

Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule will be effective on September 10, 2009.

The EPA’s compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 25, 2009 **Federal Register** notice containing the Area Source Aluminum, Copper, and Other Nonferrous Foundries final rule (74 FR 30366).

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 1, 2009.

Gina McCarthy,
Assistant Administrator for Air and Radiation.

■ For the reasons set out in the preamble, title 40, chapter I, part 63, subpart ZZZZZZ of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart ZZZZZZ—[Amended]

■ 2. Section 63.11544 is amended by:

- a. Revising paragraph (a)(1);
- b. Revising paragraph (a)(2); and
- c. Revising paragraph (a)(3) to read as follows:

§ 63.11544 Am I subject to this subpart?

(a) * * *

(1) Your aluminum foundry uses material containing aluminum foundry HAP, as defined in § 63.11556, “What definitions apply to this subpart?”; or

(2) Your copper foundry uses material containing copper foundry HAP, as defined in § 63.11556, “What definitions apply to this subpart?”; or

(3) Your other nonferrous foundry uses material containing other nonferrous foundry HAP, as defined in § 63.11556, “What definitions apply to this subpart?”.

* * * * *

§ 63.11553 [Amended]

■ 3. Section 63.11553 is amended by redesignating the second paragraph (b)(4) as paragraph (b)(5).

[FR Doc. E9–21712 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2516, 2519, 2520, 2522, 2540, 2550, 2551, 2552, and 2553

RIN 3045–AA50

Serve America Act Amendments to the National and Community Service Act of 1990 and the Domestic Volunteer Service Act of 1973

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule with request for comments.

SUMMARY: On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act). The Serve America Act reauthorizes and expands national service programs administered by the Corporation for National and Community Service (“the Corporation”) by amending the National and Community Service Act of 1990 (NCSA) and the Domestic Volunteer Service Act of 1973 (DVSA). The Corporation publishes this interim final rule to implement time-sensitive changes that are required by the Serve America Act to take effect on October 1, 2009. In addition to aligning statutory amendments with the NCSA and DVSA, the interim final rule reorders and rennumbers certain parts of the existing regulations and expands the construction and use of defined terms.

DATES: This interim final rule is effective October 1, 2009. Comments must be received by November 9, 2009.

ADDRESSES: You may mail or deliver your comments to Amy Borgstrom, Docket Manager, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 606–3476, send them electronically to Rulemaking@cns.gov, submit comments through the Federal government’s one-stop rulemaking Web site at <http://www.regulations.gov>, or submit comments on the Corporation’s Web site at <http://www.nationalservice.gov/serveact>. Members of the public may review copies of all communications received on this rulemaking at the Corporation’s Washington, DC headquarters.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this document in an alternate format.

SUPPLEMENTARY INFORMATION:

List of Topics

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I. Notice and Comment

This interim final rule makes amendments to Chapter 25 of Title 45 of the Code of Federal Regulations to align the regulations with the National and Community Service Act of 1990 and the Domestic Volunteer Service Act, as amended by the Edward M. Kennedy Serve America Act, Public Law 111–13. This rule implements only those provisions in the Serve America Act that are time-sensitive and that will have actual programmatic impact beginning October 1, 2009; subsequent rulemakings to implement other provisions in the Serve America Act will follow.

This interim final rule will become effective without prior notice and comment. Notice and comment procedures are not required under the Administrative Procedure Act (APA) when the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). The Corporation has determined that prior notice and comment would be impracticable under the circumstances. The APA’s legislative history defines the term “impracticable” as a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rulemaking proceedings (*See* S. Rep. No. 752, 79th Cong., 1st Sess. at 16 (1945)).

The Corporation finds that public notice and comment before the issuance of this interim final rule would have been impracticable. The Serve America Act was enacted on April 21, 2009, with an effective date for most purposes of

October 1, 2009. Immediately upon enactment the Corporation began the process of evaluating the impact that the Serve America Act would have on existing regulations and programs. This required the Corporation to determine which amendments to the NCSA and DVSA required regulatory changes by the effective date in order for programs to comply with the law and which changes could be implemented at a later time. The regulatory changes in this interim final rule are those that are necessary for compliance with the law on the effective date. The process of analyzing the need for immediate changes to the regulations and preparing and publishing the interim final rule for timely implementation did not provide sufficient time for prior notice and comment.

The Corporation invites all interested persons to submit written views, or other information on this interim final rule. Even though this interim final rule takes effect before the comment period closes, comments submitted in response to this notice will be given full consideration and will be addressed when the Corporation publishes final regulations for these interim regulations. To ensure that your comments have maximum value in helping us develop final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each comment addresses and to arrange your comments in the same order as the interim final regulations. During and after the comment period, you may inspect all public comments about these interim final regulations by contacting the Docket Manager listed in this notice.

For more information about commenting please visit our Web site at <http://www.nationalservice.gov/ServeAct>.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act). The Serve America Act reauthorizes and

expands national service programs administered by the Corporation by amending the NCSA and DVSA. The Corporation engages four million Americans in service each year, including approximately 75,000 AmeriCorps members, 492,000 Senior Corps Volunteers, 1.1 million Learn and Serve America students, and 2.2 million additional community volunteers mobilized and managed through agency programs. This interim final rule is being published to implement time-sensitive changes to the Corporation's AmeriCorps State/National, Senior Corps, and Learn and Serve America program regulations. The changes are required as a result of amendments to the NCSA and DVSA by the Serve America Act, which takes effect for most purposes on October 1, 2009. Section 6101 of the Serve America Act authorizes the Chief Executive Officer of the Corporation to issue such regulations as may be necessary to carry out the amendments required under the act. This action is intended to fulfill that responsibility. Amendments mandated by the Serve America Act that do not require immediate regulatory action will be implemented through other means including future proposed rulemaking with notice and the opportunity for comment. Among other things, the interim final rule rennumbers certain parts of the existing regulations, removes regulations for programs that will no longer be authorized, and expands the construction and use of defined terms as required by the Serve America Act amendments. An overview of specific changes for each program is set out below.

III. Specifics of the Interim Final Rule

(A) Learn and Serve America

School-Based Service-Learning Programs

Section 1201 of the Serve America Act makes amendments to the Corporation's service-learning programs under Subtitle B (Learn and Serve America) of Title I of the NCSA, as reflected below. References to section numbers of Subtitle B in the following discussion are to the revised section numbers reflected in the Serve America Act. References to the regulations are to the appropriate sections of 45 CFR Part 2516.

Definitions (§ 2510.20)

Section 1102 of the Serve America Act amends the NCSA at § 101 to add a definition for *community-based entity*, which is now an eligible entity for certain types of direct and subgrant school-based funding. The interim final

rule adds this definition to 45 CFR 2510.20.

Purpose for School-Based Service-Learning Programs (§ 2516.100)

The Serve America Act amends the NCSA at section 111 by including, for the first time, a purpose provision for school-based service-learning programs. This purpose provision is incorporated into the regulations verbatim. This change reassigns § 2516.100 to the new purpose provision and reassigns prior §§ 2616.100 through 110 as §§ 2616.110–120.

Eligible Applicants for Direct Grants (§ 2516.110)

The Serve America Act amends the NCSA at section 112 by revising the types of entities that are eligible applicants for a direct school-based grant from the Corporation. Accordingly, paragraph (a)(1) is amended to reflect that for funding eligibility purposes an SEA means a State Educational Agency (SEA) or SEA-designated statewide entity (which may be a community-based entity). Paragraph (a)(3) is amended to remove *grantmaking entity* as an eligible direct recipient; and to reflect that a *community-based entity* is now eligible for funding to conduct activities in a nonparticipating State or Indian Tribe. Note, however, that a grantmaking entity meeting the definition of a community-based entity may qualify as an SEA-designated statewide entity. Previous paragraph (a)(4) regarding the eligibility that a local educational agencies (LEA) or LEA partnerships may apply for direct funding has been removed.

Eligible Applicants for Subgrants (§ 2516.120)

Under the Serve America Act amendments (NCSA § 112(a), 113(b)), the list of entities for eligible to receive distributions of school-based funds from a direct grantee was changed in several ways. Most notably, in addition to LEAs and qualified organizations, for-profit businesses, private elementary and secondary schools, and institutions of higher education are eligible for support from a State or Indian Tribe for planning and capacity building. Additionally, a community-based entity will be eligible to make subgrants when it is a direct grantee of the Corporation. Since grantmaking entities no longer are eligible for direct funding, the reference to them as a distributor of subgrants in § 2516.120 (formerly § 2516.110) is amended to reflect this change.

Another change made by the Serve America Act amendment of the NCSA at

section 112(a)(2)(B)(ii) is the provision that when an Indian Tribe, as a direct recipient, distributes school-based funds to support a local partnership's costs for implementing, operating or expanding school-based service learning projects, that Tribe is not eligible to be part of the partnership operating that project. Similarly, under section 112(a)(4) when an Indian Tribe is a direct recipient, it is not eligible to receive funds it distributes to support the implementation, operation or expansion of an adult volunteer service-learning program.

Finally, the Serve America Act permits States and Indian Tribes to support *eligible entities* in carrying out civic engagement activities, so this is now reflected in § 2516.120.

Use of Grant Funds (§ 2516.200)

Section 112(a) of NCSA as amended by the Serve America Act authorizes school-based funds to be used to support five types of service-learning programs: (1) Planning and capacity-building for States and Indian Tribes; (2) implementing, operating, and expanding school-based service-learning programs; (3) planning of school-based service-learning programs through distributions to LEAs and Indian Tribes; (4) implementing, operating, or expanding adult volunteer programs; and (5) developing civic engagement service-learning programs. The amendments expand the authorized use of school-based fund in several ways. In addition to the authorized activities set out in the previous version of this rule, the interim final rule under § 2516.200(a)(2)(vi) permits recipients to use funds for planning and capacity building activities associated with establishing effective outreach and dissemination to ensure the broadest possible participation of schools throughout a State, with special emphasis on schools that are not making adequate progress under section 111 of the Elementary and Secondary Education Act of 1965. Under the same subsection at (a)(2)(ii), the development of service-learning curricula must be consistent with State or local academic content standards. LEA planning grant authority under § 2516.200(c)(3)(ii) is expanded to now permit recipients to pay the cost of recruiting, training, supervising, and placing service-learning coordinators who may be, but are not required to be, AmeriCorps VISTA members or participants in a Youthbuild program. The prior rule only allowed such support for AmeriCorps State/National members serving as service-learning coordinators. Consistent with the Serve America Act,

grantees may use funds to support civic engagement programs as described in § 2516.200(f).

Waiver for Private School Participants (§ 2516.310)

Section 115(a) of the NCSA as amended by the Serve America Act requires school-based State, territory, and Indian Tribe grantees to provide for the inclusion of services and arrangements for the equitable participation of private school students and private school teachers in supported programs. Under § 115(b), the Corporation's Chief Executive Officer may waive the requirement to include private school participants if a grantee is prohibited by law from providing for their participation. Essentially the same waiver provision existed under the NCSA at § 115A(b) prior to passage of the Serve America Act. However, the Serve America Act removes the requirement that waiver procedures be consistent with "the consultation, withholding, notice and judicial review requirements" [of the Elementary and Secondary Act of 1965]. Therefore, the regulation is amended to remove the quoted waiver procedure language by removing subsection (b)(2).

Contents of a Direct Grant Application From a State or Indian Tribe (§ 2516.400)

Section 1612 of the Serve America Act, adds section 189D to the NCSA. The criminal history check requirement of section 189D applies to all individuals receiving a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws, regardless of the type of service the individual is performing or the individual's access to vulnerable populations. Section 189D also provides that an individual convicted of murder, as described in section 1111 of title 18, United States Code, is ineligible to serve in a national service position. The criminal history check standards are set out in the regulations at 45 CFR Part 2540. Thus, in addition to the other assurances that applicants must make, compliance with the criminal history check requirements under Part 2540, which take effect October 1, 2009, has been added to § 2516.400(c)(2) and 2516.410(c)(4).

For more information on criminal history checks, please visit the Corporation's Web site at http://www.nationalservice.gov/for_organizations/manage/history_checks.asp.

Contents of a Direct Grant Application From a Community-Based Entity (§ 2516.410)

Consistent with amendments to the NCSA at section 113, this section of the regulation is amended to replace *grantmaking entity* with *community-based entity* and to remove references to LEAs and local partnerships, which may no longer apply for grants directly from the Corporation except as an SEA-designated entity in lieu of an SEA. Additionally, as discussed in the previous paragraph, § 2516.410(c)(4) is amended to require applicants for direct funding as a community-based entity to make as assurance that it will comply with the criminal history check requirements of 45 CFR Part 2540.

Contents of a Subgrant (§ 2516.420)

Like § 2516.410, this section is amended by replacing the term *grantmaking entity* with *community-based entity*, thereby making it consistent with the Serve America Act's NCSA amendments regarding the type of entities now eligible for direct funding, which in turn will make subgrants.

Application Review Criteria for Direct Grants (§ 2516.500)

As is the case in other sections of Part 2516, this section replaces the term *grantmaking entity* with *community-based entity* at (a)(3)(i). In that same paragraph a technical amendment is made by changing the reference to the State Plan from § 2550.80(a) to section 2513. Added to the list of priorities in reviewing proposals is the phrase *serving economically disadvantaged youth* at (b)(2), thereby making this priority consistent with the amendment to the priorities set out in the Serve America Act's NCSA amendment at section 114.

Application Review Criteria for Subgrants (§ 2516.520)

Consistent with the Serve America Act, this section is amended by replacing the term *grantmaking entity* with *community-based entity*.

Distribution of Funds (§ 2516.600)

The Serve America Act makes several major changes to the NCSA at section 112A that affect this section of the regulations. For the first time, the Corporation is required to reserve a minimum of school-based funding for Indian Tribes and U.S. Territories. Previously, the Corporation was required to reserve "not more than 3 percent," but there was no minimum amount that had to be reserved. The Serve America Act amendments now

require that “not less than 2 percent and not more than 3 percent” be reserved for Indian Tribes and U.S. territories. This change is now reflected in paragraph (a) of the regulation.

The competitive school-based program has been eliminated. Therefore reference to the 25 percent set-aside for the program has been deleted from paragraph (b)(1). Paragraph (b)(1) has been reassigned to the formula allotments to the States. The allotment percentage has been raised in the NCSA amendments from 37.5 percent to 50 percent for the number of school-age youth in a State that bears to the total number of school-age youth in all States and for the amount a State will receive based on the ratio of the State’s prior fiscal year allocation under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965. The Serve America Act amendments provide that if Learn and Serve America funding exceeds \$50 million in any fiscal year, the minimum allotted to each State will be \$75,000. The prior minimum funding amount was based on fiscal year 1993 funding, supplemented by State competitive funds. These minimum funding changes are reflected in (b)(iii). Paragraph (c) is amended to add community-based entity in place of local partnerships or LEAs for the type of entity eligible for funding in a nonparticipating State, as provided in the Serve America Act. Lastly, paragraph (d) of the regulation referencing competitive funding if less than \$20 million is appropriated has been removed in conformity with the Serve America Act.

Match Requirements (§ 2516.700)

The amendments to the NCSA at section 116 lower the Corporation’s share available for school-based programs. The Corporation’s share in the first year is decreased to 80 percent. In the second year it is decreased to sixty-five percent and for the third and any subsequent years, it is set at fifty percent. These changes are now reflected in paragraph (a) of the regulation. The Serve America Act amendments preclude the use as match of funding from Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 *et seq.*) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), unless waived by the Corporation based on lack of available resources at the local level. This change is reflected in paragraph (b).

Limits on Administrative Costs & Capacity (§ 2516.710)

The amendments to the NCSA at section 117 raise the amount of funding that may be used to pay for administrative costs from five percent to a maximum of six percent. This change is reflected in paragraph (a), where appropriate. The amendments also remove the requirement that recipients spend 10 to 15 percent of funding on capacity building. Therefore, this requirement has been removed from the regulation.

Higher Education Innovative Programs for Community Service

Section 1202 of the Serve America Act makes amendments to the Corporation’s Higher Education program. References to section numbers of Subtitle B of the NCSA in the following discussion are to the revised section numbers reflected in the Serve America Act. References to the regulations are to the appropriate sections of 45 CFR Part 2519.

Federal Work-Study Requirement (§ 2519.120)

The interim final rule adds § 2519.120, which requires recipients to meet minimum Federal Work-Study standards as provided in section 119(g) of the NCSA as amended by the Serve America Act. Specifically, the Serve America Act amendments provide that an institution of higher education, to be eligible for NCSA funding, must demonstrate that it meets the minimum requirements under the Higher Education Act of 1965 (443(b)(2)(A); 42 U.S.C. 2753(b)(2)(A)) relating to the participation of Federal Work-Study students employed under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) in community service activities or has received a waiver of those requirements from the Secretary of Education. The current minimum requirement under section 443(b)(2)(A) of the Higher Education Act provides that an institution must use at least 7 percent of the total amount of funds granted to it under the Federal Work-Study program to support students engaged in community service.

Contents of a Grant Application (§ 2519.400)

As is the case with all other Corporation national service programs, the Serve America Act amendments now apply the criminal history check provisions of section 189D of the NCSA to the Higher Education Program. The criminal history check standards are set out in 45 CFR Part 2540. Thus, in addition to the other assurances that

applicants must make, compliance with the criminal history check requirements under Part 2540, which take effect October 1, 2009, has been added to § 2519.400(b)(2).

Application Review Criteria (§ 2519.500)

The Serve America Act amendments (NCSA section 119(f)) include several revised or additional application review criteria that are reflected in paragraphs (b)(4), (5), (6), (7), and (10) of this section. These include consideration of an applicant’s description of a partnership that will participate in, among previously acceptable activities, providing service in or involving low-income communities and a department of the institution, or a group of faculty comprised of different departments, schools, or colleges at an institution. Other new review criteria include demonstrating the extent to which a proposal will contribute to the goals of involved community members and a commitment to performing projects in underserved communities, methods for improving service, and a description of needs that proposed projects are intended to address.

Acceptable Match (§ 2519.700)

The interim final rule, in accordance with the Serve America Act amendments (NCSA § 119(c)(1)), adds a descriptive phrase regarding match by clarifying that private funds or donated services are acceptable as local match.

Limits on Administrative Costs (§ 2519.710)

Amendments to the NCSA at § 117 increase the amount of funding that may be used to pay for administrative costs from five percent to a maximum of six percent for school-based programs. A similar amendment for the Higher Education Program is reflected in this section.

(B) AmeriCorps State and National

The Serve America Act lists as an effective date October 1, 2009. For this rule, we have identified those provisions in that Act that will require grantees to amend their practices beginning October 1, 2009 that conflict with a provision in current AmeriCorps regulations. The rule includes amendments to the list of prohibited member activities, criminal history check requirements, definitions for terms of service, documentation requirements for a release for compelling personal circumstances, requirements for tutors and tutoring programs, and State Commission administrative grant range and match

requirements, composition requirements, and State Plan requirements. There are many provisions in the Act that will be implemented in later rulemakings; this rule is primarily to eliminate conflict between the law and the regulations for those provisions that will have an immediate impact on grantee operations.

Prohibited Member Activities (§ 2520.65)

The Serve America Act adds a new section 132A to the NCSA, codifying the Corporation's longstanding list of activities in which AmeriCorps members may not engage during AmeriCorps service hours. In addition to those activities the Corporation already prohibits (found in current § 2520.65) the SAA prohibits AmeriCorps members from "[p]roviding abortion services or referrals for receipt of such services." This interim final rule amends § 2520.65 to include a prohibition on providing abortion services or referrals for receipt of such services during AmeriCorps member service hours. No member, including currently serving members, may engage in this newly added prohibited activity during AmeriCorps service hours on or after October 1, 2009.

Criminal History Check Requirements (§§ 2522.205–207, 2540.200–207)

Section 1612 of the Serve America Act, adds a new section 189D to the NCSA, codifying existing AmeriCorps criminal history check requirements, with two significant changes. First, section 189D expands coverage to all individuals receiving "a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws"—regardless of the type of service the individual is performing or the individual's access to vulnerable populations. Previously, the criminal history check outlined in our regulations in Part 2540 was required only for individuals with recurring access to vulnerable populations.

Second, section 189D states that an "individual shall be ineligible to serve in a [covered position] if such individual * * * has been convicted of murder, as described in section 1111 of title 18, United States Code." This is in addition to the current suitability criteria rendering ineligible individuals who are registered, or required to be registered, on a State sex offender registry. This interim rule amends §§ 2522.205–207 and §§ 2540.200–201 to align with these changes to the statute. Programs must amend their

criminal history check practices to comply with these changes for any individual who will receive a living allowance, stipend, education award, or salary through the program hired or enrolled in a program on or after October 1, 2009. Programs are not required to apply these changes to individuals hired or enrolled prior to that date. For more information on criminal history check requirements, please visit the Corporation's Web site at http://www.nationalservice.gov/for_organizations/manage/history_checks.asp.

The Serve America Act also includes a provision which would require FBI fingerprint checks for individuals working with vulnerable populations. This provision goes into effect two years after the date of enactment of the Serve America Act, and will be implemented in a later rulemaking.

Length of and Extension to a Term of Service (§§ 2522.220, 2522.240)

The Serve America Act amends section 139 of the NCSA by making two significant changes to the definition of terms of service: (1) It removes the limitation that a full-time term of service must be served over a period of at least nine months; and (2) it sets the maximum length of a part-time term of service at two years, conforming with current practice. This rule amends § 2522.220(a) to align the definitions of full-time and part-time terms of service with the new statutory definitions. Under this rule, a full-time term of service is defined as 1,700 hours of service over a period of not more than one year, and a part-time term of service is defined as 900 hours of service during a period of not more than two years.

While it is no longer necessary for a full-time term to cover a period of at least nine months, our grant provisions still require that grantees "ensure that each member has sufficient opportunity to complete the required number of hours to qualify for their education award." (2009 AmeriCorps Grant Provisions, IV.C.5). Further, "[in] planning for the member's term of service, the grantee must account for holidays and other time off, and must provide each member with sufficient opportunity to make up missed hours." (2009 AmeriCorps Grant Provisions, IV.D.1). A grantee that imposes unreasonable service hour requirements on an AmeriCorps member may be considered to be non-compliant with these provisions. The new definitions for terms of service will go into effect for any member enrolling on or after October 1, 2009.

The Serve America Act also amends section 139 to provide an exception to the limit on the length of a term of service for disaster purposes. The Act states that "an individual in an approved national service position performing service directly related to disaster relief efforts may continue in a term of service for a period of 90 days beyond the period otherwise specified." The Act specifies that "a period of service performed by an individual in an originally-agreed to term of service and service performed [during an extension for disaster purposes] shall constitute a single term of service." Further, while the Act permits a program to continue to provide a member with a living allowance and other benefits during an extension for disaster purposes, the member would not be eligible for any additional education award beyond what would be received for the originally agreed-upon term of service. In other words, an AmeriCorps member serving in a full-time position whose term of service was extended to respond to a natural disaster would be eligible for an education award of equivalent value to a member whose term was not extended. This rule amends § 2522.220 to provide for an extension to a term of service for disaster purposes, and amends § 2522.240 to provide for the receipt of a living allowance and other benefits during an extension. Any program wishing to extend a member's term of service for disaster relief purposes must first obtain permission from the Corporation.

Release From a Term of Service for Compelling Personal Circumstances (§ 2522.230)

The amendments to the NCSA at section 139 include a change to how a release for compelling personal circumstances is documented. Under the amended section, the program has the responsibility for determining whether an individual should be released for compelling personal circumstances, and is responsible for certifying the individual's eligibility for a pro-rated educational award; the program is no longer required to obtain or maintain documentation of the member's demonstration of compelling personal circumstances. This interim rule amends § 2522.230 to align with the changes to the statute. Programs will still be required to keep documentation of the basis for their determination that compelling personal circumstances prevented the participant from completing a term of service (§ 2522.230(a)(4)).

To be released for compelling personal circumstances under the amended section, the individual must have “otherwise performed satisfactorily and [have] completed at least 15 percent of the term of service”. While the Serve America Act changes current practice by limiting releases for compelling personal circumstances to those members who have served at least

15 percent of a term of service, this change in characterization of the release will not impact an individual’s eligibility to serve an additional term or to receive an education award. Under current rules, an individual’s eligibility for a subsequent term of service is not affected by release for cause so long as the individual received a satisfactory end-of-term performance review

(§ 2522.230(b)(6)). Further, under current rules an individual released for compelling personal circumstances must have served at least 15 percent of a term of service to be eligible to receive a pro-rated education award (§ 2526.20(a)). To illustrate, the following table shows the impact of releases prior to serving 15% under current rules:

Reason for release prior to serving 15%	Eligible for education award?	Eligible for subsequent term of service?
For Cause—For reasons of misconduct	No	No.
For Cause—For reasons other than misconduct	No	Yes.
For Compelling Personal Circumstances	No	Yes.

As illustrated above, considering all releases for reasons other than misconduct—including those reasons a program may consider “compelling”—has no impact on a member’s eligibility to earn an education award or serve a subsequent term of service.

Tutoring Requirements (§§ 2522.910, 930, 940)

The Serve America Act amends section 122 of the NCSA to codify the Corporation’s existing regulatory requirements for AmeriCorps tutoring programs, with two significant differences. First, amended section 122(h) requires that an AmeriCorps tutoring program certify that an individual serving as a tutor, except for “an individual serving in an approved national service position who is enrolled in an elementary or secondary school and is providing tutoring services through a structured, school-managed cross-grade tutoring program,” have “obtained their high school diploma.” Previously, our rules have permitted an individual who has not received a high school diploma the option of passing a proficiency test in order to serve as a tutor; amended section 122(h) removes this option. For the purposes of this requirement, “high school diploma” can be understood to mean a high school diploma or its equivalent.

Second, amended section 122(h) requires that AmeriCorps tutoring programs “offer a curriculum that is high quality, research-based, and consistent with the State academic standards required by section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311) and the instructional program of the local educational agency.” Previously, our rules have permitted programs to offer a curriculum that is consistent

with the State academic standards or the instructional program of the local educational agency; this change will require that the curricula be consistent with both.

This interim final rule aligns the regulatory requirements in §§ 2522.910, 930, and 940 with those in the amended statute. Tutoring programs must ensure that all members enrolling after October 1, 2009, have earned a high school diploma or its equivalent. All tutoring programs beginning after October 1, 2009, must design their curriculum to be consistent with both the State academic standards and the instructional program of the local educational agency.

State Commission Composition Requirements (§ 2550.50)

Section 178 of the NCSA, as amended by the Serve America Act, adds to the list of required voting members of a State Commission a “representative of the volunteer sector.” This rule amends the list of required voting members of a State Commission in § 2550.50 to align with the statute.

In addition, amended section 178 no longer permits States to allow the ex-officio member of the Commission designated by the Corporation as a representative to be a voting member. This rule amends § 2550.80 to align with the statute and longstanding Corporation guidance.

State Plan Requirements (§ 2550.80)

The Serve America Act amends the duties of State Commissions listed in section 178 of the NCSA by expanding the required components of the State Plan and adding a new requirement for a State Service Plan for adults age 55 and older.

State Plans

Under amended section 178, the State Plan must provide for “effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws,” must “include measurable goals and outcomes for the State national service programs in the State consistent with the performance levels for national service programs as described in section 179(k),” must “ensure outreach to, and coordination with, municipalities (including large cities) and county governments regarding the national service laws,” and is “subject to approval by the chief executive officer of the State.”

This rule amends § 2550.80(a) to align with the new requirements for State Plans in the NCSA. The Corporation understands that different States have different schedules for their State plans, meaning that while one State may be in the third year of its three-year plan, another State may be beginning its first year. Further, we understand that many of the new components in the State Plan rely upon elements of the Serve America Act that have not yet been implemented, such as the program performance levels required in section 179(k) of the NCSA that will not begin to be used with State and National operational grants until the 2010 funding cycle. The Serve America Act makes an additional amendment to the description of the State Plan by describing it as covering a three-year period, “the beginning of which may be set by the State.” Therefore, when a State Commission is preparing to develop its next three-year plan, it must incorporate these new elements. This will give States time to consider other changes resulting from implementation of the Serve America Act and enable

States to develop a plan befitting their particular needs and timeline.

Supplemental State Plan for Adults Age 55 or Older

Amended section 178 also adds a requirement for a “State Service Plan for Adults Age 55 or Older” (hereinafter “Supplemental State Plan for Adults Age 55 or Older”, or “Supplemental Plan”). While there will likely be overlap between the two plans, this plan is distinct from the State Plan in two significant ways beyond the plans’ required content. First, unlike the State Plan, States are required to have a Supplemental Plan in order to be eligible to receive any funds under Subtitles B and C of title I of the NCSA—including funding for Learn and Serve programs, AmeriCorps programs, disability placement funds, and administrative grants. Second, unlike the State Plan, there is no statutory requirement for a time period the Supplemental Plan must cover, nor is there a requirement to update this new plan on an annual basis. In order to ensure that all States are eligible to receive Subtitle B and C funding in the coming year, the required components of the Supplemental Plan have already been incorporated in the application instructions for Admin/PDAT/Disability applications due this Fall. States may choose to periodically update the Supplemental Plan along with their State Plans.

This rule adds development of a Supplemental State Plan for Adults Age 55 or Older to the list of duties of State

Commissions in § 2550.80 to align the list with the statute. As stated in the rule and in the Admin/PDAT/Disability instructions, these plans must:

- (1) Include recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;
- (2) Include recommendations to the State agency on aging (as defined in section 102 of the Older Americans Act of 1965, 42 U.S.C. 3002) on a marketing outreach plan to businesses and outreach to nonprofit organizations, the State educational agency, institutions of higher education, and other State agencies;
- (3) Include recommendations for civic engagement and multigenerational activities, including early childhood education and care, family literacy, and other after school programs, respite services for adults age 55 or older and caregivers, and transitions for older adults age 55 or older to purposeful work in their post-career lives; and
- (4) Incorporate the current knowledge base regarding the economic impact of the roles of workers age 55 or older in the economy, the social impact of the roles of such workers in the community, the health and social benefits of active engagement for adults age 55 or older.

The plans, once developed, must be made available to the public.

State Commission Administrative Grants (§ 2550.110)

Amount of Administrative Grants

The Serve America Act amends section 126 of the NCSA, the section authorizing administrative grants to State Commissions for the purpose of establishing or operating the Commission. Under amended section 126, the range of administrative grants has been increased from \$125,000–\$750,000 to \$250,000 up to \$1 million. This rule amends § 2550.110(a) to reflect the new range. Please note that the minimum administrative grant amount of \$250,000 will not be in effect until a fiscal year 2010 Appropriations Bill is enacted. Please also note that the \$1,000,000 is an “up to” amount, and the Corporation will exercise its discretion based on availability of funds, as to the amount awarded to larger States.

Administrative Grant Matching Requirements

Amended section 126 requires States to “provide matching funds from non-Federal sources of not less than \$1 for every \$1 provided by the Corporation” in the administrative grant. For the first time, this amended section will allow the Corporation to waive the match requirement for State Commissions that demonstrate hardship or for new State Commissions.

Upon receipt of such a waiver, the Commission will use the following match schedule, as outlined in amended section 126:

Grant amount	Match requirement
(1) First \$100,000	No match requirement.
(2) Amounts above \$100,000 but less than \$250,000	\$1 of non-Federal funds for every \$2 provided by the Corporation in excess of \$100,000.
(3) Amounts greater than \$250,000	\$1 of non-Federal funds for every \$1 provided by the Corporation in excess of \$250,000.

For example, a Commission receiving an administrative grant amount of \$300,000 who has received a waiver would have a match requirement of \$125,000:

\$0	(for the first \$100,000).
+ \$75,000	(for the amount between \$101,000 and \$250,000 (or .5 × \$150,000)).
+ \$50,000	(for the amount between \$251,000 and \$300,000 (or 1 × \$50,000)).
\$125,000	

Please note that match waivers authorized under amended section 126

will not be available until an FY 2010 Appropriations Bill has been enacted.

(C) Senior Corps

The Serve America Act amends sections 200, 211, and 213(a) of the Domestic Volunteer Service Act of 1973 (DVSA) by lowering the age of eligibility for participation in the Senior Companion and Foster Grandparent Programs from 60 to 55. The Act also includes more expansive language that will permit Foster Grandparents to serve children whose circumstances limit their academic, social, or emotional development, as well as provide supportive services and companionship

to children with special or exceptional needs.

The Serve America Act also adds a conviction for the offense of murder, as defined under Federal law in section 1111 of title 18, United States Code, as an offense disqualifying an individual from serving as a Senior Companion, Foster Grandparent, or as a grant-funded employee of the Senior Companion, Foster Grandparent, or the Retired and Senior Volunteer Program. Programs must amend their criminal history check procedures to comply with the new criteria for all staff and volunteers selected on or after October 1, 2009. For more information on criminal history check requirements, please visit the

Corporation's Web site at http://www.nationalservice.gov/for_organizations/manage/history_checks.asp.

The Serve America Act amends section 211 of the DVSA to raise the income eligibility guidelines for Senior Companion and Foster Grandparent volunteers to 200 percent of the poverty line, as set forth in 42 U.S.C. 9902(2). This interim rule amends the applicable sections of the Senior Corps regulations, which address the above issues, to align them with the new statutory requirements of the Serve America Act.

Finally, the Serve America Act also amends the DVSA by requiring the Corporation to develop a competitive process for issuing grants for the Retired and Service Volunteer Program beginning in 2013. This process will be addressed in future Corporation rulemaking.

(D) General Provisions

Parental Involvement (§ 2540.330)

The Serve America Act amends section 177 of the NCSA to add a requirement that all recipients of funds under the national service laws that intend to operate programs that include and serve children must “consult with the parents or legal guardians of children in developing and operating” those programs. Further, the Act adds a requirement that any recipient of funds under the national service laws must, “before transporting minor children, provide the children’s parents with the reason for the transportation and obtain the parents’ permission for such transportation, consistent with State law.”

This interim rule adds these requirements in a new § 2540.330. Learn and Serve America, VISTA, Senior Corps, and AmeriCorps State and National programs beginning after October 1, 2009, that will include or serve children must include in their program design an opportunity to consult with parents of the children included or served. All programs that transport children, including existing programs, must provide the children’s parents or legal guardians with the reason for transportation and obtain a parent’s or legal guardian’s permission for the transportation beginning on October 1, 2009.

IV. Effective Dates

This interim final rule will take effect October 13, 2009.

V. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Corporation has determined that the regulatory action will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

This rule contains no information collection requirements and is therefore not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or Tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2516

Grants administration, Grant programs—social programs.

45 CFR Part 2519

Grants administration, Grant programs—social programs.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

45 CFR Part 2522

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2540

Civil rights, Fraud, Grants administration, Grant programs—social programs, Trademarks—signs and symbols, Trust, Volunteers.

45 CFR Part 2550

Grants administration, Grant programs—social programs.

45 CFR Part 2551

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2552

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2553

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

■ For the reasons stated in the preamble, under the authority of 42 U.S.C. 12651d, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 42 U.S.C. 12511.

■ 2. Amend § 2510.20 by adding the definition of “community-based entity” to read as follows:

§ 2510.20 Definitions.

* * * * *

Community-based entity. The term community-based entity means a public or private nonprofit organization that—

(1) Has experience with meeting unmet human, educational, environmental, or public safety needs; and

(2) Meets other such criteria as the Chief Executive Officer may establish.

* * * * *

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

■ 3. The authority citation for part 2516 is revised to read as follows:

Authority: 42 U.S.C. 12521–12529; 42 U.S.C. 12645g.

■ 4. Revise Subpart A to read as follows:

Subpart A—Eligibility To Apply

Sec.

2516.100 What is the purpose of school-based service-learning programs?

2516.110 Who may apply for a direct grant from the Corporation?

2516.120 Who may apply for funding a subgrant?

Subpart A—Eligibility To Apply**§ 2516.100 What is the purpose of school-based service-learning programs?**

The purpose of school-based service-learning programs is to promote service-learning as a strategy to support high-quality service-learning projects that engage students in meeting community needs with demonstrable results, while enhancing students' academic and civic learning; and support efforts to build institutional capacity, including the training of educators, and to strengthen the service infrastructure to expand service opportunities.

§ 2516.110 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA). For purposes of this part "State" means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600(b), U.S. Territories; "SEA" means a "State educational agency" as defined in § 2510.20 of this chapter or an SEA-designated statewide entity (which may be a community-based entity) with demonstrated experience in supporting or implementing service-learning programs.

(2) An Indian Tribe.

(3) For activities in a nonparticipating State or Indian Tribe, a community-based entity as defined in § 2510.20.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

§ 2516.120 Who may apply for funding a subgrant?

Entities that may apply for a subgrant from a State, Indian Tribe, or community-based entity are:

(a) A qualified organization, Indian Tribe, Territory, local educational agency, for-profit business, private elementary school or secondary school, or institution of higher education for a grant from a State for planning and building the capacity of school-based service-learning programs.

(b) A local partnership, for a grant from a State to implement, operate, or expand a school-based service learning program.

(1) The local partnership must include an LEA and one or more community partners. The local partnership may include a private for-profit business, or private elementary or secondary school, or an Indian Tribe (except that an Indian Tribe distributing funds to a project under this paragraph is not eligible to be part of the partnership operating that project).

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; will make projects available for participants, who must be students; and was in existence at least one year before the date on which the organization submitted an application under this part.

(c) An LEA or Indian Tribe for planning school-based service-learning programs involving paying, recruiting, and supporting service-learning coordinators.

(d) An LEA, local partnership, or public or private nonprofit organization for a grant from a State to implement, operate, or expand an adult volunteer program. The local partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or an Indian Tribe (except that an Indian Tribe distributing funds under this paragraph is not eligible to be a recipient of those funds) that coordinate and operate projects for participants who must be students.

(e) An eligible entity for a grant from a State or Indian Tribe to carry out civic engagement activities.

5. Revise § 2516.200 to read as follows:

§ 2516.200 How may grant funds be used?

Funds under a school-based service learning grant may be used for the purposes described in this section.

(a) *Planning and capacity-building.*

(1) A State, Indian Tribe, or community-based entity may use funds to pay for planning and building its capacity to implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following:

(i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula, consistent with State or local academic content standards, to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in § 2516.120 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(vi) Establishing effective outreach and dissemination of information to ensure the broadest possible participation of schools throughout the State, Territory or serving the Indian Tribe involved, with particular attention to schools not making adequate yearly progress for two or more consecutive years under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*).

(b) *Implementing, operating, and expanding school-based programs.* (1) A State, Indian Tribe or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for programs in that State.

(3) Authorized activities include paying the costs of the recruitment, training, supervision, placement, salaries and benefits of service-learning coordinators.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in § 2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who may be, but are not required to be, participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter, or who receive AmeriCorps education awards, or who may be participants in a project under section 201 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001), or who may participate

in a Youthbuild program under section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a).

(d) *Adult volunteer programs.* (1) A State, Indian Tribe, or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(c) to implement, operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for adult volunteer programs in that State.

(e) *Planning by Indian Tribes and U.S. Territories.* If the Corporation makes a grant to an Indian Tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

(f) *Civic engagement programs.* A State, Indian Tribe, Territory or qualified organization may use funds to support service-learning civic engagement programs that promote a better understanding of:

(1) The principles of the Constitution, the heroes of United States history (including military history), and the meaning of the Pledge of Allegiance;

(2) How the Nation's government functions; and

(3) The importance of service in the Nation's character.

§ 2516.310 [Amended]

■ 6. Amend § 2516.310 by removing paragraph (b)(2) and redesignating paragraph (b)(1) as paragraph (b).

■ 7. Revise § 2516.400(c)(2) to read as follows:

§ 2516.400 What must a State or Indian Tribe include in an application for a grant?

* * * * *

(c) * * *

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

■ 8. Revise § 2516.410 to read as follows:

§ 2516.410 What must a community-based entity include in an application for a grant?

In order to apply to the Corporation for a grant, a community-based entity must submit the following:

(a) A detailed description of the proposed program goals and activities. The application of a community-based entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under § 2513 of this chapter, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission and with other Federally-assisted activities.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluations;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

(4) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

■ 9. Revise § 2516.420 to read as follows:

§ 2516.420 What must an LEA, local partnership, qualified organization or other eligible entity include in an application for a subgrant?

In order to apply for a subgrant from a State, Indian Tribe, or community-based entity under this part, an applicant must include the information required by the Corporation grantee.

■ 10. Amend § 2516.500(a)(3)(i) by removing the word “grantmaking” and adding the word “community-based” in its place and by revising paragraph (b)(2) to read as follows:

§ 2516.500 How does the Corporation review the merits of an application?

* * * * *

(b) * * *

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas or serving economically disadvantaged youth;

* * * * *

§ 2516.520 [Amended]

■ 11. Amend the caption for § 2516.520 by removing the term “grantmaking” and adding the term “community-based” in its place.

■ 12. Revise § 2516.600 to read as follows:

§ 2516.600 How are funds for school-based service-learning programs distributed?

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not less than two percent and not more than three percent for grants to Indian Tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows:

(1) Allotments to States.

(i) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(1) of this section, for any fiscal year for which amounts appropriated for Part I of Subtitle B of Title I of the National and Community Service Act of 1990 (42 U.S.C. 12521 *et seq.*) exceed \$50,000,000, the minimum allotment to each State under this paragraph (b)(1) will be \$75,000.

(2) For the purpose of paragraph (b) of this section, “State” means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian Tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to community-based entities for activities in nonparticipating States) may use its allotment for States and Indian Tribes with approved applications, as the Corporation determines appropriate.

■ 13. Revise § 2516.700 to read as follows:

§ 2516.700 What matching funds are required?

(a) The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Eighty percent of the total cost for the first year for which the program receives assistance;

(2) Sixty-five percent of the total cost for the second year; and

(3) Fifty percent of the total cost for the third year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws or title I of the Elementary and Secondary Act of 1965 (20 U.S.C. 6311 *et seq.*)).

(c) The Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

■ 14. Revise § 2516.710 to read as follows:

§ 2516.710 What are the limits on the use of funds?

The following limits apply to funds available under this part:

(a) (1) Not more than six percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant is subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs, the Corporation may approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to six percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of six percent or less (not subject to

supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Use such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

■ 15. The authority citation for part 2519 is revised to read as follows:

Authority: 42 U.S.C. 12561; 42 U.S.C. 12645g.

■ 16. Add § 2519.120 in subpart A to read as follows:

§ 2519.120 What is the Federal Work-Study Requirement?

To be eligible for assistance under this part, an institution of higher education must demonstrate that it meets the minimum requirements under section 443(b)(2)(A) of the Higher Education Act of 1965 (42 U.S.C. 2753(b)(2)(A)) relating to the participation of students employed under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) (relating to Federal Work-Study programs) in community service activities, or has received a waiver of those requirements from the Secretary of Education.

■ 17. Amend § 2519.400 by revising paragraph (c)(2) to read as follows:

§ 2519.400 What must an applicant include in an application for a grant?

* * * * *

(c) * * *

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

■ 18. Revise § 2519.500 to read as follows:

§ 2519.500 How does the Corporation review an application?

(a) The Corporation will review an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing applications submitted under this part, the Corporation will take into consideration whether proposed programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools and colleges;

(4) Describe any higher education partnership that will participate in the community service projects, such as a higher education partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth, older adults, low-income communities, a department of the institution, or a group of faculty comprised of different departments, schools, or colleges at the institution;

(5) Demonstrate community involvement in the development of the proposal and the extent to which the proposal will contribute to the goals of the involved community members;

(6) Demonstrate a commitment to perform community service projects in underserved urban and rural communities;

(7) Describe research on effective strategies and methods to improve service utilized in the design of the projects;

(8) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education;

(9) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth; or

(10) Describe the needs that the proposed projects are designed to

address, such as housing, economic development, infrastructure, health care, job training, education, crime prevention, urban planning, transportation, information technology, or child welfare.

(c) In addition, the Corporation may designate additional review criteria in an application notice that will be used in selecting programs.

■ 19. Amend § 2519.700 by revising paragraph (b) to read as follows:

§ 2519.700 Are matching funds required?
* * * * *

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources (including private funds or donated services) or Federal sources (other than funds made available under the national service laws).

* * * * *
§ 2519.710 [Amended]

■ 20. Amend § 2519.710 by replacing the term “five percent” with “six percent” in (a)(1), (a)(3)(i) and (a)(3)(ii).

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

■ 21. The authority citation for part 2520 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

- 22. Amend § 2520.65 by:
■ a. Removing the word “and” from the end of paragraph (a)(8)(iv);
■ b. Redesignating paragraph (a)(10) as (a)(11); and
■ c. Adding a new paragraph (a)(10) to read as follows:

§ 2520.65 What activities are prohibited in AmeriCorps subtitle C programs?

(a) * * *
(10) Providing abortion services or referrals for receipt of such services; and
* * * * *

PART 2522—AMERICORPS, PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 23. The authority citation for part 2522 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911, Sec. 1612, Pub. L. 111–13.

- § 2522.205 [Amended]**
■ 24. Amend § 2522.205 by removing “, and which involves recurring access to children, persons age 60 or older, or individuals with disabilities.”
■ 25. Revise § 2522.206 to read as follows:

§ 2522.206 What suitability criteria must I apply to a covered position?

An individual is ineligible to serve in a covered position if the individual:
(a) Is registered, or required to be registered, on a State sex offender registry or the National Sex Offender Registry; or
(b) Has been convicted of murder, as defined in section 1111 of title 18, United States Code.

■ 26. Amend § 2522.220 by revising paragraphs (a)(1) and (a)(2) and adding a new paragraph (g) to read as follows:

§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve more than one term?

- (a) * * *
(1) *Full-time service.* 1,700 hours of service during a period of not more than one year.
(2) *Part-time service.* 900 hours of service during a period of not more than two years.

* * * * *
(g) *Extension of term for disaster purposes.* If approved by the Corporation, a program may permit an AmeriCorps participant performing service directly related to disaster relief efforts to continue in a term of service for a period of up to 90 days beyond the period otherwise specified. A period of service performed by an AmeriCorps participant in an originally agreed-upon term of service and service performed under this paragraph shall constitute a single term of service for the purposes of § 2526.50(a) of this chapter.

- 27. Amend § 2522.230 by:
■ a. Revising the introductory text;
■ b. Revising paragraph (a)(1);
■ c. Removing paragraph (a)(3); and
■ d. Redesignating paragraphs (a)(4) through (a)(7) as (a)(3) through (a)(6), respectively.

The revised text reads as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances, as determined by the program, or for cause.

- (a) * * *
(1) An AmeriCorps program may release a participant upon a

determination by the program, consistent with the criteria listed in paragraphs (a)(6) and (a)(7) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances, if the participant has otherwise performed satisfactorily and has completed at least fifteen percent of the agreed term of service.

* * * * *

■ 28. Amend § 2522.240 by adding a new paragraph (c) to read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?
* * * * *

(c) *Financial benefits for participants during an extended term of service for disaster purposes.* An AmeriCorps participant performing extended service under § 2522.220(g) may continue to receive a living allowance under paragraph (b) and other benefits under § 2522.250, but may not receive an additional AmeriCorps educational award under paragraph (a).

■ 29. Revise § 2522.910(b)(1) to read as follows:

§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?

If the tutor is:		Then the tutor must meet the following qualifications:
* * * * *		
(b) * *		(1) High School diploma or its equivalent, or a higher degree; and
* * * * *		

§ 2522.930 [Reserved]

- 30. Remove and reserve § 2522.930.
■ 31. Amend § 2522.940 by:
■ a. Revising paragraphs (a) and (c) to read as follows:

§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

* * * * *

(a) Articulate appropriate criteria for selecting and qualifying tutors, including the requirements in § 2522.910 of this subpart, and certify that selected tutors meet the requirements in § 2522.910.

* * * * *

(c) Certify that the tutoring curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the instructional program of the local

educational agency and with State academic content standards.

* * * * *

PART 2540—GENERAL ADMINISTRATIVE POSITIONS

- 32. The authority citation for part 2540 is revised to read as follows:

Authority: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653, 12631–12637; 42 U.S.C. 5065.

§ 2540.200 [Amended]

- 33. Amend § 2540.200 by removing “, and which involves recurring access to children, persons age 60 and older, or individuals with disabilities”.
- 34. Revise § 2540.201 to read as follows:

§ 2540.201 What suitability criteria must I apply to a covered position?

An individual is ineligible to serve in a covered position if the individual:

(a) Is registered, or required to be registered, on a State sex offender registry or the National Sex Offender Registry; or

(b) Has been convicted of murder, as defined in section 1111 of title 18, United States Code.

- 35. Amend § 2540.203 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 2540.203 When must I conduct a State criminal registry check and a National Sex Offender Public Web site check on an individual in a covered position?

(a) The State criminal registry check must be conducted on Foster Grandparents, Senior Companions, and AmeriCorps State and National participants and grant-funded staff with recurring access to children, persons age 60 or older, or individuals with disabilities, who enroll in, or are hired by, your program after November 23, 2007. For all other covered individuals, the State criminal registry check must be conducted on an individual who enrolls in, or is hired by, your program on or after October 1, 2009.

(b) The National Sex Offender Public Web site check must be conducted on an individual who is serving, or applies to serve, as a Foster Grandparent, Senior Companion, or AmeriCorps State and National participant or grant-funded staff with recurring access to children, persons age 60 or older, or individuals with disabilities on or after November 23, 2007. For all other covered individuals, the National Sex Offender Public Web site check must be conducted on an individual who enrolls in, or is hired by, your program on or after October 1, 2009.

- 36. Add § 2540.330 to Subpart C to read as follows:

§ 2540.330 Parental Involvement Required

(a) *Consultation Requirement.* Programs that receive assistance under the national service laws shall consult with the parents or legal guardians of children in developing and operating programs that include and serve children.

(b) *Parental Permission.* Programs that receive assistance under the national service laws must, before transporting minor children, provide the children's parents or legal guardians with the reason for the transportation and obtain the parent's or legal guardian's permission for such transportation, consistent with State law.

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

- 37. The authority citation for Part 2550 continues to read as follows:

Authority: 42 U.S.C. 12638.

- 38. Amend § 2550.50 by:
- a. Removing the word “and” from the end of paragraph (a)(8);
- b. Removing the period and adding “; and” at the end of paragraph (a)(9);
- c. Adding a new paragraph (a)(10); and
- d. Revising paragraph (i).
- The additions and revisions read as follows:

§ 2550.50 What are the composition requirements and other requirements, restrictions, or guidelines for State Commissions?

(a) * * *

(10) A representative of the volunteer sector.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio non-voting member on the State Commission. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

- 39. Amend § 2550.80 by:
- a. Revising paragraph (a) introductory text;
- b. Redesignating paragraph (a)(5) as (a)(9);
- c. Adding new paragraphs (a)(5), (a)(6), (a)(7), and (a)(8); and
- d. Adding a new paragraph (i).

The revisions and additions read as follows:

§ 2550.80 What are the duties of the State entities?

* * * * *

(a) *Development of a three-year, comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service covering a three-year period, the beginning of which may be set by the State, that is consistent with the Corporation's broad goals of meeting human, educational, environmental, and public safety needs and meets the following minimum requirements:

* * * * *

(5) The plan must ensure outreach to, and coordination with, municipalities and county governments regarding the national service laws.

(6) The plan must provide for effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws.

(7) The plan must include measurable goals and outcomes for national service programs funded through the State consistent with the performance levels for national service programs.

(8) The plan is subject to approval by the chief executive officer of the State.

* * * * *

(i) *Supplemental State Service Plan for Adults Age 55 or Older.* To be eligible to receive a grant or allotment under subtitles B or C of title I of the National and Community Service Act (42 U.S.C. 12501 *et seq.*), or to receive a distribution of approved national service positions under subtitle C of title I of that Act, a State must work with appropriate State agencies and private entities to develop a comprehensive State service plan for service by adults age 55 or older. This plan must:

(1) Include the following elements:

(i) Recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;

(ii) Recommendations to the State agency on aging (as defined in section 102 of the Older Americans Act of 1965, 42 U.S.C. 3002) on a marketing outreach plan to businesses and outreach to nonprofit organizations, the State educational agency, institutions of higher education, and other State agencies;

(iii) Recommendations for civic engagement and multigenerational activities, including early childhood education and care, family literacy, and

other after school programs, respite services for adults age 55 or older and caregivers, and transitions for older adults age 55 or older to purposeful work in their post-career lives;

(2) Incorporate the current knowledge base regarding—

(i) The economic impact of the roles of workers age 55 or older in the economy;

(ii) The social impact of the roles of such workers in the community;

(iii) The health and social benefits of active engagement for adults age 55 or older; and

(3) Be made available to the public and transmitted to the Corporation.

■ 40. Revise § 2550.110 to read as follows:

§ 2550.110 What grants will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Administrative Grants.* The Corporation may make administrative grants to States in an amount no less than \$250,000 and up to \$1 million for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved

State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Except as provided in paragraph (c) of this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 50 percent of the total cost to establish or operate the State Commission or AAE.

(c) *Alternative Match Schedule.* The Corporation may permit a State that demonstrates hardship or a new State Commission to meet alternative matching requirements for such a grant as follows:

Grant amount	Match requirement
(1) First \$100,000	No match requirement.
(2) Amounts above \$100,000 but less than \$250,000	\$1 of non-Federal funds for every \$2 provided by the Corporation in excess of \$100,000.
(3) Amounts greater than \$250,000	\$1 of non-Federal funds for every \$1 provided by the Corporation in excess of \$250,000.

PART 2551—SENIOR COMPANION PROGRAM

■ 41. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 42. Revise § 2551.11 to read as follows:

§ 2551.11 What is the Senior Companion Program?

The Senior Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Senior Companions in providing supportive, individualized services to help older adults with special needs maintain their dignity and independence.

§ 2551.23 [Amended]

■ 43. Amend paragraph (f) of § 2551.23 by removing the term “§ 2551.45” and adding “2551.46” in its place.

§ 2551.41 [Amended]

■ 44. Amend paragraph (a)(1) of § 2551.41 by removing the term “60” and adding “55” in its place.

■ 45. Revise § 2551.42 to read as follows:

§ 2551.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Senior Companion or as a Senior Companion grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Senior Companion or as a Senior Companion grant-funded employee.

■ 46. Amend § 2551.43 by revising paragraph (a) to read as follows:

§ 2551.43 What income guidelines govern eligibility to serve as a stipended Senior Companion?

(a) To receive a stipend, a Senior Companion may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program’s income eligibility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

* * * * *

§ 2551.101 [Amended]

■ 47. Amend § 2551.101 by removing the term “60” and adding “55” in its place.

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 48. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 49. Revise § 2552.11 to read as follows:

§ 2552.11 What is the Foster Grandparent Program?

The Foster Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are to be used to support Foster Grandparents in providing supportive, person to person service to children with exceptional needs, or in circumstances that limit their academic, social, or emotional development.

■ 50. Amend § 2552.23 by:

■ a. Revising paragraph (a);

■ b. In paragraph (f), removing the term “2552.45” and adding “2552.46” in its place.

The revised text reads as follows:

§ 2552.23 What are a sponsor’s program responsibilities?

* * * * *

(a) Focus Foster Grandparent resources on providing supportive services and companionship to children with special and exceptional needs, or

in circumstances that limit their academic, social, or emotional development within the project's service area.

* * * * *

§ 2552.41 [Amended]

■ 51. Amend § 2552.41(a)(1) by removing the term "60" and adding "55" in its place.

■ 52. Revise § 2552.42 to read as follows:

§ 2552.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Foster Grandparent or as a Foster Grandparent grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Foster Grandparent or as a Foster Grandparent grant-funded employee.

■ 53. Amend § 2552.43 by revising paragraph (a) to read as follows.

§ 2552.43 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?

(a) To receive a stipend, a Foster Grandparent may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

* * * * *

■ 54. Revise § 2552.81 to read as follows:

§ 2552.81 What type of Children are eligible to be served?

Foster Grandparents serve only children and youth with special and exceptional needs, or in circumstances that limit their academic, social, or emotional development, who are less than 21 years of age.

■ 55. Amend § 2552.82 by:

■ a. In paragraph (a) introductory text, by removing the term "mentally retarded child" and adding the term "child with a disability" in its place;

■ b. Revising paragraph (b); and

■ c. In paragraph (c), by removing the term "mentally retarded child" and adding the term "child with a disability" in its place.

Revised text reads as follows:

§ 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

* * * * *

(b) In cases where the assigned Foster Grandparent becomes unavailable to serve a particular individual, the replacement of that Foster Grandparent shall be made through mutual agreement by all parties involved.

* * * * *

§ 2552.101 [Amended]

■ 56. Amend § 2552.101 by removing the term "60" and adding "55" in its place.

PART 2553—RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 57. The authority citation for part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 58. Amend § 2553.25 by adding paragraph (i) to read as follows:

§ 2553.25 What are a sponsor's administrative responsibilities?

* * * * *

(i) Conduct criminal history checks on all grant-funded staff employed on or after October 1, 2009, in accordance with the requirements in 45 CFR 2540.200–207.

Dated: September 2, 2009.

Frank R. Trinity,
General Counsel.

[FR Doc. E9–21671 Filed 9–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XR06

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-grouper Fishery of the South Atlantic; Closure of the July-December 2009 Commercial Fishery for Vermilion Snapper in the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for vermillion snapper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined

that the quota for the commercial fishery for vermillion snapper will have been reached by September 18, 2009. This closure is necessary to protect the vermillion snapper resource.

DATES: Closure is effective 12:01 a.m., local time, September 18, 2009, through 11:59 p.m., local time, on December 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail Catherine.Bruger@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for vermillion snapper in the South Atlantic at 302,523 lb (137,222 kg) for the current fishing period, July 1 through December 31, 2009, as specified in 50 CFR 622.42(e)(4)(ii).

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available commercial quota of 302,523 lb (137,222 kg) for vermillion snapper will be reached on or before September 18, 2009. Accordingly, NMFS is closing the commercial fishery for vermillion snapper in the South Atlantic EEZ from 12:01 a.m., local time, on September 18, 2009, through 11:59 p.m., local time, on December 31, 2009. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having vermillion snapper onboard must have landed and bartered, traded, or sold such vermillion snapper prior to 12:01 a.m., local time, September 18, 2009.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermillion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermillion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of vermillion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time,