the automation of the in-bond process, would modernize, simplify, and facilitate the in-bond process while enhancing CBP's ability to regulate and track in-bond merchandise to ensure that in-bond merchandise is properly entered or exported.

Inter-Partes Proceedings Concerning Exclusion Orders Based on Unfair Practices in Import Trade. 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.

### **Financial Crimes Enforcement Network**

As chief 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 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 anti-money laundering programs and compliance procedures. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. These objectives and priorities include: (1) issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and as appropriate, overseeing compliance examination functions delegated to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA; (4) maintaining a government-wide access service to that same data and for network users with overlapping interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and the financial sector; and (6) coordinating with and collaborating on anti-terrorism and anti-money laundering initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

During fiscal year 2016, FinCEN issued the following regulatory actions:

Civil Monetary Penalty Adjustment and Table. On June 30, 2016, FinCEN issued an Interim Final Rule amending the BSA regulations to adjust the maximum amount or range, as set by statute, of certain civil monetary penalties within its jurisdiction to account for inflation. The action was taken to implement the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Customer Due Diligence Requirements. On May 11, 2016, FinCEN issued Final Rules under the BSA to clarify and strengthen customer due diligence requirements for banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities. The rules contain explicit customer due diligence requirements and include a new regulatory requirement to identify beneficial owners of legal entity customers, subject to certain exemptions.

Report of Foreign Bank and Financial Accounts. 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.

Amendments to the Definitions of Broker or Dealer in Securities. On April 4, 2016, FinCEN issued an NPRM proposing amendments to the regulatory definitions of broker or dealer in securities under the BSA 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 requirements that are currently applicable to brokers or dealers in securities.

Anti-Money Laundering Program Requirements for Banks Lacking a Federal Functional Regulator. On August 25, 2016, FinCEN issued an NPRM to remove the anti-money laundering (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.

Imposition of Special Measure against FBME Bank Ltd., formerly known as Federal Bank of the Middle East, Ltd., as a Financial Institution of Primary Money Laundering Concern. On July 29, 2015, FinCEN issued a final rule imposing the fifth special measure under section 311 of the USA PATRIOT Act against FBME. This action followed a notice of finding issued on July 22, 2014 that FBME is a financial institution of primary money laundering concern and an NPRM proposing the imposition of the fifth special measure. FBME filed suit on August 7, 2015 in the U.S. District Court for the District of Columbia; FBME also moved for a preliminary injunction. On August 27, 2015, the Court granted the preliminary injunction and enjoined the rule from taking effect before the rule's effective date of August 28, 2015. On March 31, 2016, FinCEN issued a Final Rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME in place of the rule published in 2015. On July 22, 2016, the U.S. District Court for the District of Columbia ordered that the implementation of the Final Rule be stayed until further notice from the Court.

Administrative Rulings and Written Guidance. FinCEN published 4 written guidance pieces, and provided 17 responses to requests for administrative rulings and written inquiries/correspondence interpreting the BSA and providing clarity to regulated industries.

FinCEN's regulatory priorities for fiscal year 2017 include finalizing any initiatives mentioned above that are not finalized by fiscal year end, as well as the following in-process and potential projects:

Cross-Border Electronic Transmittal of Funds. On September 27, 2010, FinCEN issued an NPRM in conjunction with the feasibility study prepared pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 concerning the issue of obtaining information about certain cross-border funds transfers and transmittals of funds. As FinCEN has continued to work on developing the system to

receive, store, and use this data, FinCEN is considering various regulatory actions to update the previously published proposed rule and provide additional information to those banks and money transmitters that will become subject to the rule.

**Anti-Money Laundering Program and SAR Requirements for Investment Advisers.** On August 25, 2015, FinCEN published in the Federal Register an NPRM 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.

**Registration Requirements of Money Services Businesses.** FinCEN is considering issuing an NPRM to amend the requirements for money services businesses with respect to registering with FinCEN.

**Changes to the Travel and Recordkeeping Requirements for Funds Transfers and Transmittals of Funds.** FinCEN is considering changes to require that more information be collected and maintained by financial institutions on funds transfers and transmittals of funds and to lower the threshold.

**Changes to the Currency and Monetary Instrument Report (CMIR) Reporting Requirements.** 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 its ongoing, comprehensive review of existing regulations to enhance regulatory efficiency, and as a result of the efforts of an interagency task force currently focusing on improvements to the U.S. regulatory framework for anti-money laundering.

### **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 Governmentwide 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 2017, the Fiscal Service will accord priority to the following regulatory projects:

Notice of Proposed Rulemaking for Publishing Delinquent Debtor Information. The Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321 (DCIA) authorizes Federal agencies to publish or otherwise publicly disseminate information regarding the identity of persons owing delinquent nontax debts to the United States for the purpose of collecting the debts, provided certain criteria are met. Treasury proposes to issue a notice of proposed rulemaking seeking comments on a proposed rule that would establish the procedures Federal agencies must follow before promulgating their own rules to publish information about delinquent debtors and the standards for determining when use of this debt collection remedy is appropriate.

Offset of Tax Refund Payments to Collect Past-Due Support. On December 30, 2015, the Fiscal Service published an Interim Final Rule, with request for comments, limiting the time period during which Treasury may recover certain tax refund offset collections from States to six months from the date of such collection. Previously, there was no time limit to recoup offset amounts that were collected from tax refunds to which the debtor taxpayer was not entitled. The Fiscal Service proposes to publish a Final Rule for this time limit for such recoupments in fiscal year 2017.

Management of Federal Agency Receipts, Disbursements and Operation of the Cash Management Improvements Fund. The Fiscal Service plans to publish a notice of proposed rulemaking to amend 31 CFR 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.

### **Internal Revenue Service**

The Internal Revenue Service (IRS), working with the Office of Tax Policy, promulgates regulations that interpret and implement the Internal Revenue Code (Code) and related tax statutes. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

During fiscal year 2017, the IRS will accord priority to the following regulatory projects:

Tax-Related Affordable Care Act Provisions. On March 23, 2010, the President signed the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) and on March 30, 2010, the

President signed the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (referred to collectively as the Affordable Care Act (ACA)). The ACA's reform of the health insurance system affects individuals, families, employers, health care providers, and health insurance providers. The ACA provides authority for Treasury and the IRS to issue regulations and other guidance to implement tax provisions in the ACA, some of which are already effective and some of which will become effective over the next several years. Since enactment of the ACA, Treasury and the IRS have issued a series of temporary, proposed, and final regulations implementing over a dozen provisions of the ACA, including the premium tax credit under section 36B of the Code, the small-business health coverage tax credit under section 45R of the Code, new requirements for charitable hospitals under section 501(r) of the Code, limits on tax preferences for remuneration provided by certain health insurance providers under section 162(m)(6) of the Code, the employer shared responsibility provisions under section 4980H of the Code, the individual shared responsibility provisions under section 5000A of the Code, insurer and employer reporting under sections 6055 and 6056 of the Code, and several revenue-raising provisions, including fees on branded prescription drugs under section 9008 of the ACA, fees on health insurance providers under section 9010 of the ACA, the tax on indoor tanning services under 5000B of the Code, the net investment income tax under section 1411 of the Code, and the additional Medicare tax under sections 3101 and 3102 of the Code.

In fiscal year 2017, Treasury and the IRS will continue to provide guidance to implement tax provisions of the ACA, including:

- Proposed and final regulations related to numerous aspects of the premium tax credit under section 36B, including the determination of minimum value of eligible-employer-sponsored plans;
- Regulations related to the employer shared responsibility provisions under section 4980H;

- Regulations under section 4980I of the Code relating to the excise tax on high cost employer-provided coverage;
- Final regulations on expatriate health plans under the Expatriate Health Coverage Clarification Act of 2014 for purposes of sections 36B, 162(m)(6), 4377, 5000A, 6055, and 6056 of the Code, and section 9010 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act;
- Final regulations regarding issues related to the net investment income tax under section 1411 of the Code.

Interest on Deferred Tax Liability for Contingent Payment Installment Sales. Section 453 of the Code generally allows taxpayers to report the gain from a sale of property in the taxable year or years in which payments are received, rather than in the year of sale. Section 453A of the Code imposes an interest charge on the tax liability that is deferred as a result of reporting the gain when payments are received. The interest charge generally applies to installment obligations that arise from a sale of property using the installment method if the sales price of the property exceeds \$150,000, and the face amount of all such installment obligations held by a taxpayer that arose during, and are outstanding as of the close of, a taxable year exceeds \$5,000,000. The interest charge provided in section 453A cannot be determined under the terms of the statute if an installment obligation provides for contingent payments. Accordingly, in section 453A(c)(6), Congress authorized the Secretary of the Treasury to issue regulations providing for the application of section 453A in the case of installment sales with contingent payments. Treasury and the IRS intend to issue proposed regulations that, when finalized, will provide guidance and reduce uncertainty regarding the application of section 453A to contingent payments.

Rules for Home Construction Contracts. In general, section 460(a) of the Code requires taxpayers to use the percentage-of-completion method (PCM) to account for taxable income from any long-term contract. Under the PCM, income is generally reported in installments as work is performed, and expenses are generally deducted in the taxable year incurred. However, taxpayers with contracts

that meet the definition of a “home construction contract,” under section 460(e)(4), are not required to use the PCM for those contracts and may, instead, use an exempt method. Exempt methods include the completed contract method (CCM) and the accrual method. Under the CCM, for example, a taxpayer generally takes into account the entire gross contract price and all incurred allocable contract costs in the taxable year the taxpayer completes the contract. Treasury and the IRS believe that amended rules are needed to reduce uncertainty and controversy, including litigation, regarding when a contract qualifies as a “home construction contract” and when the income and allocable deductions are taken into account under the CCM. On August 4, 2008, Treasury and the IRS published proposed regulations on the types of contracts that are eligible for the home construction contract exemption. The preamble to those regulations stated that Treasury and the IRS expected to propose additional rules specific to home construction contracts accounted for using the CCM. After considering comments received and the need for additional and clearer rules to reduce ongoing uncertainty and controversy, Treasury and the IRS have determined that it would be beneficial to taxpayers to present all of the proposed changes to the current regulations in a single document. Treasury and the IRS plan to withdraw the 2008 proposed regulations and replace them with new, more comprehensive proposed regulations.

Research Expenditures. Section 41 of the Code provides a credit against taxable income for certain expenses paid or incurred in conducting research activities. To assist in resolving areas of controversy and uncertainty with respect to research expenses, Treasury and the IRS plan to issue final regulations with respect to the definition and credit eligibility of expenditures for internal use software. In addition, on December 18, 2015, the President signed the Protecting Americans from Tax Hikes of 2015 (the PATH Act), which added new section 41(h). That section allows qualified small businesses to elect to claim a portion of the section 41 credit against the employer’s portion of certain payroll taxes. Treasury and the IRS plan to provide guidance on eligibility for the election, how and where to claim the election, and how the credit will be recaptured in certain situations.

Domestic Production Activities Income. Section 199 of the Code provides a deduction for certain income attributable to domestic production activities. To assist in resolving areas of controversy and uncertainty with respect to the eligibility of income from online computer software, Treasury and the IRS plan to issue regulations regarding the application of section 199 to online computer software.

#### Consistent Basis

Reporting between Estate and Person Acquiring Property from Decedent. On July 31, 2015, the President signed H.R. 3236, Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Act) (Pub. 114-41), into law. Section 2004 of the Act added new Code sections 1014(f), 6035, and 6662(k). Section 1014(f) provides rules requiring that the basis of certain property acquired from a decedent be consistent with the estate tax value of the property. Section 6035 requires executors who are required to file a return under section 6018(a) of the Code (and other persons required to file a return under section 6018(b)) after July 31, 2015, to file statements with the IRS and furnish statements to certain estate beneficiaries providing information regarding the value of certain property acquired from a decedent. Section 6662(k) provides a penalty for certain recipients of property acquired from an estate required to file a return after July 31, 2015, who report a basis that is inconsistent with the value determined under section 1014(f) when the property is sold (or deemed sold). Treasury and the IRS published three notices and proposed and temporary regulations under sections 1014, 6035, and 6662(k) providing, respectively, guidance on the compliance date under section 6035 and guidance regarding: (1) the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes; and (2) the accompanying filing requirements for certain executors and other persons. On August 21, 2015, Notice 2015-57 (2015-36 IRB 294) was issued delaying the due date for any statements required by section 6035 to February 29, 2016. On February 11, 2016, Treasury and IRS issued Notice 2016-19 (2016-9 IRB 362), providing that statements required under section 6035 need not be filed until March 31, 2016, and on March 23, 2016, issued Notice 2016-27 (2016-15 IRB 576), providing that statements under section 6035 need not be filed until June 30, 2016. For statements required under sections 6035(a)(1) and (a)(2) that are required to be filed after June 30, 2016, those statements are to be filed in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under section 6018 was required

to be filed (including extensions, if any) or (ii) the date which is 30 days after the date such return is filed. The IRS is in the process of finalizing the regulations, the applicable form, schedule, and instructions to facilitate compliance with sections 1014(f), 6035, and 6662(k). It is expected that Treasury and IRS will issue final regulations within 18 months of July 31, 2015.

**Definition of Issue Price for Tax-Exempt Bonds.** On September 16, 2013, Treasury and the IRS published proposed regulations (78 FR 56842) to address certain issues involving the arbitrage investment restrictions under section 148 of the Code, including guidance on the issue price definition used in the computation of bond yield. On June 24, 2015, Treasury and the IRS published proposed regulations (80 FR 36301) that revised the 2013 guidance on the issue price definition. Treasury and the IRS plan to finalize the 2015 proposed regulations.

**Guidance on the Definition of Political Subdivision for Tax-Exempt, Tax-Credit, and Direct-Pay Bonds.** A political subdivision may be a valid issuer of tax-exempt, tax-credit, and direct-pay bonds. Concerns have been raised about what is required for an entity to be a political subdivision for purposes of section 103 of the Code. Proposed regulations (REG-129067-15) were published in the Federal Register on February 23, 2016 (81 FR 8870). Treasury and the IRS are considering comments on the proposed regulations and expect to issue regulations on this issue in fiscal year 2017.

**Contingent Notional Principal Contract Regulations.** Notice 2001-44 (2001-2 CB 77) outlined four possible approaches for recognizing nonperiodic payments made or received on a notional principal contract (NPC) when the contract includes a nonperiodic payment that is contingent in fact or in amount. The Notice solicited further comments and information on the treatment of such payments. After considering the comments received in response to Notice 2001-44, Treasury and the IRS published proposed regulations (69 FR 8886) (the 2004 proposed regulations) that would amend section 1.446-3 and provide additional rules regarding the timing and character of income, deduction, gain, or loss with respect to such nonperiodic payments, including termination payments. On December 7, 2007, Treasury and the IRS released Notice 2008-2 (2008-1 CB 252) requesting comments and information with respect to transactions frequently referred to as prepaid forward contracts. On May 8, 2015, Treasury and the IRS published temporary and proposed regulations (80 FR 26437) relating to the treatment of nonperiodic payments. Treasury and the IRS plan to finalize the temporary regulations and to re-propose regulations to address issues relating to the timing and character of nonperiodic contingent payments on NPCs, including termination payments and payments on prepaid forward contracts.

**Tax Treatment of Distressed Debt.** A number of tax issues relating to the amount, character, and timing of income, expense, gain, or loss on distressed debt remain unresolved. During the fiscal year, Treasury and the IRS plan to address certain of these issues in published guidance.

**Definition of Real Property and Qualifying Income for REIT Purposes.** A taxpayer must satisfy certain asset and income requirements to qualify as a real estate investment trust (REIT) under section 856 of the Code. REITs have sought to invest in various types of assets that are not directly addressed by the current regulations or other published guidance. On May 14, 2014, Treasury and the IRS published proposed regulations (79 FR 27508) to update and clarify the definition of real property for REIT qualification purposes, including guidance addressing whether a component of a larger item is tested on its own or only as part of the larger item, the scope of the asset to be tested, and whether certain intangible assets qualify as real property. Treasury and the IRS plan to finalize the proposed regulations in the fiscal year. Treasury and the IRS also plan to provide guidance clarifying the definition of income for purposes of section 856.

**Treatment of Certain Interests in Corporations as Stock or Indebtedness.** Section 385 of the Code grants the Secretary of the Treasury the authority to prescribe regulations as necessary or appropriate to determine whether an interest in a corporation is to be treated as stock or indebtedness or as part stock and part indebtedness for Federal income tax purposes. On April 4, 2016, Treasury and the IRS issued proposed regulations under section 385 that would establish threshold documentation requirements for determining whether certain related party interests in a corporation are characterized as stock or indebtedness for Federal tax purposes. The proposed regulations also would treat certain related party interests that otherwise would be treated as indebtedness for Federal income tax purposes as stock. Treasury and the IRS issued final and temporary regulations on these issues on October 21, 2016 (81 FR 72858).

**Corporate Spin-offs and Split-offs.** Section 355 and related provisions of the Code allow for the tax-free distribution of stock or securities of a controlled corporation if certain requirements are met. For

example, both the distributing and controlled corporations must be engaged in the active conduct of a trade or business immediately after the distribution, and the transaction must not be used as a device for the distribution of earnings and profits or to circumvent Congress' intent in repealing the General Utilities doctrine. Treasury and the IRS have published proposed regulations that address (a) whether the active trade or business requirement is met when a distribution involves small active businesses relative to other assets and (b) whether a distribution raises device concerns because either the distributing or controlled corporation has a substantial percentage of nonbusiness assets. Treasury and the IRS intend to issue final regulations on these issues. Treasury and the IRS also intend to issue additional guidance addressing: (a) when a distribution, otherwise qualifying under section 355, circumvents Congress' intent in repealing the General Utilities doctrine; and (b) the tax treatment under sections 355 and 361 when debt of the distributing corporation is issued and such debt is retired using stock or securities of the controlled corporation, and (c) the tax treatment when cash or property is transferred between a distributing or controlled corporation and its shareholder(s) in connection with the distribution. Treasury and the IRS also intend to finalize proposed regulations that would define predecessor and successor corporations for purposes of the exception to tax-free treatment under section 355(e).

Assistance to Troubled Financial Institutions. Section 597 grants the Secretary of the Treasury wide latitude to prescribe regulations determining the treatment of any transaction in which Federal financial assistance is provided to a bank or domestic building and loan association. Treasury and the IRS have issued final regulations under section 597. In the wake of the most recent financial crisis and changes in the form of government assistance that have developed since the final regulations were issued, Treasury and the IRS published proposed regulations that would reflect those changes. Treasury and the IRS intend to issue final regulations on these issues.

Redetermination of the Consolidated Net Unrealized Built-in Gain and Net Unrealized Built-in Loss. Section 382 limits the amount of taxable income that can be offset by net operating loss

carryovers. Treasury and the IRS published proposed regulations modifying the application of section 382 to consolidated groups, specifically regarding the time that recognized built-in loss is treated as reducing consolidated net unrealized built-in loss. Treasury and the IRS intend to issue final regulations on these issues.

**Disguised Payments for Services.** Section 707(a)(2)(A) of the Code provides that if a partner performs services for a partnership and receives a related direct or indirect allocation and distribution, and the performance of services and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in its capacity as a partner, the transfer will be treated as occurring between the partnership and one who is not a partner. Treasury and the IRS published proposed regulations on July 23, 2015, to provide guidance on when an arrangement that is purported to be a distributive share under section 704(b) of the Code will be recharacterized as a disguised payment for services under section 707(a)(2)(A). The proposed regulations also provide for modifications to the regulations governing guaranteed payments under section 707(c) to make those regulations consistent with the proposed regulations under section 707(a)(2)(A). Treasury and the IRS expect to issue final regulations during Fiscal Year 2017.

**Transfers of Property to Partnerships with Related Foreign Partners.** Section 721(c) of the Code provides authority to issue regulations that prevent the use of a partnership to shift gain to a foreign person. On August 6, 2015, Treasury and the IRS issued Notice 2015-54 (2015-34 IRB 210) describing regulations to be issued under that authority. By the end of 2016, Treasury and the IRS plan to issue temporary and proposed regulations implementing the guidance described in Notice 2015-52. Treasury and the IRS intend to finalize the temporary and proposed regulations in this fiscal year.

**Reporting requirements applicable to certain foreign-owned entities.** On May 5, 2016, Treasury and the IRS issued proposed regulations that would require foreign-owned entities that are disregarded

entities for tax purposes, including foreign-owned single-member limited liability companies (LLCs), to obtain an employer identification number (EIN) with the IRS. These changes are intended to provide the IRS with improved access to information that will allow the United States to comply with international standards on tax and transparency, as well as strengthen the enforcement of U.S. tax laws. Treasury and the IRS intend to finalize the proposed regulations in this fiscal year.

**Currency.** On September 6, 2006, Treasury and the IRS published a notice of proposed rulemaking under section 987 of the Code that proposes rules for translating a section 987 qualified business unit's income or loss into the taxpayer's functional currency for each taxable year, as well as for determining the amount of section 987 currency gain or loss that must be recognized when a section 987 qualified business unit makes a remittance. Treasury and the IRS expect to finalize the proposed regulations in this fiscal year. In addition, Treasury and the IRS intend to issue proposed regulations in Fiscal Year 2017 to provide guidance on the treatment of foreign currency gain or loss of a controlled foreign corporation (CFC) under the exclusion from foreign personal holding company income for income from transactions directly related to the business needs of the CFC, as well as related timing and other issues.

**Disguised Sale and Allocation of Liabilities.** A contribution of property by a partner to a partnership may be recharacterized as a sale under section 707(a)(2)(B) of the Code if the partnership distributes to the contributing partner cash or other property that is, in substance, consideration for the contribution. The allocation of partnership liabilities to the partners under section 752 of the Code may impact the determination of whether a disguised sale has occurred and whether gain is otherwise recognized upon a distribution. Treasury and the IRS published proposed regulations on January 30, 2014, to address certain issues that arise in the disguised sale context and other issues regarding the partners' shares of partnership liabilities. Treasury and the IRS are considering comments on the proposed regulations and expect to issue regulations on this issue in fiscal year 2017.

Certain Partnership Distributions Treated as Sales or Exchanges. In 1954, Congress enacted section 751 to prevent the use of a partnership to convert potential ordinary income into capital gain. In 1956, Treasury and the IRS issued regulations implementing section 751 of the Code. The current regulations, however, do not always achieve the purpose of the statute. In 2006, Treasury and the IRS published Notice 2006-14 (2006-1 CB 498) to propose and solicit alternative approaches to section 751 that better achieve the purpose of the statute while providing greater simplicity. Treasury and the IRS published proposed regulations following up on Notice 2006-14 on November 3, 2014. These regulations were intended to provide guidance on determining a partner's interest in a partnership's section 751 property and how a partnership recognizes income required by section 751. Treasury and the IRS expect to issue final regulations during fiscal year 2017.

Penalties and Limitation Periods. Congress amended several penalty provisions in the Internal Revenue Code in the past several years. Treasury and the IRS intend to publish a number of guidance projects in this fiscal year addressing these penalty provisions. Specifically, Treasury and the IRS intend to publish final regulations under section 6708 of the Code regarding the penalty for failure to make available upon request a list of advisees that is required to be maintained under section 6112 of the Code. The proposed regulations were published on March 8, 2013. Treasury and the IRS also intend to publish proposed regulations under sections 6662, 6662A, and 6664 of the Code to provide further guidance on the circumstances under which a taxpayer could be subject to the accuracy-related penalty on underpayments or reportable transaction understatements and the reasonable cause exception.

Inversion Transactions. On January 17, 2014, Treasury and the IRS issued temporary and proposed regulations providing guidance on the application of the ownership test under section 7874(a)(2)(B)(ii). On April 4, 2016, Treasury and the IRS issued temporary and proposed regulations providing further guidance on the application of sections 7874 and 367 of the Code to inversion

transactions, as well as on certain tax avoidance transactions that are commonly undertaken after an inversion transaction. In this fiscal year, Treasury and the IRS expect to issue additional guidance to further limit inversion transactions that are contrary to the purposes of section 7874 and the benefits of post-inversion tax avoidance transactions.

Information Reporting for Foreign Accounts of U.S. Persons. In March 2010, chapter 4 (sections 1471 to 1474) was added to subtitle A of the Code as part of the Hiring Incentives to Restore Employment Act (HIRE Act) (Pub. L. 111-147). Chapter 4 was enacted to address concerns with offshore tax evasion by U.S. citizens and residents and generally requires foreign financial institutions (FFIs) to enter into an agreement (FFI Agreement) with the IRS to report information regarding financial accounts of U.S. persons and certain foreign entities with significant U.S. ownership. An FFI that does not enter into an FFI Agreement, or that is not otherwise deemed compliant with FATCA, generally will be subject to a withholding tax on the gross amount of certain payments from U.S. sources. Treasury and the IRS have issued proposed, temporary, and final regulations under chapter 4, followed by proposed and temporary regulations modifying certain provisions of the final regulations; proposed and temporary regulations under chapters 3 and 61, and section 3406, to coordinate with those chapter 4 regulations; and implementing revenue procedures and other guidance. Treasury and the IRS expect to issue further guidance with respect to FATCA and related provisions in this fiscal year, including finalizing the aforementioned chapter 3, 4 and 61 regulations; issuing proposed regulations covering the compliance requirements of entities acting as sponsoring entities on behalf of certain foreign entities; issuing updated agreements for foreign financial institutions, qualified intermediaries (including qualified derivatives dealers), and withholding foreign partnerships and withholding foreign trusts; and issuing regulations on refunds and credits.

Foreign Tax Credits and Covered Asset Acquisitions. Section 901(m) of the Code limits the availability of foreign tax credits in certain cases in which U.S. tax law and foreign tax law provide different

rules for recognizing income and gain. In 2014, Treasury and the IRS issued two notices providing guidance under section 901(m) regarding the treatment of gains and losses from dispositions. By the end of 2016, Treasury and the IRS expect to issue temporary and proposed regulations setting forth the rules described in those notices. Treasury and the IRS also plan to issue proposed regulations setting forth substantial additional guidance under section 901(m). Treasury and the IRS expect to finalize the proposed regulations during this fiscal year.

**Transfers of Property to Foreign Corporations.** Section 367 of the Code provides special rules to address the transfer of property, including intangible property, by U.S. persons to foreign corporations in certain nonrecognition transactions. Under existing temporary regulations issued in 1986, favorable treatment is afforded to the outbound transfer of “foreign goodwill and going concern value,” which has created incentives for taxpayers to categorize transfers of high-value intangible property as such. On September 14, 2015, Treasury and the IRS released proposed regulations that would eliminate that favorable treatment. Treasury and the IRS intend to finalize the proposed section 367 regulations in this fiscal year.

**ABLE Account guidance.** On December 19, 2014, Congress passed The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, adding section 529A to the Code to enable states to create qualified ABLE programs under which disabled individuals may establish a tax-advantaged account to pay for disability-related expenses. To be eligible to establish an ABLE account, the individual must have become disabled prior to age 26. As required by the statute, Treasury and the IRS on June 19, 2015, published proposed regulations implementing the provision. States may rely on the proposed regulations for establishing a qualified ABLE program. Treasury and the IRS intend to finalize the regulations during the 2017 fiscal year, taking into account all comments received.

Certified Professional Employer Organization guidance. On May 6, 2016, Treasury and the IRS published final, temporary, and proposed regulations which set forth the Federal employment tax liabilities and other obligations of persons certified by the IRS as certified professional employer organizations (CPEOs) in accordance with provisions enacted as part of the ABLE Act. The temporary regulations address the requirements relating to applying for and maintaining certification as a CPEO and some related definitions. In July 2016, the IRS opened the application process for being certified as a CPEO. Treasury and the IRS intend to finalize the temporary and proposed regulations during the 2017 fiscal year, taking into account all comments received.

Guidance Relating to Publicly Traded Partnerships. Section 7704 of the Code provides that a partnership whose interests are traded on either an established securities market or on a secondary market (a “publicly traded partnership”) is generally treated as a corporation for Federal tax purposes. However, section 7704(c) permits publicly traded partnerships to be treated as partnerships for Federal tax purposes if 90 percent or more of partnership income consists of “qualifying income.” Section 7704(d) provides that income is generally qualifying income if it is passive income or is derived from exploration, development, mining or production, processing, refining, transportation, or marketing of a mineral or natural resource. Treasury and the IRS issued proposed regulations in 2015 to provide guidance and reduce uncertainty regarding the scope of the natural resource exception. After considering comments on the proposed regulations, Treasury and the IRS expect to issue final regulations in fiscal year 2017.

Guidance implementing the Bipartisan Budget Act of 2015. The Bipartisan Budget Act of 2015 repealed the current procedures governing audits of partnerships and replaced them with new procedures. Treasury and the IRS intend to publish regulations implementing these new procedures. Proposed regulations will provide guidance on electing out of the new procedures, partner reporting and adjustments, designation of a partnership representative, imputed underpayments, and requests for administrative adjustments.

Guidance on User Fees. Treasury and the IRS intend to publish regulations charging (or updating) user fees for certain applications made by individuals to the IRS, including for an installment agreement, an offer in compromise, and a preparer tax identification number, as well as to take the special enrollment examination to become an enrolled agent.

Guidance under the Protecting Americans from Tax Hikes Act of 2015. On December 25, 2015, Congress passed the Protecting Americans from Tax Hikes Act (PATH Act). The Path Act made changes to numerous provisions of the Code. Treasury and the IRS intend to publish guidance implementing these changes, including guidance on the issuance of individual taxpayer identifying numbers, an update to the revenue procedure on acceptance agents, proposed regulations on the use of truncated taxpayer identification numbers on the Form W-2, and regulations under sections 6721 and 6722 regarding de minimis errors on information returns.

**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 Regulatory Priorities**

VA's most important significant regulatory actions are identified and discussed in the following chart. These actions are identified as helping to implement VA's policies and priorities, and embody the core of VA's regulatory priorities.

RIN	Title	Summary of Rulemaking
2900-AP66	Diseases Associated With Exposure to Contaminated Water at Camp Lejeune	<p>The Department of Veterans Affairs (VA) proposed to amend its adjudication regulations relating to presumptive service connection to add certain diseases associated with contaminants present in the base water supply at U.S. Marine Corps Base Camp Lejeune (Camp Lejeune), North Carolina, from August 1, 1953 to December 31, 1987. The chemical compounds involved have been associated by various scientific organizations with the development of certain diseases. The effect of this rule would be to establish that veterans, former reservists, and former National Guard members, who served at Camp Lejeune during this period, and who have been diagnosed with any of nine associated diseases, are presumed to have a service-connected disability for purposes of entitlement to VA benefits. In addition, VA proposed establishing a presumption that these individuals were disabled during the relevant period of service, thus establishing active military service for benefit purposes. Under this presumption, affected former reservists and National Guard members would have veteran status for purposes of entitlement to some VA benefits. The proposal would implement a decision by the Secretary of Veterans Affairs that service connection on a presumptive basis is warranted for claimants who served at Camp Lejeune and later develop certain diseases. VA plans to finalize this proposal after considering public comments.</p>
2900-AP54	VA Homeless Providers Grant and Per Diem	<p>The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning the VA Homeless Providers Grant</p>

	Program	and Per Diem Program (GPD). These amendments would provide GPD with increased flexibility to (1) respond to the changing needs of homeless veterans; (2) repurpose existing and future funds more efficiently; and (3) allow grant providers the ability to add, modify, or eliminate components of funded programs. We are proposing these amendments to better serve our homeless veteran population and the grantees who serve them.
2900-AO53	Fiduciary Activities	VA proposed to amend its fiduciary program regulations, which govern the oversight of beneficiaries who, because of injury, disease, the infirmities of advanced age, or minority, are unable to manage their VA benefits and the appointment and oversight of fiduciaries for these vulnerable beneficiaries. The proposed amendments would update and reorganize regulations consistent with current law, VA policies and procedures, and VA's reorganization of its fiduciary activities. They would also clarify the rights of beneficiaries in the program and the roles of VA and fiduciaries in ensuring that VA benefits are managed in the best interest of beneficiaries and their dependents.
2900-AP72	Veterans Employment Pay for Success Program	The Department of Veterans Affairs (VA) established a grant program (Veterans Employment Pay for Success (VEPFS)) under the authority of 38 U.S.C. 3119 to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This interim final rule established regulations for awarding a VEPFS grant, including

		the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program.
2900-AP35	Tiered Pharmacy Copayments for Medications	The Department of Veterans Affairs (VA) proposes to amend its regulations concerning copayments charged to certain veterans for medication required on an outpatient basis to treat nonservice-connected conditions. This rulemaking would establish three classes of medications for copayment purposes, identified as Tier 1, Tier 2, and Tier 3. These tiers would distinguish in part based on whether the medications are available from multiple sources or a single source, with some exceptions. Copayment amounts would be fixed, and would be dependent upon the class of medication. For most veterans these copayment amounts would result in lower out-of-pocket costs, thereby encouraging greater adherence to prescribed medications and reducing the risk of fragmented care that results when veterans use multiple pharmacies to fill their prescriptions.
2900-AP57	Repayment by VA of Educational Loans for Certain Psychiatrists (Clay Hunt Act)	The Department of Veterans Affairs (VA) has added to its medical regulations a program for the repayment of educational loans for certain psychiatrists who agree to a period of obligated service with VA. This program is intended to increase the pool of qualified VA psychiatrists and increase veterans' access to mental health care.
2900-AO88	Per Diem Paid to States for Care of Eligible Veterans in State Homes	The Department of Veterans Affairs (VA) proposed to reorganize, update (based on revisions to statutory authority), and clarify its regulations that govern paying per diem to State

		<p>homes providing nursing home and adult day health care to eligible veterans. The reorganization will improve consistency and clarity throughout these State home programs. We believe that these proposed regulations will clarify current law and policy, which should improve and simplify the payment of per diem to State homes, and encourage participation in these programs. VA plans to finalize this proposal after considering public comments.</p>
<p>2900-AP60</p>	<p>Expanded Access to Non-VA Care Through the Veterans Choice Program (VCP)</p>	<p>The Department of Veterans Affairs (VA) revised its medical regulations that implement section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (hereafter referred to as “the Choice Act”), which requires VA to establish a program to furnish hospital care and medical services through eligible non-VA health care providers to eligible veterans who either cannot be seen within the wait-time goals of the Veterans Health Administration (VHA) or who qualify based on their place of residence (hereafter referred to as “the Veterans Choice Program” or “the Program”). These regulatory revisions are required by the most recent amendments to the Choice Act made by the Construction Authorization and Choice Improvement Act of 2014, and by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. The Construction Authorization and Choice Improvement Act of 2014 amended the Choice Act to define additional criteria that VA may use to determine that a veteran’s travel to a VA medical facility is an “unusual or excessive burden,” and the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 amended the Choice Act to cover all</p>

		veterans enrolled in the VA health care system, remove the 60-day limit on an episode of care, modify the wait-time and 40-mile distance eligibility criteria, and expand provider eligibility based on criteria as determined by VA.
2900-AP44	Advanced Practice Registered Nurses	The Department of Veterans Affairs (VA) proposed to amend its medical regulations to permit full practice authority of all VA advanced practice registered nurses (APRNs) when they are acting within the scope of their VA employment. This rulemaking would increase veterans' access to VA health care by expanding the pool of qualified health care professionals who are authorized to provide primary health care and other related health care services to the full extent of their education, training, and certification, without the clinical supervision of physicians. This rule would permit VA to use its health care resources more effectively and in a manner that is consistent with the role of APRNs in the non-VA health care sector, while maintaining the patient-centered, safe, high-quality health care that veterans receive from VA. VA will finalize its proposal after considering public comments.

**Retrospective Review of Existing Regulations**

Consistent with guidance from section 6 of Executive Order 13563, VA identifies rules that are to be "modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." In addition, consistent with Executive Order 13610, initiatives that are discussed in those plans are identified below.

<b>RIN</b>	<b>Title</b>	<b>Significantly Reduce Burdens on Small Businesses</b>	<b>Summary of Rulemaking</b>
Multiple RINs	Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition	No	VA is proposing to amend VA Acquisition Regulation (VAAR) as part of a project to update the VAAR. Under this initiative all parts of the regulation are being reviewed and updated in phased increments to incorporate any new regulations or policies and to remove any procedural guidance that is internal to VA. This project aims to streamline the VAAR to implement and supplement the Federal Acquisition Regulation (FAR) only when required, and to eliminate internal agency guidance in keeping with the FAR principles concerning agency acquisition regulations.
2900-AO53	Fiduciary Activities	No	VA proposes to amend its fiduciary program regulations, which govern the oversight of beneficiaries who, because of injury, disease, the infirmities of advanced age, or minority, are unable to manage their VA benefits, and the appointment and oversight of fiduciaries for these vulnerable beneficiaries. The proposed amendments

			would update and reorganize regulations consistent with current law, VA policies and procedures, and VA's reorganization of its fiduciary activities. They would also clarify the rights of beneficiaries in the program and the roles of VA and fiduciaries in ensuring that VA benefits are managed in the best interest of beneficiaries and their dependents.
Multiple RINs	VA Schedule for Rating Disabilities (With Specific Body System)	No	VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will

			introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.
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<b>VA</b>	<b>PROPOSED RULE STAGE</b>
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**101. SCHEDULE FOR RATING DISABILITIES: THE GENITOURINARY DISEASES AND CONDITIONS**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.115; 38 CFR 4.115(a); 38 CFR 4.115(b)

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to amend the portion of the Schedule for Rating Disabilities (VASRD) that addresses the genitourinary system. The purpose of this change is to update current medical terminology, incorporate medical advances that have occurred since the last review, and provide well-defined criteria in accordance with actual, standard medical clinical practice. The proposed rule reflects the most up-to-date medical knowledge and clinical practice of nephrology and urology specialties, as well as comments from subject matter experts and the public garnered during a public forum held January 27-28, 2011.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15-body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AP16

VA	
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**102. REVISE AND STREAMLINE VA ACQUISITION REGULATION TO ADHERE TO FEDERAL ACQUISITION REGULATION PRINCIPLES (VAAR CASE 2014-V001, PARTS 803, 814, 822)**

**Priority:**

Other Significant

**Legal Authority:**

40 U.S.C. 121(c); 38 U.S.C. 501; 41 U.S.C. 1121(c)(3); ...

**CFR Citation:**

48 CFR 801; 48 CFR 802; 48 CFR 803; 48 CFR 812; 48 CFR 814; 48 CFR 822; 48 CFR 852; 48 CFR 1.301 to 1.304; ...

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) is proposing to amend its VA Acquisition Regulation (VAAR) to update the VAAR to current FAR requirements, thresholds, definitions, and titles; it provides new definitions, updated VA titles and offices; it corrects inconsistencies, removes redundancies and duplicate material already covered by the FAR; it deletes outdated material or information and appropriately renumbers VAAR text and clauses and provisions where required to comport with FAR format, numbering and arrangement; and, it provides VA acquisition regulations necessary to implement FAR policies and procedures within VA, as well as additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy VA mission needs. This proposed rule revises VAAR parts 803, 814, and 822. Other revisions to the entirety of the affected parts are planned in later proposed rules when those parts are revised in full.

**Statement of Need:**

The needed changes include proposing to remove an information collection burden from the VAAR because it is based on an outdated practice in providing bid envelopes. We propose to add additional definitions to ensure a common understanding and meaning of terms related to debarment and suspensions in the department. We are proposing to update the policy governing improper business practices and personal conflicts of interests and to clarify the language regarding the prohibition of contractors from making reference in its commercial advertising regarding VA contracts to avoid implying that the Government approves or endorses products or services.

**Summary of Legal Basis:**

38 U.S.C. 501, 40 U.S.C. 121(c), 41 U.S.C. 1121(c)(3), 48 CFR 301-1.304

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2900-AP50

VA	
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**103. VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 501; 38 U.S.C. 2001; 38 U.S.C. 2011; 38 U.S.C. 2012; 38 U.S.C. 2061; 38 U.S.C. 2064

**CFR Citation:**

38 CFR 61.1; 38 CFR 61.5; 38 CFR 61.33; 38 CFR 61.61

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning the VA Homeless Providers Grant and Per Diem Program (GPD). These amendments would provide GPD with increased flexibility to: (1) respond to the changing needs of homeless veterans; (2) repurpose existing and future funds more efficiently; and (3) allow grant providers the ability to add, modify, or eliminate components of funded programs. We are proposing these amendments to better serve our homeless veteran population and the grantees who serve them.

**Statement of Need:**

The Department of Veterans Affairs (VA) proposes to amend its regulations concerning the VA Homeless Providers Grant and Per Diem Program (GPD) to better serve our homeless veteran population and the grantees who serve them. For example, VA is proposing to increase flexibility for transitioning homeless veterans into permanent housing, such as by recognizing "bridge housing", a short-term housing option for veterans who have accepted a permanent housing placement that is not immediately available.

**Summary of Legal Basis:**

38 U.S.C. 501, 2001, 2011, 2012, 2061 and 2064

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2900-AP54

VA	
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**104. REVISE AND STREAMLINE VA ACQUISITION REGULATION TO ADHERE TO FEDERAL ACQUISITION REGULATION PRINCIPLES (VAAR CASE 2014-V005, PARTS 812, 813)**

**Priority:**

Other Significant

**Legal Authority:**

40 U.S.C. 121(c)

**CFR Citation:**

48 CFR 1.3; 48 CFR 812; 48 CFR 813; 48 CFR 852

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) is proposing to amend its VA Acquisition Regulation (VAAR) as part of a project to update the VAAR. Under this initiative, all parts of the regulation are being reviewed and updated in phased increments to incorporate any new regulations or policies and to remove any procedural guidance that is internal to the VA. This project aims to streamline the VAAR to implement and supplement the Federal Acquisition Regulation (FAR) only when required, and to eliminate internal agency guidance in keeping with the FAR principles concerning agency acquisition regulations.

**Statement of Need:**

The Department of Veterans Affairs (VA) is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any guidance that is applicable only to VA's internal operating processes or procedures. FAR 1.302, Limitations, requires that agency acquisition regulations shall be limited only to those necessary to implement the FAR policies and procedures within the agency and to any additional information needed to supplement the FAR to satisfy the specific needs of the agency. The needed changes include proposing to delete paragraphs when adequately addressed in the FAR, add new subsections to clarify that FAR applies to specific parts, and to remove sections such as the section that deals with internal procedures for obtaining a waiver to tailor solicitations, to be inconsistent with customary commercial practice.

**Summary of Legal Basis:**

40 U.S.C. 121(c)

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2900-AP58

**105. DISEASES ASSOCIATED WITH EXPOSURE TO CONTAMINANTS IN THE WATER SUPPLY AT  
CAMP LEJEUNE****Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

38 U.S.C. 501(a)

**CFR Citation:**

38 CFR 3.307; 38 CFR 3.309

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) has proposed to amend its adjudication regulations relating to presumptive service connection to add certain diseases associated with contaminants present in the base water supply at U.S. Marine Corps Base Camp Lejeune (Camp Lejeune), North Carolina, from August 1, 1953 to December 31, 1987. The chemical compounds involved have been associated by various scientific organizations with the development of certain diseases. The proposed rule would establish that veterans, former reservists, and former National Guard members, who served at Camp Lejeune during this period, and who have been diagnosed with any of nine associated diseases, are presumed to have a service-connected disability for purposes of entitlement to VA benefits. In addition, VA would establish a presumption that these individuals were disabled during the relevant period of service, thus establishing active military service for benefit purposes. Under this presumption, affected former reservists and National Guard members have veteran status for purposes of entitlement to some VA benefits. This amendment implements a decision by the Secretary of Veterans Affairs that service connection on a presumptive basis is warranted for claimants who served at Camp Lejeune and later develop certain diseases. VA plans to finalize this proposal after considering public comments.

**Statement of Need:**

VA is responding to health concerns based on potentially service-connected exposure to contaminants in the drinking water at Camp Lejeune. Environmental Protection Agency standards came out in the early 1980s. In 1982, the Marine Corps discovered elevated levels of the VOCs in two of the eight on-base water supply systems at Camp Lejeune. These water systems served housing, administrative, and recreational facilities, as well as the base hospital.

**Summary of Legal Basis:**

38 U.S.C. 501(a)

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	09/09/16	81 FR 62419
NPRM Comment Period End	10/11/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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RIN: 2900-AP66

VA	
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**106. • REVISE AND STREAMLINE VA ACQUISITION REGULATION TO ADHERE TO FEDERAL ACQUISITION REGULATION PRINCIPLES VAAR CASE 2014-V004 (PARTS 811, 832)**

**Priority:**

Other Significant

**Legal Authority:**

40 USC 121(c); 48 CFR 1.3

**CFR Citation:**

48 CFR 801; 48 CFR 811; 48 CFR 832; 48 CFR 852

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) is proposing to amend its VA Acquisition Regulation (VAAR) to update the VAAR to current FAR requirements, thresholds, definitions, and titles; it provides new definitions, updated VA titles and offices; it corrects inconsistencies, removes redundancies and duplicate material already covered by the FAR; it deletes outdated material or information and appropriately

renumbers VAAR text and clauses and provisions where required to comport with FAR format, numbering and arrangement; and, it provides VA acquisition regulations necessary to implement FAR policies and procedures within VA, as well as additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy VA mission needs.

**Statement of Need:**

Included in the proposed changes that are needed are removing a significant portion of subpart 811.1, Selecting and Developing Requirements Documents, as it includes information that is redundant to the FAR. In addition, we propose to add a new section to implement the Office of Management and Budget's (OMB) Memorandum M-11-32, dated September 14, 2011, and to encourage making payments to small business contractors within 15 days of receipt of invoice.

**Summary of Legal Basis:**

40 U.S.C. 121(c), 48 CFR 1.3

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2900-AP81

VA	
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**107. • REVISE AND STREAMLINE VA ACQUISITION REGULATION TO ADHERE TO FEDERAL ACQUISITION REGULATION PRINCIPLES (VAAR CASE 2014-V002, PARTS 816, 828)**

**Priority:**

Other Significant

**Legal Authority:**

40 U.S.C. 121(c); 48 CFR 1.3

**CFR Citation:**

48 CFR 816; 48 CFR 828; 48 CFR 852

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) is proposing to amend its VA Acquisition Regulation (VAAR) to update the VAAR to current FAR requirements, thresholds, definitions, and titles; it provides new definitions, updated VA titles and offices; it corrects inconsistencies, removes redundancies and duplicate

material already covered by the FAR; it deletes outdated material or information and appropriately renumbers VAAR text and clauses and provisions where required to comport with FAR format, numbering and arrangement; and, it provides VAARs necessary to implement FAR policies and procedures within VA, as well as additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy VA mission needs. This proposed rule revises VAAR parts 816 and 828, and as a result of these changes revises small portions of VAAR part 852 (Solicitation provisions and contract clauses), as appropriate.

**Statement of Need:**

The proposed needed changes include adding a section on consignment agreements which defines and describes the consignment agreement acquisition method used for satisfying the need for immediate and on-going requirements. We propose to remove the section, Letters of Availability, as that procurement method is no longer in use in VA. Also, we propose to revise the section, Insurance Under Fixed-Price Contracts, to clarify the provision prescription for when insurance is required for solicitations when utilizing term or continuing fixed priced contracts for ambulance, automobile and aircraft service.

**Summary of Legal Basis:**

40 U.S.C. 121(c), 48 CFR 1.3

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2900-AP82

<b>VA</b>	<b>FINAL RULE STAGE</b>
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**108. SCHEDULE FOR RATING DISABILITIES: THE HEMATOLOGIC AND LYMPHATIC SYSTEMS**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.117

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to amend the portion of the VA Schedule for Rating Disabilities (Rating Schedule) that addresses the hematologic and lymphatic systems. The intended effect of this change is to incorporate medical advances that have occurred since the last review, update medical terminology, add medical conditions not currently in the Rating Schedule, and refine criteria for further clarity and ease of rater application.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	08/06/15	80 FR 46888

NPRM Comment Period End	10/05/15	
Final Rule	04/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AO19

VA	
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**109. SCHEDULE FOR RATING DISABILITIES: THE ENDOCRINE SYSTEM**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.119

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to revise the portion of the VA Schedule for Rating Disabilities (Rating Schedule) that addresses the endocrine system. The intended effect of this change is to update medical terminology, add medical conditions not currently in the Rating Schedule, revise the criteria to reflect medical advances since the last revision in 1996, and clarify the criteria.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:****Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	07/08/15	80 FR 39011
NPRM Comment Period End	09/08/15	
Final Rule	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AO44

VA	
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## **110. FIDUCIARY ACTIVITIES**

### **Priority:**

Other Significant

### **Legal Authority:**

38 U.S.C. 501; 38 U.S.C. 55; 38 U.S.C. 61; 38 U.S.C. 5502; 38 U.S.C. 5506–5510; 38 U.S.C. 6101; 38 U.S.C. 6106–6108; 38 U.S.C. 512; 38 U.S.C. 5301; 38 U.S.C. 5711; 38 U.S.C. 5504

### **CFR Citation:**

38 CFR 13.10 to 13.600; 38 CFR 3.850 to 3.857; 38 CFR 3.353; 38 CFR 3.401, 3.403; 38 CFR 3.452 ; 38 CFR 3.500, 3.501

### **Legal Deadline:**

None

### **Abstract:**

The Department of Veterans Affairs (VA) proposed to amend its fiduciary program regulations, which govern the oversight of beneficiaries who, because of injury, disease, the infirmities of advanced age, or minority, are unable to manage their VA benefits and the appointment and oversight of fiduciaries for these vulnerable beneficiaries. The proposed amendments would update and reorganize regulations consistent with current law, VA policies and procedures, and VA's reorganization of its fiduciary activities. They would also clarify the rights of beneficiaries in the program and the roles of VA and fiduciaries in ensuring that VA benefits are managed in the best interest of beneficiaries and their dependents.

### **Statement of Need:**

This final rule would amend VA fiduciary regulations, 38 CFR part 13, and removes 3.850 through 3.857 pertaining to fiduciary matters, from part 3. This amendment would implement the statutory provisions of 38 U.S.C. 55 and 61, reflect current VA policies, and prescribe the rights of beneficiaries and the roles of VA and fiduciaries in the fiduciary program.

### **Summary of Legal Basis:**

38 U.S.C. chapters 55 and 61

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	01/03/14	79 FR 430
NPRM Comment Period End	03/04/14	
Final Action	03/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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VA	
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**111. PER DIEM PAID TO STATES FOR CARE OF ELIGIBLE VETERANS IN STATE HOMES**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 101, 501 and 1710; 38 U.S.C. 1741 to 1743; 38 U.S.C. 1745; 38 U.S.C. 7104 and 7105; 42

U.S.C. 1395(cc)

**CFR Citation:**

38 CFR 51

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposed to reorganize, update (based on revisions to statutory authority), and clarify its regulations that govern paying per diem to State homes providing nursing home and adult day health care to eligible veterans. The reorganization will improve consistency and clarity throughout these State home programs. We believe that these proposed regulations will clarify current law and policy, which should improve and simplify the payment of per diem to State homes, and encourage participation in these programs. VA plans to finalize this proposal after considering public comments.

**Statement of Need:**

The proposed reorganization would improve consistency and clarity throughout these State home programs. Currently, we require States to operate these programs exclusively using a medical supervision model. We expect that these liberalizing changes will result in an increase in the number of

States that have adult day health care programs. Moreover, we proposed to eliminate the regulations governing per diem for State home hospitals because there are no longer any State home hospitals.

**Summary of Legal Basis:**

38 U.S.C. 101, 501, 1710, 1741 to 1743, 1745, 7104, 7105, and 42 U.S.C. 1395(cc)

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	06/17/15	80 FR 34793
NPRM; Correction and Clarification	06/24/15	80 FR 36305
NPRM Comment Period End	08/17/15	
Final Action	05/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AO88

VA	
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## **112. SCHEDULE FOR RATING DISABILITIES; DENTAL AND ORAL CONDITIONS**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.150

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to amend the portion of the VA Schedule for Rating Disabilities (VASRD or rating schedule) that addresses dental and oral conditions. The purpose of these changes is to incorporate medical advances that have occurred since the last review, update current medical terminology, and provide clear evaluation criteria for application of this portion of the rating schedule. The proposed rule reflects advances in medical knowledge, recommendations from the Dental and Oral Conditions Work Group ("Work Group"), which is comprised of subject matter experts from both the Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA), and

comments from experts and the public gathered as part of a public forum. The public forum, focusing on revisions to the dental and oral conditions section of the VASRD, was held on January 25-26, 2011.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	07/28/15	80 FR 44913
NPRM Comment Period End	09/28/15	
Final Action	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AP08

VA	
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**113. SCHEDULE FOR RATING DISABILITIES: GYNECOLOGICAL CONDITIONS AND DISORDERS**

**OF THE BREAST**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.116

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to amend the portion of the VA Schedule for Rating Disabilities (VASRD or rating schedule) that addresses gynecological conditions and disorders of the breast. The purpose of these changes is to incorporate medical advances that have occurred since the last review, update current medical terminology, and provide clear evaluation criteria. The proposed rule reflects advances in medical knowledge, recommendations from the Gynecological Conditions and Disorders of the Breast Work Group ("Work Group"), which is comprised of subject matter experts from both the Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA), and comments from experts and the public gathered as part of a public forum. The public forum, focusing on revisions to the gynecological conditions and disorders of the breast section of the VASRD, was held on January 24, 2012.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates.. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	02/27/15	80 FR 10637
NPRM Comment Period End	04/28/15	
Final Action	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AP13

VA	
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**114. SCHEDULE FOR RATING DISABILITIES: THE ORGANS OF SPECIAL SENSE AND SCHEDULE OF RATINGS—EYE**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.77; 38 CFR 4.78; 38 CFR 4.79

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to amend the portion of the VA Schedule for Rating Disabilities (VASRD or rating schedule) that addresses the organs of special sense and schedule of ratings - eye. The purpose of these changes is to incorporate medical advances that have occurred since the last review, update current medical terminology, and provide clear evaluation criteria. The proposed rule reflects advances in medical knowledge, recommendations from the National Academy of Sciences (NAS), and comments from subject matter experts and the public garnered as part of a public forum. The public forum, focusing on revisions to the organs of special sense and schedule of ratings for eye disabilities, was held on January 19-20, 2012.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	06/09/15	80 FR 32513
NPRM Comment Period End	08/10/15	
Final Rule	02/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

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**RIN:** 2900-AP14

VA	
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**115. SCHEDULE FOR RATING DISABILITIES: SKIN CONDITIONS**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 1155

**CFR Citation:**

38 CFR 4.118

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposes to amend the portion of the VA Schedule for Rating Disabilities (VASRD or Rating Schedule) that addresses skin conditions. The purpose of these changes is to incorporate medical advances that have occurred since the last review, update current medical terminology, and provide clear evaluation criteria. The proposed rule reflects advances in medical knowledge, recommendations from the Skin Disorders Work Group (Work Group), which is comprised of subject matter experts from both the Veterans Benefits Administration and the Veterans Health Administration, and comments from experts and the public gathered as part of a public forum. The public forum, focusing on revisions to the skin conditions section of the VASRD, was held in January 2012.

**Statement of Need:**

VA is updating its Schedule for Rating Disabilities (VASRD, or Rating Schedule) to better reflect modern medicine. The VASRD, which is part 4 of title 38, Code of Federal Regulations, governs how claims processors evaluate the severity of disabilities. While VA has routinely updated parts of the VASRD, this proposal is the first time VA is working to update the entire VASRD since 1945. In 2009, a formal project management plan was created to outline how to update the VASRD. A working group of specialized physicians (VA and non-VA), stakeholders, and claims processors reviews each of the 15 body systems and provides analysis to assist VA in developing updates. The public has 60 days to provide VA with comments. VA will introduce the proposed updates to the VASRD incrementally and is committed to an update of the entire VASRD.

**Summary of Legal Basis:**

38 U.S.C. 1155

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	08/12/16	81 FR 53353
NPRM Comment Period End	10/11/16	
Final Action	07/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

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RIN: 2900-AP27

VA	
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## 116. TIERED PHARMACY COPAYMENTS FOR MEDICATIONS

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

38 U.S.C. 501

**CFR Citation:**

38 CFR 17.110

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) adopts as a final rule, with changes, a proposal to amend its regulations concerning copayments charged to certain veterans for medication required on an outpatient basis to treat nonservice-connected conditions. This rulemaking establishes three classes of medications for copayment purposes, identified as Tier 1, Tier 2, and Tier 3. These tiers are distinguished in part based on whether the medications are available from multiple sources or a single source, with some exceptions. Copayment amounts are fixed and would vary depending upon the class of medication. The following medication copayment amounts are applicable on the effective date of this final rule: \$5 for a 30-day or less supply of a Tier 1 medication, \$8 for a 30-day or less supply of a Tier 2 medication, and \$11 for a 30-day or less supply of a Tier 3 medication.

**Statement of Need:**

This rulemaking will result in lower out-of-pocket costs for most veterans, thereby encouraging greater adherence to prescribed medications and reducing the risk of fragmented care that results when veterans use multiple pharmacies to fill their prescriptions.

**Summary of Legal Basis:**

38 U.S.C. 501

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	01/05/16	81 FR 196
NPRM Comment Period End	03/07/16	
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2900-AP35

<b>VA</b>	
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### **117. ADVANCED PRACTICE REGISTERED NURSES**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 7301; 38 U.S.C. 7304; 38 U.S.C. 7402; 38 U.S.C. 7403; 38 U.S.C. 501; ...

**CFR Citation:**

38 CFR 17.415

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) proposed to amend its medical regulations to permit full practice authority of all VA advanced practice registered nurses (APRNs) when they are acting within the scope of their VA employment. This rulemaking would increase veterans' access to VA health care by expanding the pool of qualified health care professionals who are authorized to provide primary health care and other related health care services to the full extent of their education, training, and certification, without the clinical supervision of physicians. This rule would permit VA to use its health care resources more effectively and in a manner that is consistent with the role of APRNs in the non-VA health care sector, while maintaining the patient-centered, safe, high-quality health care that veterans receive from VA.

**Statement of Need:**

The Department of Veterans Affairs (VA) is proposing to amend its medical regulations to remove barriers to the full practice authority of all VA advanced practice registered nurses (APRNs) when they are acting within the scope of their VA employment. This rulemaking would increase veterans' access to VA health care by expanding the pool of qualified health care professionals who are fully authorized to provide comprehensive primary health care and other related health care services to veterans. This rule would permit VA to use its health care resources more effectively and in a manner that is consistent with the non-VA health care sector, while maintaining the patient-centered, safe, high quality health care that veterans receive from VA.

**Summary of Legal Basis:**

38 U.S.C. 7301, 7304, 7402 and 7403

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	05/25/16	81 FR 33155
NPRM Comment Period End	07/25/16	
Final Action	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Federalism:**

Undetermined

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**RIN:** 2900-AP44

VA	
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**118. EXPANDED ACCESS TO NON-VA CARE THROUGH THE VETERANS CHOICE PROGRAM**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

sec 101 Pub. L. 113-146, 128 stat 1754; sec 4005 Pub. L. 114-41, 129 stat. 443; 38 U.S.C. 501

**CFR Citation:**

38 CFR 17.1505; 38 CFR 17.1510; 38 CFR 17.1525; 38 CFR 17.1530

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) revised its medical regulations that implement section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (hereafter referred to as "the Choice Act"), which requires VA to establish a program to furnish hospital care and medical services through eligible

non-VA health care providers to eligible veterans who either cannot be seen within the wait-time goals of the Veterans Health Administration (VHA) or who qualify based on their place of residence (hereafter referred to as the "Veterans Choice Program" or "the Program"). These regulatory revisions are required by the most recent amendments to the Choice Act made by the Construction Authorization and Choice Improvement Act of 2014, and by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.

**Statement of Need:**

The Department of Veterans Affairs (VA) amends its medical regulations concerning its authority for eligible veterans to receive care from non-VA entities and providers as required by certain new laws. The Veterans Access, Choice, and Accountability Act of 2014 (the Choice Act) directs VA to establish a program to furnish hospital care and medical services through non-VA care health care providers. The Construction Authorization and Choice Improvement Act defined additional criteria to determine that a veteran's travel to a VA medical facility is an unusual or excessive burden, and the Surface Transportation and Veterans Health Care Choice Improvement Act added further requirements.

**Summary of Legal Basis:**

Pub. L. 113-146, section 101 (38 U.S.C. 1701 note); Pub. L. 114-19, section 3(a)(2); Pub. L. 114-41, section 4005

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	12/01/15	80 FR 74991

Interim Final Rule Effective	12/01/15	
Interim Final Rule Comment Period End	03/30/16	
Interim Final Rule; Correcting Amendment	04/25/16	81 FR 24026
Final Rule	09/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 2900-AP60

VA	
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**119. VETERANS EMPLOYMENT PAY FOR SUCCESS GRANT PROGRAM**

**Priority:**

Other Significant

**Legal Authority:**

38 U.S.C. 501; 38 U.S.C. 3119; 38 U.S.C. 501(a), ch 31; 38 U.S.C. 501(a), ch 18

**CFR Citation:**

38 CFR 21.440 to 21.449

**Legal Deadline:**

None

**Abstract:**

The Department of Veterans Affairs (VA) established a grant program (Veterans Employment Pay for Success (VEPFS)) under the authority of 38 U.S.C. 3119 to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This interim final rule established regulations for awarding a VEPFS grant, including the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program.

**Statement of Need:**

There is a need to find new, innovative methods for rehabilitating Veterans with compensable service-connected disabilities who qualify for benefits under VA's Vocational Rehabilitation & Employment (VR&E) program so that they become employable and are ultimately able to obtain and maintain suitable employment. Through Pay For Success (PFS) grant programs, which may serve various Veteran populations including those Veterans with noncompensable service-connected disabilities who do not qualify for VR&E benefits, we hope to obtain information to establish new, innovative methods for rehabilitating Veterans who qualify for VR&E benefits. PFS offers an economical mechanism, which can

save taxpayers' money, for exploring the resources and techniques that are available for rehabilitating Veterans with service-connected disabilities with regard to employment.

**Summary of Legal Basis:**

38 U.S.C. 501, 3119.

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	08/10/16	81 FR 52770
Interim Final Rule Effective	08/10/16	
Interim Final Rule Comment Period End	10/11/16	
Final Action	03/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN: 2900-AP72**

**BILLING CODE 8320-01-P**

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

**FY 2017 Regulatory Plan**

**Statement of Regulatory and Deregulatory Priorities**

The Architectural and Transportation Barriers Compliance Board (Access Board) is an independent federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792). The Access Board is responsible for developing accessibility guidelines and standards under various laws to ensure that individuals with disabilities have access to and use of buildings and facilities, transportation vehicles, information and communication technology, and medical diagnostic equipment. Other federal agencies adopt the accessibility guidelines and standards issued by the Access Board as mandatory requirements for entities under their jurisdiction.

This plan highlights five rulemaking priorities for the Access Board in FY 2017: (A) Information and Communication Technology Accessibility Standards and Guidelines; (B) Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles; (C) Medical Diagnostic Equipment Accessibility Standards; (D) Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way; and (E) Passenger Vessel Accessibility Guidelines. The guidelines and standards would enable individuals with disabilities to achieve greater participation in our society, independent living, and economic self-sufficiency, and would promote our national values of equity, human dignity, and fairness, the benefits of which are difficult to quantify.

The rulemakings are summarized below.

**A. Information and Communication Technology Accessibility Standards and Guidelines (RIN: 3014-AA37).**

This rulemaking would update in a single document the accessibility standards for electronic and information technology covered by section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) (Section 508), and the accessibility guidelines for telecommunications equipment and customer premises equipment covered by section 255 of the Communications Act of 1934 (47 U.S.C. 255) (Section 255). Section 508 requires the Federal Acquisition Regulatory Council (FAR Council) and each appropriate federal department or agency to revise their procurement policies and directives no later than 6 months after the Access Board's publication of standards. The FAR Council has incorporated the accessibility standards for electronic and information technology in the Federal Acquisition Regulation (48 CFR Chapter 1). Under section 255, the Federal Communications Commission (FCC) is responsible for issuing implementing regulations and enforcing section 255. The FCC has promulgated enforceable standards (47 CFR parts 6 and 7) implementing section 255 that are consistent with the Access Board's accessibility guidelines for telecommunications equipment and customer premises equipment.

The Access Board's 2010 ANPRM included a proposal to amend section 220 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), but, based on public comments, the ADAAG proposal is no longer included in this rulemaking and will be pursued separately at a later date.

A.1. Statement of Need: The Access Board issued the Electronic and Information Technology Accessibility Standards in 2000 (65 FR 80500, December 21, 2000), and the Telecommunications Act Accessibility Guidelines for telecommunications equipment and customer premises equipment in 1998 (63 FR 5608, February 3, 1998). Since the standards and the guidelines were issued, technology has evolved and changed. Telecommunications products and electronic and information technology products have converged. For example, smartphones can perform many of the same functions as computers. Real time text technologies and video

relay services are replacing TTY's (text telephones). The Access Board is updating the standards and guidelines together to address changes in technology and to make them consistent.

A.2. Summary of the Legal Basis: Section 508 and Section 255 require the Access Board to develop accessibility standards for electronic and information technology and accessibility guidelines for telecommunications equipment and customer premises equipment, and to periodically review and update the standards and guidelines to reflect technological advances and changes.

Section 508 requires that when developing, procuring, maintaining, or using electronic and information technology, each federal department or agency must ensure, unless an undue burden would be imposed on the department or agency, that electronic and information technology (regardless of the type of medium) allows individuals with disabilities to have access to and use of information and data that is comparable to the access and use of the information and data by others without disabilities. Section 255 requires telecommunications manufacturers to ensure that telecommunications equipment and customer premises equipment are designed, developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so.

A.3. Alternatives: The Access Board established a Telecommunications and Electronic and Information Technology Advisory Committee to recommend changes to the existing standards and guidelines. The advisory committee was comprised of a broad cross-section of stakeholders, including representatives from industry, disability groups, and government agencies from the U.S. the European Commission, Canada, Australia, and Japan. Recognizing the importance of standardization across markets worldwide, the advisory committee coordinated its work with standard-setting bodies in the U.S. and abroad, such as the World Wide Web Consortium (W3C). The Access Board expects that the Information and Communication Technology Standards and

Guidelines will have international influences. The Access Board first published Advance Notices of Proposed Rulemaking (ANPRMs) in the **Federal Register** in 2010 and 2011 requesting public comments on draft updates to the standards and guidelines (75 FR 13457, March 22, 2010; and 76 FR 76640, December 8, 2011). The NPRM was published in the **Federal Register** on February 27, 2015 (80 FR 10880). The comment period closed on May 28, 2015. The proposed rule, comments on the proposed rule, records and transcripts from three public hearings, and the preliminary regulatory impact analysis are available in the rulemaking docket at <http://www.regulations.gov/#!docketDetail;D=ATBCB-2015-0002>. The final rule will address and incorporate comments submitted in response to the NPRM.

**A.4. Anticipated Costs and Benefits:** The Access Board worked with a contractor to assess costs and benefits and prepare a preliminary regulatory impact assessment to accompany the NPRM. Baseline cost estimates of complying with Section 508 and Section 255 are made, and incremental costs due to the revised or new requirements are estimated for federal agencies and telecommunications equipment manufacturers. Anticipated benefits are also numerous, including hard-to quantify benefits such as increased ability for people with disabilities to obtain information and conduct transactions electronically. The Access Board will prepare a final regulatory impact assessment to accompany the final rule, which will incorporate information received from commenters to the NPRM.

**B. Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles (RIN: 3014-AA38).**

This rulemaking would update the accessibility guidelines for buses, over-the-road buses, and vans covered by the Americans with Disabilities Act (ADA). The accessibility guidelines for other

transportation vehicles covered by the ADA, including vehicles operated in fixed guideway systems (e.g., rapid rail, light rail, commuter rail, high speed rail and intercity rail) would be updated in a future rulemaking. The guidelines ensure that transportation vehicles covered by the ADA are readily accessible to and usable by individuals with disabilities. The U.S. Department of Transportation (DOT) has issued enforceable standards (49 CFR part 37) that apply to the acquisition of new, used, and remanufactured transportation vehicles, and the remanufacture of existing transportation vehicles covered by the ADA. DOT is expected to update its standards in a separate rulemaking to be consistent with the updated guidelines.

B.1. Statement of Need: The Access Board issued the ADA Accessibility Guidelines for Transportation Vehicles in 1991, and amended the guidelines in 1998 to include additional requirements for over-the-road buses. Level boarding bus systems were introduced in the U.S. after the 1991 guidelines were issued. We are revising the 1991 guidelines to include new requirements for level boarding bus systems, automated stop and route announcements, and other changes.

B.2. Summary of the Legal Basis: Title II of the ADA applies to state and local governments and title III of the ADA applies to places of public accommodation operated by private entities. The ADA covers designated public transportation services provided by state and local governments and specified public transportation services provided by private entities that are primarily engaged in the business of transporting people and whose operations affect commerce. (See 42 U.S.C. 12141 to 12147 and 12184.) Bus rapid transit systems, including level boarding bus systems, that provide public transportation services, are covered by the ADA.

The Access Board is required by the ADA and the Rehabilitation Act to establish and maintain guidelines for the accessibility standards adopted by DOT for transportation vehicles acquired or manufactured by entities covered by the ADA. Compliance with the new guidelines is not

required until DOT revises its accessibility standards for transportation vehicles acquired or remanufactured by entities covered by the ADA to be consistent with the new guidelines.

B.3. Alternatives: The Access Board issued a Notice of Proposed Rulemaking to revise the 1991 guidelines for buses, over-the-road buses, and vans in 2010 (75 FR 43748, July 26, 2010). The proposed rule, comments on the proposed rule, transcripts from public hearings and an information meeting, and other related documents are available in the rulemaking docket at <http://www.regulations.gov/#!docketDetail;D=ATBCB-2010-0004>. The final rule will address and incorporate comments submitted in response to the NPRM.

B.4. Anticipated Costs and Benefits: In conjunction with the NPRM, the Access Board published a report entitled “Cost Estimates for Automated Stop and Route Announcements” (July 2010), which is available on the agency website ([www.access-board.gov](http://www.access-board.gov)) and the rulemaking docket. A final regulatory assessment will be prepared to accompany the final rule. The final regulatory assessment will evaluate estimated incremental costs for new or revised requirements for buses, over-the-road buses, and vans in the final rule, as well as provide a description of qualitative benefits. It is anticipated that this rule will improve access to wheeled transportation vehicles for persons who have mobility disabilities, persons who have difficulty hearing or are deaf, and persons who have difficulty seeing or are blind to make better use of transportation services.

**C. Medical Diagnostic Equipment Accessibility Standards (RIN: 3014-AA40).**

The Access Board plans to issue a final rule establishing accessibility standards for medical diagnostic equipment used in or in conjunction with medical settings

such as physicians' offices, clinics, emergency rooms, and hospitals. The standards will contain minimum technical criteria to ensure that medical diagnostic equipment, including examination tables, examination chairs, weight scales, mammography equipment, and other imaging equipment used by health care providers for diagnostic purposes are accessible to and usable by individuals with disabilities. The Access Board published a Notice of Proposed Rulemaking (NPRM) in the Federal Register in 2012 (77 FR 6916, February 9, 2012).

C.1. Statement of Need: A national survey of a diverse sample of individuals with a wide range of disabilities, including mobility and sensory disabilities, showed that the respondents had difficulty getting on and off examination tables and chairs, radiology equipment and weight scales, and experienced problems with physical comfort, safety and communication. Focus group studies of individuals with disabilities also provided information on barriers that affect the accessibility and usability of various types of medical diagnostic equipment. The national survey and focus group studies are discussed in the NPRM.

C.2. Summary of the Legal Basis: Section 4203 of the Patient Protection and Affordable Care Act (Pub. L. 111-148, 124 Stat. 570) amended title V of the Rehabilitation Act, which establishes rights and protections for individuals with disabilities, by adding section 510 to the Rehabilitation Act (29 U.S.C. 794f) (Section 510). Section 510 requires the Access Board, in consultation with the Commissioner of the Food and Drug Administration (FDA), to develop standards that contain minimum technical criteria to ensure that medical diagnostic equipment used in or in conjunction with medical settings such as physicians' offices, clinics, emergency rooms, and hospitals are accessible to and usable by individuals with disabilities.

Section 510 does not address who is required to comply with the standards. However, the Americans with Disabilities Act requires health care providers to provide individuals with disabilities full and equal access to their health care services and facilities. The U.S. Department of Justice (DOJ) is responsible for issuing regulations to implement the Americans with Disabilities Act and enforcing the law. The NPRM discusses DOJ activities related to health care providers and medical diagnostic equipment.

C.3. Alternatives: The Access Board worked with the FDA and DOJ in developing the standards. The Access Board considered the Association for the Advancement of Medical Instrumentation's ANSI/AAMI HE 75:2009, "Human factors engineering-Design of medical devices," which includes recommended practices to provide accessibility for individuals with disabilities. The Access Board also established a Medical Diagnostic Equipment Accessibility Standards Advisory Committee that included representatives from the disability community and manufacturers of medical diagnostic equipment to make recommendations on issues raised in public comments and responses to questions in the NPRM. The Advisory Committee report, completed in December 2013, is available at <http://www.access-board.gov/guidelines-and-standards/health-care/about-this-rulemaking/advisory-committee-final-report>. The final rule will be based on recommendations of the advisory committee, and will also address and incorporate comments submitted in response to the NPRM.

C.4. Anticipated Costs and Benefits: In conjunction with the NPRM, the Access Board published a preliminary regulatory assessment of the proposed MDE standards. The Access Board is working on a final regulatory assessment, which will evaluate the incremental costs and benefits of the final rule from quantitative and qualitative perspectives as information permits. It is anticipated that the final MDE standards will address many of the barriers that have been identified as affecting the accessibility and usability of diagnostic equipment by individuals

with disabilities. The standards aim to facilitate independent transfers by individuals with disabilities onto and off of diagnostic equipment, and enable them to maintain their independence, confidence, and dignity, lessening the need for health care personnel to assist individuals with disabilities when transferring on and off of diagnostic equipment. The standards also are expected to improve the quality of health care for individuals with disabilities and ensure that they receive examinations, diagnostic procedures, and other health care services equivalent to those received by individuals without disabilities.

**D. Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (RIN: 3014-AA26).**

The rulemaking would establish accessibility guidelines to ensure that sidewalks and pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. A Supplemental Notice of Proposed Rulemaking consolidated this rulemaking with RIN 3014-AA41; accessibility guidelines for shared use paths (which are multi-use paths designed primarily for use by bicyclists and pedestrians – including persons with disabilities – for transportation and recreation purposes). The U.S. Department of Justice, U.S. Department of Transportation, and other federal agencies are expected to adopt the accessibility guidelines for pedestrian facilities in the public right-of way and for shared use paths, as enforceable standards in separate rulemakings for the construction and alteration of facilities covered by the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Architectural Barriers Act.

D.1. Statement of Need: While the Access Board has issued accessibility guidelines for the design, construction, and alteration of buildings and facilities covered by the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA) (36 CFR part 1191), these guidelines were developed primarily for buildings and facilities on sites. Some of the provisions in these guidelines can be readily applied to pedestrian facilities in the public right-of-way such as curb ramps. However, other provisions need to be adapted or new provisions developed for pedestrian facilities that are built in the public right-of-way as well as shared use paths.

D.2. Summary of the Legal Basis: Section 502 (b) (3) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 792 (b) (3), requires the Access Board to establish and maintain minimum guidelines for the standards issued by other agencies pursuant to the ADA and ABA. In addition, section 504 of the ADA, 42 U.S.C. 12204, required the Access Board to issue accessibility guidelines for buildings and facilities covered by that law.

D.3. Alternatives: The Access Board established a Public Rights-of-Way Access Advisory Committee to make recommendations for the guidelines. The advisory committee was comprised of a broad cross-section of stakeholders, including representatives of state and local government agencies responsible for constructing facilities in the public right-of-way, transportation engineers, disability groups, and bicycling and pedestrian organizations. The Access Board

released two drafts of the guidelines for public comment, an NPRM (76 FR 44664, July 11, 2011) based on the advisory committee report and public comments on the draft guidelines, and a supplemental notice of proposed rulemaking (SNPRM) regarding shared use paths (78 FR 10110, February 13, 2013). The final rule will address and incorporate comments submitted in response to the NPRM and SNPRM.

D.4. Anticipated Costs and Benefits: In conjunction with the NPRM, the Access Board published a preliminary regulatory assessment of the proposed accessibility guidelines for pedestrian facilities in the public right-of-way, which is available in the rulemaking docket at <http://www.regulations.gov/#!docketDetail;D=ATBCB-2011-0004>. The Access Board identified four provisions in the NPRM that were expected to have more than minimal monetary impacts on state and local governments. Three of these four requirements are related to: (1) detectable warning surfaces on newly constructed and altered curb ramps and blended transitions at pedestrian street crossings; (2) accessible pedestrian signals and pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections; and (3) pedestrian activated signals at roundabouts with multi-lane pedestrian crossings. In addition, the fourth requirement for provision of a 2 percent maximum cross slope on pedestrian access routes within pedestrian street crossings with yield or stop control was estimated to have more than minimal monetary impacts on state and local governments when constructing roadways with pedestrian crossings in

hilly areas. The NPRM included questions requesting information to assess the costs and benefits of these provisions, as well as other provisions that may have cost impacts. The Access Board will prepare a final regulatory impact assessment to accompany the final rule based on information provided in response to questions in the NPRM and other sources.

**E. Americans with Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels (RIN: 3014-AA11).**

The rulemaking would establish accessibility guidelines to ensure that newly constructed and altered passenger vessels covered by the Americans with Disabilities Act (ADA) are accessible to and usable by individuals with disabilities. The U.S. Department of Transportation and U.S. Department of Justice are expected to adopt the guidelines as enforceable standards in separate rulemakings for the construction and alteration of passenger vessels covered by the ADA.

E.1. Statement of Need: Section 504 of the ADA requires the Access Board to issue accessibility guidelines for the construction and alteration of passenger vessels covered by the law to ensure that the vessels are readily accessible to and usable by individuals with disabilities (42 U.S.C. 12204).

E.2. Summary of the Legal Basis: Title II of the ADA applies to state and local governments and title III of the ADA applies to places of public accommodation operated by private entities. The ADA covers designated public transportation services provided by state and local governments and specified public transportation services provided by private entities that are primarily engaged in the business of transporting people and whose operations affect commerce. (See 42 U.S.C. 12141 to 12147 and 12184.)

Titles II and III of the ADA require the DOT and DOJ to issue accessibility standards for the construction and alteration of passenger vessels covered by the law that are consistent with the guidelines issued by the Access Board. (See 42 U.S.C. 12134(c), 12149(b), 12186(c).) The DOT has reserved a subpart in its ADA regulations for accessibility standards for passenger vessels in anticipation of the Access Board issuing these guidelines. (See 49 CFR part 39, subpart E.) Once DOT and DOJ issue accessibility standards for the construction and alteration of passenger vessels covered by the ADA, vessel owners and operators are then required to comply with the standards.

E.3. Alternatives: In developing the proposed accessibility guidelines, the Access Board has received and considered extensive input from passenger vessel owners and operators, individuals with disabilities, and other interested parties for more than a decade. The Access Board convened an advisory committee comprised of passenger vessel industry trade groups, passenger vessel owners and operators, disability advocacy groups, and state and local government agencies to advise how to develop the accessibility guidelines. The committee submitted its report to the Access Board in 2000. In addition, over the years, the Access Board issued an ANPRM and three versions of draft accessibility guidelines and conducted in-depth case studies on various passenger vessels. The Access Board solicited and analyzed public comments on these documents in developing the proposed guidelines and regulatory impact analysis. All the published documents together with public comments are available at: <http://www.access-board.gov>.

E.4. Anticipated Costs and Benefits: The proposed guidelines would address the discriminatory effects of architectural, transportation, and communication barriers encountered by individuals with disabilities on passenger vessels. The estimated compliance costs for certain types of vessels include: (1) the incremental impact of constructing a vessel in compliance with the guidelines; and (2) any additional costs attributable to the operation and maintenance of accessible features. For certain large cruise ships, the compliance costs would include loss of

guest rooms and gross revenues attributed to a proposed requirement for a minimum number of guest rooms that provide mobility features. The proposed guidelines would significantly benefit individuals with disabilities by affording them equal opportunity to travel on passenger vessels for employment, transportation, public accommodation, and leisure. Other benefits, which are difficult to quantify, include equity, human dignity, and fairness values.

## **BILLING CODE 8150-01-P**

## **ENVIRONMENTAL PROTECTION AGENCY (EPA)**

### **Statement of Priorities**

#### **OVERVIEW**

For more than 40 years, the U.S. Environmental Protection Agency (EPA) has worked to protect people's health and the environment. By taking advantage of the best thinking, the newest technologies and the most cost-effective, sustainable solutions, EPA and its Federal, tribal, State, local, and community partners have made important progress to address pollution where people live, work, play, and learn. From cleaning up contaminated waste sites to reducing greenhouse gases, mercury and other air emissions, to investing in water and wastewater treatment, the American people have seen and felt tangible benefits to their health and surroundings. Efforts to reduce air pollution alone have produced hundreds of billions of dollars in benefits in the United States.

To keep up this momentum in the coming year, EPA will use regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance and tools, research and educational initiatives to address the priorities set forth in EPA's Strategic Plan:

- Addressing Climate Change and Improving Air Quality

- Protecting America's Waters
- Cleaning up Communities and Advancing Sustainable Development
- Ensuring the Safety of Chemicals and Preventing Pollution
- Protecting Human Health and the Environment by Enforcing Laws and Assuring Compliance

All of this work will be undertaken with a strong commitment to science, law and transparency.

## **HIGHLIGHTS OF EPA'S REGULATORY PLAN**

EPA's more than 40 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. This Regulatory Plan contains information on some of our most important upcoming regulatory actions. As always, our Semiannual Regulatory Agenda contains information on a broader spectrum of EPA's upcoming regulatory actions.

### *Guiding Priorities*

The EPA's success depends on supporting innovation and creativity in both what we do and how we do it. To guide the agency's efforts, the Agency has established several guiding priorities. These priorities are enumerated in the list that follows, along with recent progress and future objectives for each.

### **Goal 1: Addressing Climate Change and Improving Air Quality**

The Agency will continue to deploy existing regulatory tools where appropriate and warranted. Using the Clean Air Act, EPA will continue to develop standards, as appropriate, for both mobile and stationary sources, to reduce emissions of greenhouse gases and other pollutants, including sulfur dioxide, particulate matter, nitrogen oxides, and toxics.

**Greenhouse Gas Emissions from Power Plants.** As part of the President's Climate Action Plan, in July 2015, the EPA promulgated the Clean Power Plan final rules setting guidelines for states to follow in

reducing carbon emissions from existing power plants, as well as finalizing emission standards for new plants. On February 9, 2016, the Supreme Court stayed implementation of these standards and guidelines pending judicial review. The Court's decision was not on the merits of the rules.

For the states that choose to continue to work to cut carbon pollution from power plants and seek the Agency's guidance and assistance, EPA will continue to provide tools and support, including issuing Model Trading Rules as a tool for states to use in developing plans that achieve carbon reductions. These Model Trading Rules were proposed in July 2015, and will be finalized in late 2016. The Clean Energy Incentive Program (CEIP), which was proposed in 2016, will be finalized in 2017.

**Renewable Fuels.** 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 (BBD), advanced biofuel, and total renewable fuel. In May of 2016, EPA issued a proposal to set the applicable volumes for all renewable fuel categories for 2017 and the BBD standard for 2018. EPA will finalize that rule in late 2016. EPA also intends to propose RFS volume requirements for 2018 and the 2019 BBD standard in May of 2017. Also in 2016, EPA proposed to make numerous changes to promote the production of renewable fuels and clarify certain requirements under the RFS program. When finalized in early 2017, that action will provide substantial additional flexibility for ethanol flex fuel producers that accommodate current market realities while continuing to ensure that flex fuel quality is consistent with controlling pollution when used in flexible fuel vehicles.

**Implementing Air Quality Standards.** The National Ambient Air Quality Standards (NAAQS) for ozone were strengthened in 2015, and EPA is developing an implementation rule to help states implement those standards. This rule, which will also cover ozone classifications, will be proposed late in 2016 and finalized in 2017.

**Emissions from Aircraft.** In 2017, EPA plans to issue a proposed finding, under Clean Air Act section 231, to determine whether lead emissions from aircraft operating on leaded fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

**Radiation Protection.** In the fall of 2016, EPA will issue final rules to protect public health, safety and the environment from radiological hazards associated with uranium processing. The first of these rules, under Clean Air Act section 112, establishes standards or management practices to limit air emissions of radon from uranium byproduct material or tailings. The second rule, under the Uranium Mill Tailings Radiation Control Act, establishes groundwater restoration and monitoring requirements for uranium in-situ recovery, which is now the dominant form of uranium recovery in the United States.

## **Goal 2: Protecting America's Waters**

Despite considerable progress, America's waters remain at risk. Water quality protection programs face complex challenges: an aging national water infrastructure, widespread nutrient pollution, stormwater runoff and threats to drinking water safety. These challenges require both traditional and innovative strategies.

**Lead and Copper NPDWR Revisions (LCR).** The Lead and Copper Rule, promulgated in 1991, has resulted in substantial reductions in lead in drinking water. This critically important rule, however, is now 25 years old and is in need of substantive revisions to strengthen the rule's protections for public health. EPA has conducted extensive engagement with state, tribal and local government representatives, stakeholder groups and the public to obtain input to inform revisions to the LCR. Most recently, EPA received comprehensive recommendations from the National Drinking Water Advisory Council (NDWAC) and other concerned stakeholders on potential steps to strengthen the LCR.

**Credit Assistance for Water Infrastructure Projects.** EPA plans to issue an interim final rule that establishes the guidelines for a new credit assistance program for water infrastructure projects and the process by which EPA will administer such credit assistance. The rule will implement a new program authorized under the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA). WIFIA authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects. The interim final rule primarily clarifies statutory language and establishes approaches to specific procedural issues left to EPA's discretion. Once projects are selected by the EPA Administrator, individual credit agreements will be developed through negotiations between the project sponsors and EPA.

**Federal Baseline Water Quality Standards for Indian Reservations.** EPA published an advanced notice of proposed rulemaking (ANPRM) requesting public comment on the establishment of baseline

water quality standards under the Clean Water Act for waters on Indian reservations that currently do not have EPA-approved WQS in place to protect water quality. The ANPRM provides information on EPA's current thinking and is a way to get specific and clear guidance from the full range of tribal governments and stakeholders. EPA will consider comments received on this ANPRM prior to determining whether to develop a proposed rule on this topic. This ANPRM effort is one of several initiatives the EPA is undertaking to improve how we work with tribes to ensure that they have access to clean and safe waters.

### **Goal 3: Cleaning Up Communities and Advancing Sustainable Development**

EPA's regulatory program recognizes the progress in environmental protection and incorporates new technologies and approaches that allow us to provide for an environmentally sustainable future more efficiently and effectively.

**CERCLA Section 108(b) - Hardrock Mining.** Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain authorities concerning financial responsibility requirements. The Agency has identified classes of facilities within the hardrock mining industry as those for which financial responsibility requirements will be first developed. (EPA's 108(b) rules will address the degree and duration of risks associated with aspects of hazardous substance management at hardrock mining and mineral processing facilities.) EPA intends for these regulations to help ensure that businesses make financial arrangements to address risks from hazardous substances at their sites, and to encourage businesses to improve their management of hazardous substances.

**Modernization of the Accidental Release Prevention Regulations under Clean Air Act.** On August 1, 2013, President Obama signed Executive Order 13650, entitled Improving Chemical Facility Safety and Security (EO 13650 or the EO). This Executive Order 13650 directs the federal government to carry out a number of tasks whose overall aim is to prevent chemical accidents. Among the tasks discussed, the Executive order directs agencies to consider possible changes to existing chemical safety regulations, such as the EPA's Risk Management Plan (RMP) regulation (40 CFR part 68).

Both EPA and the Occupational Safety & Health Administration (OSHA) had previously 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 (PSM) standard (29 CFR part 1910.119) in 1992. EPA modeled the RMP regulation after OSHA's PSM standard and published the RMP rule in two stages: a list of regulated substances and threshold quantities in 1994; and the RMP final regulation, containing risk management requirements, in 1996. Both the OSHA PSM standard and the EPA RMP regulation aim to prevent, or minimize the consequences of, accidental chemical releases to workers and the community.

The EPA is considering modifications to the current 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.

#### **Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution**

One of EPA's highest priorities is to make significant progress in assuring the safety of chemicals. Using sound science as a compass, EPA protects individuals, families, and the environment from potential risks of pesticides and other chemicals. In its implementation of these programs, EPA uses 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) and the Pollution Prevention Act (PPA), as well as collaborative and voluntary activities. In FY 2017, the Agency will continue to satisfy its overall directives under these authorities and highlights the following actions in this Regulatory Plan:

**Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act Implementation.** Enacted on June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act amended TSCA with immediate effect. The Agency is working aggressively to carry out the requirements of the new law. Among other things, EPA is now required to evaluate existing chemicals purely on the basis of the health risks they pose – including risks to vulnerable groups like children and the elderly, and to workers who use chemicals daily as part of their jobs – and then take steps to eliminate any unreasonable risks that are

found. Based on efforts initiated prior to the enactment of the new law, EPA plans to propose risk management actions under TSCA section 6 related to several specific uses of trichloroethylene (TCE), methylene chloride, and n-methylpyrrolidone (NMP) to protect the human health and the environment from the risks presented by those chemicals.

In addition, EPA is now required to systematically prioritize and evaluate chemicals on a specific and enforceable schedule. Within a few years, EPA's chemicals program will have to assess at least 20 chemicals at a time, beginning another chemical review as soon as one is completed. The new law provides a consistent source of funding for EPA to carry out its new responsibilities. EPA will now be able to collect up to \$25 million a year in user fees from chemical manufacturers and processors, supplemented by Congressional budgeting, to pay for these improvements. The Agency initiated stakeholder discussions in August 2016 and is developing regulations that will identify how EPA will carry out the various provisions of the new law.

**Lead-Based Paint Program.** EPA is developing a final rule that would implement several amendments to the EPA lead-based paint program that would improve efficiencies and save resources for those involved. EPA proposed changes in 2014 to the EPA lead-based paint program that would, among other things, amend the renovation, repair and painting rule by removing the requirement for hands-on refresher training for renovators so that they can take the refresher course online and without the need to travel to a training facility for the hands-on portion. EPA also proposed to amend the lead-based paint abatement program by removing the requirement for firms, training providers and individuals to apply for and be certified or accredited in each EPA-administered jurisdiction where they work (i.e., state, tribe or territory where EPA runs the abatement program). In addition, as directed by TSCA section 402(c)(3), EPA is developing a proposed rule to address renovation or remodeling activities that create lead-based paint hazards in pre-1978 public buildings and commercial buildings. EPA previously issued a final rule to address lead-based paint hazards created by these activities in target housing and child-occupied facilities.

**Reassessment of PCB Use Authorizations.** When enacted in 1978, TSCA banned the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs), except when uses would pose no unreasonable risk of injury to health or the environment. EPA is reassessing certain ongoing, authorized uses of PCBs that were established by regulation in 1979, including the use, distribution in commerce, marking and storage for reuse of liquid PCBs in electric equipment, to determine whether those authorized uses still meet TSCA's "no unreasonable risk" standard. EPA plans to propose the revocation or revision of any PCBs use authorizations included in this reassessment that no longer meet the TSCA standard, with an initial emphasis on PCB-containing fluorescent ballasts in schools and daycares.

**Strengthening Pesticide Applicator Safety.** As part of EPA's effort to enhance the pesticide worker safety program, the Agency is also developing final revisions to the existing regulation concerning the certification of applicators of restricted-use pesticides. This rulemaking is intended to ensure that the federal certification standards adequately protect applicators, the public and the environment from potential risks associated with use of restricted use pesticides. The rule changes are intended to improve the competency of certified applicators of restricted use pesticides, increase protection for noncertified applicators of restricted use pesticides operating under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, and establish a minimum age requirement for such noncertified applicators. Also, in keeping with EPA's commitment to work more closely with tribal governments to strengthen environmental protection in Indian Country, certain rule changes are intended to provide more practical options for establishing certification programs in Indian Country.

**Evaluating Pesticide Risks to Bees and Other Pollinators.** As part of the efforts outlined in the "National Strategy to Promote the Health of Honey Bees and Other Pollinators," EPA is working to update its pesticide data requirements to provide the Agency with data needed to determine the potential exposure and effects of pesticides on bees and other important non-target insect pollinators. Pollinator insects are ecologically and economically important. Recognizing heightened concerns for honey bees

due to pollinator declines and that the science has now evolved to where additional toxicity and exposure protocols are available, EPA issued interim study guidance for bees in 2011. EPA developed finalized guidance in 2014 on the conduct of exposure and effect studies used to characterize the potential risk of pesticides to bees. The development and implementation of updates data requirements is intended to provide the information the Agency needs to evaluate whether a proposed or existing use of a pesticide may have an unreasonable adverse effect on these important insects and support pesticide registration decisions under FIFRA.

### **Goal 5: Protecting Human Health and the Environment by Enforcing Laws and Assuring Compliance**

Today's pollution challenges require a modern approach to compliance, taking advantage of new tools and approaches while strengthening vigorous enforcement of environmental laws. Next Generation Compliance is EPA's integrated strategy to do that, designed to bring together the best thinking from inside and outside EPA.

EPA's Next Generation Compliance consists of five interconnected components, each designed to improve the effectiveness of our compliance program:

- Design regulations and permits that are easier to implement, with a goal of improved compliance and environmental outcomes.
- Use and promote advanced emissions/pollutant detection technology so that regulated entities, the government, and the public can more easily see pollutant discharges, environmental conditions, and noncompliance.
- Shift toward electronic reporting to help make environmental reporting more accurate, complete, and efficient while helping EPA and co-regulators better manage information, improve effectiveness and transparency.
- Expand transparency by making information more accessible to the public.

- Develop and use innovative enforcement approaches (e.g., data analytics and targeting) to achieve more widespread compliance.

***Retrospective Review of Existing Regulations***

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), the following EPA actions have been identified as associated with retrospective review and analysis in the Agency's final plan for retrospective review of regulations, or one of its subsequent updates. Some of the entries on this list may not appear in *The Regulatory Plan* but appear in EPA's semiannual regulatory agenda. These rulemakings can also be found on Regulations.gov. EPA's final agency plan can be found at: <http://www.epa.gov/regdarrt/retrospective/>.

<b>Rulemaking Title</b>	<b>Regulatory Identifier Number (RIN)</b>
New Source Performance Standards for Grain Elevators – Amendments	2060-AP06
Treatment of Data Influenced by Exceptional Events – Rule Revisions	2060-AS02
Public Notice Provisions in CAA Permitting Programs	2060-AS59
Regional Haze Regulations – Revision to SIP Submission Date and Requirements for Progress Reports	2060-AS55
Title V Petitions Process Improvement Rulemaking	2060-AS61
National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040-AF15
National Pollutant Discharge Elimination System (NPDES) Application and Program Updates Rule	2040-AF25
National Primary Drinking Water Regulations: Group Regulation of Carcinogenic Volatile Organic Compound (VOCs)	2040-AF29

Management Standards for Hazardous Waste Pharmaceuticals	2050-AG39
Hazardous Waste Export-Import Revisions Rule	2050-AG77
Improvements to the Hazardous Waste Generator Regulatory Program (Parts 261-265)	2050-AG70
Pesticides; Certification of Pesticide Applicators	2070-AJ20

**2016: Aggregation of Benefits and Costs from Monetized Rules Reported in the Regulatory Plan**

<i>Discount Rate = 3%</i>							
		Benefits (millions \$/year)		Costs (millions \$/year)		Net Benefits (millions \$/year)	
<i>Rule</i>	Base Year	Low	High	Low	High	Low	High
Modernization of the Accidental Release Prevention Regulations under Clean Air Act	2014	\$274.7	\$274.7	\$158.3	\$158.3	\$116.4	\$116.4
Health and Environmental Standards for Uranium and Thorium Mill Tailings (40 CFR 192): Revisions <sup>1</sup>	2014	Not Monetized	Not monetized	\$6.6	\$13.4	Not Computed	Not Computed
Technical and Regulatory Support to Develop the NESHAP Subpart W Standard for Radon Emissions From Operating Uranium Mills (40 CFR 61.250) <sup>2</sup>	2014	Not Monetized	Not Monetized	\$15.8	\$17.9	Not Computed	Not Computed
Pesticides; Certification of Pesticide Applicators	2014	\$20.8	\$21.2	\$48.8	\$48.8	(\$28.0)	(\$27.6)
<b>Aggregate Estimates</b> <sup>4</sup>	2014	\$295.5	\$295.9	\$229.6	\$238.4	\$88.4	\$88.8

<i>Discount Rate = 7%</i>							
		Benefits (millions \$/year)		Costs (millions \$/year)		Net Benefits (millions \$/year)	
<i>Rule</i>	Base Year	Low	High	Low	High	Low	High
Modernization of the Accidental Release Prevention Regulations Under Clean Air Act	2014	\$274.7	\$274.7	\$161.0	\$161.0	\$113.7	\$113.7

Health and Environmental Standards for Uranium and Thorium Mill Tailings (40 CFR 192): Revisions <sup>1</sup>	2014	Not Monetized	Not Monetized	\$4.1	\$8.3	Not Computed	Not Computed
Technical and Regulatory Support to develop the NESHAP Subpart W Standard for Radon Emissions From Operating Uranium Mills (40 CFR 61.250) <sup>2</sup>	2014	Not Monetized	Not Monetized	\$15.8	\$17.9	Not Computed	Not Computed
Pesticides; Certification of Pesticide Applicators <sup>3</sup>	2014	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported
<b>Aggregate Estimates</b> <sup>4</sup>	2014	\$274.7	\$274.7	\$180.9	\$187.2	\$113.7	\$113.7

1. National net benefits for Health and Environmental Standards for Uranium and Thorium Mill Tailings (40 CFR 192) Revisions were not computed because most categories of benefits, including health and ecosystem benefits, were not monetized.
2. The Economic Impact Analysis for the NESHAP Subpart W Standard does not monetize benefits such as the value of reduced cancer risk, so net benefits were not computed.
3. The Economic Analysis for the Certification of Pesticide Applicators did not estimate annual costs using a 7% discount rate. Using a 7% discount rate is expected to have little effect on annualized costs as most of the costs recur annually.
4. Aggregate Net Benefits are estimated by summing the column of net benefits reported for each discount rate.

### ***Burden Reduction***

As described above, EPA continues to review its existing regulations in an effort to achieve its mission in the most efficient means possible. To this end, the Agency is committed to identifying areas in its regulatory program where significant savings or quantifiable reductions in paperwork burdens might be achieved, as outlined in Executive Orders 13563 and 13610, while protecting public health and our environment.

### ***Rules Expected to Affect Small Entities***

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. Actions that may affect small entities can be tracked on EPA's Regulatory Development and Retrospective Review Tracker (<http://www.epa.gov/regdarrt/>) at any time. This Plan includes the following rules that may be of particular interest to small entities:

<b>Rulemaking Title</b>	<b>Regulatory Identifier Number (RIN)</b>
Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry	2050-AG61
Modernization of the Accidental Release Prevention Regulations Under Clean Air Act	2050-AG82
Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a); Vapor Degreasing	2070-AK11
N-Methylpyrrolidone (NMP) and Methylene Chloride; Rulemaking Under TSCA Section 6(a)	2070-AK07
Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares	2070-AK12
National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040-AF15

**International Regulatory Cooperation Activities**

EPA has considered international regulatory cooperation activities as described in Executive Order 13609 and has identified the following international activity that is anticipated to lead to a significant regulation in the following year:

<b>Rulemaking Title</b>	<b>Regulatory Identifier Number (RIN)</b>
N-Methylpyrrolidone (NMP) and Methylene Chloride; Rulemaking Under TSCA Section 6(a)	2070-AK07

<b>EPA—Office of Water(OW)</b>	<b>PRERULE STAGE</b>
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**120. FEDERAL BASELINE WATER QUALITY STANDARDS FOR INDIAN RESERVATIONS**

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

33 U.S.C. 1313(c)(4)(B)

**CFR Citation:**

40 CFR 131

**Legal Deadline:**

None.

**Abstract:**

EPA published an advance notice of proposed rulemaking (ANPRM) requesting public comment on the establishment of baseline water quality standards (WQS) under the Clean Water Act (CWA) for waters on Indian reservations that currently do not have EPA-approved WQS in place to protect water quality. EPA will consider comments received on this ANPRM prior to determining whether to develop a proposed rule on this topic. This ANPRM effort is one of several initiatives the EPA is undertaking that recognize the importance of protecting waters on which tribes rely.

**Statement of Need:**

Currently, fewer than 50 of over 300 tribes with reservations have WQS effective under the CWA. Virtually all of the reservations with existing coverage have WQS established by tribes that have obtained treatment in a manner similar to a state (TAS) under CWA section 518, however, many tribes face obstacles on this pathway to WQS. The resulting gap in EPA-approved WQS in Indian reservation waters is not insignificant. Tribal reservations without CWA-effective WQS account for as much land area and population as the state of North Dakota. Federal baseline WQS would define water quality goals for unprotected reservation waters and serve as the foundation for CWA actions to protect human health and the environment.

**Summary of Legal Basis:**

The CWA establishes the basis for the water quality standards (WQS) regulation and program. CWA section 303 addresses the development of state and authorized tribal WQS that serve the CWA objective for waters of the United States. The core components of WQS are designated uses, water quality criteria that support the uses, and antidegradation requirements. Designated uses establish the environmental objectives for a water body and water quality criteria define the conditions sufficient to achieve those environmental objectives. The antidegradation requirements provide a framework for maintaining and protecting water quality that has already been achieved. The CWA creates a partnership between states and authorized tribes, and EPA, by assigning states and authorized tribes the primary role of adopting WQS (CWA sections 101(b) and 303), and EPA the oversight role of reviewing and approving or

disapproving state and authorized tribal WQS (CWA section 303(c)). Absent state or authorized tribal adoption or submission of new or revised WQS, section 303(c)(4)(B) of the CWA gives EPA the authority to determine that new or revised WQS are necessary to meet the requirements of the Act. Once the Administrator makes such a determination, EPA must promptly propose regulations setting forth new or revised WQS for the waters of the United States involved, and must then promulgate such WQS, unless a state or authorized tribe adopts and EPA approves such WQS first.

**Alternatives:**

To Be Determined

**Anticipated Cost and Benefits:**

To Be Determined

**Risks:**

to be determined

**Timetable:**

Action	Date	FR Cite
ANPRM	09/29/16	81 NFR 66900
ANPRM Comment Period End	12/28/16	
NPRM	To Be	Determined

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Tribal

**Federalism:**

Undetermined

**URL For More Information:**

<http://tcots.epa.gov/oita/tconsultation.nsf/>

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**RIN:** 2040-AF62

<b>EPA—Office of Air and Radiation(OAR)</b>	<b>PROPOSED RULE STAGE</b>
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**121. RENEWABLES ENHANCEMENT AND GROWTH SUPPORT RULE**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 7429 Clean Air Act

**CFR Citation:**

40 CFR 80

**Legal Deadline:**

None.

**Abstract:**

This action proposes to make numerous changes to promote the production of renewable fuels and clarify certain requirements under the RFS program. This action would propose to allow for feedstocks partially converted at a facility other than a renewable fuel production facility to be fully converted at a renewable fuel production facility into finished renewable fuel. These partially converted feedstocks are referred to as biointermediate feedstocks. Further, this action would also propose to add new registration, recordkeeping, and reporting requirements for certain renewable fuel production facilities using carbon capture and storage (CCS) if the EPA were to allow CCS as a lifecycle GHG emissions reduction technology in the context of the RFS program. Additionally, this action also proposes to require obligated parties to report a breakdown of their gasoline, diesel, and heating oil production; provide an additional RIN-generating pathway that is an extension of an existing pathway; and make numerous technical corrections. Finally, this action would implement fuel quality specifications for blends containing 16 to 83 volume percent ethanol. This action would provide substantial additional flexibility for ethanol flex fuel (EFF) producers that accommodate current market realities while continuing to ensure EFF quality is consistent with controlling pollution when used in flexible fuel vehicles.

**Statement of Need:**

This action proposes various changes to our fuel and renewable fuel regulations to remove barriers to the production and use of renewable fuels. First, this action would resolve several outstanding issues and provide clarification on certain Renewable Fuel Standard (RFS) requirements. Second, this action would propose to allow for a feedstock partially converted at one facility (referred to as a biointermediate) to be fully converted into finished renewable fuel at another facility. Finally, this action would provide production flexibilities and carry over gasoline fuel quality standards to gasoline-ethanol blends containing 16 to 83 volume percent ethanol (referred to as ethanol flex fuel (EFF)). The increased flexibility provided by this rule for biointermediates and EFF could result in the increased production and use of renewable fuels in support of the RFS program.

**Summary of Legal Basis:**

Statutory authority for this action comes from Clean Air Act sections 203 to 205, 208, 211, and 301.

**Alternatives:**

This action to proposes to establish fuel quality standards for EFF that are equivalent to those already in place for gasoline. Producers would demonstrate compliance based on their ability to affect fuel quality and certain types of producers would be able to use natural gasoline as a blendstock to produce EFF. Alternatively, EPA also considered a simplified approach that would restrict EFF blendstocks to gasoline, blendstocks for oxygenate blending (BOBs), and denatured fuel ethanol. EPA is seeking comment on this alternative approach.

**Anticipated Cost and Benefits:**

The two main areas where this proposal would have economic impacts are the proposed provisions for EFF and gasoline produced at blender pumps, and the proposed provisions for biointermediates. The proposal would provide significant additional regulatory flexibility, streamlined compliance provisions, and the opportunity for increased biofuel production at reduced cost. The cost savings are anticipated to far outweigh the minor costs imposed for demonstrating compliance. In most cases, the associated costs would only apply to those parties that elect to take advantage of the proposed flexibilities because the potential economic benefits outweigh the costs. This proposal contains minor additional registration, reporting, and recordkeeping requirements that would apply to some parties in the biofuel production and distribution system that do not take advantage of the proposed flexibilities as well as those that do.

**Risks:**

This proposed rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the fuel programs and RFS regulations and therefore will not cause emissions increases from these sources.

**Timetable:**

Action	Date	FR Cite
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NPRM	11/00/16	
Final Rule	12/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Sectors Affected:**

325199 All Other Basic Organic Chemical Manufacturing; 325193 Ethyl Alcohol Manufacturing; 454310 Fuel Dealers; 221210 Natural Gas Distribution; 424690 Other Chemical and Allied Products Merchant Wholesalers; 325110 Petrochemical Manufacturing; 424710 Petroleum Bulk Stations and Terminals; 324110 Petroleum Refineries; 424720 Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

**URL For More Information:**

<http://www2.epa.gov/renewable-fuel-standard-program>

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**RIN:** 2060-AS66

<b>EPA—OAR</b>	
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**122. IMPLEMENTATION OF THE 2015 NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE: NONATTAINMENT AREA CLASSIFICATIONS AND STATE IMPLEMENTATION PLAN REQUIREMENTS**

**Priority:**

Other Significant

**Legal Authority:**

23 U.S.C. 101 42 U.S.C. 7401-7671q

**CFR Citation:**

40 CFR 50 to 51

**Legal Deadline:**

None

**Abstract:**

This proposed rule will address a range of implementation requirements for the 2015 National Ambient Air Quality Standards (NAAQS) for ozone, including the nonattainment area classification system, and the timing of State Implementation Plan (SIP) submissions. It will also discuss and outline relevant guidance on meeting the Clean Air Act's requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control measures, nonattainment new source review, and emission inventories. Other issues addressed in this proposed rule are the potential revocation of the 2008 ozone NAAQS and anti-backsliding requirements that would apply if the 2008 NAAQS are revoked. The items

covered in this rulemaking have been covered in similar rulemakings for two prior 8-hour ozone NAAQS (1997 and 2008).

**Statement of Need:**

This rule is needed to clarify and establish implementation requirements for the 2015 ozone NAAQS, including the nonattainment area classification system, and those elements that states must include in their state implementation plans (SIPs) to bring nonattainment areas into compliance with the 2015 ozone NAAQS. There is no court-ordered deadline for this final rule. However, the CAA requires that EPA promulgate area designations no later than 2 years from the date of promulgation of the revised ozone NAAQS, and this rule is needed to establish the air quality thresholds to classify areas designated nonattainment, in this case by October 1, 2017.

**Summary of Legal Basis:**

The CAA requires states to plan for the attainment and maintenance the NAAQS. EPA establishes implementing regulations that states follow to fulfill these CAA requirements.

**Alternatives:**

The EPA plans to solicit comments on a number of proposals, including nonattainment area classification thresholds, SIP submission requirements for states with nonattainment areas and states in the Ozone Transport Region, milestone compliance demonstrations, plan submission and implementation deadlines for attainment planning and emissions control requirements, flexible new source emissions offsets for preconstruction permitting, clarification of emissions inventory and emissions statement requirements, and state demonstration requirements under CAA section 179B. The rule also includes alternatives for treatment of outstanding state planning requirements for the previous ozone NAAQS.

**Anticipated Cost and Benefits:**

The annual information collection burden for ozone-related state planning averaged over the first 3 years is estimated to be a total of 41,800 labor hours per year at an annual labor cost of \$2.5 million (present value) over the 3-year period, or approximately \$107,000 per state for the 23 anticipated state respondents. There are no capital or operating and maintenance costs associated with the proposed rule requirements.

**Risks:**

Ozone concentrations that exceed the National Ambient Air Quality Standards (NAAQS) to can cause adverse public health and welfare effects, as discussed in the October 26, 2015 Final Rule for NAAQS for Ozone (80 FR 65292).

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

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RIN: 2060-AS82

EPA-OAR	
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**123. • RENEWABLE FUEL VOLUME STANDARDS FOR 2018 AND BIOMASS BASED DIESEL**

**VOLUME (BBD) FOR 2019**

**Priority:**

Other Significant

**Legal Authority:**

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 standards 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 (BBD), advanced biofuel, and total renewable fuel. The statute requires 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 be set no later than 14 months before the year for which the requirements would apply.

**Statement of Need:**

The Clean Air Act Section 211(o) requires the Agency set annual renewable fuel standards.

**Summary of Legal Basis:**

Clean Air Act section 211(o)

**Alternatives:**

Alternatives will be assessed as the proposal is developed.

**Anticipated Cost and Benefits:**

Costs and benefits will be analyzed as the proposal is developed.

**Risks:**

Risk information will be developed as the proposal is developed.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/17	
Final Rule	12/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2060-AT04

<b>EPA—Office of Chemical Safety and Pollution Prevention(OCSP)</b>	<b>PROPOSED RULE STAGE</b>
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**124. TRICHLOROETHYLENE (TCE); RULEMAKING UNDER TSCA SECTION 6(A)**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:**

NYD

**Legal Deadline:**

None

**Abstract:**

Section 6(a) of the Toxic Substances Control Act (TSCA) provides authority for the EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical substances, as well as any manner or method of disposal. The EPA identified trichloroethylene (TCE) for risk evaluation as part of its Work Plan for Chemical Assessment under TSCA. TCE is used in industrial and commercial processes, and also has some limited uses in consumer products. In the June 2014 TSCA Work Plan Chemical Risk Assessment for TCE, the EPA identified risks associated with commercial degreasing and some consumer uses. EPA proposes that the use of TCE in vapor degreasing presents unreasonable risks to human health, and is initiating rulemaking under TSCA section 6 to address the risks of TCE when used as a spotting agent in dry cleaning and in commercial and consumer aerosol spray degreasers. A separate Regulatory Agenda entry (RIN 2070-AK11) addresses the EPA's consideration of a rulemaking to address the risks associated with TCE when used in vapor degreasing operations.

**Statement of Need:**

In the June 2014 TSCA Work Plan Chemical Risk Assessment for TCE, the EPA identified risks associated with commercial degreasing and some consumer uses. The EPA is initiating a rulemaking under TSCA section 6 to address these risks. Specifically, the EPA will determine whether the continued use of TCE in some commercial degreasing uses, as a spotting agent in dry cleaning, and in certain consumer products would pose an unreasonable risk to human health and the environment.

**Summary of Legal Basis:**

Section 6 of the Toxic Substances Control Act provides authority for the EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical substances, as well as any manner or method of disposal.

**Alternatives:**

Alternatives will be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:**

The EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

**Risks:**

In the published TCE Risk Assessment, the EPA identified significant risks to human health in occupational, consumer and residential settings. The risk assessment identified health risks from TCE exposures to consumers using aerosol degreasers and spray fixatives, and health risks to workers when TCE is used in commercial shops and as a stain removing agent in dry cleaning.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

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

**Sectors Affected:**

325 Chemical Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance, and Component Manufacturing; 332 Fabricated Metal Product Manufacturing; 337 Furniture and Related Product Manufacturing; 333 Machinery Manufacturing; 339 Miscellaneous Manufacturing; 928 National Security and International Affairs; 32411 Petroleum Refineries; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 323 Printing and Related Support Activities; 811 Repair and Maintenance; 488 Support Activities for Transportation; 314 Textile Product Mills; 336 Transportation Equipment Manufacturing; 493 Warehousing and Storage; 321 Wood Product Manufacturing

**URL For More Information:**

<https://www.epa.gov/chemical-data-under-toxic-substance-control-act-tsca>

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**RIN:** 2070-AK03

<b>EPA-OCSP</b>	
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**125. N-METHYLPYRROLIDONE (NMP) AND METHYLENE CHLORIDE; RULEMAKING UNDER TSCA**

**SECTION 6(A)**

**Priority:**

Other Significant

**Legal Authority:**

15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

Section 6 of the Toxic Substances Control Act provides authority of EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical, as well as any manner or method of disposal of chemicals. EPA identified N-methylpyrrolidone (NMP) and methylene chloride for risk evaluation as part of its TSCA Work Plan for Chemical Assessments. NMP and methylene chloride are uses in commercial processes and in consumer products in residential settings. In the August 2014 TSCA Work Plan Chemical Risk Assessment for methylene chloride and the March 2015 TSCA Work Plan Chemical Risk Assessment for NMP, EPA identified risks of concern from paint and coating removal. EPA proposes that the use of NMP and methylene chloride in paint and coating presents unreasonable risks to human health, and is initiating rulemaking under TSCA section 6 to address these risks.

**Statement of Need:**

The EPA identified n-methylpyrrolidone and methylene chloride for risk evaluation as part of its Work Plan for Chemical Assessments under TSCA. In the August 2014 Risk Assessment for methylene chloride and March 2015 Risk Assessment for NMP, the EPA identified risks associated with commercial and consumer paint removal uses. The EPA is initiating rulemaking under TSCA section 6 to address these risks. Specifically, the EPA will determine whether the use of NMP or methylene chloride in commercial and consumer paint removal poses an unreasonable risk to human health and the environment.

**Summary of Legal Basis:**

Section 6 of the Toxic Substances Control Act provides authority for the EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemicals, as well as any manner or method of disposal.

**Alternatives:**

Alternatives will be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:**

The EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

**Risks:**

As indicated in the published Risk Assessments and supplemental analyses for these chemicals, the EPA determined that there is risk of adverse human health effects (acute and chronic) for methylene chloride and NMP in occupational, consumer and residential settings.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**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.

**Sectors Affected:**

336411 Aircraft Manufacturing; 811121 Automotive Body, Paint, and Interior Repair and Maintenance; 325 Chemical Manufacturing; 238330 Flooring Contractors; 711510 Independent Artists, Writers, and Performers; 712110 Museums; 238320 Painting and Wall Covering Contractors; 811420 Reupholstery and Furniture Repair; 336611 Ship Building and Repairing

**URL For More Information:**

<https://www.epa.gov/chemical-data-under-toxic-substance-control-act-tsca>

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**RIN:** 2070-AK07

<b>EPA—OCSP</b>	
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**126. TRICHLOROETHYLENE (TCE); RULEMAKING UNDER TSCA SECTION 6(A); VAPOR**

**DEGREASING**

**Priority:**

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

**Legal Authority:**

15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

Section 6(a) of the Toxic Substances Control Act (TSCA) provides authority for the EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical substances, as well as any manner or method of disposal. The EPA identified trichloroethylene (TCE) for risk evaluation as part of its Work Plan for Chemical Assessment under TSCA. TCE is used in industrial and commercial processes, and also has some limited uses in consumer products. In the June 2014 TSCA Work Plan Chemical Risk Assessment for TCE, the EPA identified risks associated with commercial vapor degreasing. EPA proposes that the use of TCE in vapor degreasing presents unreasonable risks to human health, and is initiating rulemaking under TSCA section 6 to address these risks. A separate Regulatory Agenda entry (RIN 2070-AK03) covers the EPA's consideration of a rulemaking to address the risks associated with TCE when used as a spotting agent in dry cleaning and in commercial and consumer aerosol spray degreasers.

**Statement of Need:**

In the June 2014 TSCA Work Plan Chemical Risk Assessment for TCE, the EPA identified risks associated with commercial degreasing and some consumer uses. The EPA is initiating a rulemaking under TSCA section 6 to address these risks. Specifically, the EPA will determine whether the continued use of TCE in some commercial degreasing uses, as a spotting agent in dry cleaning, and in certain consumer products would pose an unreasonable risk to human health and the environment.

**Summary of Legal Basis:**

Section 6 of the Toxic Substances Control Act provides authority for the EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical substances, as well as any manner or method of disposal.

**Alternatives:**

Alternatives will be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:**

The EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

**Risks:**

Significant adverse human health effects have been found in occupational settings and in consumer and residential settings.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Federalism:**

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

**Sectors Affected:**

33641 Aerospace Product and Parts Manufacturing; 336411 Aircraft Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 33299 All Other Fabricated Metal Product Manufacturing; 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; 333999 All Other Miscellaneous General Purpose Machinery Manufacturing; 33999 All Other Miscellaneous Manufacturing; 339999 All Other Miscellaneous Manufacturing; 32799 All Other Nonmetallic Mineral Product Manufacturing; 326299 All Other Rubber Product Manufacturing; 325220 Artificial and Synthetic Fibers and Filaments Manufacturing; 334512 Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use; 332722 Bolt, Nut, Screw, Rivet, and Washer Manufacturing; 334416 Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing; 311812 Commercial Bakeries; 323111 Commercial

Printing (except Screen and Books); 811310 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance; 81131 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance; 339114 Dental Equipment and Supplies Manufacturing; 332813 Electroplating, Plating, Polishing, Anodizing, and Coloring; 332912 Fluid Power Valve and Hose Fitting Manufacturing; 333511 Industrial Mold Manufacturing; 333413 Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing; 337127 Institutional Furniture Manufacturing; 334515 Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals; 332111 Iron and Steel Forging; 331210 Iron and Steel Pipe and Tube Manufacturing from Purchased Steel; 339910 Jewelry and Silverware Manufacturing; 332431 Metal Can Manufacturing; 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers; 332119 Metal Crown, Closure, and Other Metal Stamping (except Automotive); 332811 Metal Heat Treating; 332215 Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing; 339 Miscellaneous Manufacturing; 33634 Motor Vehicle Brake System Manufacturing; 336310 Motor Vehicle Gasoline Engine and Engine Parts Manufacturing; 335312 Motor and Generator Manufacturing; 928110 National Security; 331410 Nonferrous Metal (except Aluminum) Smelting and Refining; 336413 Other Aircraft Parts and Auxiliary Equipment Manufacturing; 424690 Other Chemical and Allied Products Merchant Wholesalers; 333318 Other Commercial and Service Industry Machinery Manufacturing; 334419 Other Electronic Component Manufacturing; 332618 Other Fabricated Wire Product Manufacturing; 333249 Other Industrial Machinery Manufacturing; 334519 Other Measuring and Controlling Device Manufacturing; 3399 Other Miscellaneous Manufacturing; 332313 Plate Work Manufacturing; 332913 Plumbing Fixture Fitting and Trim Manufacturing; 325612 Polish and Other Sanitation Good Manufacturing; 332721 Precision Turned Product Manufacturing; 332216 Saw Blade and Handtool Manufacturing; 334511 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing; 332994 Small Arms, Ordnance, and Ordnance Accessories Manufacturing; 325611 Soap and Other Detergent Manufacturing; 331512 Steel Investment Foundries; 339112 Surgical and Medical Instrument Manufacturing

**URL For More Information:**

<https://www.epa.gov/chemical-data-under-toxic-substance-control-act-tsca>

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**RIN:** 2070-AK11

EPA—OCSP	
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**127. POLYCHLORINATED BIPHENYLS (PCBS); REASSESSMENT OF USE AUTHORIZATIONS FOR PCBS IN SMALL CAPACITORS IN FLUORESCENT LIGHT BALLASTS IN SCHOOLS AND DAYCARES**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect State, local or tribal governments.

**Legal Authority:**

15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:**

40 CFR 761

**Legal Deadline:**

None.

**Abstract:**

The EPA's regulations governing the use of Polychlorinated Biphenyls (PCBs) in electrical equipment and other applications were first issued in the late 1970s and have not been updated since 1998. The EPA has initiated rulemaking to reassess the ongoing authorized use of PCBs in small capacitors. In particular, the reassessment of the use authorization will focus on the use of liquid PCBs in small capacitors in fluorescent light ballasts. A separate Regulatory Agenda entry (RIN 2070-AJ38) addresses the proposed reassessment of other PCB use authorizations.

**Statement of Need:**

Since the commercial manufacture of PCBs in the United States ceased in the 1970s, PCB-containing equipment is at least 30 years old and may be nearing the end of its expected useful life. Several international treaties have recognized the hazards of PCBs and the risks they pose to human health and the environment. EPA has recently learned that there was widespread use of PCBs at levels at or above 50 ppm, prior to the 1979 TSCA ban, in the formulation of caulk used in schools and other commercial buildings. In the current regulations PCBs are excluded from the TSCA ban only if found below 50 ppm. Thus, many schools and other building owners are now facing an unauthorized use of PCBs that has been present in their buildings for many years. This ANPR will solicit comment as to whether the current threshold of 50 ppm should be revised so that PCBs in caulk found at other levels could be authorized for use and, if so, under what conditions. EPA is required to make a finding that the authorized use will not present an unreasonable risk to human health and the environment. Needless to say, many changes have taken place in the industry sectors that use such equipment, and EPA believes that the balance of

risks and benefits from the continued use of remaining equipment containing PCBs may have changed enough to consider amending the current regulations.

**Summary of Legal Basis:**

TSCA section 6(e)(2)(A) provides that "no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in a manner other than in a totally enclosed manner" after January 1, 1978. However, TSCA section 6(e)(2)(B) provides EPA with the authority to issue regulations allowing the use and distribution in commerce of PCBs in a manner other than a totally enclosed manner if the EPA Administrator finds that the use and distribution in commerce "will not present an unreasonable risk of injury to health or the environment." EPA published the first regulations addressing the use of equipment containing PCBs on May 31, 1979.

**Alternatives:**

Alternatives will be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:**

The EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

**Risks:**

PCB exposures can cause significant human health and ecological effects. The EPA and the International Agency for Research on Cancer (IARC) have characterized some commercial PCB mixtures as probably carcinogenic to humans. In addition to carcinogenicity, potential effects of PCB exposure include neurotoxicity, reproductive and developmental toxicity, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs persist in the environment for long periods of time and bioaccumulate, especially in fish and marine animals. PCBs are also readily transported across long distances in the environment, and can easily cycle between air, water, and soil.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

State, Local, Tribal

**Federalism:**

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

**Sectors Affected:**

31-33 Manufacturing; 811 Repair and Maintenance; 92 Public Administration

**URL For More Information:**

<http://www.epa.gov/pcbs>

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**RIN:** 2070-AK12

<b>EPA—OCSP</b>	
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**128. • PROCEDURES FOR EVALUATING EXISTING CHEMICAL RISKS UNDER THE TOXIC SUBSTANCES CONTROL ACT**

**Priority:**

Other Significant

**Legal Authority:**

15 U.S.C. 2601 et seq. Toxic Substances Control Act

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, June 22, 2017.

**Abstract:**

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends the Toxic Substance Control Act (TSCA), the Nation's primary chemicals management law. A summary of the new law, which includes much needed improvements to TSCA, is available at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act>. This particular rulemaking effort involves the revised TSCA section 6(b)(4), which requires EPA to promulgate a final rule within 1 year of enactment to establish EPA's process for evaluating the risk of existing chemical substances and determining whether they present an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk

factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.

**Statement of Need:**

As required by statute, the EPA must establish EPA's process for evaluating the risk of existing chemical substances and determining whether they present an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.

**Summary of Legal Basis:**

This particular rulemaking effort involves the revised TSCA section 6(b)(4), which requires EPA to promulgate a final rule within 1 year of enactment to establish EPA's process for evaluating the risk of existing chemical substances and determining whether they present an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.

**Alternatives:**

Alternatives will be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:**

The EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

**Risks:**

This will be a procedural rule related to risk evaluations. It is not intended to address any particular risk.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Sectors Affected:**

325 Chemical Manufacturing

**URL For More Information:**

<https://www.epa.gov/assessing-and-managing-chemicals-under-tsca>

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**RIN:** 2070-AK20

<b>EPA-OCSP</b>	
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**129. • PROCEDURES FOR PRIORITIZATION OF CHEMICALS FOR RISK EVALUATION UNDER THE TOXIC SUBSTANCES CONTROL ACT**

**Priority:**

Other Significant

**Legal Authority:**

15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:**

40 CFR NYD

**Legal Deadline:**

None

**Abstract:**

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends the Toxic Substance Control Act (TSCA), the Nation's primary chemicals management law. A summary of the new law, which includes much needed improvements to TSCA, is available at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act>. This particular rulemaking effort involves the revised TSCA section 6(b)(1), which requires that EPA promulgate a final rule within 1 year of enactment to establish a risk-based screening process, including criteria for designating chemical substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time. As required by statute, the process to designate the priority of chemical substances must include a consideration of the hazard and exposure potential of a chemical substance or a category of chemical substances (including consideration of persistence and bioaccumulation, potentially exposed or susceptible subpopulations and storage near significant sources of drinking water), the conditions of use or significant changes in the conditions of use of the chemical substance, and the volume or significant changes in the volume of the chemical substance manufactured or processed.

**Statement of Need:**

As required by statute, the process to designate the priority of chemical substances must include a consideration of the hazard and exposure potential of a chemical substance or a category of chemical substances (including consideration of persistence and bioaccumulation, potentially exposed or susceptible subpopulations and storage near significant sources of drinking water), the conditions of use or significant changes in the conditions of use of the chemical substance, and the volume or significant changes in the volume of the chemical substance manufactured or processed.

**Summary of Legal Basis:**

This action is mandated by the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amended the Toxic Substance Control Act (TSCA), on June 22, 2016. This particular rulemaking effort involves the revised TSCA section 6(b)(1), which requires that EPA promulgate a final rule within 1 year of enactment to establish a risk-based screening process, including criteria for designating chemical

substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time.

**Alternatives:**

Alternatives will not be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:**

The EPA will prepare a regulatory impact analysis as part of the development of a proposed rule.

**Risks:**

This action will not address any particular risk. It will establish a risk-based screening process, including criteria for designating chemical substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/16	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Federal, State, Tribal

**Sectors Affected:**

325 Chemical Manufacturing

**URL For More Information:**

<https://www.epa.gov/assessing-and-managing-chemicals-under-tsca>

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RIN: 2070-AK23

<b>EPA—Office of Land and Emergency Management(OLEM)</b>	<b>PROPOSED RULE STAGE</b>
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**130. FINANCIAL RESPONSIBILITY REQUIREMENTS UNDER CERCLA SECTION 108(B) FOR  
CLASSES OF FACILITIES IN THE HARDROCK MINING INDUSTRY**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 U.S.C. 9601 et seq.; 42 U.S.C. 9608 (b)

**CFR Citation:**

40 CFR 320

**Legal Deadline:**

NPRM, Judicial, December 1, 2016, Notice of proposed rulemaking.

**Abstract:**

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain authorities concerning financial responsibility requirements. The agency has identified classes of facilities within the hardrock mining industry as those for which financial responsibility requirements will be first developed. The EPA intends to include requirements for financial responsibility, as well as notification and implementation.

**Statement of Need:**

EPA's 108(b) rules will address the degree and duration of risks associated with aspects of hazardous substance management at hardrock mining and mineral processing facilities. These regulations will help ensure that businesses make financial arrangements to address risks from hazardous substances at their sites, and encourage businesses to improve their management of hazardous substances.

**Summary of Legal Basis:**

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain regulatory authorities concerning financial responsibility requirements. Specifically, the statutory language addresses the promulgation of regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.

**Alternatives:**

The EPA is considering proposing for comment alternatives for allowable types of financial instruments.

**Anticipated Cost and Benefits:**

The EPA expects that the primary costs of the rule will be the costs to facilities for procuring required financial instruments. The EPA also expects to incur administrative and oversight costs. These regulations will help ensure that businesses make financial arrangements to address risks from hazardous substances at their sites, and encourage businesses to improve their management of hazardous substances.

**Risks:**

EPA's 108(b) rules are intended to address the risks associated with the production, transportation, treatment, storage or disposal of hazardous substances at hardrock mining and mineral processing facilities.

**Timetable:**

Action	Date	FR Cite
Notice	07/28/09	74 FR 37213
NPRM	12/00/16	
Final Rule	12/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Additional Information:**

Docket #:EPA-HQ-SFUND-2015-0781. Split from RIN 2050-AG56.

**Sectors Affected:**

212 Mining (except Oil and Gas); 331 Primary Metal Manufacturing

**URL For More Information:**

<https://www.epa.gov/superfund/superfund-financial-responsibility>

**URL For Public Comments:**

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-SFUND-2009-0265-0001>

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**RIN:** 2050-AG61

<b>EPA—Office of Water(OW)</b>	<b>PROPOSED RULE STAGE</b>
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**131. 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

**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:**

Beginning in 2004, EPA conducted a wide-ranging review of implementation of the Lead and Copper Rule (LCR) to determine if there is a national problem related to elevated lead levels. EPA's comprehensive review consisted of several elements, including a series of workshops designed to solicit issues, comments, and suggestions from stakeholders on particular issues; a review of monitoring data to evaluate the effectiveness of the LCR; and a review of the LCR implementation by States and water utilities. As a result of this multi-part review, EPA identified seven targeted rules changes and EPA promulgated a set of short-term regulatory revisions and clarifications on October 10, 2007, to strengthen

implementation of the existing Lead and Copper Rule. In developing the short-term revisions, EPA identified several regulatory changes to be considered as part of identifying more comprehensive changes to the rule. These considerations are longer-term in nature as they require additional data collection, research, analysis, and stakeholder involvement to support decisions. This action addresses the remaining regulatory revisions. EPA's goal for the LCR revisions is to improve the effectiveness of public health protections while maintaining a rule that can be effectively implemented by the 68,000 drinking water systems that are covered by the rule.

**Statement of Need:**

Beginning in 2004, EPA conducted a wide-ranging review of implementation of the Lead and Copper Rule (LCR) to determine if there is a national problem related to elevated lead levels. EPA's comprehensive review consisted of several elements, including a series of workshops designed to solicit issues, comments, and suggestions from stakeholders on particular issues; a review of monitoring data to evaluate the effectiveness of the LCR; and a review of the LCR implementation by States and water utilities. As a result of this multi-part review, EPA identified seven targeted rules changes and EPA promulgated a set of short-term regulatory revisions and clarifications on October 10, 2007, to strengthen implementation of the existing Lead and Copper Rule. In developing the short-term revisions, EPA identified several regulatory changes to be considered as part of identifying more comprehensive changes to the rule. These considerations are longer-term in nature as they require additional data collection, research, analysis, and stakeholder involvement to support decisions. EPA's goal for the LCR revisions is to improve the effectiveness of public health protections while maintaining a rule that can be effectively implemented by the 68,000 drinking water systems that are covered by the rule.

**Summary of Legal Basis:**

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.) requires EPA to establish maximum contaminant level goals (MCLGs) and National Primary Drinking Water Regulations (NPDWRs) for contaminants that may have an adverse effect on the health of persons, may occur in public water systems at a frequency and level of public concern, and in the sole judgment of the Administrator, regulation of the contaminant would present a meaningful opportunity for health risk reduction for persons served by public water systems (section 1412(b)(1)(A)). The 1986 amendments to SDWA established a

list of 83 contaminants for which EPA is to develop MCLGs and NPDWRs, which included lead and copper. The 1991 NPDWR for Lead and Copper (56 FR 26460, U.S. EPA, 1991a) fulfilled the requirements of the 1986 SDWA amendments with respect to lead and copper. EPA promulgated a set of short-term regulatory revisions and clarifications on October 10, 2007, to strengthen implementation of the existing Lead and Copper Rule. In developing the short-term revisions, EPA identified several regulatory changes to be considered as part of identifying more comprehensive changes to the rule. These considerations are longer-term in nature as they require additional data collection, research, analysis, and stakeholder involvement to support decisions. Changes will be made to improve the effectiveness of public health protections while maintaining a rule that can be effectively implemented.

**Alternatives:**

To be determined.

**Anticipated Cost and Benefits:**

To be determined.

**Risks:**

To be determined.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/17	
Final Rule	12/00/18	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

This action includes retrospective review under Executive Order 13563; see:

<http://www.epa.gov/regdarrt/retrospective/history.html>.

**URL For More Information:**

<http://water.epa.gov/lawsregs/rulesregs/sdwa/lcr/index.cfm>

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**RIN:** 2040-AF15

<b>EPA—OW</b>	
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**132. • FEES FOR WATER INFRASTRUCTURE PROJECT APPLICATIONS UNDER THE WATER  
INFRASTRUCTURE FINANCE AND INNOVATION ACT**

**Priority:**

Other Significant

**Legal Authority:**

33 U.S.C. 3901 et seq. WRDDA

**CFR Citation:**

TBD

**Legal Deadline:**

None

**Abstract:**

EPA is proposing this rule to establish fees for applying for federal credit assistance under the Water Infrastructure Finance and Innovation Act (WIFIA) program. As specified under 33 U.S.C. sections 3908(b)(7), 3909(b), and 3909(c)(3), EPA is authorized to charge fees to recover all or a portion of the Agency's cost of providing credit assistance and the costs of retaining expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments. EPA is proposing an initial application fee, credit processing fee, and servicing fee and is seeking comment on these.

**Statement of Need:**

EPA is proposing to establish fees for applying for federal credit assistance under the Water Infrastructure Finance and Innovation Act (WIFIA) program. As specified under 33 U.S.C. sections 3908(b)(7), 3909(b), and 3909(c)(3), EPA is authorized to charge fees to recover all or a portion of the Agency's cost of providing credit assistance and the costs of retaining expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments. EPA is proposing an initial application fee, credit processing fee, and servicing fee and is seeking comment on these.

**Summary of Legal Basis:**

The Water Infrastructure Finance and Innovation Act (WIFIA) program authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects. WIFIA was passed as part of

the Water Resources Reform and Development Act of 2014, Pub. L. 113-121. The fees are specified under 33 U.S.C. sections 3908(b)(7), 3909(b), and 3909(c)(3).

**Alternatives:**

To Be Determined

**Anticipated Cost and Benefits:**

To Be Determined

**Risks:**

To Be Determined

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/16	
Final Rule	07/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

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**Related RIN:**

Related to 2040–AF63

**RIN:** 2040–AF64

EPA—Office of Air and Radiation(OAR)	FINAL RULE STAGE
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**133. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)**

**SUBPART W: STANDARDS FOR RADON EMISSIONS FROM OPERATING URANIUM MILL**

**TAILINGS: REVIEW**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 7401 et seq. Clean Air Act

**CFR Citation:**

40 CFR 61

**Legal Deadline:**

None

**Abstract:**

National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart W protects human health and the environment by setting radon emission standards and work practices for operating uranium mill tailings impoundments. The EPA is in the process of reviewing this standard. If necessary, the Agency will revise the NESHAP requirements for radon emissions from operating uranium mill tailings.

**Statement of Need:**

This radionuclide NESHAP promulgated in 1989 limits radon emissions from operating impoundments that manage uranium byproduct material. This review of the rule is prompted by a settlement agreement based on EPA's failure to review the rule within 10 years of the 1990 Clean Air Act Amendments.

**Summary of Legal Basis:**

The authority for this action comes from Clean Air Act section 112(q)(1).

**Alternatives:**

The rule proposed to establish Generally Available Control Technologies (GACT) or management practices for conventional impoundments, non-conventional impoundments, and heap leach piles. EPA proposed to: eliminate the radon flux standard and monitoring at older conventional impoundments; to require non-conventional impoundments to retain one meter of liquid; to regulate heap leach piles from the initial application of leaching solution; and to require heap leach piles to maintain 30% moisture content. A specific alternative was discussed only in relation to regulating heap leach piles. The alternative was to not regulate the piles under subpart W until the leaching (extraction) process was completed and the heap leach pile contained only uranium byproduct material.

**Anticipated Cost and Benefits:**

Costs attributable to the proposed rule include the cost to maintain one meter of liquid in non-conventional impoundments and the cost to maintain 30% moisture content in heap leach piles. These

costs represent less than 0.1% of baseline facility costs. The primary benefit is maintaining air quality in the vicinity of uranium recovery facilities to levels consistent with the 1989 rule.

**Risks:**

The proposed rule maintains the estimated individual lifetime risk of fatal cancer at approximately  $1 \times 10^{-4}$  or below, consistent with the 1989 rule. Population risk is estimated at between 0.0015 and 0.0026 fatal cancers per year, or approximately 1 case every 385 to 667 years for the 4 million persons living within 80 km of uranium recovery facilities.

**Timetable:**

Action	Date	FR Cite
NPRM	05/02/14	79 FR 25387
NPRM Comment Period Extended	07/21/14	79 FR 42275
Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State, Tribal

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**RIN:** 2060-AP26

EPA-OAR	
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**134. REVISION OF 40 CFR 192—HEALTH AND ENVIRONMENTAL PROTECTION STANDARDS FOR URANIUM AND THORIUM MILL TAILINGS AND URANIUM IN SITU LEACHING PROCESSING FACILITIES**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 2011 et seq. Atomic Energy Act

**CFR Citation:**

40 CFR 192

**Legal Deadline:**

None

**Abstract:**

The EPA's regulations in 40 CFR 192 establish standards for the protection of public health, safety, and the environment from radiological and nonradiological hazards associated with uranium ore processing and disposal of resulting waste materials. These cross-media standards, which apply to pollutant emissions and site restoration, must be adopted by the Nuclear Regulatory Commission, their Agreement States, and the Department of Energy. The EPA reviewed the standards in the existing rule and proposed to revise the regulations in January 2016 (80 FR 4155), taking into particular account the significant changes in uranium industry extraction technologies and their potential impacts to groundwater. In addition, new facilities being proposed in states from Virginia to Alaska add to the importance of this effort. The final rule will incorporate comments from industry and public stakeholders received during the proposal, as well as the intra-agency workgroup.

**Statement of Need:**

In-situ uranium recovery (ISR) is now the dominant form of uranium recovery. ISR involves injection of chemical solutions to alter groundwater chemistry and mobilize uranium, which is then extracted. Monitoring and groundwater restoration must be conducted to limit the potential for contamination during operations and after facility closure. Rules specific to ISR do not exist at the federal level. The current rulemaking will provide national consistency in protecting groundwater at ISR facilities.

**Summary of Legal Basis:**

EPA's authority to establish standards of general application to protect public health, safety, and the environment is provided by section 275 of the Atomic Energy Act of 1954, as amended by section 206 of the Uranium Mill Tailings Radiation Control Act of 1978. EPA's standards of general application are implemented and enforced by the Nuclear Regulatory Commission (NRC).

**Alternatives:**

The proposed rule would establish a framework for monitoring at ISR facilities. The primary alternatives proposed related to the length of the long-term stability monitoring period. EPA proposed a 30-year monitoring period, with provision to shorten using geochemical modeling. Alternative presented were a 30-year period, with no provision for shortening, and a narrative standard identifying performance goals with no specified time period, in which the NRC would determine whether monitoring is sufficient based on site-specific conditions.

**Anticipated Cost and Benefits:**

The proposed rule was estimated to increase the average cost of uranium production at ISR facilities by approximately \$1.50 per pound of uranium (~2.9%), and that average costs per facility would range from \$304,000 to \$9.5 million, depending on the scale of the facility. Total annual costs attributable to the rule were estimated at approximately \$13.5 million. Benefits are primarily the avoidance of remediation of contamination resulting from insufficient restoration and monitoring. Because current practice is to monitor for only a short period after restoration, it was not possible to determine how many sites could require remediation in the absence of the rule or quantify benefits, although it is estimated that the cost of remediation at any particular site would likely exceed the cost of compliance with the rule.

**Risks:**

Risk to public health would be from exposure to groundwater contamination resulting from insufficient restoration and monitoring. Because current practice is to monitor for only a short period after restoration, there is insufficient information to determine public exposures after monitoring is terminated. Therefore, it is not possible to quantify the health benefits of the rule, such as cancers averted.

**Timetable:**

Action	Date	FR Cite
NPRM	01/26/15	80 FR 4155
NPRM Comment Period Extended	04/24/15	80 FR 22964

Final Rule	11/00/16	
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**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State, Tribal

**Additional Information:**

SAN No. 5319

**Sectors Affected:**

212291 Uranium-Radium-Vanadium Ore Mining

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**RIN:** 2060–AP43

<b>EPA—OAR</b>	
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**135. MODEL TRADING RULES FOR GREENHOUSE GAS EMISSIONS FROM ELECTRIC UTILITY  
GENERATING UNITS CONSTRUCTED ON OR BEFORE JANUARY 8, 2014**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 7401 et seq.

**CFR Citation:**

40 CFR 62

**Legal Deadline:**

None

**Abstract:**

In the final Clean Power Plan (CPP) promulgated in August 2015, the EPA set Emission Guidelines for the best system of emission reductions for carbon dioxide from existing power plants. States were tasked in the CPP with developing plans to achieve reductions in carbon dioxide emissions from the existing power plants in each state. In these model trading rules, the EPA will finalize models that provide two optional approaches (rate-based and mass-based emission trading programs) that states may use in developing a plan.

**Statement of Need:**

These model trading rules provide states with examples of a mass-based trading program and a rate-based trading program that can be used as part of a state plan submission for the Clean Power Plan.

These model trading rules achieve the level of carbon dioxide emission reductions achieved through the Clean Power Plan.

**Summary of Legal Basis:**

The Model Trading rules are example trading programs the states may use to achieve emission reductions for carbon dioxide from existing power plants. They can be used by states as part of their submissions for the Clean Power Plan. The Clean Power Plan was developed under the authority of the Clean Air Act Section 111.

**Alternatives:**

In the proposal, the EPA solicited comments on many topics. For the rate-based Model Trading Rule, the EPA solicited comment on different methods for calculating Gas Shift Emission Rate Credits. Also in the rate-based Model Trading Rule, there were alternatives sought for the overall structure of a rate-based trading rule that aligns with the Clean Power Plan and facilitates interstate trading. For the mass-based Model Trading Rule, the EPA solicited comment on allocation approaches and methods for addressing leakage.

**Anticipated Cost and Benefits:**

There are no anticipated costs for these Model Trading Rules that differ from the anticipated costs described in the Clean Power Plan. The Model Trading Rules have the anticipated benefits described there as well. Actions taken to comply with the Clean Power Plan will also reduce the emissions of directly-emitted PM2.5, SO2, and NOX. The benefits associated with these PM2.5, SO2, and NOX reductions are referred to as co-benefits, as these reductions are not the primary objective of this rule. The RIA for the Clean Power Plan spells out, in detail, the numerical benefits associated with the model trading rules.

**Risks:**

Because these Model Trading Rules are example trading programs for states, there is no risk associated with them outside of what is described in the Clean Power Plan.

**Timetable:**

Action	Date	FR Cite
NPRM	10/23/15	80 FR 64965

Final Rule	12/00/16	
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**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Energy Effects:**

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

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**RIN:** 2060-AS47

## 136. RENEWABLE FUEL VOLUME STANDARDS FOR 2017 AND BIOMASS BASED DIESEL

### VOLUME (BBD) FOR 2018

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 7619 Clean Air Act

**CFR Citation:**

40 CFR 80

**Legal Deadline:**

Final, Statutory, November 30, 2016, The statute requires the standards be finalized by November 30 of the year prior to the year in which the standards would apply.

Final Statutory November 30,2016, cellulosic biofuel, biomass based diesel (BBD), advanced biofuel, and total renewable fuel. The statute requires the standards be finalized by November 30 of the year prior to the year in which the standards would apply.

**Abstract:**

The Clean Air Act requires the EPA to promulgate regulations that specify the annual standards 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 (BBD), 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 that requires applicable volumes be set no later than 14 months before the year for which the requirements would apply. This action would propose the applicable volumes for all renewable fuel categories for 2017, and would also propose the BBD standard for 2018.

**Statement of Need:**

Section 211(o) of the Clean Air Act requires the 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 (BBD), advanced biofuel, and total renewable fuel. The statute requires 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 be set no later than 14 months before the year for which the requirements would apply.

**Summary of Legal Basis:**

The Clean Air Act Section 211 (o) requires 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 be set no later than 14 months before the year for which the requirements would apply.

**Alternatives:**

The action will establish renewable fuel standards for the years identified above. Comments submitted during the public process will be reviewed and considered in the final standards.

**Anticipated Cost and Benefits:**

In the proposal, EPA estimated that the cost to produce renewable fuels compared to the costs of producing petroleum fuels would range from \$535 to \$971 million in 2017. These illustrative cost estimates are not meant to be precise measures, nor do they attempt to capture the full impacts of the rule. These estimates are provided solely for the purpose of showing how the cost to produce a gallon of a "representative" renewable fuel compares to the cost of producing a petroleum fuel. The short timeframe provided for the annual renewable fuel rule process does not allow sufficient time for EPA to conduct a comprehensive analysis of the benefits of the annual standards. Since the benefits are unquantified, the net benefits are incalculable.

**Risks:**

A risk analysis was not conducted.

**Timetable:**

Action	Date	FR Cite
NPRM	05/31/16	81 FR 34777
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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RIN: 2060–AS72

<b>EPA—Office of Chemical Safety and Pollution Prevention(OCSP)</b>	<b>FINAL RULE STAGE</b>
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**137. PESTICIDES; CERTIFICATION OF PESTICIDE APPLICATORS**

**Priority:**

Other Significant

**Legal Authority:**

7 U.S.C. 136 et seq. Federal Insecticide Fungicide and Rodenticide Act

**CFR Citation:**

40 CFR 156; 40 CFR 171

**Legal Deadline:**

None

**Abstract:**

The EPA is developing a final rule to revise the federal regulations governing the certified pesticide applicator program (40 CFR part 171). In August 2015, the EPA proposed revisions based on years of extensive stakeholder engagement and public meetings, to ensure that they adequately protect applicators, the public, and the environment from potential harm due to exposure to restricted use pesticides (RUPs). This action is intended to improve the competence of certified applicators of RUPs and to increase protection for noncertified applicators of RUPs operating under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators.

**Statement of Need:**

Change is needed to strengthen the protections for pesticide applicators, the public, and the environment from harm due to pesticide exposure.

### **Summary of Legal Basis:**

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. sections 136 to 136y, particularly sections 136a(d), 136i, and 136w.

### **Alternatives:**

The Agency has developed mechanisms to improve applicator trainers and make training materials more accessible. The Agency has also developed nationally relevant training and certification materials to preserve State resources while improving competency. However, these mechanisms and materials do not address other requisite needs for improving protections, such as requirements for determining competency and recertification. The EPA worked with key stakeholders to identify and evaluate various alternatives and regulatory options during the development of the proposed rule. These are discussed in detail in the proposed rule, and Economic Analysis that was prepared for the proposed rule.

### **Anticipated Cost and Benefits:**

The EPA prepared an Economic Analysis (EA) of the potential costs and impacts associated with the proposed rule, a copy of which is available in the docket, discussed in more detail in unit III of the proposed rule; and briefly summarized here. The EPA monetized benefits based on avoided acute pesticide incidents are estimated at \$80.5 million/year after adjustment for underreporting of pesticide incidents (EA chapter 6.5). Qualitative benefits include the following: • Willingness to pay to avoid acute effects of pesticide exposure beyond cost of treatment and loss of productivity. • Reduced latent effect of avoided acute pesticide exposure. • Reduced chronic effects from lower chronic pesticide exposure to workers, handlers, and farmworker families, including a range of illnesses such as non-Hodgkins lymphoma, prostate cancer, Parkinson's disease, lung cancer, chronic bronchitis, and asthma. (EA chapter 6.4 & 6.6) EPA estimated total incremental costs of \$47.2 million/year (EA chapter 5), which included the following: • \$19.5 million/year for costs to Private Applicators, with an estimated 490,000

impacted and an average cost of \$40 per applicator (EA chapter 5 & 5.6). • \$27.4 million/year for costs to Commercial Applicators, with an estimated 414,000 impacted and an average cost of \$66 per applicator (EA chapter 5 & 5.6). • \$359,000 for costs to States and other jurisdictions, with an estimated 63 impacted (EA chapter 5). The EPA estimated that there is no significant impact on a substantial number of small entities. EPA estimated that the proposed rule may affect over 800,000 small farms that use pesticides, although about half are unlikely to apply restricted use pesticides. The estimated impact for small entities is less than 0.1% of the annual revenues for the average small entity (EA chapter 5.7). The EPA also estimated that the proposed rule will have a negligible effect on jobs and employment because most private and commercial applicators are self-employed; and the estimated incremental cost per applicator represents from 0.3 to 0.5 percent of the cost of a part-time employee (EA chapter 5.6).

**Risks:**

Applicators are at risk from exposure to pesticides they handle for their work. The public and the environment may also be at risk from misapplication by applicators. Revisions to the regulations are expected to minimize these risks by ensuring the competency of certified applicators.

**Timetable:**

Action	Date	FR Cite
Notice	11/14/14	79 FR 68152
Notice	11/14/14	79 FR 68152
NPRM	08/24/15	80 FR 51355
NPRM Comment Period Extended	11/18/15	80 FR 72029
NPRM Comment Period Extended	12/23/15	80 FR 79803
Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

Docket #:EPA-HQ-OPP-2011-0183. Includes retrospective review under Executive Order 13563.

**Sectors Affected:**

9241 Administration of Environmental Quality Programs; 111 Crop Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 5617 Services to Buildings and Dwellings

**URL For More Information:**

<http://www.epa.gov/oppfead1/safety/applicators/applicators.htm>

**URL For Public Comments:**

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0001>

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**RIN:** 2070-AJ20

<b>EPA—Office of Land and Emergency Management(OLEM)</b>	<b>FINAL RULE STAGE</b>
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**138. MODERNIZATION OF THE ACCIDENTAL RELEASE PREVENTION REGULATIONS UNDER  
CLEAN AIR ACT**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 U.S.C. 7412(r)

**CFR Citation:**

40 CFR 68

**Legal Deadline:**

None

**Abstract:**

The EPA, in response to Executive Order 13650, is amending its Risk Management Program regulations. Such revisions may include several changes to the accident prevention program requirements including an additional analysis of safer technology and alternatives for the process hazard analysis for some Program 3 processes, third-party audits and incident investigation root cause analysis for Program 2 and Program 3 processes, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions and

data elements submitted in risk management plans. Such amendments are intended to improve chemical process safety, assist local emergency authorities in planning for and responding to accidents, and improve public awareness of chemical hazards at regulated sources.

**Statement of Need:**

In response to Executive Order 13650, the EPA is considering potential revisions to its Risk Management Program regulations. The Executive Order establishes the Chemical Facility Safety and Security Working Group ("Working Group"), co-chaired by the Secretary of Homeland Security, the Administrator of the EPA, and the Secretary of Labor or their designated representatives at the Assistant Secretary level or higher, and composed of senior representatives of other federal departments, agencies, and offices. The Executive Order requires the Working Group to carry out a number of tasks whose overall goal is to prevent chemical accidents. Section 6(a)(i) of the Executive Order requires the Working Group to develop options for improved chemical facility safety and security that identify "improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations." Section 6(c) of Executive Order 13650 requires the Administrator of the EPA to review the RMP Program (RMP).

**Summary of Legal Basis:**

Clean Air Act Section 112(r)(7) authorizes the EPA Administrator to promulgate regulations to prevent accidental releases. Section 112(r)(7)(A) authorizes release prevention, detection, and correction requirements that may include a broad range of methods, make distinctions among classes and types of facilities, and may take into consideration other factors, including, but not limited to, size, location, process and substance factors, and response capabilities. Section 112(r)(7)(B) authorizes reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

**Alternatives:**

The EPA is considering revisions to the accident prevention, emergency response, recordkeeping, and other provisions in 40 CFR part 68 to address chemical accident risks. The proposed action will contain the EPA's preferred option, as well as alternative regulatory options. The EPA also is considering publishing non-regulatory guidance to address some issues that will be raised in the proposed action.

**Anticipated Cost and Benefits:**

Costs will include the burden on regulated entities associated with implementing new or revised requirements, including program implementation, training, equipment purchases, and recordkeeping, as applicable. Some costs will also accrue to implementing agencies and local governments, due to enhanced local coordination and recordkeeping requirements. Benefits will result from avoiding the harmful accident consequences to communities and the environment, such as deaths, injuries, and property damage, environmental damage, and from mitigating the effects of releases that may occur.

**Risks:**

The proposed action will address the risks associated with accidental releases of listed regulated toxic and flammable substances to the air from stationary sources. Substances regulated under the RMP program include highly toxic and flammable substances that can cause deaths, injuries, property and environmental damage, and other on- and off-site consequences if accidentally released. The proposed action will reduce these risks by making accidental releases less likely, and by mitigating the severity of releases that may occur. The proposed action would not address the risks of non-accidental chemical releases, accidental releases of non-regulated substances, chemicals released to other media, and air releases from mobile sources.

**Timetable:**

Action	Date	FR Cite
NPRM	03/14/16	81 FR 13637
Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Federal, 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:**

<http://www.regulations.gov/docket?D=EPA-HQ-OEM-2015-0725>

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**RIN:** 2050–AG82

<b>EPA—Office of Water(OW)</b>	<b>FINAL RULE STAGE</b>
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**139. CREDIT ASSISTANCE FOR WATER INFRASTRUCTURE PROJECTS**

**Priority:**

Other Significant

**Legal Authority:**

33 U.S.C. 3901 et seq. WRDDA

**CFR Citation:**

Undetermined

**Legal Deadline:**

None

**Abstract:**

The EPA is taking this action to implement the Water Infrastructure Finance and Innovation Act (WIFIA) program. WIFIA was passed as part of the Water Resources Reform and Development Act of 2014, Pub. L. 113-121. This action will establish guidelines for the application process, selection criteria, and project selection, as well as define threshold requirements for credit assistance, limits on credit assistance, reporting requirements, collection of fees and the application of other Federal statutes.

**Statement of Need:**

EPA plans to issue an interim final rule that establishes the guidelines for a new credit assistance program for water infrastructure projects and the process by which EPA will administer such credit assistance. The rule will implement a new program authorized under the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA). WIFIA authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects. Following project selection by the EPA Administrator, individual credit agreements will be developed through negotiations between the project sponsors and EPA. The interim final rule primarily restates and clarifies statutory language while establishing approaches to specific procedural issues left to EPA's discretion.

**Summary of Legal Basis:**

The Water Infrastructure Finance and Innovation Act (WIFIA) program authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects. WIFIA was passed as part of the Water Resources Reform and Development Act of 2014, Pub. L. 113-121.

**Alternatives:**

To Be Determined

**Anticipated Cost and Benefits:**

To Be Determined

**Risks:**

To Be Determined

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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**RIN:** 2040-AF63

**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 & local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability).

The Regulatory Plan has one item entitled “Affirmative Action for Individuals With Disabilities in the Federal Government.” The EEOC’s regulations implementing section 501, as set forth in 29 CFR 1614, require Federal agencies and departments to be “model employers” of individuals with disabilities. The Commission issued an Advanced Notice of Proposed Rulemaking (ANPRM) on May 15, 2014 (79 FR 27824), and it issued a proposed rule on February 24, 2016 (81 FR 9123), to include a more detailed explanation of how Federal agencies and departments should “give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities.” Any revisions would be informed by Management Directive 715, and may include goals consistent with Executive Order 13548. Furthermore, any revisions would result in costs only to the Federal Government; would contribute to increasing the employment of individuals with disabilities; and would not affect risks to public health, safety, or the environment.

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.

**Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563, “Improving Regulation and Regulatory Review” (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the EEOC’s final retrospective review of regulations plan. Some of the entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov (<http://reginfo.gov/>) in the Completed Actions section. These rulemakings can also be found on Regulations.gov (<http://regulations.gov/>). The EEOC’s final Plan for Retrospective

Analysis of Existing Rules can be found at:

[http://www.eeoc.gov/laws/regulations/retro\\_review\\_plan\\_final.cfm](http://www.eeoc.gov/laws/regulations/retro_review_plan_final.cfm).

RIN	TITLE	EFFECT ON SMALL BUSINESS
3046-AA91	REVISIONS TO PROCEDURES FOR COMPLAINTS OR CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY SUBJECT TO THE AMERICANS WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT OF 1973	This rulemaking may decrease burdens on small businesses by making the charge/complaint process more efficient.
3046-AA92	REVISIONS TO PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED	This rulemaking may decrease burdens on small businesses by making the charge/complaint

	AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS	process more efficient.
3046-AA93	REVISIONS TO PROCEDURES FOR COMPLAINTS OF EMPLOYMENT DISCRIMINATION FILED AGAINST RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE	This rulemaking may decrease burdens on small businesses by making the charge/complaint process more efficient.
3046-AB00	FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY	This rulemaking pertains to the Federal sector equal employment opportunity process and thus is not expected to affect small businesses.

<b>EEOC</b>	<b>FINAL RULE STAGE</b>
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**140. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES IN THE FEDERAL**

**GOVERNMENT**

**Priority:**

Other Significant

**Legal Authority:**

29 U.S.C. 791(b)

**CFR Citation:**

29 CFR 1614.203(a)

**Legal Deadline:**

None

**Abstract:**

Section 501 of the Rehabilitation Act, as amended (Section 501), prohibits discrimination against individuals with disabilities in the Federal Government. The EEOC's regulations implementing section 501, as set forth in 29 CFR part 1614, require Federal agencies and departments to be "model employers" of individuals with disabilities.<sup>1</sup> On May 15, 2014, the Commission issued an Advance Notice of Proposed Rulemaking (79 FR 27824) that sought public comments on whether and how the existing regulations could be improved to provide more detail on what being a "model employer" means and how Federal agencies and departments should "give full consideration to the hiring, placement and advancement of qualified individuals with disabilities."<sup>2</sup> The NPRM was published on February 24, 2016 (81 FR 9123). The EEOC's review of the comments and potential revisions was informed by the discussion in Management Directive 715 of the tools Federal agencies should use to establish goals for the employment and advancement of individuals with disabilities. The EEOC's review of the comments and potential revisions was also informed by, and consistent with, the goals of Executive Order 13548 to increase the employment of individuals with disabilities and the employment of individuals with targeted disabilities. \_\_\_\_\_<sup>1</sup> 29 CFR 1614.203(a).<sup>2</sup> Id.

**Statement of Need:**

Pursuant to section 501 of the Rehabilitation Act, the Commission is authorized to issue such regulations as it deems necessary to carry out its responsibilities under this Act. Executive Order 13548 called for increased efforts by Federal agencies and departments to recruit, hire, retain, and return individuals with disabilities to the Federal workforce.

**Summary of Legal Basis:**

Section 501 of the Rehabilitation Act of 1973, as amended (section 501), 29 U.S.C. 791, in addition to requiring nondiscrimination with respect to Federal employees and applicants for Federal employment who are individuals with disabilities, also requires Federal agencies to maintain, update annually, and submit to the Commission an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities. As part of its responsibility for the administration and enforcement of equal

opportunity in Federal employment, the Commission is authorized under 29 U.S.C. 794a(a)(1) to issue rules, regulations, orders, and instructions pursuant to section 501.

**Alternatives:**

The EEOC considered all alternatives offered by ANPRM public commenters. The EEOC will consider all alternatives offered by future public commenters.

**Anticipated Cost and Benefits:**

Any costs that might result would only be borne by the Federal Government. The revisions would contribute to increased employment of individuals with disabilities.

**Risks:**

The proposed changes do not affect risks to public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
ANPRM	05/15/14	79 FR 27824
ANPRM Comment Period End	07/14/14	
NPRM	02/24/16	81 FR 9123
NPRM Comment Period End	04/25/16	
Final Action	11/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

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**Related RIN:**

Related to 3046-AA73

**RIN:** 3046-AA94

**BILLING CODE 6570-01-P**

**GENERAL SERVICES ADMINISTRATION (GSA) – Regulatory Plan – October 2016**

**I. Mission and Overview**

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 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 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 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 that increase overall Government effectiveness and efficiency. FAS business operations are organized into four business portfolios based on the product or service provided to customer agencies: Integrated Technology Services (ITS); Assisted Acquisition Services (AAS); General Supplies and Services (GSS); and Travel, Motor Vehicles, and Card Services (TMVCS). The FAS portfolio structure enables GSA and FAS to provide best value services, products, and solutions to its customers by aligning resources around key functions.

### **Public Buildings Service (PBS)**

PBS is the largest public real estate organization in the United States, providing facilities and workspace solutions to more than 60 Federal agencies. PBS aims to provide a superior workplace for the Federal worker and superior value for the U.S. taxpayer. Balancing these two objectives is PBS' greatest management challenge. PBS' activities fall into two broad areas. The first is space acquisition through both leases and construction. PBS translates general needs into specific requirements, marshals the

necessary resources, and delivers the space necessary to meet the respective missions of its Federal clients. The second area is management of space. This involves making decisions on maintenance, servicing tenants, and ultimately, deciding when and how to dispose of a property at the end of its useful life.

### **Office of Government-wide Policy (OGP)**

OGP sets Government-wide policy in the areas of personal and real property, travel and transportation, information technology, regulatory information, and 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 regulatory function fully incorporates the provisions of the President's priorities and objectives under Executive Orders 12866 and 13563 with policies covering acquisition, travel, and property and management practices to promote efficient Government operations. OGP's strategic direction is to ensure that Government-wide policies encourage agencies to develop and utilize the best, most cost effective management practices for the conduct of their specific programs. To reach the goal of improving Government-wide management of property, technology, and administrative services, OGP builds and maintains a policy framework by: (1) incorporating the requirements of Federal laws, Executive orders, and other regulatory material into policies and guidelines; (2) facilitating Government-wide reform to provide Federal managers with business-like incentives and tools and flexibility to prudently manage their assets; (3) identifying, evaluating, and promoting best practices to improve efficiency of management processes; and (4) performing ongoing analysis of existing rules that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive.

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 the travel and relocation policy for all title 5 Executive agency employees and others, as specified therein. The Code of Federal Regulations (CFR) is available at [www.gpoaccess.gov/cfr](http://www.gpoaccess.gov/cfr). Each version is updated as official changes are published in the

**Federal Register.** **Federal Register** publications and complete versions of the FTR are available at [www.gsa.gov/ftr](http://www.gsa.gov/ftr).

The FTR is the regulation contained in 41 Code of Federal Regulations (CFR), chapters 300 through 304, that implements statutory requirements and executive branch policies for official travel by Federal civilian employees and others authorized to travel at Government expense.

The Administrator of General Services promulgates the FTR to: (a) interpret statutory and other policy requirements in a manner that balances the need to ensure that official travel is conducted in a responsible manner with the need to minimize administrative costs; and (b) communicate the resulting policies in a clear manner to Federal agencies and employees.

#### **Office of Asset and Transportation Management (Federal Management Regulation)**

The Federal Management Regulation (FMR) establishes policy for aircraft, transportation, personal property, real property, and mail 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.

#### **Office of Acquisition Policy (General Services Administration Acquisition Manual (GSAM) and the 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 supplements 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 primarily established under the authority of 40 U.S.C. 585. The GSAR implements contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

## **II. Statement of Regulatory and Deregulatory Priorities**

### **FTR Regulatory Priorities**

In fiscal year 2017, GSA plans to amend the FTR by:

- Revising chapter 301, Temporary Duty Travel, ensuring accountability and transparency. This revision will ensure agencies' travel for missions is efficient and effective, reduces costs, promotes sustainability, or incorporates industry best practices at the lowest logical travel cost.
- Revising chapters 301; Temporary Duty (TDY) Travel Allowances and 304, Payment of Travel Expenses from a Non-Federal Source to clarify the full or partial waiver of conference registration fees from a non-Federal conference organizer.

### **FMR Regulatory Priorities**

In fiscal year 2017, GSA plans to amend the FMR by:

- Revising rules regarding management of Federal real property;
- Revising rules regarding management of Federal personal property.
- Revising rules under management of transportation.

### **FPMR Regulatory Priorities**

- Migrating regulations regarding the supply and procurement of Government personal property management from the FPMR to the FMR.
- Incorporating the penalty inflation adjustments for the civil monetary penalties.

### **GSAR Regulatory Priorities**

GSA plans, to update the GSAR to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. Current GSAR initiatives are focused on—

- Providing consistency with the FAR;
- Eliminating coverage that duplicates the FAR or creates inconsistencies within the GSAR;
- Rewriting sections that have become irrelevant because of changes in technology or business processes or that place unnecessary administrative burdens on contractors and the Government;
- Streamlining or simplifying the regulation;
- Rolling up coverage from the services and regions/zones that should be in the GSAR, specifically targeting PBS's construction contracting policies and the GSA Schedules Program; and
- Streamlining the evaluation process for contracts containing commercial supplier agreements.

#### **General Services Property Management Regulation**

- Updating and streamlining the Freedom of Information Act regulations.

#### **Regulations of Concern to Small Businesses**

GSAR rules are relevant to small businesses that do or wish to do business with the Federal Government. GSAR Case 2015-G512, Unenforceable Commercial Supplier Agreement Terms is of interest to small businesses as it proposes a way to streamline the evaluation process to award contracts containing commercial supplier agreements. By streamlining this process, GSA anticipates reducing barriers to entry for small businesses.

#### **Regulations Which Promote Open Government and Disclosure**

There are currently no regulations which promote open Government and disclosure.

### **III. Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (2011), the GSA retrospective review and analysis final and updated regulations plan can be found at [www.gsa.gov/improvingregulations](http://www.gsa.gov/improvingregulations). The following RINS are included in the Retrospective Review.

Regulation Identifier Number	Title
	<b>Proposed Rule Stage</b>
3090-AJ63	General Services Administration Regulation (GSAR); GSAR Case 2015-G503; Construction Contract Administration
3090-AJ64	General Services Administration Regulation (GSAR); GSAR Case 2015-G506; Construction Manager as Constructor Contracting
3090-AJ65	General Services Administration Regulation (GSAR); GSAR Case 2015-G505; Architect-Engineer Selection Procedures
3090-AJ66	General Services Administration Regulation (GSAR); GSAR Case 2015-G504; Design-Build Selection Procedures
3090-AJ71	Federal Management Regulation (FMR); FMR Case 2016-102-2, Designation of Authority and Location of Space
3090-AJ74	General Services Property Management Regulation (GSPMR) GSPMR Case 2016-105-1; Public Availability of Agency Records and Informational Materials Inbox
3090-AJ75	General Services Administration Regulation (GSAR); GSAR Case 2016-G506; Federal Supply Schedule, Order-Level Materials
	<b>Final Rule Stage</b>

3090-AJ50	Federal Property Management Regulations (FPMR)/Federal Management Regulation (FMR) FPMR Case 2014–101–1; FMR Case 2014–102–2, Supply and Procurement
3090-AJ56	Federal Travel Regulation (FTR); FTR Case 2015-304, Clarifying Agency Responsibilities Concerning Reimbursement for Automatic Teller Machine (ATM) Fees and Laundry, Cleaning and Pressing of Clothing Expenses
3090-AJ59	Federal Management Regulation (FMR); FMR Case 2015-102-2, Transportation Payment and Audit
3090-AJ60	Federal Management Regulation (FMR); FMR Case 2015-102-3, Art-in-Architecture
3090-AJ67	General Services Administration Regulation (GSAR); GSAR Case 2015-G512, Unenforceable Commercial Supplier Agreement Terms
3090-AJ68	Federal Travel Regulation (FTR); FTR 2015-303, Optimal Use of the Government Contractor-Issued Travel Charge Card
3090-AJ69	Federal Travel Regulation (FTR); FTR Case 2016-301, Clarification of Payment In Kind for Speakers at Meetings and Conferences
3090-AJ70	Federal Property Management Regulation; FPMR Case 2016-101-1; Program Fraud Civil Remedies Act of 1986, Civil Monetary Penalties Inflation Adjustment
3090-AJ72	Federal Management Regulation (FMR); FMR Case 2016-102-

	1; Federal Real Property Profile
3090-AJ73	Federal Management Regulation (FMR); FMR Case 2010-102-3, Sale of Personal Property
3090-AJ76	Federal Management Regulation (FMR); FMR Case 2016-102-3, Utility Services
3090-AJ77	Federal Management Regulation (FMR); FMR Case 2016-102-4, Historic Preservation
	<b>Completed Actions</b>
3090-AI51	General Service Administration Acquisition Regulation (GSAR); GSAR Case 2007-G500, Rewrite of GSAR Part 517, Special Contracting Methods
3090-AI76	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2008-G506, Rewrite of GSAR Part 515, Contracting by Negotiation
3090-AJ43	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2010-G511, Purchasing by Non-Federal Entities
3090-AJ51	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013-G504, Transactional Data Reporting

**DATED:** September 1, 2016.

**NAME: Troy Cribb,**

*Associate Administrator,*

*Office of Government-wide Policy.*

**BILLING CODE 6820–34–P**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)**

**Statement of Regulatory Priorities**

The National Aeronautics and Space Administration (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 2014 Strategic Plan. The Agency's mission is to "Drive advances in science, technology, aeronautics, and space exploration to enhance knowledge, education, innovation, economic vitality, and stewardship of the Earth." The FY 2014 Strategic Plan, (available at [http://www.nasa.gov/sites/default/files/files/2014 NASA Strategic Plan.pdf](http://www.nasa.gov/sites/default/files/files/2014%20NASA%20Strategic%20Plan.pdf)), guides NASA's program activities through a framework of the following three strategic goals:

- Strategic Goal 1: Expand the frontiers of knowledge, capability, and opportunity in space.
- Strategic Goal 2: Advance understanding of Earth and develop technologies to improve the quality of life on our home planet.
- Strategic Goal 3: Serve the American public and accomplish our mission by effectively

managing our people, technical capabilities, and infrastructure.

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.

### **International Regulatory Cooperation**

As the President noted in Executive Order 13609, “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. Accordingly, in Executive Order 13609, the President requires each executive agency to include in its Regulatory Plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.

In August 2009, the President directed a broad-based interagency review of the U.S. export control system, with the goal of strengthening national security by focusing efforts on controlling the most critical products and technologies and by enhancing the competitiveness of US manufacturing and technology sectors. While NASA does not have any regulations implementing this initiative, the Agency does serve on the interagency review team in a consultative and supportive role for this process, along with the Department of Defense, the Department of State, and the Department of Commerce.

In addition, NASA serves as one of the signatories to the Federal Acquisition Regulation (FAR). 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, National Aeronautics and Space Administration, under their several statutory authorities. NASA implements and supplements FAR requirements through the NASA FAR Supplement (NFS), 48 CFR chapter 18. NASA finalized the entire NFS rewrite initiative this year to eliminate unnecessary and burdensome regulations, clarify regulatory language, and simplify processes. More than 1.9 million hours of information collection requirements (ICRs) were identified as no longer required and duplicative of active FAR-level ICRs. Specifically, OMB control numbers 2700-0085, 2700-0086, and 2700-0087 were discontinued as part of the NFS rewrite initiative. The Agency will continue to analyze the NFS to implement procurement-related statutes, Executive orders, NASA initiatives, and Federal procurement policy that streamline current processes and procedures.

### **Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13579 "Regulation and Independent Regulatory Agencies" (Jul. 11, 2011), NASA regulations associated with its retrospective review and analysis are described in the Agency's final retrospective plan of existing regulations. NASA's final plan and updates can be found at <http://www.nasa.gov/open>, under the Open Government News. Below describes the rulemakings that were recently completed or are near completion.

### **Rulemakings that were streamlined and reduced unjustified burdens**

1. Discrimination on Basis of Handicap [14 CFR 1251] – NASA has finalized its section 504 regulations to incorporate changes to the definition of disability required by the Americans with Disabilities Act (ADA) Amendments Act of 2008; include an affirmative statement of the longstanding requirement for reasonable accommodations in programs, services, and activities; include a definition of direct threat and a provision describing the parameters of the existing direct threat defense to a claim of discrimination; clarify the existing obligation to provide auxiliary aids and services to qualified individuals with disabilities; update the methods of communication that recipients may use to inform program beneficiaries of their obligation to comply with section 504 to reflect changes in technology, adopt updated

accessibility standards applicable to the design, construction, and alteration of buildings and facilities; establish time periods for compliance with these updated accessibility standards; provide NASA with access to recipient data and records to determine compliance with section 504; and make administrative updates to correct titles. These amendments will reduce administrative burdens imposed on the public [81 FR 3703].

2. NASA FAR Supplement: Safety and Health Measures and Mishap Reporting [48 CFR 1852.233] – NASA finalized its regulations to revise a current clause related to safety and health measures and mishaps reporting by narrowing the application of the clause, resulting in a decrease in the reporting burden on contractors while reinforcing the measures contractors at NASA facilities must take to protect the safety of their workers, NASA employees, the public, and high-value assets. These amendments streamlined and reduced reporting requirements imposed on the public [80 FR 73675].
3. Clarification of Award Fee Evaluations and Payments – [48 CFR 1816 and 1852] NASA issued a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to clarify NASA’s award fee process by incorporating terms used in award-fee contracting; guidance relative to final award-fee evaluations; release of source selection information; and the calculation of the provisional award fee payment percentage in NASA end-item award-fee contracts [81 FR 50365].
4. Cooperative Agreements with Commercial Firms – [14 CFR 1274] NASA issued a final rule amending its regulation on Cooperative Agreements with Commercial Firms to implement the requirements of section 872 of the National Defense Authorization Act for Fiscal Year 2009 for recipients and NASA staff to report information that will appear in the Federal Awardee Performance and Integrity Information System (FAPIIS) [81 FR 35583].

**Rulemakings that were modified, streamlined, expanded, or repealed**

5. Space Flight [14 CFR 1214] – NASA amended its regulations to remove language that refers to the retired Space Shuttle Program and to clarify language for other ongoing programs that require some of this rule to remain in place [81 FR 8545].
6. NASA Protective Services [14 CFR 1204] – NASA amended its traffic enforcement regulation to correct citations and to clarify the regulation’s scope, policy, responsibilities, procedures, and violation descriptions [81 FR 70151].
7. Processing of Monetary Claims [14 CFR 1261] – NASA is amending its regulations to change the amount to collect installment payments from \$20,000 to \$100,000 to align with Title II, Claims of the United States Government, section 3711(a)(2) Collection and Compromise. This regulation will also be amended to include the rules for the use of contractors for debt collection and new provisions allowing for debts to be transferred to the Treasury Department for direct collection, as prescribed by Federal Debt Collection Procedures Act of 1990.
8. Duty Free Entry of Space Articles [14 CFR 1217] – NASA amended its regulations to remove language that refers to the Space Shuttle Program and to clarify language for other ongoing programs that require some of this rule to remain in place [80 FR 45864].
9. Removal of Obsolete Regulations [14 CFR 1216] – NASA amended its regulations to remove regulatory text that is covered in internal NASA policies and requirements [80 FR 30352].
10. Administrative Updates [14 CFR 1207, 1245, 1262, 1263, 1264, & 1266] NASA amended its regulations to make administrative updates to correct spelling citations [80 FR 42028].
11. Removal of Outdated and Duplicative Guidance [48 CFR 1817 and 1852] – NASA amended the NASA FAR Supplement (NFS) to remove duplicative language of the FAR and superseded NFS guidance. The revision is part of NASA’s retrospective plan under Executive Order (EO) 13563 completed in August 2011 [81 FR 39871].

**Rulemaking that is of particular concerns to small business**

Abstracts for other regulations that will be amended or repealed between October 2016 and October 2017 are reported in the fall 2016 edition of Unified Agenda of Federal Regulatory and Deregulation actions.

**Regulations that Office of Procurement intends to publish between now and October 2017.**

1. Contractor Financial Reporting of Property [48 CFR 1845, 1852] – NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to add a monthly reporting requirement for contractors having custody of \$10 million or more in NASA-owned property, plant, and equipment (PP&E) [81 FR 48726].
2. Revised Voucher Submission & Payment Process [48 CFR 1816, 1832, 1842, 1852] – NASA is proposing to issue an interim rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to implement revisions to the voucher submittal and payment process. These revisions are necessary due to section 893 of the National Defense Authorization Act for Fiscal Year 2016 prohibiting the Defense Contract Audit Agency (DCAA) from performing audit work for non-Defense Agencies. NASA had delegated to DCAA the task of reviewing contractor requests for payment under NASA cost-type contracts.
3. Removal of NFS clause 1852.243-70, Engineering Change Proposals [48 CFR 1852] – NASA is proposing to amend the NASA FAR Supplement (NFS) to remove NFS clause 1852.243-70, Engineering Change Proposals (ECPs) basic clause with its Alternate I & II and associated information collection from the NFS.
4. Award Term [48 CFR 1816 and 1852] – NASA is proposing to revise the NFS to implement policy addressing the use of “award terms” or additional contract periods of performance for which a contractor may earn if the contractor’s performance is superior, the Government has an ongoing need for the requirement, and funds are available for the additional period of performance. The purpose of the policy is to provide a non-monetary incentive for contractors whose performance is better than the “average” or “acceptable” level.

5. Revisions to Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards [2 CFR 1800] – NASA is proposing to amend the NASA regulation, titled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to modify the requirements related to information contained in a Federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results.

**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 and to the public. These regulations include records management, information services, access to and use of NARA holdings, and grant programs. 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 Government-wide regulations concerning information security classification and declassification programs. NARA regulations directed to the public address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA has two regulatory priorities for fiscal year 2017, which are included in The Regulatory Plan. The first priority is a substantial revision to NARA's National Industrial Security Program (NISP) regulations at 32 CFR 2004. The NISP regulations govern release of classified information to contractors and other entities that enter agreements with the Federal Government involving access to classified information. Although we are proposing to substantially revise the regulation, the proposed revisions would effect only minor changes to the program's requirements for contractors and other entities. The

proposed changes primarily include new sections setting out agency obligations in the course of implementing the program that reflect already-existing requirements for industry contained in the National Industrial Security Program Operating Manual (NISPO), and streamline or clarify other sections of the regulation. In addition, a small portion of the proposed revisions add requirements from Executive Order 13587 to implement the insider threat program.

And the second priority this fiscal year are revisions to the Federal records management regulations found at 36 CFR Chapter XII, Subchapter B (phases I, II, and III). The proposed changes include changes resulting from the 2011 Presidential Memorandum on Managing Government Records, the 2012 Managing Government Records Directive (M-12-18), and Public Law 113-187, The Presidential and Federal Records Acts Amendments of 2014. The proposed rules will affect Federal agencies' records management programs relating to proper records creation and maintenance, adequate documentation, electronic recordkeeping requirements, use of the Electronic Records Archive (ERA) for records transfer, and records disposition.

Phase I (RIN 3095-AB74) includes changes to provisions in 36 CFR parts 1223 (Managing Essential Records), 1224 (Records Disposition Programs), 1227 (General Records Schedules), 1229 (Emergency Authorization to Destroy Records), 1232 (Transfer of Records to Records Storage Facilities), 1233 (Transfer Use and Disposition of Records in a NARA Federal Records Center), and 1239 (Program Assistance and Inspections). These regulations were published in a proposed rulemaking in March 2016 and were open for public comment through May. During the course of addressing the comments we received, we determined we need to undertake a more substantial revision, which we are focusing on this fiscal year. We anticipate publishing a new proposed rule around the end of FY 2017.

Phase II (RIN 3095-AB89) includes changes to provisions in 36 CFR parts 1235 (Transfer of Records to the National Archives of the United States), 1236 (Electronic records management), and 1237 (Audiovisual Cartographic and Related Records Management). These regulations were published in a proposed rulemaking in July 2016 and were open for public comment through September. We are currently addressing the comments we received and, similarly to Phase I, we have determined that we should do a more significant revision. As a result, we anticipate publishing a new proposed rule on these regulations in FY 2018.

Phase III (RIN 3095-AB85) includes changes to provisions in 36 CFR parts 1220 (Federal Records General), 1222 (Creation and Maintenance of Federal Records), 1225 (Scheduling records), 1226 (Implementing disposition), 1228 (Loan of Permanent and Unscheduled Records), 1230 (Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records), 1231 (Transfer of Records from the Custody of one Executive Agency to Another), 1234 (Facility standards for records storage facilities), 1236 (Electronic Records Management), and 1238 (Microforms records management). We are currently drafting the proposed revisions to these regulations and project publication of a proposed rulemaking on these regulations after we have published new proposed rules for phases I and II.

## **BILLING CODE 7515-01-P**

### **U.S. Office of Personnel Management**

#### **Statement of Regulatory and Deregulatory Priorities**

#### **Fall 2016 Unified Agenda**

##### **I. Mission and Overview**

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.

## **II. Statement of Regulatory and Deregulatory Priorities**

### **Management Priorities**

- **Appointment of Current and Former Land Management Employees**

#### **3206-AN28**

The U.S. Office of Personnel Management (OPM) proposes regulations that will allow current and former land management employees to compete for permanent positions in the competitive service at a land management agency or any agency for any position under internal merit promotion procedures. This appointment into the competitive service is authorized in Public Law 114-47.

- **Senior Employee Performance Management System Certification**

#### **3206-AL20**

The U.S. Office of Personnel Management (OPM) is proposing changes to the senior employee performance management system certification regulations which will ultimately replace interim regulations published in 2004. Proposed changes reflect lessons learned from several years of certifying agency Senior Executive Service (SES) and Senior-Level (SL) and Scientific and Professional (ST) performance management systems and recommendations from a cross-agency workgroup.

- **Veterans' Preference**

**3206-AM79**

The U.S. Office of Personnel Management (OPM) issued interim regulations to implement statutory changes pertaining to veterans' preference. These changes were in response to the Hubbard Act, which broadened the category of individuals eligible for veterans' preference; and to implement the VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011, which requires Federal agencies to treat certain active duty service members as preference eligibles for purposes of competing for a position in the competitive service, even though the service members have not been discharged or released from active duty and do not have a Department of Defense (DoD) form 214, Certificate of Release or Discharge from Active Duty. In addition, OPM updated its regulations to reference existing requirements for the alternative ranking and selection procedure called "category rating;" and to add a reference to the end date of Operation Iraqi Freedom, which affected veteran status and preference eligibility. This action will align OPM's regulations with the existing statute.

- **Recruitment, Selection, and Placement (General) And Suitability (aka Ban the Box)**

**3206-AN25**

The U.S. Office of Personnel Management (OPM) is proposing to revise its regulations pertaining to when, during the hiring process, a hiring agency can make a suitability determination on an

applicant for Federal employment. OPM is proposing this change in response to a Presidential directive. On November 2, 2015, the President directed OPM, "...to take action where it can by modifying its rules to delay inquiries into criminal history until later in the hiring process." The intended effect of this proposal is to better ensure that applicants from all segments of society, including those with prior criminal histories, receive a fair opportunity to compete for Federal employment.

- **Federal Employees Health Benefits Program: Removal of Ineligible Individuals From Existing Enrollments**

#### **3206-AN09**

The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to clarify the process for removing ineligible individuals from Federal Employees Health Benefits (FEHB) Program Self and Family enrollments.

- **Employment in the Excepted Service**

#### **3206-AN30**

The U.S. Office of Personnel Management (OPM) is proposing to revise its regulations governing employment in the excepted service. The proposed rules will clarify the existing policy on exemptions from excepted service selection procedures, and provide additional procedures for passing over a preference eligible veteran with a compensable disability of 30 percent or more.

- **Noncompetitive Appointment of Certain Military Spouses**
- **3206-AM76**

The U.S. Office of Personnel Management (OPM) will limit to one the number of permanent appointments spouses of 100 percent disabled and spouses of deceased members of the Armed Forces may receive under this noncompetitive hiring authority. OPM is making this change based on the provisions of the FY 2013 National Defense Authorization Act (NDAA).

- **Personnel Management in Agencies**

**3206-AL98**

The U.S. Office of Personnel Management (OPM) will issue a final rule that will provide regulatory definitions for various documents related to the strategic management of human resources, clarify requirements regarding the systems and metrics for managing human resources in the Federal Government, streamline/clarify procedures agencies are required to follow, eliminate the Human Capital Management Report, and reflect the planning and reporting requirements of the Government Performance and Results Modernization Act.

- **Medical Qualification Determinations**

**3206-AL14**

The U.S. Office of Personnel Management (OPM) will revise its regulations for medical qualification determinations. The revised regulations would update references and language;

add and modify definitions; clarify coverage and applicability; address the need for medical documentation and medical examination and/or testing for an applicant or employee whose position may or may not have medical standards, physical requirements and/or physical fitness standards or testing; and may recommend the establishment of agency medical review boards. The final rule would provide agencies with more comprehensive guidance regarding medical evaluation and clearance procedures and implementation of a comprehensive physical fitness and medical standards program for applicants and employees.

- **Prevailing Rate Systems; Redefinition of the New York, NY, and Philadelphia, PA, Appropriated Fund Federal Wage System Wage Areas**

**3206-AN29**

The U.S. Office of Personnel Management (OPM) is issuing a proposed rule that would redefine the geographic boundaries of the New York, NY, and Philadelphia, PA, appropriated fund Federal Wage System (FWS) wage areas. The proposed rule would redefine the Joint Base McGuire-Dix-Lakehurst portions of Burlington County, NJ, and Ocean County, NJ, that are currently defined to the Philadelphia wage area to the New York wage area so that the entire Joint Base is covered by a single wage schedule. This change is based on a majority recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on the administration of the FWS.

- **Pay Administration Under the FLSA**

**3206-AN41**

The U.S. Office of Personnel Management (OPM) is issuing interim final regulations for part 551 subpart B to make OPM's regulations consistent with updates to Department of Labor regulations that define which white collar workers are protected by the FLSA's minimum wage and overtime standards. 79 FR 18737 (Apr. 3, 2014). While OPM's regulations are not required to conform with DOL's regulations, OPM believes that updates to part 551 are appropriate and consistent with the President's goal of ensuring workers are paid a fair day's pay for a fair day's work.

- **Competitive Service; Shared Certificates**

**3206-AN46**

The U.S. Office of Personnel Management (OPM) will issue interim regulations to implement the Competitive Service Act of 2015 which authorizes agencies to share certificates when filling competitive service positions.

- **Compensatory Time Off for Religious Observances**

**3206-AL55**

The U.S. Office of Personnel Management (OPM) will issue a final rule regarding compensatory time off for religious observances. The final regulation will address comments to the proposed rule (78 FR 53695), and will clarify employee and agency responsibilities, provide timeframes for earning and using religious compensatory time off, and define key terms.

- **Federal Employees Health Benefits Program: Employee Prepayment of FEHB Contributions During Leave Without Pay (LWOP)**

**3206-AN33**

The U.S. Office of Personnel Management (OPM) proposes to amend the Federal Employees Health Benefits (FEHB) regulations at 5 CFR Part 890 to provide agencies with the option to require payment of FEHB premium contributions from employees in Leave Without Pay (LWOP) status for the time period they are in LWOP status.

- **Federal Employees Health Benefits Program; Tribes and Tribal Organizations**

**3206-AM40**

The U.S. Office of Personnel Management (OPM) proposes to amend the Federal Employees Health Benefits (FEHB) regulations at 5 CFR Part 890 to include enrollments for eligible employees of Tribes and Tribal organizations under the provisions of the Affordable Care Act of 2010.

- **Privacy Procedures for Personnel Records**

**3206-AN27**

The Office of Personnel Management (OPM) proposes to amend part 297 of title 5, Code of Federal Regulations, to implement a timeframe to submit a request for administrative review on internal or central system of records. This proposed change will allow greater efficiency in processing appeals and requests for administrative review and will also improve the office's records maintenance and disposal policies.

- **Federal Employees' Retirement System; Government Costs**

**3206-AN22**

The Office of Personnel Management (OPM) proposes to amend 5 CFR part 841 to clarify the process by which the U.S. Postal Service and the U.S. Department of the Treasury may request reconsideration of OPM's computation of the supplemental liability. This proposed rule will also clarify the employee categories it will use for computing the FERS normal cost percentages covered under FERS (Federal Employees Retirement System), FERS-RAE (FERS Revised Annuity Employees), and FERS FRAE (FERS Further Revised Annuity Employees). Finally, it will also clarify the definition of present value factors as provided in 5 CFR part 831; 5 CFR part 839; 5 CFR part 841; 5 CFR part 842; and 5 CFR part 847.

**BILLING CODE 6325-44-P**

**PENSION BENEFIT GUARANTY CORPORATION (PBGC)**

**Statement of Regulatory and Deregulatory Priorities**

The Pension Benefit Guaranty Corporation (PBGC) protects the pensions of more than 40 million people in nearly 24,000 private-sector defined benefit plans. PBGC receives no tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteeed by PBGC, and recoveries from the companies formerly responsible for the trusteeed plans.

To carry out these functions, PBGC issues regulations on such matters as termination, payment of premiums, reporting and disclosure, and assessment and collection of employer liability. The Corporation is committed to issuing simple, understandable, flexible, and timely regulations to help affected parties.

PBGC continues to follow a regulatory approach that seeks to encourage the maintenance of existing defined benefit plans or the establishment of new plans. Thus, in developing new regulations

and reviewing existing regulations, the focus, to the extent possible, is to reduce burdens on plans, employers, and participants, and to ease and simplify employer compliance. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans.

PBGC develops its regulations in accordance with the principles set forth in Executive Order 13563 “Improving Regulation and Regulatory Review” (Jan. 18, 2011), and PBGC’s Plan for Regulatory Review (Regulatory Review Plan).<sup>15</sup> This Statement of Regulatory and Deregulatory Priorities reflects PBGC’s ongoing implementation of its Regulatory Review Plan.

### **PBGC Insurance Programs**

PBGC administers two insurance programs for privately maintained defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA):

- *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 smaller 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 unable to pay benefits at the guaranteed level. The guarantee is structured differently from, and generally significantly smaller than, the single-employer guarantee.

At the end of FY 2015, PBGC had a deficit of \$24 billion in its single-employer insurance program and \$52 billion in its multiemployer insurance program. While the financial position of the single-employer program is likely (but not certain) to improve, the multiemployer program is likely to run out of funds by

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<sup>15</sup> <http://www.pbgc.gov/documents/plan-for-regulatory-review.pdf>. Progress reports on the plan can be found at <http://www.pbgc.gov/res/laws-and-regulations/reducing-regulatory-burden.html>.

2025. Substantial increases in premium revenue will be needed to avoid cuts in multiemployer insurance program guarantees.

### **Regulatory Objectives and Priorities**

PBGC's regulatory objectives and priorities are developed in the context of the Corporation's statutory purposes:

- To encourage voluntary private pension plans;
- To provide for the timely and uninterrupted payment of pension benefits; and
- To keep premiums at the lowest possible levels.

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 and other guidance that do not impose undue burdens that could impede maintenance or establishment of defined benefit plans.

Through its regulations and other guidance, PBGC strives to minimize burdens on plans, plan sponsors, and plan participants; simplify filing; provide relief for small businesses and plans; and assist plans in complying with applicable requirements. To enhance policy-making through collaboration, PBGC also plans to continue to expand opportunities for public participation in rulemaking (see Open Government and Public Participation below).

PBGC's current regulatory objectives and priorities are to simplify its regulations and reduce burden, to enhance retirement security, and to implement statutory changes, particularly the Multiemployer Pension Reform Act of 2014 (MPRA) and the Pension Protection Act of 2006 (PPA 2006).

### **Enhancing Retirement Security**

**Missing participants.** A major focus of PBGC's current regulatory efforts is to finalize rules to improve and expand the existing missing participants program to help connect more participants with their lost retirement savings. As authorized by PPA 2006, the expanded program will cover terminating defined contribution plans, non-covered defined benefit plans, and multiemployer plans, in addition to single-employer defined benefit plans. PBGC will continue to work with Internal Revenue Service and Department of Labor to coordinate government requirements for dealing with missing participant issues. PBGC published a proposal in September 2016. PBGC expects to publish a final regulation in FY 2017.

### **Rethinking Existing Regulations**

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis consistent with the Corporation's final retrospective review plan. The regulatory actions associated with these RINs are described below.

Title	RIN	Effect on Small Business
Payment of Premiums; Late Payment Penalty Relief	1212-AB32	Expected to reduce burden on small business
Valuation Assumptions and Methods; Interest and Mortality	1212-AA55	To Be Determined
Benefit Payments	1212-AB27	To Be Determined
Administrative Review	1212-AB35	To Be Determined
Miscellaneous Corrections, Clarifications, and Improvements	1212-AB34	To Be Determined

**Penalty relief for late payment of premiums.** PBGC is lowering the rates of penalty charged for late payment of premiums by all plans, and providing a waiver of most of the penalty for plans with a history of

premium compliance. In recent years, Congress has significantly increased PBGC premium rates. Since late payment charges are a percentage of unpaid premium, the penalties have gone up in proportion to the increases. PBGC is sensitive to the fact that a penalty assessed today may be several times what would have been assessed years ago for the same acts or omissions involving a plan with the same number of participants and the same unfunded vested benefits. Penalties under the new rule generally would be reduced by half and could be reduced by 80 percent for sponsors with good payment histories.

**Valuation assumptions and methods; interest and mortality.** PBGC plans to conduct a routine, periodic review of PBGC's regulations and policies to ensure that the actuarial and economic content remains current. PBGC plans to publish a proposed rule in FY 2017 that would amend its benefit valuation and asset allocation regulations by improving its valuation assumptions and methods. Chief among the modifications PBGC is considering are modifications to mortality rates and the format of its interest factors.

**Benefit payments.** PBGC plans to publish a proposed rule in FY 2017 to 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.

**Administrative review.** PBGC is proposing to update and improve its rules for administrative review of agency decisions.

**Miscellaneous corrections, clarifications, and improvements.** PBGC is proposing to make miscellaneous corrections, clarifications, and improvements to its regulations. PBGC intends to initiate future projects of this type to deal with minor issues that don't call for full-scale rulemaking projects.

### **Statutory implementation**

**MPRA.** MPRA established new options for trustees of multiemployer plans that will potentially run out of money to apply to PBGC for financial assistance. PBGC published a proposed rule on June 6, 2016, that

would prescribe rules for facilitated mergers of multiemployer plans and conform the existing regulation to changes in the law. PBGC received 10 comments on the proposal and expects to publish a final rule early in FY 2017. This is the second PBGC rulemaking project based on MPRA requirements. The first, prescribing the application process and notice requirements for partitions of eligible multiemployer plans under MPRA, was finalized on December 23, 2015.

**Cash balance plans.** PPA 2006 changed the rules for determining benefits in cash balance plans and other statutory hybrid plans. In October 2011, PBGC published a proposed rule implementing the changes both in PBGC-trusted plans and in plans that close out in the private sector.<sup>16</sup> Now that the Treasury Department has issued final regulations on statutory hybrid plans, PBGC is developing a final rule, which it expects to publish in FY 2017.

**Owner-participant benefits.** PPA 2006 changed the guarantee of owner-participant benefits in PBGC-trusted plans. PBGC is developing a proposed rule implementing these changes, which it expects to publish in FY 2017.

### **Small Businesses**

PBGC takes into account the special needs and concerns of small businesses in making policy. A large percentage of the plans insured by PBGC are small or maintained by small employers. PBGC has issued or is considering proposed rules that will focus on small businesses:

**Missing participants.** The missing participants rule discussed above would benefit small businesses by simplifying and streamlining current requirements, better coordinating with requirements of other agencies, and providing more options for sponsors of terminating non-covered plans.

**Penalty relief for late payment of premiums.** The late payment penalty relief rule discussed above benefits small businesses by reducing penalties for late premium payments by at least half.

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<sup>16</sup> 76 FR 67105 (Oct. 31, 2011), <http://www.pbgc.gov/Documents/2011-28124.pdf>.

## **Open Government and Increased Public Participation**

PBGC is doing more to encourage public participation in the regulatory process. For example, PBGC's current efforts to reduce regulatory burden are in substantial part a response to public comments. The regulatory projects discussed above highlight PBGC's customer-focused efforts to reduce regulatory burden.

PBGC's Regulatory Review Plan sets forth ways to expand opportunities for public participation in the regulatory process. For example, in June 2013, PBGC held its first-ever regulatory hearing on the reportable events proposed rule, so that the agency would have a better understanding of the needs and concerns of plan administrators and plan sponsors. Discussion at that hearing informed PBGC's final rule. PBGC's 2013 Request for Information<sup>17</sup> on Missing Participants in Individual Account Plans and 2015 Request for Information<sup>18</sup> on Partitions and Facilitated Mergers Under MPRA are examples of PBGC's efforts to solicit public participation in the regulatory process.

PBGC plans to provide additional means for public involvement, including social media and continuing opportunity for public comment on PBGC's Web site.

PBGC also invites comments on the Regulatory Review Plan on an on-going basis as we engage in the review process. Comments should be sent to [murphy.deborah@pbgc.gov](mailto:murphy.deborah@pbgc.gov).

PBGC will continue to look for ways to further improve its 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 economic recovery of communities after disasters. In carrying out this mission, SBA strives to improve the economic environment for small businesses, including those in areas that have significantly higher unemployment and lower income levels than the Nation's averages and those in traditionally underserved

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<sup>17</sup> <http://www.pbgc.gov/documents/2013-14834.pdf>.

<sup>18</sup> <http://www.pbgc.gov/documents/2015-03434.pdf>.

markets. The Agency serves as a guarantor of small business loans, and also provides management and technical assistance to existing or potential small business owners through various grants, cooperative agreements or contracts. This access to capital and other assistance provides a crucial foundation for those starting a new business, or growing an existing business and ultimately helps to create new jobs. SBA also provides direct financial assistance to homeowners, renters, and small business to help in the rebuilding of communities 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, innovation, and procurement programs.

#### 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's FY 2014 to FY 2018 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 three strategic goals: (1) growing businesses and creating jobs; (2) serving as the voice for small business; and (3) building an SBA that meets the needs of today's and tomorrow's 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;
- Ensuring Federal contracting goals are met or exceeded by collaborating across the Federal Government to expand opportunities for small businesses and strengthen the integrity of the Federal contracting data and certification process;
- Strengthening SBA's relevance to high growth entrepreneurs and small businesses to more effectively drive innovation and job creation; and
- Mitigating risk and improving program oversight.

The regulations reported in SBA's semi-annual regulatory agenda and plan are intended to facilitate achievement of these goals and objectives. Over the next twelve months, SBA's highest regulatory priorities will be to implement the following regulations and program guidance: (1) Small Business Investment Company (SBIC) Program; Impact SBICs (RIN: 3245-AG66); and (2) Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive (RIN: 3245-AG64).

**(1) Small Business Investment Company (SBIC) Program; Impact SBICs (RIN: 3245-AG66):**

This rule proposes to establish a regulatory structure for the SBIC program's Impact Investment Fund initiative, which is currently implemented via policy memorandum. The goal of the Impact Investment Fund is to support small business investment strategies that maximize financial returns while also yielding enhanced social, environmental, or economic impacts as part of the SBIC program's overall effort to supplement the flow of private equity and long-term loan funds to small businesses in underserved communities and the innovative sectors whose capital needs are not being met. The proposed rule supports the development of America's growing impact investing industry by making available a new type of SBIC license called an Impact SBIC to investment funds meeting the SBIC program's licensing qualifications, provides application and examination fee considerations to incentivize impact investing participation, establishes leverage eligibility requirements, and establishes reporting and performance measures for licensed funds to maintain Impact SBIC designation. The proposed rule would require an Impact SBIC to invest at least 50% of its total invested capital in one or both categories of impact investment: (a) SBA-identified impact investments, which are investments in small businesses located in geographic areas and sectors of national priority designated by SBA, such as Low- and

Moderate- Income Zones (LMI); and/or (b) fund-identified impact investments, which are investments that meet an SBIC's own definition, subject to SBA's approval, of an "Impact Investment," such as small businesses operating in the clean energy, education or healthcare sectors.

**(2) Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive (RIN: 3245-AG64):**

This proposed Directive seeks to revise the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Policy Directives. Specifically, SBA proposes to combine the two directives into one integrated Directive, clarify the Phase III preference afforded to SBIR and STTR small business awardees, add definitions relating to data rights, clarify the benchmarks for progress towards commercialization, and update language regarding the calculations of extramural Research/Research & Development budgets used to fund the SBIR/STTR programs.

Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), SBA developed a plan for the retrospective review of its regulations. Since that date SBA has issued several updates to this plan to reflect the Agency's ongoing efforts in carrying out this executive order. The final agency plan and review updates, which can be found at [http://www.sba.gov/about-sba/sba\\_performance/open\\_government/retrospective\\_review\\_of\\_regulations](http://www.sba.gov/about-sba/sba_performance/open_government/retrospective_review_of_regulations), currently identify the rule and the policy directive discussed above.

<b>SBA</b>	<b>FINAL RULE STAGE</b>
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**141. SMALL BUSINESS INNOVATION RESEARCH PROGRAM AND SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM POLICY DIRECTIVE**

**Priority:**

Other Significant

**Legal Authority:**

15 U.S.C. 638(p); Pub. L. 112–81, sec. 5001, et seq.

**CFR Citation:**

13 CFR ch 1

**Legal Deadline:**

None

**Abstract:**

SBA reviews its Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) program policy directives regularly to determine areas that need updating and further clarification. On November 7, 2014, SBA issued an advance notice of policy directive amendments and request for comments at 77 FR 66342. SBA explained that it intended to update the directives on a regular basis and to restructure and reorganize the directives, as well as address certain policy issues relating to SBIR and STTR data rights and Phase III work. In this ANPRM, SBA outlined what it believed were the issues concerning data rights and Phase III awards and requested feedback on several questions posed. The comments SBA received were generally in agreement that the sections of the directives relating to data rights and Phase III awards need further clarification.

On April 7, 2016, SBA issued a notice of policy directive amendments with a request for comments at 81 FR 20484. In this NPRM, SBA proposed clarification of the issues relating to both programs concerning data rights, Phase III awards, and miscellaneous issues such as benchmarks to commercialization achievement and the calculation of extramural budget. SBA also proposed combining both the SBIR and STTR policy directives into one because the general structure of both programs is the same.

**Statement of Need:**

It is necessary to update the data rights, Phase III preference, benchmark sections, and clarify how agencies calculate extramural budget due to numerous inquiries and requests for clarification received from SBIR and STTR Program Managers and small businesses regarding these issues. Requests for clarification indicate that there is confusion among participating agencies and small business concerns

regarding these policy issues. It is necessary to combine the Policy Directives to increase ease of use and to reduce duplicity, as much of the language in the current Directives is identical for both programs. The clarifications and consolidation will provide clearer guidance and uniformity of these sections of the Policy Directive, and are necessary to enhance the efficient implementation of the programs.

**Summary of Legal Basis:**

Section 9(j) and (p) of the Small Business Act, codified at 15 U.S.C. 638(j) & (p) requires SBA to issue directives to the SBIR/STTR participating agencies to simplify and standardize program proposals, selections, contracting, compliance, and audit procedures, while allowing the participating agencies flexibility in the operation of their individual programs.

**Alternatives:**

If SBA does not amend the Policy Directives, the participating agencies and small business concerns will continue to need additional guidance and clarification regarding the implementation of data rights, Phase III awards, and the commercialization benchmarks.

**Anticipated Cost and Benefits:**

The consolidation and revision of the SBIR/STTR Policy Directive is essential to the efficient implementation of the respective programs. There may be some costs associated with the consolidation and revision of the Policy Directives, such as updating current resource materials to reflect the clarifications and consolidation to one document; however, SBA anticipates such costs are not burdensome.

**Risks:**

None identified.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
ANPRM	11/07/14	79 FR 66342
ANPRM Comment Period End	01/06/15	
NPRM	04/07/16	81 FR 20484
NPRM Comment Period Extended	05/31/16	81 FR 34426
NPRM Comment Period End	06/06/16	
Second NPRM Comment Period End	07/06/16	
Final Rule	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Federal

**Additional Information:**

Included in SBA's Retrospective Review under Executive Orders 13563 and 13610.

**Agency Contact:**

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Washington, DC 20416

Phone: 202 205-6450

Email: edsel.brown@sba.gov

**RIN:** 3245-AG64

SBA	
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## 142. SMALL BUSINESS INVESTMENT COMPANY (SBIC) PROGRAM – IMPACT SBICS

**Priority:**

Other Significant

**Legal Authority:**

15 U.S.C. 681

**CFR Citation:**

13 CFR 107

**Legal Deadline:**

None

**Abstract:**

This rule will establish a regulatory structure for the SBIC Programs Impact Investment Fund, which is currently being implemented through a policy memorandum to interested applicants. The rule would establish in the regulations a new type of SBIC license called the Impact SBIC license and will include application and examination fee considerations to incentivize Impact Investment Fund participation. Impact SBICs may also be able to access Early Stage leverage on the same terms as Early Stage SBICs without applying through the Early Stage call process defined in 107.310. This will allow Impact SBICs with early stage strategies to apply for the program. The new license will be available to investment funds that meet the SBIC Programs licensing qualifications and commit to invest at least 50 percent of their invested capital in impact investments as defined in the rule. The rule would also outline reporting and performance measures for licensed funds to maintain Impact Investment Fund designation. The goal of the Impact Investment Fund is to support small business investment strategies that maximize financial returns while also yielding enhanced social environmental or economic impacts as part of the SBIC Programs overall effort to supplement the flow of private equity and long-term loan funds to small businesses whose capital needs are not being met.

**Statement of Need:**

SBA originally announced the launch of the SBIC program's Impact Investing Initiative (Initiative) on April 7, 2011, with a commitment of \$1 billion in debenture leverage over a 5-year period to SBICs that committed to deploy at least 50% of their total invested capital in small businesses located in low-to-moderate income areas, economically-distressed areas and rural areas, as well as small businesses active in the education and clean energy sectors. Subsequently, SBA made several changes to the Initiative in 2014, including renaming the Initiative the Impact Investment Fund, and expanding its scope to reflect SBA's commitment beyond the initial 5-year term. This rule follows that commitment by providing a permanent framework within the SBIC program's regulations, highlighting the important role of impact investing by supporting the development of America's growing impact investing industry, and seeking to expand the pool of investment capital available to underserved communities and innovative sectors. The rule requires an Impact SBIC to invest at least 50% of its total invested capital in one or both categories of impact investment: (1) SBA-identified impact investments, which are investments in small businesses located in geographic areas and sectors of national priority designated by SBA, such as Low and Moderate Income Zones; and (2) fund-identified impact investments, which are investments that meet an SBIC's own definition, subject to SBA's approval, of an Impact Investment, such as small businesses operating in the clean energy, education and/or healthcare sectors. The rule will encourage the creation of Impact SBICs by providing certain application and examination fee discounts to these funds.

**Summary of Legal Basis:**

The policy goal of the Small Business Investment Act of 1958, 15 U.S.C. 661 *et seq.*, is to stimulate and supplement the flow of private equity capital and long-term loan funds to the nation's small businesses for the sound financing of their growth, expansion, and modernization. The Small Business Investment Act contains several provisions aimed at promoting the flow of capital to several special categories of small business, including those located in low income geographic areas, those engaged in energy-saving activities and smaller businesses, 15 U.S.C. 683(b)(2)(C), 683(b)(2)(D), 683(d). The rule was crafted to enhance the SBIC program's effectiveness in channeling much-needed capital to small businesses operating in these and other underserved areas and sectors of the U.S. economy.

**Alternatives:**

SBA considered several alternatives to the regulation, including continuing its impact investment objectives solely through existing policy initiatives. However, those policy initiatives did not provide sufficient incentives to attract Impact SBIC fund managers to the program. Moreover, SBA determined that it must demonstrate a lasting commitment to the Initiative by promulgating regulations. In addition, SBA considered restricting the definition of an Impact Investment to financings that meet requirements already outlined in federal regulations, such as Energy-Savings Investments, LMI Investments or investments in rural areas. These investments are aligned with federal policy priorities and are easy to define and monitor, but SBA determined a more accommodative approach would be more effective. The rule has been drafted to allow Impact SBIC applicants to make SBA-identified impact investments, which target federal priority areas, or make fund-identified impact investments that align with their own definitions of impact. This approach expands the reach of SBA's impact investing efforts beyond the limited subset of investments that meet existing regulatory criteria and promotes freedom of choice for impact fund managers to pursue an impact investing strategy based on their own definition of Impact Investment.

**Anticipated Cost and Benefits:**

The rule will result in an approximate 6.1 basis point increase in the annual charge paid by all SBICs with outstanding leverage and will include *de minimis* additional oversight costs to SBA in monitoring the additional reporting requirements that Impact SBICs must comply with. The rule benefits SBA by encouraging SBICs to deploy capital to small businesses operating in geographic areas and sectors of national priority designated by SBA, and SBA expects that it will result in increased financings to small businesses taking innovative approaches in, among others, the educational, clean energy and healthcare sectors. As a corollary benefit, the rule will support the development of the impact investing industry more broadly by incorporating impact investing best practices, especially with regard to the measurement and assessment of impact.

**Risks:**

None identified.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
NPRM	02/03/16	81 FR 5666
NPRM Comment Period End	03/04/16	
Final Rule	02/00/17	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

Included in SBA's Retrospective Review under Executive Orders 13563 and 13610.

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**RIN:** 3245-AG66

**BILLING CODE 8025-01-P**

**FEDERAL ACQUISITION REGULATION (FAR)**

**I. Mission and Overview**

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, pursuant to the Office of Federal Procurement Policy (OFPP) Reauthorization Act, under the statutory authorities granted to the Secretary of Defense, Administrator of General Services, and the Administrator, National Aeronautics and Space Administration. Statutory authorities to issue and revise the FAR have been delegated to the procurement executives in Department of Defense (DoD), GSA, and National Aeronautics and Space Administration (NASA).

## **II. Statement of Regulatory and Deregulatory Priorities**

### **Federal Acquisition Regulation Priorities:**

Specific FAR cases that the FAR Council plans to address in fiscal year 2017 include:

#### **SB - Regulations to Improve Small Businesses Opportunities in Government Contracting**

Implementation of the Small Business Administration's final rule for section 1651 of the National Defense Authorization Act for Fiscal Year 2013. SBA's rule revised the limitations on subcontracting and the nonmanufacturer rule. Also implements SBA's regulatory clarifications concerning application of the limitations on subcontracting, nonmanufacturer rule, and size determination of joint ventures. (FAR Case 2016-011, Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments)

Clarification on the participation of Federal Prison Industries in small business set-asides. Provides clarity under FAR subparts 19.8, 19.13, 19.14, and 19.15. (FAR Case 2016-010, FPI Participation in Small Business Set-Asides)

Clarification on 8(a) joint ventures. Clarifies that 8(a) joint ventures are not “certified” into the 8(a) program and that 8(a) joint venture agreements need not be “approved” by the SBA until contract award rather than at the time of proposal submission. (FAR Case 2015-031, Policy on 8(a) Joint Ventures)

Considers applicability of small business regulations to contracts performed outside the United States. FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States)

Contracts under the Small Business Administration 8(a) Program—This case clarifies FAR subpart 19.8, “Contracting with the Small Business Administration (The 8(a) Program).” (FAR Case 2012-022)

Clarification of Requirement for Justifications for 8(a) Sole-Source Contracts—This case clarifies the requirement for a justification for 8(a) sole-source contracts, in response to GAO Report to the Chairman, Subcommittee on Contracting Oversight, Committee on Homeland Security and Governmental Affairs, U.S. Senate, entitled Federal Contracting: Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts (GAO-13-118 dated December 2012). (FAR Case 2013-018)

Set-Asides under Multiple Award Contracts—This case implements statutory requirements from the Small Business Jobs Act of 2010 and is aimed at providing agencies with clarifying guidance on how to use multiple-award contracts as a tool to increase Federal contracting opportunities for small businesses. (FAR Case 2014-002)

Payment of Subcontractors—This case implements section 1334 of the Small Business Jobs Act of 2010 and the Small Business Administration’s (SBA) Final Rule 78 FR 42391, Small Business Subcontracting. The rule requires prime contractors of contracts requiring a subcontracting plan to notify the contracting officer in writing if the prime contractor pays a reduced price to a subcontractor or if payment is more than 90 days past due. A contracting officer will then use his or her best judgment in determining whether the late or reduced payment was justified and if not the contracting officer will record the identity of a prime contractor with a history of unjustified

untimely payments to subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS) or any successor system. (FAR Case 2014-004)

### **Labor - Regulations Which Promote the Welfare of Wage Earners**

Equal Pay for Equal Work Among Employees Working for Covered Federal Contractors. The rule implements E.O. 13665, Non-Retaliation for Disclosure of Compensation Information. FAR Case 2016-007, Non-Retaliation for Disclosure of Compensation Information.

Combating Trafficking in Persons—Definition of “Recruitment Fees”—This case considers a new definition for the term “recruitment fees” at the request of the Senior Policy Operating Group (SPOG) for Combating Trafficking in Persons. (FAR Case 2015-017)

### **Environmental Rules - Regulations That Promote Environmental Goals**

Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation—This case creates an annual representation within the System for Award Management (SAM) for contractors to indicate if and where they publicly disclose GHG emissions and GHG reduction goals or targets. This information will help the Government assess supplier GHG management practices and assist agencies in developing strategies to engage with contractors to reduce supply chain emissions as directed in section 15 of Executive Order 13693, Planning for Federal Sustainability in the Next Decade, dated March 19, 2015. (FAR Case 2015-024)

Sustainable Acquisition— This case implements Executive Order 13693, Planning for Federal Sustainability in the Next Decade, which supersedes Executive orders 13423 and 13514. (FAR Case 2015-033)

### **Regulations That Promote Protection of Government Information and Systems**

Privacy Training—This case creates a FAR clause to require contractors that (1) need access to a system of records, (2) handle personally identifiable information, or (3) design, develop, maintain, or operate a system of records on behalf of the Government, have their personnel complete privacy training. This addition complies with subsections (e) (agency requirements) and (m) (Government contractors) of the Privacy Act (5 U.S.C. 552a) (FAR Case 2010-013)

Organizational Conflicts of Interest and Unequal Access to Information—This case implements section 841 of the NDAA for FY 2009 (Pub. L. 110-147). Section 841 requires consideration of how to address the current needs of the acquisition community with regard to Organizational Conflicts of Interest. Separately addresses issues regarding unequal access to information. (FAR Case 2011-001)

Contractor Use of Information—This case addresses contractor access to controlled unclassified information. (FAR Case 2014-021)

### **Regulations Which Promote Ethics and Integrity in Contractor Performance**

Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction.—This case implements multiple sections of the Consolidated and Further Continuing Appropriations Act, 2015. (Pub. L. 113-235) to prohibit using any of the funds appropriated by the Act to enter into a contract with any corporation with a delinquent Federal tax liability or a felony conviction. (FAR Case 2015-011)

Prohibition on Providing Funds to the Enemy—This case implements sections 841–843, subtitle E (Never Contract with the Enemy), title VIII, of the National Defense Authorization Act for FY 2015 (Pub. L. 113-291), enacted 12/19/2014. Section 841 prohibits providing funds to the enemy. Section 842 provides additional access to records. Section 843 provides definitions. (FAR Case 2015-014)

### **Regulations That Streamline and Reduce Unjustified Burdens**

Effective Communication. Implements section 887 of the NDAA for FY 2016, which provides that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. (FAR Case 2016-005, Effective Communication between Government and Industry)

Provide clarification within service contracts that contractors are required to purchase the mandatory source products from approved sources. (FAR Case 2015-026, Contractor Use of Mandatory Sources of Supply in Service Contracts)

Incremental Funding of Fixed-Price Contracting Actions. While the FAR provides for incremental funding of cost-reimbursement contracts, it is silent on incremental funding of fixed-price contracts. Given the federal government's implicit preference for fixed-price contracting, as well as the quagmire posed by Continuing Resolutions and other budgeting problems, acquisition professionals need additional tools to overcome less-than-full-funding challenges while abiding by the preference for fixed-price contracting. The proposed rule aims to amend the FAR to cover fixed-price contracting actions under circumstances in which full funding is not available at the outset of the contracting endeavor.

Provisions and Clauses for Acquisitions of Commercial Items and Acquisitions That Do Not Exceed the Simplified Acquisition Threshold—This case implements a new approach to the prescription and flow down for provisions and clauses applicable to the acquisition of commercial items or acquisitions that do not exceed the simplified acquisition threshold. Each clause prescription and each clause flow down for commercial items is specified within the prescription/clause itself, without having to cross-check another clause or list. The rule supports the use of automated contract writing systems and reduced necessary FAR maintenance when clauses are updated. (FAR Case 2015-004)

Reverse Auction Guidance—This case implements OFPP memorandum, "Effective Use of Reverse Auctions." The memorandum provides guidance on the usage of reverse auctions, and was issued in response to

recommendations within GAO report (Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings, GAO-14-108). (FAR Case 2015-038)

### **Regulations Which Promote Fiscal Responsibility (Accountability and Transparency)**

Revise the definition of “information technology” in the FAR. This conforms to the Office of Management and Budget Memo, M-15-14 titled Management Oversight of Federal Information Technology. (FAR Case 2015-037, Definition of “Information Technology”)

Strategic Sourcing Documentation—This case implements section 836 of the FY15 NDAA. Section 836 requires that when purchasing services and supplies that are offered under the Federal Strategic Sourcing Initiative but the Initiative is not used, the contract file shall include an analysis of comparative value, including price and nonprice factors, between the services and supplies offered under such Initiative and services and supplies offered under the source or sources used for the purchase. (FAR Case 2015-015)

Prohibition on Reimbursement for Congressional Investigations and Inquiries—This case implements section 857 of the NDAA for FY15, which amends 10 U.S.C.2324(e)(1). Section 857 disallows costs incurred by a contractor in connection with a congressional investigation or inquiry into an issue that is the subject 10 U.S.C. 2324(k)(2). (FAR Case 2015-016)

Determination of Fair and Reasonable Prices on Orders under Multiple-Award Contracts—This case clarifies the responsibilities for ordering activity contracting officers to determine fair and reasonable prices when using Federal Supply Schedules. (FAR Case 2015-021)

### **Regulations Which Promote Accountability and Transparency**

Uniform Use of Line Items—This case establishes a requirement for use of a standardized uniform line item numbering structure in Federal procurement. (FAR Case 2013-014)

Past Performance Evaluation Requirements—This case updates FAR subpart 42.15 to identify “regulatory compliance” as a separate evaluation factor in the Contractor Past Performance Assessment System (CPARS) and require agencies use past performance information in the Past Performance Information three years for construction and architect-engineer contracts. (FAR Case 2015-027)

**DATED:** August 29, 2016.

**NAME:** William 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)**

### **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 18 entries in our regulatory plan (plan) represent issues of major importance to the Agency. We describe the individual initiatives more fully in the attached plan.

### **Improving the Disability Process**

The continued improvement of the disability program and the protection of our beneficiaries is of paramount importance to SSA. The regulatory plan actions under this category will aid in these goals. These initiatives include two final and three proposed rules that will:

- Save time during the disability application process by authorizing the Commissioner of SSA to directly seek necessary medical evidence for disability claims;
- Update the education category in our medical-vocational guidelines to accurately differentiate between literacy and education level;
- Establish beneficiaries' legal guardians as the preferred choice during our representative payee selection process;
- Update our rules on withdrawal of old-age benefits applications and suspension of benefits; and
- Improve the efficiency of our processes by requiring representatives to use electronic methods with the Agency.

### **Priority Hearings and Appeals Process Improvement Rules**

These rules are the core of a continuing SSA initiative to improve the adjudication process, reduce average processing times for disability hearings, and reduce the hearings backlog.

These regulatory actions include three final rules that will:

- Revise existing rules to achieve national consistency of our procedures at the administrative law judge (ALJ) and Appeals Council levels;
- Revise our rules of conduct and standards of responsibility for claimant representatives to better protect the integrity of our administrative process and further clarify representatives' existing responsibilities, thus protecting our beneficiaries; and
- Update rules relating to acceptable medical sources and medical evidence, to make these rules easier to understand and apply and support the goal of faster, more accurate disability decisions.

### **Revised Listing of Medical Impairments**

SSA uses the Listing of Impairments in disability determinations. Each major body system has its own unique listing describing impairments that we consider severe enough to prevent an individual from performing substantial gainful activity, regardless of age, education, or work experience. As part of our commitment to improving and modernizing the disability programs, we update the listings to keep pace with medicine, science, technology, and the world of work. In 2017, we plan to begin the process of updating six of our body system listings by publishing proposed rules.

### **Bipartisan Budget Act (BBA)**

The rules in this section are required in connection with the Bipartisan Budget Act of 2015 (BBA), Public Law 114-74, enacted on November 2, 2015. SSA is prioritizing these rules to meet our regulatory obligations under the BBA. Our BBA Regulatory Plan initiatives include a proposed and final rule to regulate the use of electronic payroll data to improve program

administration, and a proposed rule to close unintended loopholes related to presumed filing and voluntary suspension.

### **Privacy and Disclosure**

The interim final rule in this category will implement the time-sensitive, statutory requirements of the FOIA Improvement Act of 2016, Public Law 114-185.

### **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](http://www.reginfo.gov) in the "Completed Actions" section for the Social Security Administration. The Agency's most recently published Retrospective Review Progress Report can be found at:

<https://www.whitehouse.gov/sites/default/files/omb/inforeg/regreform/retroplans/Jan-2016/SSA-Retrospective-Plan-Progress-Report.pdf>.

<b>SSA</b>	<b>PROPOSED RULE STAGE</b>
<b>143. REVISED MEDICAL CRITERIA FOR EVALUATING MUSCULOSKELETAL DISORDERS (3318P)</b>	

**Priority:**

Other Significant

**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 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:**

We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving musculoskeletal disorders in adults and children under titles II and XVI of the Social Security Act (Act). These proposed revisions reflect our adjudicative experience, advances in medical knowledge and treatment of musculoskeletal disorders, recommendations from medical experts, and comments we received in response to a final rule with request for public comments that we published in November 2001.

**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 because of medical advances, technology, and treatment since we last revised these rules.

**Anticipated Cost and Benefits:**

Currently being determined.

**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	06/00/17	

**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](http://www.regulations.gov)

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**144. REVISED MEDICAL CRITERIA FOR EVALUATING DIGESTIVE DISORDERS (3441P)**

**Priority:**

Other Significant

**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 5.00 and 105.00, Digestive Systems, of appendix 1 to subpart P of part 404 of our regulations describe those digestive 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 rules are required to facilitate disability claims adjudication.

**Summary of Legal Basis:**

Sections 5.00 and 105.00, Digestive Systems, 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 medical advances, 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: While no cost is expected, documentation is not yet available.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
ANPRM	12/12/07	72 FR 70527
ANPRM Comment Period End	02/11/08	
NPRM	07/00/17	

**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](http://www.regulations.gov)

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RIN: 0960-AG65

SSA	
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**145. REVISED MEDICAL CRITERIA FOR EVALUATING CARDIOVASCULAR DISORDERS (3477P)**

**Priority:**

Other Significant

**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, of appendix 1 to subpart P of part 404 of our regulations describe those cardiovascular 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 rules are required to facilitate disability claims adjudication.

**Summary of Legal Basis:**

Sections 4.00 and 104.00, Cardiovascular System, 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 medical advances since we last published our final rule

**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: While no cost is expected, documentation is not yet available.

**Risks:**

**Timetable:**

Action	Date	FR Cite
ANPRM	04/16/08	73 FR 20564
ANPRM Comment Period End	06/16/08	
NPRM	07/00/17	

**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](http://www.regulations.gov)

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**RIN:** 0960-AG74

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**146. REVISING THE TICKET TO WORK PROGRAM RULES (3780A)**

**Priority:**

Other Significant

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This notice of proposed rulemaking will pose several questions to the public regarding the best means by which to encourage employment networks to assist beneficiaries in seeking employment at a level that could lead to eventual financial independence. We want to hear from program beneficiaries and others about what combination of incentives would best help beneficiaries to go to work and reach and sustain middle-class earnings.

**Statement of Need:**

We would like to clarify the purpose of and the rules for our Ticket to Work (TTW) program, as part of our ongoing effort to help our beneficiaries find and maintain employment that leads to increased independence and enhanced productivity.

**Summary of Legal Basis:**

Ticket to Work and Work Incentives Improvement Act of 1999 (Ticket Act).

**Alternatives:**

We may postpone updating our TTW regulations.

**Anticipated Cost and Benefits:**

Updating the Ticket to Work program rules to provide increased choices for our beneficiaries and service providers. Improving flexibility in the program rules should also increase the number of employment service providers participating in the Ticket to Work program, as well as encourage additional beneficiaries to attempt work and reach their employment goals. When beneficiaries with disabilities return work at a significant level of earnings, they are able to take advantage of all of the work supports in SSA's program rules and start on the road to financial independence and a better future.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
ANPRM	02/10/16	81 FR 7041
ANPRM Comment Period End	04/11/16	
NPRM	06/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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<b>SSA</b>	
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## **147. REVISIONS TO RULES REGARDING THE EVALUATION OF MEDICAL EVIDENCE**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 405(a); 42 U.S.C. 423(d)(5)(A); 42 U.S.C. 902(a)(5); 42 U.S.C. 1010(a); 42 U.S.C. 1382c(a)(3)(H)(i); 42 U.S.C. 1382c(a)(3)(H)(i); Bipartisan Budget Act of 2015, section 832

**CFR Citation:**

20 CFR 404.1502; 20 CFR 404.1512; 20 CFR 404.1520b; 20 CFR 404.1521 to 404.1523; 20 CFR 404.1526 and 404.1527; 20 CFR 404.1530; 20 CFR 404.1546; 20 CFR 416.902; 20 CFR 416.912; 20 CFR 416.920b; 20 CFR 416.921 to 416.923; 20 CFR 416.926 and 416.927; 20 CFR 416.930; 20 CFR 416.946

**Legal Deadline:**

None

**Abstract:**

We are proposing several revisions to our medical evidence rules. The proposals include redefining several key terms related to evidence, revising our list of acceptable medical sources (AMS), revising how we consider and articulate our consideration of medical opinions and prior administrative medical findings, revising who can be a medical consultant (MC) and psychological consultant (PC), revising our rules about treating sources, and reorganizing our evidence regulations for ease of use. These proposed revisions would conform our rules with the requirements of the Bipartisan Budget Act of 2015 (BBA),

reflect changes in the national healthcare workforce and in the manner that individuals receive primary medical care, simplify and reorganize our rules to make them easier to understand and apply, allow us to continue to make accurate and consistent decisions, and emphasize the need for objective medical evidence in disability and blindness claims.

**Statement of Need:**

These revisions would simplify and reorganize our rules to make them easier to understand and apply, allow us to make more accurate and consistent decisions, and emphasize the need for objective medical evidence in disability and blindness claims under titles II and XVI of the Social Security Act.

**Summary of Legal Basis:**

Administrative--not required by statute or court order.

**Alternatives:**

Undetermined at this time.

**Anticipated Cost and Benefits:**

Undetermined at this time.

**Risks:**

Undetermined at this time.

**Timetable:**

Action	Date	FR Cite
NPRM	09/09/16	81 FR 62559
NPRM Comment Period End	11/08/16	
Final Action	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

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**148. REVISED MEDICAL CRITERIA FOR EVALUATING HEARING LOSS AND DISTURBANCES OF LABYRINTHINE-VESTIBULAR FUNCTION (3806P)**

**Priority:**

Other Significant

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

Sections 2.00B and 102.00B, Hearing Loss and Disturbances of Labyrinthine-Vestibular Function, of appendix 1 to subpart P of part 404 of our regulations describe hearing loss 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 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 rules are required to facilitate disability claims adjudication.

**Summary of Legal Basis:**

Sections 5.00 and 105.00, Digestive Systems, 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 medical advances, 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: While no cost is expected, documentation is not yet available.

**Risks:**

**Timetable:**

Action	Date	FR Cite
ANPRM	08/30/13	78 FR 53700
ANPRM Comment Period End	10/29/13	
NPRM	10/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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<b>SSA</b>	
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**149. USE OF ELECTRONIC PAYROLL DATA TO IMPROVE PROGRAM ADMINISTRATION**

**Priority:**

Other Significant

**Legal Authority:**

Bipartisan Budget Act of 2015 sec 824

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This NPRM will propose to implement the Commissioner's access to and use of the information held by payroll providers. The Agency will use this data to help administer the disability and SSI programs and prevent improper payments.

**Statement of Need:**

In accordance with the Bipartisan Budget Act of 2015, section 824; the Commissioner of Social Security has the authority to enter into an information exchange with a payroll or data provider, allowing us to efficiently administer monthly insurance and supplemental security income benefits, while preventing improper payments.

**Summary of Legal Basis:**

Bipartisan Budget Act of 2015, section 824

**Alternatives:**

None

**Anticipated Cost and Benefits:**

To be determined

**Risks:**

To be determined

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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<b>SSA</b>	
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**150. TREATMENT OF EARNINGS DERIVED FROM SERVICES**

**Priority:**

Other Significant

**Legal Authority:**

Bipartisan Budget Act of 2015 sec 825

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

Prior to the Bipartisan Budget Act when a Social Security disability beneficiary worked, we were required to determine which month the beneficiary's income was earned in determining the beneficiary's continued entitlement to benefits (or the amount of his or her benefits). Section 825 of the Bipartisan Budget Act of 2015, requires SSA to presume that wages and salaries are earned when paid, unless information is available to SSA that shows when the income is earned. Regulatory changes are needed to set forth the procedures and rules that beneficiaries and SSA must follow in implementing this provision.

**Statement of Need:**

The purpose of section 825 is to simplify work CDR processing by allowing adjudicators to use readily available evidence of earnings like IRS data, SSI verified wages, quarterly earnings data, and earnings maintained by third party payroll providers.

**Summary of Legal Basis:**

Section 825 of the Bipartisan Budget Act of 2015.

**Alternatives:**

There is no alternative, this rule complies with statutory mandate.

**Anticipated Cost and Benefits:**

Prior to this legislation, when we made an SGA determination we had to determine when the services were performed. Under provision 825, we can presume that monthly earnings are earned in the month paid, unless there is readily available evidence to indicate when earned.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

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<b>SSA</b>	
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**151. CLOSURE OF UNINTENDED LOOPHOLES (CONFORMING CHANGES TO REGULATIONS ON PRESUMED FILING AND VOLUNTARY SUSPENSION)**

**Priority:**

Other Significant

**Legal Authority:**

Bipartisan Budget Act of 2015 sec 831

**CFR Citation:**

20 CFR 404.623; 20 CFR 404.313

**Legal Deadline:**

None

**Abstract:**

Section 831 of the Bipartisan Budget Act of 2015, closes several loopholes in our program rules regarding deemed filing, dual entitlement, and benefit suspension in order to prevent individuals from obtaining larger benefits than Congress intended. Regulatory changes are needed to conform our regulations on presumed filing and voluntary suspension.

**Statement of Need:**

Section 831 of the Bipartisan Budget Act of 2015, closes several loopholes in our program rules regarding deemed filing, dual entitlement, and benefit suspension in order to prevent individuals from obtaining

larger benefits than Congress intended. Regulatory changes are needed to conform our regulations on presumed filing and voluntary suspension.

**Summary of Legal Basis:**

Section 831(a) of the Bipartisan Budget Act of 2015 amends the Social security Act at sec. 202(r).

Section 831(b) of the Bipartisan Budget Act of 2015 amends the Social Security Act to add sec. 202(z).

**Alternatives:**

**Anticipated Cost and Benefits:**

**Risks:**

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/17	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**URL For Public Comments:**

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<b>SSA</b>	<b>FINAL RULE STAGE</b>
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**152. REVISIONS TO RULES ON REPRESENTATION OF PARTIES (3396F)**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 405(a); 42 U.S.C. 406(a)(1); 42 U.S.C. 810(a); 42 U.S.C. 902(a)(5); 42 U.S.C. 1010; 42 U.S.C. 1383(d)

**CFR Citation:**

20 CFR 404.612; 20 CFR 404.901; 20 CFR 404.903; 20 CFR 404.909; 20 CFR 404.910; 20 CFR 404.933; 20 CFR 404.934; 20 CFR 404.1700 to 404.1799; 20 CFR 408.1101; 20 CFR 416.315; 20 CFR 416.1401; 20 CFR 416.1403; 20 CFR 416.1409; 20 CFR 416.1410; 20 CFR 416.1433; 20 CFR 416.1434; 20 CFR 416.1500 to 416.1599; 20 CFR 422.203; 20 CFR 422.515

**Legal Deadline:**

None

**Abstract:**

We will revise our rules on representation of parties in parts 404, 408, 416, and 422 to reflect changes in the way claimants obtain representation and in representatives' business practices. These new rules will improve our efficiency by increasing the use of electronic services.

**Statement of Need:**

These revisions will reflect changes in representatives' business practices and improve our efficiency by enhancing use of the Internet.

**Summary of Legal Basis:**

Allows SSA to recognize firms as representatives.

**Alternatives:**

Determining if SSA has legal authority to permit appointed representatives to assign fees awarded under section 206 of the Social Security Act (42 U.S.C. 406) this would be an interim step.

**Anticipated Cost and Benefits:**

Costs include Systems changes, modifications, and/or updates. There will also be costs associated with training staff on the new policy. Benefits include a more streamlined process for paying fees under section 206 of the Social Security Act, 42 U.S.C. 406, that will make it more efficient and effective saving significant work years for SSA as well as providing better customer service.

**Risks:**

SSA anticipates that its recognition of firms as representatives will streamline the process for paying fees under section 206 of the Social Security Act, 42 U.S.C. 406, which will likely make the process more efficient and effective, and potentially reduce the number of incorrect payments.

**Timetable:**

Action	Date	FR Cite
NPRM	09/08/08	73 FR 51963
NPRM Comment Period End	11/07/08	
Final Action	10/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

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**RIN:** 0960–AG56

<b>SSA</b>	
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**153. REVISED MEDICAL CRITERIA FOR EVALUATING HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION AND FOR EVALUATING FUNCTIONAL LIMITATIONS IN IMMUNE SYSTEM DISORDERS (3466F)**

**Priority:**

Other Significant

**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:**

We are revising the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving human immunodeficiency virus (HIV) infection in adults and children under titles II and XVI of the Social Security Act (Act). We also are revising the introductory text of the listings that we use to evaluate functional limitations resulting from immune system disorders. The revisions reflect our program experience, advances in medical knowledge, our adjudicative experience, recommendations from a commissioned report, and comments from medical experts and the public.

**Statement of Need:**

These final rules are necessary in order to update the HIV evaluation listings to reflect advances in medical knowledge, treatment, and evaluation methods. The changes will ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that individuals who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

**Summary of Legal Basis:**

Administrative--not required by statute or court order.

**Alternatives:**

Undetermined at this time.

**Anticipated Cost and Benefits:**

Cost/savings estimate--negligible.

**Risks:**

Undetermined at this time.

**Timetable:**

Action	Date	FR Cite
ANPRM	03/18/08	73 FR 14409
ANPRM Comment Period End	05/19/08	
NPRM	02/26/14	79 FR 10730
NPRM Comment Period End	04/28/14	

NPRM Correction and NPRM Comment Period Extended	03/25/14	79 FR 16250
NPRM Comment Period Extended End	05/27/14	
Final Action	12/00/16	

**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:**

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<b>SSA</b>	
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**154. AMENDMENTS TO REGULATIONS REGARDING WITHDRAWALS OF APPLICATIONS AND VOLUNTARY SUSPENSION OF BENEFITS (3573F)**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 402; 42 U.S.C. 402(i); 42 U.S.C. 402(j); 42 U.S.C. 402(o); 42 U.S.C. 402(p); 42 U.S.C. 402(r);  
42 U.S.C. 403(a); 42 U.S.C. 403(b); 42 U.S.C. 405(a); 42 U.S.C. 416; 42 U.S.C. 416(i)(2); 42 U.S.C. 423;  
42 U.S.C. 423(b); 42 U.S.C. 425; 42 U.S.C. 428(a) to 428(e); 42 U.S.C. 902(a)(5)

**CFR Citation:**

20 CFR 404.313; 20 CFR 404.640

**Legal Deadline:**

None

**Abstract:**

We modified our regulations to establish a 12-month time limit for the withdrawal of an old-age benefits application. We will also permit only one withdrawal per lifetime. These changes limit the voluntary suspension of benefits only to those benefits disbursed in future months.

**Statement of Need:**

We are under a clear congressional mandate to protect the Trust Funds. It was crucial that we change our current policies that have the effect of allowing beneficiaries to withdraw applications or suspend benefits and use benefits from the Trust Funds as something akin to an interest-free loan.

**Summary of Legal Basis:**

Discretionary.

**Alternatives:**

Based on our current evidence, there are no alternatives at this time.

**Anticipated Cost and Benefits:**

The administrative effect of this final rule is negligible.

**Risks:**

None.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	12/08/10	75 FR 76256
Interim Final Rule Effective	12/08/10	

Interim Final Rule Comment	02/07/11	
Period End		
Final Action	04/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

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**RIN:** 0960-AH07

**155. REVISIONS TO RULES OF CONDUCT AND STANDARDS OF RESPONSIBILITY FOR****APPOINTED REPRESENTATIVES****Priority:**

Other Significant

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

We propose to revise our rules of conduct and standards of responsibility for representatives. We also propose to update and clarify procedures we use when we bring charges against a representative for violating our rules of conduct and standards of responsibilities for representatives. These changes are necessary to better protect the integrity of our administrative process and further clarify representatives' currently existing responsibilities in their conduct with us. The changes to our rules are not meant to suggest that any specific conduct is permissible under our existing rules; instead, we seek to ensure that our rules of conduct and standards of responsibility are clearer as a whole and directly address a broader range of inappropriate conduct.

**Statement of Need:**

These changes are necessary because our current regulations do not specifically address some representative conduct that we find inappropriate.

**Summary of Legal Basis:**

Administrative--not required by statute or court order.

**Alternatives:**

Based on our program experience, there are no alternatives at this time. These rules will be based on recommendations.

**Anticipated Cost and Benefits:**

The administrative effect of this regulation is negligible.

**Risks:**

Undetermined.

**Timetable:**

Action	Date	FR Cite
NPRM	08/16/16	81 FR 54520
NPRM Comment Period End	10/17/16	
Final Action	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

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SSA	
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**156. ENSURING PROGRAM UNIFORMITY AT THE HEARING AND APPEALS COUNCIL LEVELS OF THE ADMINISTRATIVE REVIEW PROCESS**

**Priority:**

Other Significant

**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. 405(j); 42 U.S.C. 405(s); 42 U.S.C. 421; 42 U.S.C. 421 note; 42 U.S.C. 423(a) to 423(b); 42 U.S.C. 423(i); 42 U.S.C. 902(a)(5); 42 U.S.C. 902 note; 42 U.S.C. 1381; 42 U.S.C. 1381a; 42 U.S.C. 1383; 42 U.S.C. 1383b

**CFR Citation:**

20 CFR 404.935; 20 CFR 404.938; 20 CFR 404.939; 20 CFR 944; 20 CFR 404.949; 20 CFR 404.950; 20 CFR 404.951; 20 CFR 404.970; 20 CFR 976; 20 CFR 405 RECINDED & RESERVED; 20 CFR 416.1435; 20 CFR 416.1438; 20 CFR 416.1439; 20 CFR 416.1444; 20 CFR 416.1449; 20 CFR 416.1450; 20 CFR 416.1451; 20 CFR 416.1470; 20 CFR 416.1476; 20 CFR 404.900; 20 CFR 404.929; 20 CFR 404.968; 20 CFR 416.1400; 20 CFR 416.1429; 20 CFR 416.1468

**Legal Deadline:**

None

**Abstract:**

We propose to revise our rules so that more of our procedures at the administrative law judge (ALJ) and Appeals Council levels of our administrative review process are consistent nationwide. We propose revisions to:

- 1) the time-frame for notifying claimants of a hearing date;
- 2) the information in our hearing notices;
- 3) the period when we require claimants to inform us about or submit written evidence, written statements, objections to the issues, and subpoena requests;
- 4) what constitutes the official record; and
- 5) the manner in which the Appeals Council considers additional evidence.

We anticipate that these nationally consistent procedures will enable us to administer our disability programs more efficiently and better serve the public.

**Statement of Need:**

We propose to revise parts 404 and 416 to make more of our procedures at the hearings and Appeals Council levels consistent nationwide. These changes would bring the vast majority of the part 405 procedures in line with the procedures in parts 404 and 416, so we propose to remove part 405 in its entirety. We anticipate that under nationally consistent procedures, we will be able to administer our disability programs more efficiently and better serve the public.

**Summary of Legal Basis:**

Administrative--not required by statute or court order.

**Alternatives:**

Based on our program experience, there are no alternatives at this time.

**Anticipated Cost and Benefits:**

Undetermined.

**Risks:**

Undetermined.

**Timetable:**

Action	Date	FR Cite
NPRM	07/12/16	81 FR 45079
NPRM Comment Period Extended	08/04/16	81 FR 51412
NPRM Comment Period End	08/11/16	
NPRM Comment Period Extended End	08/26/16	
Final Action	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For Public Comments:**

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**RIN:** 0960-AH71

<b>SSA</b>	
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**157. IMPLEMENTATION OF THE NICS IMPROVEMENT AMENDMENTS ACT OF 2007**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 902(a)(5); 18 U.S.C. 922 note

**CFR Citation:**

20 CFR 421

**Legal Deadline:**

None

**Abstract:**

We propose to implement provisions of the NICS Improvement Amendments Act of 2007 (NIAA) that require Federal agencies to provide relevant records to the Attorney General for inclusion in the National Instant Criminal Background Check System (NICS). Under the proposed rule, we would identify, on a prospective basis, individuals who receive Disability Insurance benefits under title II of the Social Security Act (Act) or Supplemental Security Income (SSI) payments under title XVI of the Act and also meet certain other criteria, including an award of benefits based on a finding that the individual's mental impairment meets or medically equals the requirements of section 12.00 of the Listing of Impairments (Listings) and receipt of benefits through a representative payee. We propose to provide pertinent information about these individuals to the Attorney General on not less than a quarterly basis. As required

by the NIAA, at the commencement of the adjudication process we would also notify individuals, both orally and in writing, of their possible Federal prohibition on possessing or receiving firearms, the consequences of such inclusion, the criminal penalties for violating the Gun Control Act, and the availability of relief from the prohibitions imposed by Federal law. Finally, we also propose to establish a program that permits individuals to request relief from the Federal firearms prohibitions based on our adjudication. The proposed rule would allow us to fulfill responsibilities that we have under the NIAA.

**Statement of Need:**

We propose to implement provisions of the NICS Improvement Amendments Act of 2007 (NIAA) that require Federal agencies to provide relevant records to the Attorney General for inclusion in the National Instant Criminal Background Check System (NICS).

**Summary of Legal Basis:**

The NICS Improvement Amendments Act of 2007 (NIAA)

**Alternatives:**

none

**Anticipated Cost and Benefits:**

To be determined

**Risks:**

To be determined

**Timetable:**

Action	Date	FR Cite
NPRM	05/05/16	81 FR 27059

NPRM Comment Period End	07/05/16	
Final Action	01/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Agency Contact:**

NICS Questions

Social Security Administration

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**RIN:** 0960-AH95

<b>SSA</b>	
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**158. • AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC**

**Priority:**

Other Significant

**Legal Authority:**

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.

FOIA Reform Act of 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:**

To Be Determined

**Risks:**

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	12/00/16	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

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**BILLING CODE 4191-02-P**

**FALL 2016 STATEMENT OF REGULATORY PRIORITIES**

**CFPB Purposes and Functions**

The Bureau of Consumer Financial Protection (CFPB or Bureau) was established in 2010 as an independent bureau of the Federal Reserve System by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376) (Dodd-Frank Act). Pursuant to the Dodd-Frank Act, the CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. Among these are the consumer financial protection authorities that transferred to the CFPB from seven Federal agencies on the designated transfer date, July 21, 2011. These authorities include the ability to issue regulations under more than a dozen Federal consumer financial laws.

As provided in section 1021 of the Dodd-Frank Act, the purpose of the CFPB is to implement and enforce Federal consumer financial laws consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent, and competitive. The CFPB is authorized to exercise its authorities for the purpose of ensuring that, with respect to consumer financial products and services:

(1) Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to status of a person as a depository institution, in order to promote fair competition; and

(5) Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

### **CFPB Regulatory Priorities**

The CFPB's regulatory priorities for the period from November 1, 2016, to October 31, 2017, include continuing rulemaking activities to address critical issues in various markets for consumer financial products and services and implementing Dodd-Frank Act mortgage protections. The Bureau also maintains a long-term agenda listing areas of potential rulemaking interest, as discussed below.

#### *Bureau Regulatory Efforts in Various Consumer Markets*

The Bureau is working on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services. Many of these projects build on prior research efforts by the Bureau.

For example, the Bureau has begun a rulemaking process to follow up on a report it issued to Congress in March 2015 concerning the use of agreements providing for arbitration of any future disputes

between covered persons and consumers in connection with the offering or providing of consumer financial products or services. The report, which was required by the Dodd-Frank Act, expanded on preliminary results of arbitration research that had been released by the Bureau in December 2013. The Bureau has issued a proposed rule that would prohibit covered providers of certain consumer financial products and services from using an arbitration agreement to bar the consumer from filing or participating in a class action. Under the proposal, companies would still be able to include arbitration clauses in their contracts. However, for contracts subject to the proposal, the clauses would have to say explicitly that they cannot be used to stop consumers from being part of a class action in court. The proposal would also require a covered provider that has an arbitration agreement and that is involved in arbitration pursuant to a pre-dispute arbitration agreement to submit specified arbitral records to the Bureau. The Bureau has received several thousand comments on the proposal and is considering development of a final rule for spring 2017.

The Bureau is also engaged in a rulemaking concerning underwriting and certain other practices in connection with payday, vehicle title, and similar credit products. The rulemaking follows on multiple reports that the Bureau has issued on its research into these markets, including a white paper in April 2013, a data point in March 2014, and several publications earlier this year. The Bureau has issued a proposed rule that, among other things, would require lenders to make a reasonable determination that the consumer has the ability to repay a covered loan before extending credit. It would also require lenders to make certain disclosures before attempting to collect payments from consumers' accounts and restrict lenders from making additional payment collection attempts after two consecutive attempts have failed. The Bureau has already received more than 100,000 comments in response to the proposal; the comment period closed on October 7, 2016.

In addition, the Bureau also engaged in policy analysis and research initiatives in preparation for a proposed rulemaking on debt collection activities, which are the single largest source of complaints to the

Federal Government of any industry. Building on the Bureau's November 2013 Advance Notice of Proposed Rulemaking, the Bureau released materials in July 2016 in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy to consult with small businesses that may be affected by the policy proposals under consideration. This SBREFA process focuses on companies that are considered "debt collectors" under the Fair Debt Collection Practices Act; the Bureau expects to convene a separate SBREFA proceeding focusing on companies that collect their own debts in 2017. The CFPB is also in the process of analyzing the results of a survey to obtain information from consumers about their experiences with debt collection and undertaking consumer testing initiatives to determine what information would be useful for consumers to have about debt collection and their debts and how that information should be provided to them.

Building on Bureau research and other sources, the Bureau is also engaged in policy analysis and further research initiatives in preparation for a proposed rulemaking on overdraft programs on checking accounts. The CFPB issued a white paper in June 2013, and a report in July 2014, based on supervisory data from several large banks that highlighted a number of possible consumer protection concerns, including how consumers opt in to overdraft coverage for ATM and one-time debit card transactions, overdraft coverage limits, transaction posting order practices, overdraft and insufficient funds fee structures, and involuntary account closures. The CFPB is continuing to engage in additional research and has begun qualitative consumer testing initiatives relating to the opt-in process.

The Bureau is also working on a final rule to create a comprehensive set of protections for prepaid financial products, such as general purpose reloadable cards and other similar products, which are increasingly being used by consumers in place of traditional checking accounts or credit cards. The final rule will build off a proposal that the Bureau issued in November 2014 to bring prepaid products within the ambit of Regulation E (which implements the Electronic Fund Transfer Act) as prepaid accounts and to

create new provisions specific to such accounts. The proposal also included provisions to amend Regulation E and Regulation Z (which implements the Truth in Lending Act) to regulate prepaid accounts with overdraft services or certain other credit features.

The Bureau is also continuing rulemaking activities that will further establish the Bureau's nonbank supervisory authority by defining larger participants of certain markets for consumer financial products and services. Larger participants of such markets, as the Bureau defines by rule, are subject to the Bureau's supervisory authority. The Bureau expects that its next larger participant rulemaking will focus on the markets for consumer installment loans and vehicle title loans for purposes of supervision. The Bureau is also considering whether rules to require registration of these or other non-depository lenders would facilitate supervision, as has been suggested to the Bureau by both consumer advocates and industry groups.

The Bureau is also continuing to develop research on other critical markets to help implement statutory directives and to assess whether regulation of other consumer financial products and services may be warranted. For example, section 1071 of the Dodd-Frank Act amends the Equal Credit Opportunity Act to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau is in its early stages with respect to implementing section 1071 and is currently focused on outreach and research to develop its understanding of the players, products, and practices in the business lending markets and of the potential ways to implement section 1071. The Bureau then expects to begin developing proposed regulations concerning the data to be collected and determining appropriate procedures and privacy protections needed for information-gathering and public disclosure under this section.

### *Implementing Dodd-Frank Act Mortgage Protections*

The Bureau is also continuing its efforts to implement critical consumer protections under the Dodd-Frank Act to guard against mortgage market practices that contributed to the Nation's most significant financial crisis in several decades. The Bureau has already issued regulations implementing Dodd-Frank Act protections for mortgage originations and servicing and integrating various Federal mortgage disclosures as discussed further below.

In October 2015, the Bureau issued a final rule implementing Dodd-Frank amendments to the Home Mortgage Disclosure Act (HMDA), which augment existing data reporting requirements regarding housing-related loans and applications for such loans. In addition to obtaining data that is critical to the purposes of HMDA—which include providing the public and public officials with information that can be used to help determine whether financial institutions are serving the housing needs of their communities, assisting public officials in the distribution of public sector investments, and assisting in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes—the Bureau views this rulemaking as an opportunity to streamline and modernize HMDA data collection and reporting, in furtherance of its mission under the Dodd-Frank Act to reduce unwarranted regulatory burden. Certain elements of the rule take effect in January 2017, and most new data collection requirements begin in January 2018. The Bureau is conducting outreach with industry and coordinating with other agencies to monitor and facilitate implementation of the rule. The Bureau has already released a small entity compliance guide. In addition, the Bureau is planning a rulemaking to make technical corrections and to clarify certain requirements under the new provisions of Regulation C. The Bureau expects the follow up HMDA rulemaking to occur in 2017.

Another major effort of the Bureau is the implementation of its final rule combining several federal mortgage disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. The integrated forms are the cornerstone of the Bureau's broader "Know Before You Owe" mortgage initiative. The rule, in most cases, requires that two forms, the Loan Estimate and the Closing Disclosure, replace four different

Federal disclosures. These new forms help consumers better understand their options, choose the deal that is best for them, and avoid costly surprises at the closing table. The Bureau has worked intensively to support implementation efforts, including consumer education initiatives, both before and after the rule's October 2015 effective date. To facilitate implementation, the Bureau has released and provided applicable updates for a small entity compliance guide, a guide to forms, a readiness guide, sample forms, and additional materials. In July 2016, the Bureau proposed revisions to address a number of questions about the final rule that have been identified by interested parties in the course of these implementation efforts. The comment period on the proposal closed October 18, 2016. The Bureau anticipates finalizing the proposal in 2017.

The Bureau also continues to work in support of the full implementation of, and to facilitate compliance with, various mortgage-related final rules issued by the Bureau in January 2013 (including several amendments issued since that time) to strengthen consumer protections involving the origination and servicing of mortgages. In general, these rules, implementing requirements under the Dodd-Frank Act, were all effective by January 2014. The Bureau is working diligently to monitor the market and continues to make clarifications and adjustments to the rules where warranted. For example, the Bureau issued a final rule in August 2016 that amends various provisions of its mortgage servicing rules in both Regulation X, which implements RESPA, and Regulation Z, which implements TILA. The final rule clarifies the applicability of certain provisions when a borrower is in bankruptcy or has invoked cease communication rights under the Fair Debt Collection Practices Act, enhances loss mitigation requirements, and extends the protections of the mortgage servicing rules to confirmed successors in interest, among other amendments. Most of the final rule will be effective in 2017, one year from publication in the **Federal Register**, while certain provisions regarding borrowers in bankruptcy and successors in interest will be effective in 2018, 18 months from publication. In developing the final rule, the Bureau reviewed and considered public comments on the proposed rule, consulted with other agencies, and conducted consumer testing of certain disclosures. The Bureau will continue supporting implementation and consumer education efforts in connection with the mortgage-related final rules issued by the Bureau in January 2014, including the amendments issued since that time.

Further, the Bureau continues to participate in a series of interagency rulemakings to implement various Dodd-Frank Act amendments to TILA and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) relating to mortgage appraisals. In April 2015, in conjunction with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency, the Bureau issued a final rule adopting certain minimum requirements for appraisal management companies. These joint agency efforts are continuing with further efforts to implement amendments to FIRREA concerning required quality control standards relating to the use of automated valuation models.

#### *Bureau Long-Term Planning Efforts*

The Bureau also maintains a long-term agenda to reflect its expectations beyond the current fiscal year. As noted in these items, the Bureau intends to explore potential rulemakings to address important issues related to consumer reporting and student loan servicing.

With regard to consumer reporting, the Bureau continues to oversee the credit reporting market through its supervisory and enforcement efforts, monitor the market through research and to consider prior research, including a white paper the Bureau published on the largest consumer reporting agencies in December 2012 and reports on credit report accuracy produced by the Federal Trade Commission pursuant to the Fair and Accurate Credit Transactions Act. As this work continues, the Bureau will evaluate possible policy responses to issues identified, including potential additional rules or amendments to existing rules governing consumer reporting. Potential topics for consideration might include the accuracy of credit reports, including the processes for resolving consumer disputes, or other issues.

Further, in May 2015, the CFPB issued a request for information seeking comment from the public regarding student loan servicing practices, including those related to payment processing, servicing transfers, complaint resolution, co-signer release, and procedures regarding alternative repayment and refinancing options. In September 2015, the CFPB released a report regarding student loan servicing practices, based, in part, on comments submitted in response to the request for information. The CFPB, the Department of Education, and the Department of Treasury also published a Joint Statement of Principles on student loan servicing. In May 2016, the CFPB issued a request for information, seeking comment from the public about potential borrower communications regarding alternative repayment options. In July 2016, the CFPB and Department of Treasury joined the Department of Education as it announced new policy guidance regarding servicing standards for Federal student loans, which it developed in consultation with the Bureau and the Department of Treasury. The CFPB will also continue to monitor the student loan servicing market for trends and developments. As this work continues, the Bureau will evaluate possible policy responses, including potential rulemaking. Possible topics for consideration might include specific acts or practices and consumer disclosures.

The Bureau also has begun planning to conduct assessments of significant rules it has adopted, pursuant to section 1022(d) of the Dodd-Frank Act. That section requires the Bureau to conduct such assessments to address, among other relevant factors, the effectiveness of the rules in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals of the rules assessed, to publish a report of each assessment not later than five years after the effective date of the subject rule, and to invite public comment on recommendations for modifying, expanding, or eliminating the subject rule before publishing each report. The Bureau will provide further information about its expectations for the lookback process as its planning continues.

**BILLING CODE 4810-AM-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**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 one rule that would constitute a “significant regulatory action” under the definition of that term in Executive Order 12866:

1. Flammability Standard for Upholstered Furniture

Under Section 4 of the Flammable Fabrics Act (“FFA”), the Commission may issue a flammability standard or other regulation for a product of interior furnishing if the Commission determines that such a standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage. The Commission's regulatory proceeding could result in several actions, one of which could be the development of a mandatory standard requiring that upholstered furniture meet mandatory requirements specified in the standard.

CPSC	PROPOSED RULE STAGE
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**159. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

15 U.S.C. 1193; 5 U.S.C. 801

**CFR Citation:**

16 CFR 1634

**Legal Deadline:**

None

**Abstract:**

In October 2003, the Commission issued an advance notice of proposed rulemaking (ANPRM) to address the risk of fire associated with cigarette and small open-flame ignitions of upholstered furniture. The Commission published a notice of proposed rulemaking (NPRM) in March 2008, and received public comments. The Commission's proposed rule would require that upholstered furniture have cigarette-resistant fabrics or cigarette- and open flame-resistant barriers. The proposed rule would not require flame-resistant chemicals in fabrics or fillings. CPSC staff is conducting technical work to support a Final Rule. Since the Commission published the NPRM, CPSC staff has conducted testing of upholstered furniture, using both full-scale furniture and bench-scale models, as proposed in the NPRM. Currently, staff is reviewing fire barriers and fire-resistant fill materials that do not contain organohalogen chemicals as an approach for reducing deaths and injuries associated with furniture fires from upholstered furniture ignitions. Staff will develop a briefing package with options for consideration by the Commission in FY 2017, as well as a briefing package reviewing the pros and cons of adopting California's standard TB-117-2013 in FY 2016. Staff is also actively working with both ASTM and NFPA to evaluate new provisions and improve the existing consensus standards related to upholstered furniture flammability.

**Statement of Need:**

From 2009 to 2011, an annual average of approximately 5,000 residential fires in which upholstered furniture was the first item to ignite resulted in an estimated 410 deaths, 730 civilian injuries, and about \$280 million in property damage that could be addressed by a flammability standard. The total annual societal cost attributable to these upholstered furniture fire losses was more than \$3.8 billion for 2008-2011. This total includes fires ignited by small open-flame sources and cigarettes.

## **Summary of Legal Basis:**

Section 4 of the Flammable Fabrics Act (FFA) (15 U.S.C. 1193) authorizes the Commission to issue a flammability standard or other regulation for a product of interior furnishing if the Commission determines that such a standard is "needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage." The Commission's regulatory proceeding could result in several actions, one of which could be the development of a mandatory standard requiring that upholstered furniture sold in the United States meet mandatory requirements specified in the standard.

## **Alternatives:**

(1) The Commission could issue a mandatory flammability standard if the Commission finds that such a standard is needed to address an unreasonable risk of the occurrence of fire from ignition of upholstered furniture. (2) The Commission could issue mandatory requirements for labeling of upholstered furniture, in addition to, or as an alternative to, the requirements of a mandatory flammability standard. (3) The Commission could terminate the proceeding for development of a flammability standard and rely on a voluntary standard if a voluntary standard would adequately address the risk of fire, and substantial compliance with such a standard is likely to result.

## **Anticipated Cost and Benefits:**

The estimated annual cost of imposing a mandatory standard to address ignition of upholstered furniture will depend upon the test requirements in the Final Rule and the steps manufacturers take to meet those requirements. Depending upon the test requirements, a standard may reduce upholstered furniture-related fire losses, the annual societal cost of which was more than \$3.8 billion for 2008 to 2011. Thus, the potential benefits of a mandatory standard to address the risk of ignition of upholstered furniture could be significant, even if the standard did not prevent all such fires.

## **Risks:**

The estimated average annual cost to society from residential fires associated with upholstered furniture was \$3.8 billion for 2008 to 2011. Societal costs associated with upholstered furniture fires are among the highest associated with any product subject to the Commission's authority. A standard has the potential to reduce these societal costs.

**Timetable:**

<b>Action</b>	<b>Date</b>	<b>FR Cite</b>
ANPRM	06/15/94	59 FR 30735
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame-Retardant Chemicals	03/17/98	63 FR 13017
Meeting Notice	03/20/02	67 FR 12916
Notice of Public Meeting	08/27/03	68 FR 51564
Public Meeting	09/24/03	
ANPRM	10/23/03	68 FR 60629
ANPRM Comment Period End	12/22/03	
Staff Held Public Meeting	10/28/04	
Staff Held Public Meeting	05/18/05	
Staff Sent Status Report to Commission	01/31/06	
Staff Sent Status Report to Commission	11/03/06	
Staff Sent Status Report to Commission	12/28/06	
Staff Sent Options Package to Commission	12/22/07	

Commission Decision to Direct Staff to Prepare Draft NPRM	12/27/07	
Staff Sent Draft NPRM to Commission	01/22/08	
Commission Decision to Publish NPRM	02/01/08	
NPRM	03/04/08	73 FR 11702
NPRM Comment Period End	05/19/08	
Staff Published NIST Report on Standard Test Cigarettes	05/19/09	
Staff Publishes NIST Report on Standard Research Foam	09/14/12	
Notice of April 25 Public Meeting and Request for Comments	03/20/13	78 FR 17140
Staff Holds Upholstered Furniture Fire Safety Technology Meeting	04/25/13	
Comment Period End	07/01/13	
Staff Sends Briefing Package to Commission on California's TB117-2013	09/08/16	
Staff Sends NPRM Briefing Package to Commission	09/00/17	

**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.

**Agency Contact:**

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**RIN:** 3041–AB35

**BILLING CODE 6355–01–P**

**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. Unfair or deceptive acts or practices injure both consumers and honest competitors alike and undermine competitive markets. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information in the marketplace. One recent example is the FTC's enforcement action along with its law enforcement partners, the U.S. Department of Justice and the Environmental Protection Agency, to compensate consumers who were harmed by Volkswagen both because the company allegedly unfairly sold cars with illegal defeat devices and deceptively advertised these cars with claims that they were "clean." On June 28, 2016, Volkswagen entered into a settlement to create a \$10 billion compensation fund for Volkswagen diesel owners.<sup>19</sup> This is the largest consumer refund program in the FTC's history.

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. Thus, the second part of the Commission's basic mission – antitrust enforcement – is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the nation's only Federal agency with this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the FTC Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of

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<sup>19</sup> Proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgment, FTC v. Volkswagen Group of America, Inc., No. 3:15-md-2672 (N.D. Cal. June 28, 2016), *available at* [https://www.ftc.gov/system/files/documents/cases/proposed\\_partial\\_stipulated\\_order\\_filed\\_copy\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/proposed_partial_stipulated_order_filed_copy_0.pdf); see also related proposed consent decree between the United States Department of Justice and the State of California and Volkswagen at <https://www.justice.gov/opa/file/871306/download>.

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<sup>20</sup> and energy laws.<sup>21</sup> 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.

### *Commission Initiatives*

The Commission protects consumers through a variety of tools, including both regulatory and non-regulatory approaches. It has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

As detailed below, protecting consumer privacy, preventing and mitigating identity theft, containing the rising costs of health care and prescription drugs, fostering competition and innovation in markets for products that consumers buy every day, challenging deceptive advertising and marketing, and safeguarding the interests of potentially vulnerable consumers, such as children and the financially distressed, continue to be at the forefront of the Commission's consumer protection and competition programs.

By subject area, the FTC discusses some of the major workshops, reports,<sup>22</sup> and initiatives it has pursued since the 2015 Regulatory Plan was published.

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<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> The FTC also prepares a number of annual and periodic reports on the statutes it administers. These are not discussed in this plan.

(a) *Protecting Consumer Privacy.* As the nation's top enforcer on the consumer privacy beat, the FTC works to ensure that consumers can take advantage of the benefits of a dynamic and ever-changing digital marketplace without compromising their privacy. The FTC achieves that goal through civil law enforcement, policy initiatives, and consumer and business education. For example, the FTC's unparalleled 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. The Commission's recent efforts have addressed a wide range of issues, including the privacy of health information, the Internet of Things, Big Data, and data security.

New health-related apps, devices, and services are increasingly available to consumers. These products and services often involve the collection of sensitive health data, which consumers generally expect to be private. While much of this activity is not covered by HIPAA (Health Insurance Portability and Accountability Act of 1996), it is covered by the FTC Act. An example of a recent enforcement action in this area is a case against Practice Fusion, a company that provides management services to physicians, based on allegations that it deceived consumers by soliciting reviews about their doctors without adequately disclosing that the reviews would be posted publicly on the internet.<sup>23</sup> As detailed in the complaint, many of the posted reviews included consumers' full names, medications, health conditions, and treatments received. The FTC also took action against Henry Schein Practice Solutions, a provider of office management software for dental practices, based on allegations that it misrepresented the extent to which it protected sensitive patient information.<sup>24</sup> Further, because many of the entities collecting health data in today's marketplace are health apps and other small companies, the FTC is placing emphasis on business education. The FTC has thus worked with the U.S. Department of Health and Human Services to develop an interactive tool showing app developers which laws apply to them.<sup>25</sup>

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<sup>23</sup> Complaint, In re Practice Fusion, Inc., No. C-4591 (Aug. 15, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/142-3039/practice-fusion-inc-matter>.

<sup>24</sup> Complaint, In re Henry Schein Practice Solutions, Inc., No. C-4575 (May 20, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/142-3161/henry-schein-practice-solutions-inc-matter>.

<sup>25</sup> See Mobile Health Apps Interactive Tool (Apr. 2016), <https://www.ftc.gov/tips-advice/business-center/guidance/mobile-health-apps-interactive-tool>.

In conjunction with that project, the FTC also released guidance to help mobile health app developers build privacy and security into their apps.<sup>26</sup>

The Internet of Things is also an expanding part of the Commission's work. It comes in the form of products such as fitness devices, wearables, smart cars, and connected smoke detectors, light bulbs, and refrigerators. While these products are innovative and exciting, they are also collecting, storing, and often sharing vast amounts of consumer data, some of it very personal, raising familiar and new concerns relating to privacy and security. Device security is a serious concern. If hackers can hack a smart car, a pacemaker, or an insulin pump, the consequences could be grave. The FTC's case against computer hardware company ASUS illustrates the problems created by poor device security.<sup>27</sup> The complaint charged that critical security flaws in ASUS' routers put the home networks of hundreds of thousands of consumers at risk. An earlier case against TRENDnet involved allegations of compromised security of home security monitoring cameras.<sup>28</sup> Last year, the FTC issued a report addressing how fundamental privacy principles can be adapted to Internet of Things devices and recommending best practices for companies to follow.<sup>29</sup>

Another area of interest is Big Data, specifically the vast collection of data about consumers and enhanced capabilities to analyze data to make inferences and predictions about consumers. Such data uses can and are creating many benefits, including in areas such as public health and safety. But the increase in data collection and storage also increases the risk of data breach, identity theft, and the likelihood that data will be used in ways consumers do not expect or want. The FTC recently issued a report entitled *Big Data: A Tool for Inclusion or Exclusion?* addressing how the categorization of

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<sup>26</sup> See *Mobile Health App Developers: FTC Best Practices* (Apr. 2016), <https://www.ftc.gov/tips-advice/business-center/guidance/mobile-health-app-developers-ftc-best-practices>.

<sup>27</sup> Complaint, In re ASUSTeK Computer Inc., No. C-4587 (July 18, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/07/ftc-approves-final-order-asus-privacy-case>.

<sup>28</sup> Complaint, In re TRENDnet, Inc., No. C-4426 (Jan. 16, 2014), *available at* <http://www.ftc.gov/enforcement/cases-proceedings/122-3090/trendnet-inc-matter>.

<sup>29</sup> FTC Staff Report, *Internet of Things: Privacy & Security in a Connected World* (Jan. 2015), <https://www.ftc.gov/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things>.

consumers may be both creating and limiting opportunities for them, with a focus on low-income and underserved consumers.<sup>30</sup> A key message in the report is that there are laws currently on the books – including the Fair Credit Reporting Act, the Equal Credit Opportunity Act, and the FTC Act – that already address some of the concerns raised by Big Data, and with which companies must already comply. The report also identifies issues that companies should consider when using Big Data analytics to minimize discriminatory or other harmful outcomes.

One aspect of the increase in data collection is the ease with which anyone can buy detailed data about consumers. The FTC continues to focus on data brokers and, in particular, the role they play in facilitating fraud. For example, the FTC brought a case against data broker Sequoia One, alleging that it purchased the payday loan applications of financially strapped consumers – including names, addresses, phone numbers, Social Security Numbers, and bank account numbers – and then sold them to scam artists who used the data to withdraw millions of dollars from consumers' accounts.<sup>31</sup> The FTC also hosted a public workshop that examined the growing use of online lead generation in various industries<sup>32</sup> leading to a 2016 staff report that addressed lead generation's potential benefits and the consumer protection issues it might raise.<sup>33</sup> Further, in November 2015, the FTC hosted a workshop on cross-device tracking to examine the various ways that companies now track consumers across multiple devices, and not just on one device.<sup>34</sup>

Data security remains an important focus of the Commission's privacy work. Since 2002, approximately 60 companies have settled FTC cases alleging that they engaged in deceptive or unfair

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<sup>30</sup> FTC Report, *Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues*, (Jan. 2016), <https://www.ftc.gov/reports/big-data-tool-inclusion-or-exclusion-understanding-issues-ftc-report>.

<sup>31</sup> Complaint, *FTC v. Sequoia One, LLC*, No. 2:15-cv-01512-JCM-CWH (D. Nev. Aug. 12, 2015), available at <https://www.ftc.gov/system/files/documents/cases/150812sequoiaonecmpt.pdf>.

<sup>32</sup> Follow the Lead: An FTC Workshop on Lead Generation (Oct. 30, 2015), <https://www.ftc.gov/news-events/events-calendar/2015/10/follow-lead-ftc-workshop-lead-generation>.

<sup>33</sup> FTC Staff Perspective, *Follow the Lead Workshop* (Sept. 2016), [https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff\\_perspective\\_follow\\_the\\_lead\\_workshop.pdf](https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff_perspective_follow_the_lead_workshop.pdf).

<sup>34</sup> Cross Device Tracking: An FTC Workshop (Nov. 16, 2015), <https://www.ftc.gov/news-events/events-calendar/2015/11/cross-device-tracking>.

practices that unreasonably put consumers' personal data at risk. In July 2016, the Commission issued an Opinion and Final Order against medical testing laboratory LabMD, Inc., concluding that its data security practices were unreasonable and constituted an unfair act or practice that violated the FTC Act.<sup>35</sup> The case concerns the company's failure to protect the sensitive health information of many thousands of consumers. The final order requires LabMD to establish a comprehensive information security program, obtain periodic assessments regarding its implementation, and notify those consumers whose personal information was exposed. The agency also announced recent data security settlements against Lifelock and Wyndham. In Lifelock, the company agreed to pay \$100 million – the largest monetary award obtained by the Commission in a contempt action to settle charges that it violated the terms of a 2010 federal court order that required the company to secure consumers' personal information and prohibited deceptive advertising.<sup>36</sup> In the Wyndham case, the company agreed to settle FTC charges that the company's security practices unreasonably exposed the payment card information of hundreds of thousands of consumers to hackers in three separate data breaches.<sup>37</sup> While the Wyndham case was pending, the Third Circuit affirmed the FTC's authority to challenge unfair data security practices using its Section 5 authority.

The FTC also engages in policy initiatives to better understand emerging technologies, research, and business models, including by hosting many workshops and events on privacy issues. On January 14, 2016, the FTC hosted its first-ever PrivacyCon event to showcase original research in the area of privacy and security. Participants presented and discussed original research on important and timely topics such as data security, online tracking, and consumer perceptions of privacy, privacy disclosures, Big Data, and the economics of privacy. PrivacyCon is helping the Commission stay up-to-date with changing technologies, learn about new tools and programs, identify potential areas for investigation and

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<sup>35</sup> Opinion of the Commission and Final Order, *In re LabMD, Inc.*, No. 9357 (July 28, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>.

<sup>36</sup> Amended Order, *FTC v. LifeLock, Inc.*, No. 2:10-CV-00530-JJT (D. Ariz. Jan. 4, 2016), *available at* <https://www.ftc.gov/system/files/documents/cases/160105lifelockorder.pdf>.

<sup>37</sup> Stipulated Order for Injunction, *FTC v. Wyndham Worldwide Corp.*, No. 2:13-CV-01887-ES-JAD (D.N.J. Dec. 11, 2015), *available at* <https://www.ftc.gov/system/files/documents/cases/151211wyndhamstip.pdf>.

enforcement, fashion remedies, and identify areas for further study. The Commission has scheduled a second PrivacyCon for January 12, 2017, in Washington, D.C.

As another example of its work on policy issues, the FTC is hosting a Fall Technology Series of three half-day events during Fall of 2016 that to explore consumer protection and privacy implications of ransomware, drones, and smart TVs. This series gathers input from academics, business and industry representatives, government experts, and consumer advocates for three-hour discussion sessions, which take place in Washington, D.C. and are open to the public. The FTC invites comment from the public on the events.

Finally, the FTC educates consumers and businesses on privacy and security issues. For example, the “Start with Security” business outreach campaign, launched in 2015, has included one-day conferences in Austin, San Francisco, Seattle, and Chicago to bring business owners and developers together with industry experts to discuss practical tips and strategies for implementing effective data security. Additionally, the Start with Security Guide<sup>38</sup> for businesses provides an easy way for companies to understand and apply lessons from the FTC’s previous data security cases. It includes brief descriptions and references to the cases, as well as plain-language explanations of the security principles at issue. The FTC has also introduced a one-stop website at [www.ftc.gov/datasecurity](http://www.ftc.gov/datasecurity) that consolidates the Commission’s data security information for businesses.

*(b) Protecting Children.* Children increasingly use the Internet for entertainment, information and schoolwork. The FTC enforces the Children’s Online Privacy Protection Act (COPPA) and the COPPA Rule to protect children’s privacy when they are online by putting their parents in charge of who gets to collect personal information about their children under the age of thirteen. For example, in cases against app developers LAI Systems and Retro Dreamer,<sup>39</sup> the FTC alleged that the companies created a

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<sup>38</sup> FTC, Start with Security: A Guide for Business (June 2015), <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>.

<sup>39</sup> See Press Release, FTC, Two App Developers Settle FTC Charges They Violated Children’s Online Privacy Protection Act (Dec. 17, 2015), <https://www.ftc.gov/news-events/press-releases/2015/12/two-app-developers-settle-ftc-charges-they-violated-childrens>.

number of apps directed to children that allowed third-party advertisers to collect personal information from children in the form of persistent identifiers, for purposes of conducting behavioral advertising, without obtaining parental consent.

The Commission actively litigates to protect children and their parents when children use mobile apps that appeal to children and offer virtual goods for sale. On April 26, 2016, a federal district court granted the Commission's request for summary judgment in the agency's lawsuit alleging that Amazon, Inc. billed consumers for unauthorized in-app charges incurred by children. The judge's order in the case found that Amazon received many complaints from consumers about surprise in-app charges incurred by children, citing the fact that the company's disclosures about the possibility of in-app charges within otherwise "free" apps were not sufficient to inform consumers about the charges.<sup>40</sup> This is the FTC's third case relating to children's in-app purchases; Apple and Google both settled FTC complaints concerning the issue in 2014.<sup>41</sup>

*(c) Protecting Every Community.* The FTC has brought a very large number of cases to stop scam artists, shut down their operations, and put money back in consumers' pockets. Fraud precludes economic opportunities and deprives individuals of money, time, and resources. While fraud touches people of all ages, backgrounds, incomes, and locations, certain groups are targeted more frequently. Sometimes fraudsters target older people, and sometimes they target people of different racial, ethnic, or national origins, or people for whom English is not their first language. Sometimes scam artists target members of the military. The FTC is thus making a concerted effort to ensure that our fraud prevention efforts – both law enforcement and education – are reaching every community, including groups that may have been underserved in the past.

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<sup>40</sup> Redacted Order Granting Amazon's Motion for Partial Summary Judgment and Granting the FTC's Motion for Summary Judgment, *FTC v. Amazon.com, Inc.*, No. 2:14-cv-1038-JCC (W.D. Wash. Apr. 26, 2016), *available at* <https://www.ftc.gov/system/files/documents/cases/160427amazonorder.pdf>.

<sup>41</sup> Decision and Order, *In re Apple Inc.*, No. C-4444 (Mar. 25, 2014), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/112-3108/apple-inc>; Decision and Order, *In re Google Inc.*, No. C-4499 (Dec. 2, 2015), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/122-3237/google-inc>.

The agency has aggressively enforced the law against scam artists and sought to educate older consumers about scams and to promote technological solutions that will make it more difficult for scammers to operate and hide from law enforcement. Though all of the FTC's fraud cases involve elderly consumers as part of the general population, since 2005, the Commission has brought 38 cases alleging that defendants' conduct has specifically targeted or disproportionately harmed older adults. Although scams targeting older Americans are diverse and have ranged from sweepstakes to business opportunities, the FTC has in recent years concentrated its law enforcement efforts on online threats and various types of impostor scams. Some examples are technical support scams, health care-related scams, and sweepstakes and prize scams. The FTC also has pursued actions related to the money transfer services that are commonly used in scams affecting older adults, and has coordinated efforts with criminal and foreign law enforcement agencies to achieve a broader impact.

FTC education and outreach programs reach tens of millions of people every year. Among them are a series of fotonovelas (graphic novels) to raise awareness about scams targeting the Latino community and the "Pass It On" program that provides seniors with information, in English and Spanish, on a variety of scams targeting the elderly.<sup>42</sup> The agency works with the Elder Justice Coordinating Council to help protect seniors. And the FTC also works with the AARP Foundation, whose peer counselors provided fraud-avoidance advice last year to more than a thousand seniors who had filed complaints about certain frauds, including lottery, prize promotion, and grandparent scams. The Commission also promotes initiatives to make it harder for scammers to fake or "spoof" their caller identification information and supports more widespread availability of technology that will block calls from fraudsters, essentially operating as a spam filter for the telephone.

*(d) Protecting Financially Distressed Consumers.* Even as the economy recovers, some consumers continue to face financial challenges. The FTC acts to protect consumers from deceptive and unfair credit practices and ensure that consumers can get the information they need to make informed financial choices. The Commission has continued its enforcement efforts by bringing law enforcement

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<sup>42</sup> FTC, Fotonovelas, <https://www.consumer.ftc.gov/features/feature-0031-fotonovelas>; FTC, Pass It On, <https://www.consumer.ftc.gov/features/feature-0030-pass-it-on>.

actions to curb deceptive and unfair practices in mortgage rescue, debt relief, auto financing, and debt collection.

For example, if educational institutions make promises to their prospective students about future employment and income, the institutions must be able to substantiate those claims. On January 27, 2016, the Commission filed suit against DeVry University for allegedly deceiving students about the likelihood that they would find jobs after graduation in their field of study.<sup>43</sup> In its complaint against DeVry, the FTC alleged that the defendants' claim that 90 percent of DeVry graduates actively seeking employment landed jobs in their field within six months of graduation was deceptive. The complaint also charged that DeVry deceptively claimed that its graduates had 15 percent higher incomes one year after graduation on average than the graduates of all other colleges or universities.

*(e) Fighting Identity Theft.* The issue of identity theft has been one of the top consumer complaint subject areas reported to the FTC over the past 15 years, and in 2015, the Commission received 490,220 complaints from consumers who were victims of identity theft. On May 14, 2015, the FTC launched the website IdentityTheft.gov (*robodeidentidad.gov* in Spanish), a free, one-stop resource people can use to report and recover from identity theft. The site implements the President's Executive Order<sup>44</sup> by consolidating federal resources and reducing the burden on identity theft victims as they repair damage caused by identity theft. The online site is accessible from mobile devices and is integrated with the FTC's consumer complaint system. Identity theft victims can use the site to create a personal recovery plan based on the type of identity theft they face and prepare pre-filled letters and forms to send to credit bureaus, businesses and debt collectors. During 2015, the IdentityTheft.gov website had more than 1.3 million page views and the public ordered more than 3.7 million related publications in English, Spanish and four other languages.

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<sup>43</sup> Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. DeVry Educ. Group Inc.*, No. 2:16-cv-579 (C.D. Cal. Jan. 27, 2016), *available at* <https://www.ftc.gov/system/files/documents/cases/160127devrycmpt.pdf>.

<sup>44</sup> E.O. 13681, "Improving the Security of Consumer Financial Transactions" (Oct. 17, 2014).

Tax identity theft is a growing share of identity theft-related complaints. In January 2016, the FTC sponsored a Tax Identity Theft Awareness Week to raise awareness about tax identity theft and provide tips about how to respond to it. The FTC's Tax Identity Theft Awareness Week website<sup>45</sup> provided material for regional events held in the states with the highest reported rates of identity theft. The FTC conducted multiple webinars with Veterans Affairs staff and military financial counselors, including three webinars about tax identity theft and imposter scams that reached more than 1,100 Veterans Affairs staff and veterans.

(f) *Sharing Economy.* In light of the recent rapid expansion of business activity on online and mobile peer-to-peer business platforms, the Commission hosted a workshop in 2015 on the emerging "Sharing Economy."<sup>46</sup> Peer-to-peer platforms provide marketplaces in which numerous suppliers (frequently individuals and small entities) and consumers may locate partners and engage in commercial transactions.<sup>47</sup> These platforms, and suppliers using them, are providing innovative alternatives to consumers in a number of sectors, particularly in local transportation (e.g., Uber and Lyft) and lodging (e.g., Airbnb). The workshop examined the economics underlying sharing economy activity, the reputational systems and other mechanisms that sharing economy platforms use to promote trust among parties, how entry by sharing economy platforms and suppliers enhances competition, and the debate over how such economic activity should be regulated.

(g) *Promoting Competition in Health Care Markets.* The Commission prioritizes preventing mergers that would reduce competition among healthcare providers and likely enable the merged entities to raise rates charged to commercial healthcare plans for vital services and reduce incentives to improve service quality and innovation. The latest empirical research consistently finds that provider competition results in the greatest price and quality benefits for consumers, driving the FTC's continued vigilance in

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<sup>45</sup> See FTC, Tax Identity Theft Awareness Week (Jan. 2016), <http://www.consumer.ftc.gov/features/feature-0029-tax-identity-theft-awareness-week>.

<sup>46</sup> The workshop homepage can be accessed at the following address: <https://www.ftc.gov/news-events/events-calendar/2015/06/sharing-economy-issues-facing-platforms-participants-regulators>.

<sup>47</sup> Some peer-to-peer platforms enable non-commercial transactions. The FTC's workshop did not evaluate such platforms.

health care provider markets.<sup>48</sup> In late 2015, the Commission sued to stop three proposed hospital mergers that the agency alleged would lead to increased market power for the merging firms in their local communities.<sup>49</sup> Two of these cases are still pending, but on July 6, 2016, the FTC dismissed without prejudice its administrative complaint challenging the proposed merger between Cabell Huntington Hospital and St. Mary's Medical Center – two hospitals located three miles apart in Huntington, West Virginia. The Commission voted to dismiss the complaint in light of the passage in March 2016 of a new West Virginia law relating to certain “cooperative agreements” between hospitals in that state, and the West Virginia Health Care Authority’s decision to approve a cooperative agreement between Cabell and St. Mary’s. Cooperative agreement laws seek to replace antitrust enforcement with state regulation and supervision of healthcare provider combinations. In the Commission’s view, this case presents another example of healthcare providers using state legislation to shield potentially anticompetitive combinations from antitrust enforcement. Such state cooperative agreement laws are likely to harm local communities through higher health care costs and lower quality care.<sup>50</sup>

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<sup>48</sup> Zack Cooper et al., *The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured* (Nat'l Bureau of Econ. Research, Working Paper No. 21815, 2015), <http://www.nber.org/papers/w21815>; Beth Jones Sanborn, *Huge Variation in Medical Prices as Hospital Monopolies Charge More*, Report Says, *Healthcare Fin.* (Dec. 18, 2015), <http://www.healthcarefinancenews.com/news/huge-variation-medical-prices-hospital-monopolies-charge-more-report-says>; see, e.g., Richard Scheffler et al., *Differing Impacts of Market Concentration of Affordable Care Act Marketplace Premiums*, 35 *Health Affairs* 880 (2015); Erin Trish & Bradley Herring, *How Do Health Insurer Market Concentration and Bargaining Power With Hospitals Affect Health Insurance Premiums?*, 42 *J. Health Econ.* 104, 112 (2015); Martin Gaynor et al., *Death by Market Power: Reform, Competition, and Patient Outcomes in the National Health Service*, 5 *Am. Econ. J.* 134 (Nov. 2013); Zack Cooper et al., *Does Hospital Competition Save Lives? Evidence from the English NHS Patient Choice Reforms*, 121 *Econ. J.* 228 (2011); see also Nathan Wilson, *Market Structure as a Determinant of Patient Care Quality*, *Am. J. Health Econ.* (forthcoming).

<sup>49</sup> Press Release, FTC, *FTC Challenges Proposed Merger of Two West Virginia Hospitals* (Nov. 6, 2015), <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-challenges-proposed-merger-two-west-virginia-hospitals>; Press Release, FTC, *FTC and Pennsylvania Office of Attorney General Challenge Penn State Hershey Medical Center's Proposed Merger with PinnacleHealth System* (Dec. 8, 2015), <https://www.ftc.gov/news-events/press-releases/2015/12/ftc-pennsylvania-office-attorney-general-challenge-penn-state>; Press Release, FTC, *FTC Challenges Proposed Merger of Two Chicago-area Hospital Systems* (Dec. 18, 2015), <https://www.ftc.gov/news-events/press-releases/2015/12/ftc-challenges-proposed-merger-two-chicago-area-hospital-systems>.

<sup>50</sup> See Statement of the Federal Trade Commission, *In re Cabell Huntington Hosp., Inc.*, Docket No. 9366 (July 6, 2016), [https://www.ftc.gov/system/files/documents/public\\_statements/969783/160706cabellcommstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/969783/160706cabellcommstmt.pdf).

The FTC also continues to work to eliminate anticompetitive “pay-for-delay” settlements in which a branded drug firm pays a generic competitor to keep generic drugs off the market. In a significant victory, the U.S. Supreme Court held that pay-for-delay agreements between brand and generic drug companies are subject to antitrust scrutiny under an antitrust “rule of reason” analysis. *FTC v. Actavis, Inc.*, 570 U.S. 756 (2013). This decision cleared the way for antitrust review of potentially anticompetitive pay-for-delay patent settlement agreements. The FTC currently has three active pay-for-delay litigations underway in federal courts. Two involve the blockbuster male testosterone replacement drug Androgel (the *Actavis* case on remand to the U.S. District Court for the Northern District of Georgia and *FTC v. AbbVie, Inc.*, in the U.S. District Court for the Eastern District of Pennsylvania).<sup>51</sup> The third case involves an agreement not to market an authorized generic – often called a “no-AG” commitment – as a form of reverse payment.<sup>52</sup>

The FTC also remains vigilant to stop other anticompetitive conduct by pharmaceutical firms to delay generic competition, including “product hopping,” where a brand introduces new products with minor or no substantive improvements in the hopes of preventing substitution to lower-priced generics. The Commission has noted that the potential for anticompetitive product design is particularly acute in the pharmaceutical industry, in part because it may be a profitable strategy even if consumers do not prefer the reformulated version of the product or if it lacks any real medical benefit.<sup>53</sup>

*(h) Promoting Competition for Retail Goods.* On May 19, 2016, Staples, Inc. abandoned its proposed \$6.3 billion acquisition of Office Depot, Inc. after the Commission obtained a preliminary injunction in federal court. This deal would have eliminated head-to-head competition between the two

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<sup>51</sup> Complaint for Injunctive and Other Equitable Relief, *FTC v. AbbVie, Inc.*, No. 2:14-cv-05151-RK (E.D. Pa. Sept. 8, 2014), *available at* <https://www.ftc.gov/system/files/documents/cases/140908abbviecmpt1.pdf>.

<sup>52</sup> Complaint for Injunctive and Other Equitable Relief, *FTC v. Endo Pharms. Inc.*, No. 2:16-cv-01440 (E.D. Pa. Mar. 30, 2016), *available at* <https://www.ftc.gov/system/files/documents/cases/160331endocmpt.pdf>.

<sup>53</sup> Brief for Amicus Curiae FTC Supporting Plaintiff-Appellant, *Mylan Pharms., Inc. v. Warner Chilcott PLC*, Civ. A. No. 12-3824 (3d. Cir. Sept. 30, 2015), [https://www.ftc.gov/system/files/documents/amicus\\_briefs/mylan-pharmaceuticals-inc.v.warner-chilcott-plc-et-al./151001mylanamicusbrief.pdf](https://www.ftc.gov/system/files/documents/amicus_briefs/mylan-pharmaceuticals-inc.v.warner-chilcott-plc-et-al./151001mylanamicusbrief.pdf). Commissioner Ohlhausen voted against the filing of this brief.

companies and likely led to higher prices and lower quality for the many large businesses that purchase office supplies for their own use. This action, like other merger challenges involving supermarkets and dollar stores, helps preserve competition in prices, distribution, and combination of services and features for products that businesses and consumers buy every day.

The Commission also recently filed an administrative complaint against 1-800 Contacts, the country's largest online seller of contact lenses.<sup>54</sup> The complaint alleges that the company entered into a series of agreements with its online rivals that suppress competition in certain online search advertising auctions and restrict truthful internet advertising to consumers, resulting in some consumers paying more for contact lenses than they would have absent the agreements. The complaint contends that the agreements, which settled trademark lawsuits that 1-800 Contacts brought or threatened, bar both 1-800 Contacts and each of its affected rivals from bidding for each other's trademarked terms. The agreements also allegedly require each party to use negative keywords designed to keep search engines from displaying one party's advertisements in response to a search query that includes terms specified by the other party. The complaint charges that the bidding agreements are overly broad and unnecessary to safeguard any legitimate trademark interest. The case is pending.

*(i) Fostering Innovation & Competition.* For more than two decades, the Commission has examined difficult issues at the intersection of antitrust and intellectual property law—including those related to innovation, standard-setting, and patents. The Commission's work in this area is grounded in the recognition that intellectual property and competition laws share the fundamental goals of promoting innovation and consumer welfare. The Commission has authored several seminal reports on competition and patent law and conducted workshops to learn more about emerging practices and trends.

For instance, the FTC has used its authority under Section 6(b) of the Federal Trade Commission Act to explore the impact of patent assertion entities (PAE), firms that acquire patents from third parties and then try to make money by licensing or suing accused infringers. In 2014, the FTC received clearance under the Paperwork Reduction Act from the Office of Management and Budget to issue

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<sup>54</sup> Complaint, In re 1-800 Contacts, Docket No. 9372 (Aug. 8, 2016). *available at* [https://www.ftc.gov/system/files/documents/cases/160808\\_1800contactspt3cmpt.pdf](https://www.ftc.gov/system/files/documents/cases/160808_1800contactspt3cmpt.pdf).

compulsory process orders to PAEs and other industry participants to develop a better understanding of PAE business models. During October 2016, the FTC published a staff report that spotlighted the business practices of PAEs and recommended patent litigation reforms.<sup>55</sup>

. In 2014, the FTC received clearance under the Paperwork Reduction Act from the Office of Management and Budget to issue compulsory process orders to PAEs and other industry participants to develop a better understanding of PAE business models. The FTC expects to publish a report in Fall 2016 describing its findings and providing recommendations for future reform.

In conjunction with the Department of Justice, the Commission is also seeking to update the Antitrust Guidelines for the Licensing of Intellectual Property, also known as the IP Licensing Guidelines. To reflect changes in law and accumulated antitrust enforcement experience over the past 20 years, the agencies have proposed modifications to the IP Licensing Guidelines. The Commission is seeking comments from the public on the proposed update.<sup>56</sup>

(j) *Deceptive Endorsements and Native Advertising.* The Commission also focuses on many other advertising issues, such as deceptive endorsements and native advertising. Deceptive endorsements continue to be a priority, especially given the rapid growth of newer forms of promotion, such as social media, videos, and online reviews. Last year the FTC updated its Endorsement Guides to address these newer forms of promotion.<sup>57</sup> The key principle is straightforward: consumers have a right to know when a supposedly objective opinion is actually a marketing pitch. The FTC has brought many past cases and several recent cases involving deceptive endorsements, including a recent settlement with Machinima, an entertainment network that allegedly paid a large group of “influencers” to post videos

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<sup>55</sup> FTC Study, *Patent Assertion Entity Activity* (Oct. 2016), [https://www.ftc.gov/system/files/documents/reports/patent-assertion-entity-activity-ftc-study/p131203\\_patent\\_assertion\\_entity\\_activity\\_an\\_ftc\\_study.pdf](https://www.ftc.gov/system/files/documents/reports/patent-assertion-entity-activity-ftc-study/p131203_patent_assertion_entity_activity_an_ftc_study.pdf).

<sup>56</sup> Press Release, FTC, FTC and DOJ Seek Views on Proposed Update of the Antitrust Guidelines for Licensing of Intellectual Property (Aug. 12, 2016), <https://www.ftc.gov/news-events/press-releases/2016/08/ftc-doj-see-views-proposed-update-antitrust-guidelines-licensing>.

<sup>57</sup> The FTC’s Endorsement Guides: What People Are Asking (May 2015), <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>.

online touting Microsoft's Xbox One.<sup>58</sup> According to the complaint, the videos appeared to be the objective views of the influencers and allegedly did not disclose they were actually paid endorsements. In July 2016, the FTC announced a proposed settlement that would resolve allegations of similar practices against Warner Brothers.<sup>59</sup>

The Commission focuses on similar concerns with respect to native advertising, which involves the use of formats that make advertising or promotional messages look like objective content. The Commission recently issued an Enforcement Policy Statement about this practice.<sup>60</sup> It affirms that ads and marketing that promote the benefits and attributes of goods and services should be identifiable as advertising to consumers. The FTC also recently brought its first native advertising case, alleging that retailer Lord & Taylor deceived consumers by paying for native ads, including a seemingly objective article in an online fashion publication, without disclosing that such ads were actually paid promotions for a 2015 clothing launch.<sup>61</sup> The FTC also challenged the company's endorsement practices. The complaint alleged that the company paid 50 online fashion "influencers" to post Instagram pictures of themselves wearing a dress from the new collection without disclosing that it had paid the influencers to do so.

(k) *Energy Prices.* Few issues are more important to consumers and businesses than the prices they pay for gasoline to run their vehicles and energy to heat and light their homes and businesses. Given the impact of energy prices on consumer budgets, the energy sector continues to be a major focus of FTC law enforcement and study. Accordingly, the FTC works to maintain competition in energy

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<sup>58</sup> Complaint, In re Machinima, Inc., No. C-4569 (Mar. 16, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/142-3090/machinima-inc-matter>.

<sup>59</sup> See Press Release, FTC, Warner Bros. Settles FTC Charges It Failed to Adequately Disclose It Paid Online Influencers to Post Gameplay Videos (July 11, 2016), <https://www.ftc.gov/news-events/press-releases/2016/07/warner-bros-settles-ftc-charges-it-failed-adequately-disclose-it>.

<sup>60</sup> See Commission Enforcement Policy Statement on Deceptively Formatted Advertisements (Dec. 2015), <https://www.ftc.gov/public-statements/2015/12/commission-enforcement-policy-statement-deceptively-formatted>; see also FTC, Native Advertising: A Guide for Businesses (Dec. 2015), <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>.

<sup>61</sup> Complaint, In re Lord & Taylor, LLC, No. C-4576 (May 20, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/152-3181/lord-taylor-llc-matter>.

industries, invoking all the powers at its disposal—including monitoring industry activities, investigating possible antitrust violations, prosecuting cases, and conducting studies—to protect consumers from anticompetitive conduct in the industry.<sup>62</sup> For example, in 2016, the Commission required divestitures in connection with ArcLight Energy’s acquisition of Gulf Oil to preserve competition among petroleum product terminals located in Altoona, Scranton, and Harrisburg, Pennsylvania.<sup>63</sup> The Commission also hosted a one-day public workshop to explore competition and consumer protection issues that may arise when consumers generate their own electric power by installing solar panels on their homes.<sup>64</sup> In view of the fundamental importance of oil, natural gas, and other energy resources to the overall vitality of the United States and world economy, we expect that FTC review and oversight of the energy industries will remain a focus of our work for years to come.

(l) *Remedy Study.* The Commission is conducting another study to evaluate the effectiveness of the Commission’s orders in past merger cases where it has required a divestiture or other remedy.<sup>65</sup> This effort will expand on a similar remedy study conducted in the 1990s that led to important improvements in the Commission’s orders.<sup>66</sup> The new study is broader, covering 90 orders entered between 2006 and 2012, and will benefit from information collected from customers and significant competitors. We expect the study to provide insight into whether the Commission’s orders maintained competition in markets that otherwise would have been affected by the merger at issue.

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<sup>62</sup> Information regarding FTC oil and gas industry initiatives is available at <https://www.ftc.gov/tips-advice/competition-guidance/industry-guidance/oil-and-gas>.

<sup>63</sup> Decision and Order, *In re ArcLight Energy Partners Fund VI, L.P.*, No. C-4563 (Feb. 4, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/151-0149/arclight-energy-partners-fund-vi-lp-matter>.

<sup>64</sup> For more information, see FTC workshop, *Something New Under the Sun* (June 21, 2016), <https://www.ftc.gov/news-events/events-calendar/2016/06/something-new-under-sun-competition-consumer-protection-issues>.

<sup>65</sup> Press Release, FTC, *FTC Proposes to Study Merger Remedies* (Jan. 9, 2015), <https://www.ftc.gov/news-events/press-releases/2015/01/ftc-proposes-study-merger-remedies>.

<sup>66</sup> FTC, *A Study of the Commission’s Divestiture Process* (1999), <https://www.ftc.gov/sites/default/files/attachments/merger-review/divestiture.pdf>.

*(m) Protecting Consumers from Cross-Border Harm.* The FTC cooperates with competition and consumer protection agencies in other countries to halt deceptive and anticompetitive business practices that affect U.S. consumers, and promotes sound approaches to issues of mutual international interest by building relationships with counterpart agencies around the world on competition and consumer protection issues.

The FTC cooperated on enforcement-related matters with foreign agencies or multilateral organizations in 58 consumer protection and privacy matters, using its authority under the U.S. SAFE WEB Act in 19 of these matters to share information or provide investigative assistance to foreign authorities. One highlight was the FTC's successful effort, working with the Royal Canadian Mounted Police and the U.S. Department of Justice, to obtain a court order from a Montreal court repatriating nearly \$2 million to the U.S. victims of a phony mortgage assistance and debt relief scheme. The FTC also continues to advance enforcement cooperation through networks such as the International Consumer Protection and Enforcement Network (ICPEN), the Global Privacy Enforcement Network (GPEN), the anti-spam London Action Plan and the International Mass Marketing Fraud Working Group. It relaunched the econsumer.gov complaint portal, together with 33 other countries that are members of ICPEN, to enhance their ability to gather and share cross-border consumer complaints that can be used to investigate and take action against international scams. In addition, the FTC with enforcement agencies from seven other GPEN member countries launched a new information-sharing system – GPEN Alert – which enables the FTC and its counterparts to better coordinate international efforts to protect consumer privacy by sharing information about investigations while maintaining confidentiality.

In the policy arena, the FTC played a leading role in revising the OECD's Guidelines on Consumer Protection in Electronic Commerce, which were adopted by the OECD Council in early 2016 to address new developments in e-commerce including mobile applications, digital content, and peer platform marketplaces. The agency also played an important role in negotiating new provisions of the United Nations Guidelines on Consumer Protection relating to e-commerce, consumer financial services, dispute resolution and redress, and international cooperation.

The FTC also continues to advocate for global interoperability among different international privacy frameworks. For example, the FTC worked closely with the U.S. Department of Commerce and European Commission to develop the E.U.-U.S. Privacy Shield Framework which the European Commission adopted on July 12, 2016. The new framework replaces the U.S.-E.U. Safe Harbor Framework and allows companies of all sizes and across most industries to transfer data between the European Union and United States. The new framework enhances protections for EU citizens' data, improves cooperation procedures among U.S. and EU authorities, and adds new redress and complaint resolution mechanisms for EU citizens. The FTC has a strong track record of protecting consumer privacy in many contexts, and it is committed to vigorously enforcing the new framework.

Throughout 2016, the FTC's international competition program promoted cooperation with competition agencies in other jurisdictions and advocated convergence of international antitrust policies toward best practice. As a new co-chair of the Mergers Working Group of the International Competition Network (ICN), the FTC is already taking a lead role to strengthen implementation of, and possibly update, the ICN's signature recommended practices for merger notification and review procedures.

In addition to promoting convergence toward sound competition policy and enforcement, the FTC advocates fair and transparent enforcement procedures. The FTC initiated and co-led the ICN's project on procedural fairness that culminated in the consensus Guidance on Investigative Process, which is the most comprehensive agency-led effort to articulate best practices in providing due process in antitrust investigations. The FTC actively promotes implementation of these standards of transparency, engagement, and other key procedural aspects of antitrust enforcement. The FTC also participated in the interagency teams that negotiated outcomes with China in the Joint Commission on Commerce and Trade and the Strategic and Economic Dialogue, including with regard to procedural fairness in anti-monopoly law proceedings and the coherence of antitrust monopoly and intellectual property rules. We also played an active role in developing the competition chapters of Trans-Pacific and Transatlantic Trade and Investment Partnerships.

Finally, the FTC has continued its robust technical assistance program to share its experience with competition agencies around the world. In 2016, the FTC conducted programs in jurisdictions around the globe, including Argentina, Brazil, India, Mexico, the Philippines, South Africa, and Ukraine. Through its International Fellows Program, the FTC brought ten international competition colleagues from five competition agencies to work alongside FTC staff on antitrust enforcement matters for fiscal year

2016. Under the same program, the FTC brought four international consumer protection colleagues from four agencies to work alongside FTC staff on consumer protection matters and research this fiscal year.

*(n) Self-Regulatory and Compliance Initiatives with Industry.* The Commission continues to engage industry in compliance partnerships in the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR 453, so that they can meet the rule's disclosure requirements. Four hundred and ninety-nine funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program assists franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR 436, in complying with the rule. Violations involving fraud or other 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.

#### *Retrospective Review of Existing Regulations*

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. Under the Commission's program, rules are reviewed on a 10-year schedule. For many rules, this has resulted in more frequent reviews than are generally required by Section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a "significant economic impact upon a substantial number of small entities." 5 U.S.C. 610. 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. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary or in the public interest. Most of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. 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.

In light of Executive Orders 13563 and 13579, the FTC continues to take a fresh look at its long-standing regulatory review process. The Commission is taking a number of steps to ease burdens on business and promote transparency in its regulatory review program:

- The Commission issued in February 2016 a revised 10-year review schedule (see next paragraph below). The Commission is currently reviewing 11 of the 65 rules and guides within its jurisdiction.
- The Commission continues to request and review public comments on the effectiveness of its regulatory review program and suggestions for its improvement.
- 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 addition, the Commission's 10-year periodic review schedule includes initiating reviews for the following rules and guides (81 FR 7716, Feb. 16, 2016) during 2016:

(1) Standards for Safeguarding Customer Information, 16 CFR 314,

(2) CAN–SPAM Rule, 16 CFR 316,

(3) Labeling and Advertising of Home Insulation, 16 CFR 460,

(4) Disposal of Consumer Report Information and Records, 16 CFR 682,

and in 2017 for:

(5) Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, 16 CFR 410.

#### *Ongoing Rule and Guide Reviews*

The Commission is continuing review of a number of rules and guides, which are discussed below.

#### *(a) Rules*

*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. On September 12, 2016, the Commission proposed amendments to the Energy Labeling Rule to require labels for portable air conditioners, large-diameter and high-speed small diameter ceiling fans, and instantaneous electric water heaters. 81 FR 62681. Additionally, it proposed eliminating certain marking requirements for plumbing products. The comment period closes on November 14, 2016.<sup>67</sup>

*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

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<sup>67</sup> See *Final Actions* below for information about a separate completed rulemaking proceeding for the Energy Labeling Rule.

Insulation, as part of its ongoing systematic review of all rules and guides. 81 FR 19936. The comment period was later extended to September 6, 2016. 81 FR 35661 (June 3, 2016). Staff anticipates sending a recommendation to the Commission by the end of 2016. 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.

*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.<sup>68</sup> 79 FR 46732. The comment period as extended closed on November 13, 2014. 79 FR 61267 (Oct. 10, 2014). Staff anticipates making a recommendation to the Commission by the end of July 2017.

*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. 80 FR 36267. 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 Consumer Financial Protection Bureau in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The comment period closed on August 31, 2015. Staff anticipates that the Commission will take its next action by April 2017.

*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

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<sup>68</sup> See *Final Actions* below for information about a separate completed rulemaking proceeding for the Telemarketing Sales Rule.

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 (76 FR 41148, July 13, 2011), 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; clarify what can constitute a reasonable basis for care instructions; and update the definition of “dryclean.” 77 FR 58338. 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 2017.

*Used Car Rule, 16 CFR 455.* The Used Motor Vehicle Trade Regulation Rule (Used Car Rule), 16 CFR 455, sets out the general duties of a used vehicle dealer; requires that a completed Buyers Guide be posted at all times on the side window of each used car a dealer offers for sale; and mandates disclosure of whether the vehicle is covered by a dealer warranty and, if so, the type and duration of the warranty coverage, or whether the vehicle is being sold “as is—no warranty.” The Commission published a notice seeking public comments on the effectiveness and impact of the rule. See 73 FR 42285 (July 21, 2008). The comment period, as extended and then reopened, ended on June 15, 2009. In response to comments, the Commission published a Notice of Proposed Rulemaking on December 17, 2012 (See 77 FR 74746) and a final rule revising the Spanish translation of the window form on December 12, 2012. See 77 FR 73912. The extended comment period on the NPRM ended on March 13, 2012. The Commission issued a Supplemental NPRM on November 28, 2014. 79 FR 70804. Staff anticipates Commission action by November 2016.

*Contact Lens Rule, 16 CFR 315, and Eyeglass Rule, 16 CFR 456.* As part of the systematic rule review process, on September 3, 2015, the Commission issued Federal Register notices seeking public comments about the Contact Lens Rule and the Eyeglass Rule (or Trade Regulation Rule on Ophthalmic

Practice Rules). 80 FR 53272 (Contact Lens Rule) and 80 FR 53274 (Eyeglass Rule). The comment period extended until October 26, 2015. Commission staff has completed the review of 660 comments on the Contact Lens Rule and 831 comments on the Eyeglass Rule and is formulating next steps. 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 to 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. The Eyeglass Rule requires that an optometrist or ophthalmologist must 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.

*Holder in Due Course Rule, 16 CFR 433.* On December 1, 2015, the Commission initiated a periodic review of this Rule, officially the Preservation of Consumers' Claims and Defenses Rule. 80 FR 75018. The comment period closed on February 12, 2016. Staff is reviewing the comments and anticipates sending a recommendation to the Commission by early 2017. 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.

*Disposal Rule, 16 CFR 682.* On September 15, 2016, the Commission initiated a periodic review of the Disposal Rule (formally the Disposal of Consumer Report Information and Records) as part of its ongoing systematic review of all rules and guides. 81 FR 63435. The comment period will close on November 21, 2016. The Disposal Rule requires any person or entity that maintains or otherwise possesses consumer information for a business purpose to properly dispose of the information to protect against unauthorized access to or use of the information. Consumer information means any record about

an individual that is a consumer report or is derived from a consumer report, or a compilation of such records. This rule implements Section 216 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information.

*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. 81 FR 61632. The comment period will close on November 7, 2016. The FTC's Safeguards Rule, as directed by the Gramm-Leach-Bliley Act (GLB), requires each financial institution subject to the FTC's jurisdiction to 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.

*CAN-SPAM Rule, 16 CFR 316.* The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 sets rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have senders of commercial email stop emailing them, and provides for penalties for violations. The FTC issued the CAN-SPAM Rule (Rule) to implement the Act, as authorized by the statute. As part of its ongoing systematic review of all Federal Trade Commission rules and guides, in late 2016 the Commission plans to initiate a periodic review of the Rule.

*Picture Tube Rule, 16 CFR 410.* The Picture Tube Rule, officially the Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, became effective in 1967 and sets forth appropriate methods for measuring television screens when that measure is included in any advertisement or promotional material for the television set. If the measurement of the screen size is based on a measurement other than the horizontal dimension of the actual viewable picture area, the method of measurement must be clearly and conspicuously disclosed in close proximity to the size designation. As part of the systematic review of its rules and guides, the Commission plans to initiate a periodic review of this rule in 2017.

*(b) Guides*

*Jewelry Guides, 16 CFR 23.* On July 2, 2012, the Commission sought public comments on its Guides for the Jewelry, Precious Metals, and Pewter Industries, which are commonly known as the Jewelry Guides. 77 FR 39202. The Guides explain to businesses how to avoid making deceptive claims about precious metal, pewter, diamond, gemstone, and pearl products and when they should make disclosures to avoid unfair or deceptive trade practices. Based on comments received, and on information obtained during a public roundtable in June 2013, the FTC proposed revisions to the Guides on January 12, 2016, regarding below-threshold alloys, precious metal content of products containing more than one precious metal, surface application of precious metals, lead-glass filled stones, “cultured” diamonds, pearl treatments, varietals, and misuse of the word “gem.” 81 FR 1349. The extended comment period closed on June 3, 2016, and Commission staff anticipates forwarding a recommendation to the Commission before the end of 2016.

*Fuel Economy Guide, 16 CFR 259.* On June 6, 2016, the Commission sought comments on proposed amendments to the Guide Concerning Fuel Economy Advertising for New Automobiles (Fuel Economy Guide) to reflect current Environmental Protection Agency and National Highway Traffic Safety Administration fuel economy labeling rules and to consider advertising claims prevalent in the market. 81 FR 36216. The extended comment period closed on September 8, 2016. Staff is reviewing the comments and is considering next steps. The Fuel Economy Guide was adopted in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising.

*Green Guides, 16 CFR 260.* On August 10, 2016, the FTC released a staff report analyzing an internet-based study that explored consumer perceptions of “organic” and “recycled content” claims related to the Commission's Green Guides (officially Guides for the Use of Environmental Marketing Claims).<sup>69</sup> The study, which was co-funded by the United States Department of Agriculture (USDA), also addressed consumer perception of pre-consumer recycled content claims. The Commission and the

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<sup>69</sup> See FTC Staff Report, Consumer Perception of “Recycled Content” and “Organic” Claims (Aug. 10, 2016), [https://www.ftc.gov/system/files/documents/reports/consumer-perception-recycled-content-organic-claims-joint-staff-report-federal-trade-commission/consumer\\_perception\\_of\\_recycled\\_content\\_and\\_organic\\_2016-08-10.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-perception-recycled-content-organic-claims-joint-staff-report-federal-trade-commission/consumer_perception_of_recycled_content_and_organic_2016-08-10.pdf).

USDA also held a public roundtable on October 20, 2016, that explored organic claims for non-food products and ways to reduce deceptive organic claims, including through consumer education.

### *Final Actions*

Since the publication of the 2015 Regulatory Plan, the Commission has issued the following final rules or taken other actions to close other rulemaking proceedings.

*Hobby Rules, 16 CFR 304.* On October 11, 2016, the Commission announced a final rule amending the Hobby Rules to conform with the 2014 Collectible Coin Protection Act that amended the Hobby Protection Act, 15 U.S.C. sections 2101-2106. The Hobby Protection Act prohibits manufacturing or importing imitation numismatic and collectible political items unless they are marked in accordance with regulations prescribed by the Federal Trade Commission. The implementing Rules prescribe that imitation political items—such as buttons, posters or coffee mugs—must be marked with the calendar year in which they were manufactured, and imitation numismatic items—including coins, tokens and paper money—must be marked with the word “copy.”

The final rule amendments extend the scope of the Rules to cover persons or entities that sell imitation numismatic items (coins, paper currency and commemorative medals), or provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or any manufacturer or importer of imitation political items, who they know, or should have known, is violating the marking requirements of the Hobby Act and the Rules. The amendments will be effective on November 16, 2016.

*Fuel Rating Rule, 16 CFR 306.* First issued in 1979, the Fuel Rating Rule (or Automotive Fuel Ratings, Certification and Posting Rule) enables consumers to buy gasoline with an appropriate octane rating for their vehicle and establishes standard procedures for determining, certifying, and posting octane ratings. On January 14, 2016, the Commission published final rule amendments that require entities to rate and certify all ethanol fuels with ethanol content ranging from above 10 percent to 83 percent so as

to provide useful information to consumers about ethanol concentration and suitability for their cars and engines (81 FR 2054). The final rule amendments respond to the comments by providing greater flexibility for businesses to comply with the ethanol labeling requirements, and by not adopting the alternative octane rating method proposed in the 2014 Notice of Proposed Rulemaking (79 FR 18850 April 4, 2014). The amendments took effect on July 14, 2016.

*Telemarketing Sales Rule (TSR), 16 CFR 308. Anti-Fraud Provisions*— Following a public comment period, the Commission amended the TSR on December 14, 2015, to define and prohibit the use of certain payment methods in all telemarketing transactions; expand the scope of the advance fee ban for recovery services; and clarify certain provisions of the Rule (80 FR 77520).<sup>70</sup> For inbound or outbound telemarketing transactions by telemarketers and sellers, the amendments prohibit novel payment methods that are difficult to trace and hard for people to reverse. The prohibited payment methods include remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms. While addressing changes in the financial marketplace to ensure consumers remain protected by the TSR's antifraud provisions, the amendments are narrowly tailored to allow for innovations with respect to other payment methods that are used by legitimate companies. Portions of the changes took effect on February 12, 2016, while the remainder took effect on June 13, 2016.

*Energy Labeling Rule, 16 CFR 305.* On September 15, 2016, the Commission amended the Rule to improve access to energy labels online and improve labels for refrigerators, ceiling fans, central air conditioners, and water heaters. 81 FR 63634. The amendments to 16 CFR 305.3(x), 305.13, and Sample Label 17 of Appendix L are effective on September 17, 2018. All other amendments are effective on June 12, 2017.<sup>71</sup>

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<sup>70</sup> See *Ongoing Rule and Guide Reviews* for information about a separate ongoing rulemaking proceeding for the Telemarketing Sales Rule.

<sup>71</sup> See *Ongoing Rule and Guide Reviews* for information about a separate ongoing rulemaking proceeding for the Energy Labeling Rule.

*Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions and the Pre-Sale Availability Rule, 16 CFR 701-702.* These rules establish (1) requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than \$15.00, and (2) requirements for sellers and warrantors to make the terms of any written warranty available to the consumer prior to the sale of the product. The E-Warranty Act of 2015, which was signed into law on September 24, 2015, directed the FTC to revise the Pre-Sale Availability Rule to permit the option of using Internet websites to post warranty terms, in addition to the other methods that the Pre-Sale Availability Rule already allows. On September 15, 2016, the FTC issued final rule amendments, which were effective on October 17, 2016. 81 FR 63664.

*Premerger Notification Rules and Report Form (or HSR Rules), 16 CFR 801-803.* On September -1, 2016, the Commission amended the HSR Rules to allow for submission of the Premerger Notification and Report Form (Form) and accompanying documents on digital video/versatile disc (DVD), and clarify the Instructions to the Form. The final rule was effective on September 1, 2016 (81 FR 60257).

### *Summary*

In both content and process, the FTC's ongoing and proposed regulatory actions are consistent with the President's priorities. The actions under consideration inform and protect consumers, while minimizing the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's 10-year review program described above is patterned after provisions in the Regulatory Flexibility Act 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. 58 FR 51735 (Sept. 30, 1993). In addition, the final rules issued by the Commission continue to be consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*, required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

The Commission continues to identify and weigh the costs and benefits of proposed 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." Executive Order 12866, section 1.

## **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.<sup>72</sup> The Commission has no proposed rules that would have significant international impacts under the definition in Executive Order 13609. Also, there are no international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations under Executive Order 13609.

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**NATIONAL INDIAN GAMING COMMISSION**

### **Statement of Regulatory Priorities**

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<sup>72</sup> 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.

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) to protect such gaming, amongst other things, as a means of generating tribal revenue.

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 NIGC is committed to strong regulation of Indian gaming, the NIGC 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 in order to fully promote tribal economic development, self-sufficiency, 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 13579 was issued on July 11, 2011. The NIGC, however, recognizes the importance of Executive Order 13579, and its regulatory review is being conducted in the spirit of Executive Order 13579, 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, the NIGC 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) are associated with the review:

RIN	TITLE
3141-AA32	Definitions
3141-AA55	Minimum Internal Control Standards
3141-AA58	Management Contracts
3141-AA60	Class II Minimum Internal Control Standards
3141-AA62	Buy Indian Goods and Services (BIGS)
3141-AA64	Class II Minimum Technical Standards
3141-AA65	Privacy Act Procedures

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; (ii) the removal, revision, or suspension of the existing minimum internal control standards (MICS) in part 542; (iii) updates or revisions to its management contract regulations to address the current state of the industry; (iv) the review and revision of the minimum internal control standards for Class II gaming; (v) regulation that would provide a preference to qualified Indian-owned businesses when purchasing goods or services for

the Commission at a fair market price; (vi) revisions to the minimum technical standards for gaming equipment used with the play of Class II games; and, (vii) revisions to the existing Privacy Act Procedures in part 515 as a means to streamline internal processes.

The NIGC anticipates that the ongoing consultations with tribes will continue to play an important role in the development of the NIGC's rulemaking efforts.

NIGC	PROPOSED RULE STAGE
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**160. CLASS II MINIMUM INTERNAL CONTROL STANDARDS**

**Priority:**

Other Significant

**Legal Authority:**

25 U.S.C. 2706(b)(1) to (4); 25 U.S.C. 2706(b)(10); 25 U.S.C. 2710(d)(7)(B)(vii)

**CFR Citation:**

25 CFR 543

**Legal Deadline:**

None

**Abstract:**

The NIGC continues to review and revise the minimum internal control standards (MICS) for Class II gaming. The NIGC anticipates proposing minor but substantive corrections to the Class II MICS, including adding clarifying language and reinserting critical key controls that were inadvertently removed by the last revisions.

**Statement of Need:**

Periodic review and revision of existing standards based on input by a wide array of tribal entities ensures that the MICS remain relevant and appropriate. Recent review has uncovered a need for correction and clarification to specific provisions of the MICS, as well as a need to re-insert standards that were accidentally overwritten when kiosk standards were added.

**Summary of Legal Basis:**

The NIGC is charged with monitoring class II gaming conducted on Indian lands 25 U.S.C. 2706(b)(1). With regard to Class II gaming, NIGC's responsibility includes inspecting and examining the premises located on Indian lands on which Class II gaming is conducted and auditing all papers, books, and records respecting gross revenues of Class II gaming conducted on Indian lands, and any other matters necessary to carry out the duties of the NIGC pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA). 25 U.S.C. 2706(b)(2), (4).

**Alternatives:**

Maintain the current regulations.

**Anticipated Cost and Benefits:**

There are no anticipated cost increases to the Federal Government or to tribal governments as a result of this regulatory action.

**Risks:**

There are no known risks to this regulatory action.

**Timetable:**

Action	Date	FR Cite
NPRM	10/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Tribal

**Agency Contact:**

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**Related RIN:**

Split from 3141-AA56

**RIN:** 3141-AA60

<b>NIGC</b>	<b>FINAL RULE STAGE</b>
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**161. MINIMUM INTERNAL CONTROL STANDARDS**

**Priority:**

Other Significant

**Legal Authority:**

25 U.S.C. 2706(b)(1) to (4); 25 U.S.C. 2706(b)(10); 25 U.S.C. 2710(d)(7)(B)(vii)

**CFR Citation:**

25 CFR 542

**Legal Deadline:**

None

**Abstract:**

The NIGC is considering removing, revising, or suspending the existing Class III minimum internal control standards (MICS) in part 542.

**Statement of Need:**

The NIGC cannot promulgate, implement, or enforce Class III MICS.

**Summary of Legal Basis:**

The D.C. Circuit Court’s decision in Colorado River Indian Tribes v. National Indian Gaming Commission 383 F.Supp.2d 123 (D.D.C. 2005), affd., 466 F.3d 134 (D.C. Cir. 2006), held that the NIGC cannot promulgate, implement, or enforce Class III control standards.

**Alternatives:**

The NIGC has a number of options: 1) Retain the status quo; 2) remove the standards; or 3) remove the standards and publish updated standards as guidance documents. At this time, the NIGC continues to research and identify all other available options.

**Anticipated Cost and Benefits:**

There are no anticipated cost increases to the Federal Government or to tribal governments as a result of this regulatory action.

**Risks:**

There are no known risks to this regulatory action.

**Timetable:**

Action	Date	FR Cite
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First NPRM	12/01/04	69 FR 69847
First NPRM Comment Period End	01/18/05	
Second NPRM	03/10/05	70 FR 11893
Second NPRM Comment Period End	04/25/05	
Final Action on First NPRM	05/04/05	70 FR 23011
Final Action on Second NPRM	08/12/05	70 FR 47097
Third NPRM	11/15/05	70 FR 69293
Third NPRM Comment Period End	12/30/05	
Final Action on Third NPRM	05/11/06	71 FR 27385
Final Rule; Delay of Effective Date and Request for Comments	08/30/12	77 FR 53817
Final Rule; Delay of Effective Date and Request for Comments	10/04/12	77 FR 60625
Effective Date Delayed	04/22/14	
Final Action	10/00/17	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Tribal

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**Related RIN:**

Split from 3141-AA27

**RIN:** 3141-AA55

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# **U.S. Nuclear Regulatory Commission Statement of Regulatory Priorities for Fiscal Year 2017**

## **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, promote the common defense and security, and protect the environment. As part of our mission, we regulate the operation of nuclear power plants and fuel-cycle plants; 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) 2017 reflect our complex mission and will enable us to achieve our two strategic goals described in NUREG-1614, Volume 6, "Strategic Plan: Fiscal Years 2014–2018 (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v6/>): (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 regulatory actions that we are considering issuing in proposed or final form during FY 2017. For additional information on these regulatory actions and on a broader spectrum of the NRC's upcoming regulatory actions, see the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions.

## A. Proposed Rules

*2015 Edition of the American Society of Mechanical Engineers Code (RIN 3150-AJ74;*

*NRC-2016-0082)*: This proposed rule would amend the NRC's regulations to incorporate, by reference, the 2015 American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Code for Operation and Maintenance of nuclear power plants.

*Cyber Security for Fuel Facilities (RIN 3150-AJ64)*: This proposed rule would assure that NRC-licensed fuel cycle facilities provide reasonable assurance that digital assets associated with safety, security, emergency preparedness, and material control and accountability are adequately protected from cyber-attacks.

## B. Final Rules

*Modified Small Quantities Protocol (SQP) (RIN 3150-AJ70)*: The final rule would amend the NRC's regulations to ensure that the U.S. Government can meet its international obligations under INFCIRC/366 and the modified SQP. The NRC is responsible for ensuring compliance by the licensees in the U.S. Caribbean Territories.

*Performance-Based Emergency Core Cooling System Acceptance Criteria (RIN 3150-AH42; NRC-2008-0332)*: This final rule would amend the NRC's regulations that specify the fuel cladding acceptance criteria for emergency core cooling system (ECCS) loss-of-coolant accidents (LOCA) evaluations. The ECCS acceptance criteria would be performance-based, and reflect recent research findings that identified new embrittlement mechanisms for fuel rods with zirconium alloy cladding under LOCA conditions.

*Enhanced Weapons, Firearms Background Checks, and Security Event Notifications (RIN 3150-AI49; NRC-2008-0465, NRC-2011-0018)*: This final rule would amend the NRC's regulations by implementing the authority in Section 161A of the Atomic Energy Act of 1954, as amended. The rule would enable access to enhanced weapons with associated firearms background checks at power reactor facilities, at-reactor Independent Spent Fuel Storage Installations, and Category I strategic special nuclear materials facilities. This final rule would also modify physical security event notification provisions for most classes of NRC licensees with physical security programs.

*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 for beyond-design-basis external events.

*Revision of Fee Schedules: Fee Recovery for FY 2017 (RIN 3150-AJ73; NRC-2016-0081):* This final rule would amend the NRC's fee schedules for licensing, inspection, and annual fees charged to its applicants and licensees.

<b>NRC</b>	<b>FINAL RULE STAGE</b>
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**162. MODIFIED SMALL QUANTITIES PROTOCOL [NRC-2015-0263]**

**Priority:**

Other Significant

**Legal Authority:**

42 U.S.C. 2201; 42 U.S.C. 5841

**CFR Citation:**

10 CFR 40; 10 CFR 70; 10 CFR 75

**Legal Deadline:**

None

**Abstract:**

This rule amends the Nuclear Regulatory Commission's regulations in 10 CFR parts 40, 70, and 75, as needed, to ensure that the U.S. Government can meet its international obligations under INFCIRC/366. The Nuclear Regulatory Commission is responsible for ensuring compliance by the licensees in the U.S. Caribbean Territories. Changes would go into effect as a final rule, issued without notice and comment under 5 U.S.C. 553(a)(1), which allows agencies to issue rules involving the foreign affairs functions of the United States without notice and comment. These rule changes must be in effect before the U.S. Government can bring the modified Small Quantities Protocol to INFCIRC/366 into force.

**Statement of Need:**

This rule would respond to Commission direction to proceed with rulemaking.

**Summary of Legal Basis:**

The legal basis of this rule is to ensure that the U.S. Government meets its obligations under the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco).

**Alternatives:**

None.

**Anticipated Cost and Benefits:**

Undefined.

**Risks:**

Undefined.

**Timetable:**

Action	Date	FR Cite
Final Rule	05/00/17	

**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:**

In SECY-15-0080 staff requested Commission approval to initiate rulemaking: On June 5, 2015, the staff requested Commission approval to initiate the rulemaking. On July 21, 2015, the Commission approved initiation of the rulemaking. Specifically, the Commission provided its clearance for the Circular 175 memorandum authorizing the Department of State to negotiate and conclude a modified Small Quantities Protocol between the US and IAEA with the treaty for the prohibition of Nuclear Weapons in Latin America. This rulemaking will go directly to a final rule as it has a foreign policy exclusion.

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**RIN:** 3150-AJ70

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