

Proposed Rules

Federal Register

Vol. 74, No. 201

Tuesday, October 20, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. APHIS-2008-0076]

Environmental Impact Statement; Movement of Plant Pests, Biological Control Organisms, and Associated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement relative to proposed regulatory requirements that are being developed for the movement of plant pests, biological control organisms, and associated articles. This notice identifies potential issues and alternatives that will be studied in the environmental impact statement and requests public comment to further delineate the scope of those issues and alternatives.

DATES: We will consider all comments that we receive on or before November 19, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0076>) to submit or view comments.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS-2008-0076, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0076.

Reading Room: You may read any comments that we receive on this

docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. David A. Bergsten, APHIS Interagency NEPA Contact, Environmental Services, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737-1238; (301) 734-6103.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the regulations in "Subpart—Movement of Plant Pests" (7 CFR 330.200 through 330.212, referred to below as the regulations) is to prevent the dissemination of plant pests within the United States by regulating their importation and interstate movement.

The Animal and Plant Health Inspection Service (APHIS) is planning to revise its regulations regarding the movement of plant pests. APHIS intends to prepare an environmental impact statement (EIS) analyzing the potential environmental impacts associated with proposed regulatory requirements for movement not only of plant pests, but also of biological control organisms, and associated articles.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*, referred to below as the Act) the Secretary of Agriculture has broad authority to carry out operations or measures to detect, control, eradicate, suppress, prevent, or retard the spread of plant pests. Section 411(a) of the Act provides that "no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States." Moreover, section 412(a) of the Act provides that the Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of, among other things, any

biological control organism, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or the dissemination within the United States of a plant pest or noxious weed.

Accordingly, APHIS has the authority to regulate not only plant pests, but also biological control organisms, noxious weeds, and associated articles. APHIS is therefore considering revising the regulations to establish provisions for the movement and environmental release of biological control organisms and associated articles. APHIS is also considering revising the regulations for the movement of soil, and establishing regulations governing the biocontainment facilities in which plant pests, biological control organisms, and associated articles are held. The impacts associated with these changes to the regulations will also be analyzed in a programmatic EIS.

In addition to establishing a regulatory framework for the movement of new organisms and articles in a manner that protects U.S. agriculture, these proposed regulations would help clarify the existing requirements for the importation and domestic movement of plant pests. APHIS may also consider including within the proposed regulations other mitigating measures with the potential to equally reduce pest risk. We are requesting public comment to help us identify or confirm potential alternatives and environmental issues that should be examined in the EIS. We have identified three broad alternatives that we plan to consider in the EIS, as follows:

- **Take no action.** This would be characterized as no change in the existing regulations that apply to the movement of plant pests (while not contributing to the further mitigation of pest risk, the analysis of the no action alternative provides a baseline and is required by the National Environmental Policy Act and its implementing regulations).

- **Revise requirements for movement of plant pests consistent with the scope of the Plant Protection Act (preferred alternative).** This would be characterized by amendment or revision of the plant pest regulations to also cover biological control organisms and associated articles. It would also include revisions to the regulations for the movement of soil and the establishment

of regulations for biocontainment facilities.

- Implement a comprehensive risk reduction program (more expansive regulations to address specific risk categories). This would be characterized as a broad risk mitigation strategy that could involve various options such as increased inspection, regulations specific to a certain organism or group of related organisms, or extensive biocontainment requirements. While not the preferred alternative at this time, the risk mitigation strategy considered within this alternative could provide the basis at some point for future Agency regulatory actions, either to establish a new and more appropriate regulatory framework for the movement of plant pests, biological control organisms, and associated articles, or to augment the existing regulations with more effective mitigation measures to address the risk of such movement.

We will examine the potential effects on the human environment of each alternative. We are also interested in comments that identify other issues that should be examined in the EIS. Potential issues include other new mitigation measures, logistical considerations, environmental regulations and constraints, and harmonization of regulatory efforts.

The EIS will be prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Comments regarding the proposed scope of the EIS are welcome and will be considered fully. When APHIS has completed a draft EIS, a notice announcing its availability and an invitation to comment on it will be published in the **Federal Register**.

Done in Washington, DC, this 14th day of October, 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-25184 Filed 10-19-09; 8:45 am]

BILLING CODE: 3410-34-S

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2009-22]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules regarding the definitions of “voter registration activity” and “get-out-the-vote activity” under the Federal Election Campaign Act of 1971, as amended. These proposed changes are in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Shays v. FEC*. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 20, 2009. The Commission will hold a hearing on these proposed rules on Wednesday, December 16, 2009 at 9:30 a.m. and, if necessary, Thursday, December 17, 2009 at 9:30 a.m. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and submitted in either electronic, facsimile or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments should be sent to FEAShays3@fec.gov. If the electronic comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219-3923, with hard copy follow-up. Hard copy comments and hard copy follow-up of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its web site after the comment period ends. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Attorneys Mr. David C. Adkins or Mr. Neven F. Stipanovic, 999

E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002¹ (“BCRA”) contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (“the Act”). The Commission promulgated a number of rules to implement BCRA, including rules defining the terms “voter registration activity” and “get-out-the-vote activity” (“GOTV activity”) at 11 CFR 100.24(a). The Court of Appeals for the District of Columbia Circuit found aspects of these rules invalid in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008) (“*Shays III Appeal*”). The Commission seeks comment on proposed changes to the rules at 11 CFR 100.24 to implement the *Shays III Appeal* decision.

I. Background

A. BCRA

The Act, as amended by BCRA, and Commission regulations provide that a State, district, or local committee of a political party must pay for certain “Federal election activities” with either entirely Federal funds² or, in other instances, a mix of Federal funds and “Levin funds.”³ See 2 U.S.C. 441i(b); 11 CFR 300.32. The Act identifies four types of activity that are subject to these funding restrictions, including “voter registration activity”—Type I Federal election activity—and GOTV activity—Type II Federal election activity. See 2 U.S.C. 431(20)(A)(i) and (ii); 441i(b); 11 CFR 100.24(a)(2) and (3).⁴

Application of BCRA's Federal election activity funding restrictions for Types I and II Federal election activity is conditioned upon the timing of the activity. Voter registration activity (Type

¹ Pub. L. 107-155, 116 Stat. 81 (2002).

² “Federal funds” are funds subject to the limitations, prohibitions, and reporting requirements of the Act. See 11 CFR 300.2(g).

³ “Levin funds” are funds raised and disbursed by State, district, or local party committees pursuant to certain restrictions. See 2 U.S.C. 441i(b); see also 11 CFR 300.2(i).

⁴ In addition to GOTV activity, Type II Federal election activity also includes “voter identification” and “generic campaign activity.” See 2 U.S.C. 431(20)(A)(ii); 11 CFR 100.24; 100.25. Types III and IV Federal election activity are outside the scope of this rulemaking and are not discussed. They pertain to public communications that refer to a clearly identified Federal candidate and promote, support, attack or oppose a candidate for Federal office (Type III), and services provided by an employee of a State, district, or local committee of a political party who spends more than 25 percent of his or her compensated time on activities in connection with a Federal election (Type IV). Types I and II Federal election activity may be funded with a combination of Federal and Levin funds; Types III and IV Federal election activity must be funded entirely with Federal funds.