

required for the establishment of a tolerance exemption for inert ingredients. *Contact:* Alganesh Debesai, (703) 308-8353, *e-mail address:* debesai.alganesh@epa.gov.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2540, 2551, 2552

RIN 3045-AA56

AmeriCorps State/National, Senior Companions, Foster Grandparents, and Retired and Senior Volunteer Program

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The Corporation for National and Community Service (the Corporation) proposes amendments to its National Service Criminal History Check regulations to require grantees to conduct and document criminal history checks (including both state criminal history checks and FBI fingerprint checks) on Senior Companions, Foster Grandparents, Retired Senior Volunteer Program grant-funded staff, Learn and Serve America, AmeriCorps State/National (including Education Award Program) participants, and other Corporation grant-funded participants and grant-funded staff in all Corporation programs, who, on a recurring basis, have access to children, persons age 60 and older, or individuals with disabilities.

DATES: To be certain your comments are considered, they must reach the Corporation on or before August 5, 2011.

ADDRESSES: You may send your comments electronically through the Federal government's one-stop rulemaking Web site at <http://www.regulations.gov>. You may also mail or deliver your comments to Amy Borgstrom, Docket Manager,

Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. Members of the public may review copies of all communications received on this rulemaking at <http://www.regulations.gov> or at the Corporation's Washington, DC headquarters.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom at (202) 606-6930. The TDD/TTY number is (202) 606-3472. You may request this notice in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

List of Topics

- I. Invitation to Comment
- II. Background
 - (a) Prior to Passage of the Kennedy Serve America Act of 2009
 - (b) Expanded Definition of "Covered Individual"
 - (c) Heightened Standard for Individuals With Recurring Access to Vulnerable Populations
- III. Contents of Proposed Rule
 - (a) Definitions
 - (b) Eligibility Criteria—AmeriCorps State and National
 - (c) National Service Criminal History Checks Generally
 - (d) Special Rule for Individuals With Recurring Access to Vulnerable Populations
 - (e) Alternative Screening Protocol for Individuals With Recurring Access to Vulnerable Populations
 - (f) Consecutive Terms
 - (g) No Unaccompanied Access to Vulnerable Populations Pending Criminal History Results
 - (h) Documentation Requirements
 - (i) Costs
- IV. Non-Regulatory Matters
- V. Effective Dates
- VI. Regulatory Procedures

I. Invitation To Comment

We invite you to submit comments about these proposed regulations online at <http://www.regulations.gov>. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect public comments about these proposed regulations submitted online at <http://www.regulations.gov>, or in person in room 10615, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

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

(a) Prior to Passage of the Kennedy Serve America Act of 2009

The Corporation initially engaged in rulemaking concerning the requirement for grantees to conduct criminal history checks on national service participants and grant-funded staff in 2007. In that rule, the Corporation required programs to conduct National Service Criminal History Checks—consisting of a statewide search of a state's criminal registry (for both the state where the individual resides at the time of application and the state where the individual will be serving) and a check of the Department of Justice's National Sex Offender Public Web site (NSOPW)—on all "covered individuals." Covered individuals were those program staff and participants who had recurring access to children, the elderly, and to individuals with disabilities. Recurring access was defined as having contact with individuals from one or more of the above groups on more than one occasion. The regulations did not cover the RSVP and Learn and Serve programs, nor did they cover the NCCC and VISTA programs, which are Federally operated programs that have their own criminal history requirements.

Those regulations offered the option of requesting approval of an alternative search procedure (also known as an "alternative screening protocol" or "ASP"), which would permit an entity that could demonstrate that it was "prohibited or otherwise precluded under state law from complying with a Corporation requirement relating to criminal history checks or that [it] could obtain substantially equivalent or better information through an alternative process" to use a process other than the one outlined by the Corporation. (45 CFR 2540.206). Under this rule, an entity had the option of using a national FBI fingerprint-based check in lieu of the state criminal registry check without obtaining prior Corporation approval.

(b) Expanded Definition of "Covered Individuals"

In 2009, Congress passed the Kennedy Serve America Act of 2009 (Pub. L. 111-13) (SAA), which amended the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*) (NCSA) by codifying the Corporation's regulatory National Service Criminal History Check requirements, and by expanding the categories of individuals required to undergo criminal history checks. Under the new statutory requirements, as of October 1, 2009 (the effective date of the SAA), any entity selecting an individual to serve in a position in which the individual receives a living allowance, stipend, national service educational award or salary through a program receiving assistance under the national service laws must conduct a criminal history check on that individual. Accordingly, the SAA expanded the definition (and consequently the number) of "covered individuals" to those individuals described above without regard to their access to vulnerable populations.

As directed by the SAA, the Corporation issued new regulations in 2009, expanding coverage to any national service participant or grant-funded employee who received one of the above-described payments for his or her service or employment. (74 FR 46495). Now included in this group of covered individuals are grant-funded staff serving in any Corporation-funded national service program, including RSVP and Learn and Serve grant-funded staff, as well as participants in all Corporation grant programs, if the individual receives one of the types of remuneration described above. This includes the Non-profit Capacity Building and Social Innovation Fund grant programs.

Pursuant to these regulations, each individual meeting the amended description of a "covered individual" hired or enrolled in a program on or after October 1, 2009, is required to undergo a full National Service Criminal History Check including: (a) A search of either (1) the state criminal registry in the state in which the program is operating and the state in which the individual resides at the time of application, or (2) a Federal Bureau of Investigation (FBI) fingerprint check; and (b) a nationwide check of the NSOPW.

In addition to expanding the definition of "covered individuals," the Serve America Act expanded the types of offenses that would render an individual ineligible to serve in a

covered position to include individuals who had been convicted of murder.

(c) Heightened Standard for Individuals With Recurring Access to Vulnerable Populations

Under section 189D(d) of the NCSA, as amended by the SAA, beginning April 21, 2011, entities that select covered individuals over the age of 18 who will have recurring access to vulnerable populations as part of their position must conduct both a statewide criminal history check and an FBI fingerprint-based check. As described herein, section 189D(d)(3) of the NCSA permits limited exceptions to this heightened requirement.

III. Contents of Proposed Rule

The Corporation is undertaking this rulemaking to implement the amendments made by the SAA with regard to heightened screening requirements for covered individuals with recurring access to vulnerable populations. In addition, this proposed rule clarifies several existing requirements, and makes several minor technical corrections for clarity.

*(a) Definitions***(1) Definition of "program." (§ 2510.20)**

The SAA amended the definition of "program" in the NCSA to include newly-authorized programs such as Campuses of Service, Serve America and Encore Fellows, Silver Scholars, the Social Innovation Fund, and activities funded under programs such as the Volunteer Generation Fund. This proposed rule corrects the definition of "program" in regulation to align with the definition in statute.

(2) Definition of "covered individual." (§ 2540.200)

To clarify that it is not necessary to conduct checks on individuals whose connection to the program is tangential (such as an individual who provides training to participants and volunteers on occasion but is otherwise not integral to the operation of the program) or who is intended as a beneficiary (such as a child who receives a cash prize for completing a service-learning project hosted by the program), this rule proposes to amend the definition of "covered individual" by removing the clause "or other remuneration." A covered individual is any individual who receives a Corporation grant-funded living allowance, stipend, national service education award, or salary for participation in or employment by a program. An individual who receives some financial benefit through a national service

program but who does not otherwise perform any service to implement the program is not a covered individual.

(b) Eligibility Criteria—AmeriCorps State and National

The Serve America Act expanded the list of offenses that would render an individual ineligible for service to include conviction for murder. The Corporation amended its regulations to align with this statutory change in 2009, but through that rulemaking inadvertently neglected to amend the regulation on eligibility to serve in an AmeriCorps State and National position. This rule amends § 2522.200 to expand the list of eligibility criteria to serve in an AmeriCorps State and National to include satisfaction of the National Service Criminal History Check eligibility criteria.

(c) National Service Criminal History Checks Generally (§ 2540.202)

In practice, the National Service Criminal History Check for covered individuals includes: (1) a name or fingerprint-based state registry check of the state where the program is operating and the state where the individual resides at the time of application or nationwide check by submitting fingerprints to the FBI; and (2) a check of the NSOPW. This proposed rule makes technical edits to the regulatory language to conform to current practice.

Since promulgating criminal history check rules in 2007, the Corporation has applied the first prong of this test to programs operating in more than one state by requiring such programs to conduct the state registry check in the state where the covered individual will be primarily serving or working. This proposed rule would also codify this clarification.

(d) Special Rule for Individuals With Recurring Access to Vulnerable Populations (§ 2540.202)

As required by section 189D of the NCSA, as amended by the SAA, under this rule, unless the Corporation approves an alternative screening protocol under § 2540.206, for each covered individual a program hires or enrolls on or after April 21, 2011, who is age 18 or older and whose position will involve recurring access to vulnerable populations, in addition to a National Sex Offender Public Web site (<http://www.nsopw.gov>) check, the program must conduct: (1) A search (by name or fingerprint) of the state criminal registry for the state in which the program operates and the state in which the individual resides at the time of application; and (2) a national search

by submitting fingerprints to the Federal Bureau of Investigation.

“Recurring access” is defined as “the ability on more than one occasion to approach, observe, or communicate with, an individual, through physical proximity or other means, including but not limited to, electronic or telephonic communication.” (45 CFR 2510.20).

In anticipation of this heightened requirement, current grantees have inquired into whether the Corporation would be developing a centralized mechanism for conducting FBI checks for national service participants. While the Corporation is committed to identifying ways to decrease burden on grantees, at this time no such centralized mechanism is available.

(e) Alternative Screening Protocol for Individuals With Recurring Access to Vulnerable Populations (§ 2540.206)

Under this proposed rule, an entity may apply to the Corporation for approval of an ASP that would relieve the entity from the requirement to conduct both the statewide and national checks on a covered individual with recurring access to vulnerable populations.

The Corporation will approve an ASP for this requirement if the entity demonstrates: (1) The service provided by the individual serving with the entity to a vulnerable population is episodic in nature or for a 1-day period; (2) the cost to the program of complying with § 2540.202(b) of this chapter is prohibitive; (3) the program is not authorized, or is otherwise unable, under state or Federal law, to access the national criminal history background check system of the FBI; or (4) the program cannot comply with the requirement for good cause, as determined and approved by the Corporation.

(1) Episodic Access (§ 2540.206)

Congress specifically exempted from heightened coverage those individuals whose access to vulnerable populations is “episodic in nature or for a 1-day period.” While the heightened coverage applies to all individuals with “recurring access,” or access on more than one occasion, it will not apply to those individuals whose recurring access is “episodic in nature.”

For the purposes of this rule, the Corporation proposes to define “episodic” as access that is not a regular, scheduled, and anticipated component of an individual’s position description. If access to vulnerable populations is not a regular, scheduled, and anticipated component of the position description, the program is not

required to conduct both an FBI and a state check on the individual.

For example, consider an individual who is applying for an AmeriCorps position with an environmental program that involves volunteer coordination. If the program anticipates that the position will involve coordinating high school student volunteers on a regular basis, the individual will need the heightened check. However, if the program has no reason to expect that the position will involve coordinating 17-year-old and younger volunteers because the program has never operated in a youth environment and does not have any youth engagement goals, and does not recruit high school age volunteers, any contact with a child volunteer would be irregular, unscheduled, and unanticipated, and thus, episodic. Therefore, it would be unnecessary to conduct a heightened check on the individual.

The Corporation does not propose a numeric component for the determination of whether or not access is episodic. In other words, if a program does not anticipate that a member will have access to vulnerable populations, the requirement would not materialize after a specific number of incidents of access occur.

The Corporation expects that in the majority of cases it will be clear whether or not access to vulnerable populations is an anticipated, regular component of a position description. Nevertheless, the Corporation recommends that programs specifically address contact with vulnerable populations in each position description. If incidental access becomes unexpectedly regular or frequent, a program may want to take additional precautionary measures based on the circumstances.

(2) Alternative Search Protocols Approved for “Good Cause”

The Corporation will publish on its Web site those scenarios for which the Corporation has approved ASPs for “good cause” based on requests received following the publication of this rule. This list may be expanded and codified in regulation in the future.

(f) Consecutive Terms (§ 2540.203)

Under current 45 CFR 2540.203(c), (redesignated as 2540.203(b) under this proposed rule) it is not necessary to perform an additional check on an individual who serves in consecutive terms of service with a program with a break in service of fewer than 30 days. This section permits a program to forego additional checks for individuals serving consecutive terms, but is based upon a presumption that the additional

check would essentially replicate the original check.

Each individual hired or enrolled into a covered position that involves recurring access to vulnerable populations after April 21, 2011, is required to undergo the enhanced criminal history check. The fact that an individual met the criminal history check requirements at the time the individual was hired or enrolled in a prior term of service does not excuse the individual from the enhanced requirements at the time the individual is hired or enrolled in a subsequent term, even if there has been a break in service of fewer than 30 days.

If a program can demonstrate that the check performed on an individual during the previous term would meet the current requirements, it is not necessary to perform an additional check. For example, if, at the time the covered individual was hired or enrolled in a prior term, the program conducted the NSOPR check, a state check, and an FBI check, it is unnecessary to replicate the entire process for the subsequent term if there is a break in service of fewer than 30 days.

(g) No Unaccompanied Access to Vulnerable Populations Pending Criminal History Results (§ 2540.204)

Under current rules, an individual for whom the results of a required state criminal registry check are pending is not permitted access to vulnerable populations “without being accompanied by an authorized program representative who has previously been cleared for such access.” 45 CFR 2540.204(g). Since the initial promulgation of this rule, it has come to our attention that it is common for the vulnerable beneficiary in question to be accompanied by a parent, legal guardian, teacher, doctor, nurse, or other individual responsible for his or her care.

The Corporation does not believe it is necessary for a selected individual with pending criminal history results to be accompanied by an authorized program representative who has received the appropriate criminal history check when the vulnerable individual is accompanied by an individual responsible for his or her care. Thus, under this proposed rule, a covered individual may be selected and placed while state or FBI criminal history checks are pending, so long as the individual is not permitted access to vulnerable populations without being accompanied by: (1) An authorized program representative who has previously been cleared for such access;

(2) a family member or legal guardian of the vulnerable individual; or (3) an individual authorized by the nature of his or her profession to have recurring access to the vulnerable individual, such as an education or medical professional.

For example, a covered individual who occasionally gives nature tours to schoolchildren as part of an environmental program would not be required to be accompanied by an authorized program representative on the tour if the students are accompanied by teachers or parents.

(h) Documentation Requirements (§ 2540.205)

This proposed rule clarifies that it is not necessary to retain the actual documents produced as a result of conducting the statewide or FBI criminal registry search component of the check. Rather, it is sufficient to retain a summary of the results certified by an authorized program representative, along with written documentation that the results were considered in selecting the individual. The program must have reviewed and determined that the criteria used by the

issuing governmental body meets or exceeds the Corporation's standards for eligibility. For example, if a program receives a document from the statewide criminal registry that indicates the individual has been "cleared" for service based upon an agreement that describes the offenses that would result in ineligibility, that clearance document may be retained as the result of the criminal registry check.

(i) Costs (§ 2540.204)

The proposed rule requires grantees to obtain and document a baseline criminal history check for covered individuals. The Corporation considers the cost of this required criminal history check a reasonable and necessary program grant expense, such costs being presumptively eligible for reimbursement. In any event, a grantee should include the costs associated with its screening process in the grant budget it submits for approval to the Corporation.

The proposed rule codifies the Corporation's guidance that, except where approved by the Corporation, a grantee may not charge an individual for the cost of a National Service Criminal

History Check. In addition, because criminal history checks are inherently attributable to operating a program, such costs may not be charged to a state commission administrative grant.

We will monitor compliance with the rules and requirements associated with National Service Criminal History Checks as a material condition of receiving a Corporation grant. A grantee's failure to comply with this requirement may adversely affect the grantee's access to grant funds or ability to obtain future grants from the Corporation. In addition, a grantee jeopardizes eligibility for reimbursement of costs related to a disqualified individual if it fails to perform or properly document (as described herein) the required National Service Criminal History Check on covered individuals.

IV. Non-Regulatory Matters

Coverage Based on Start Date

The table below illustrates which requirements apply to various program types.

TABLE 1

| Recurring access to vulnerable populations | | Date individual hired or enrolled | | | | | | | | | | | |
|--|-----|-----------------------------------|---|---|--------------------------------------|---|---|--------------------------------|---|---|----------------------------|---|---|
| | | Before November 23, 2007 * | | | November 23, 2007–September 30, 2009 | | | October 1, 2009–April 20, 2011 | | | On or after April 21, 2011 | | |
| | | N | S | F | N | S | F | N | S | F | N | S | F |
| Program: | | | | | | | | | | | | | |
| AmeriCorps S & N | Yes | X | | | X | X | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |
| FGP | Yes | X | | | X | X | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |
| Senior Companions | Yes | X | | | X | X | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |
| RSVP staff | Yes | | | | | | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |
| VISTA program grants | Yes | | | | | | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |
| Learn & Serve | Yes | | | | | | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |
| Other Grant Programs | Yes | | | | | | | X | X | | X | X | X |
| | No | | | | | | | X | X | | X | X | |

N = NSOPW; S = State registry check; F = FBI fingerprint check

* This applies to individuals who were enrolled or employed as of November 23, 2007, but were hired or enrolled prior to that date.

V. Effective Dates

The Corporation intends to make any final rule based on this proposal effective no sooner than 60 days after the final rule is published in the **Federal Register**. The requirement applies to any covered individual hired or enrolled on or after April 21, 2011. However, programs have until 60 days after the publication of the final rule to complete the heightened check.

VI. Regulatory Procedures

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866.

Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the Corporation certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This 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.

Unfunded Mandates

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.

Paperwork Reduction Act

This proposed 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.*).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The proposed rule does not have any Federalism implications, as described above.

List of Subjects

45 *CFR Part 2510*

Grant programs—social programs.

45 *CFR Part 2522*

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

45 *CFR Part 2540*

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 *CFR Part 2551*

Aged, Grant programs—social programs, Volunteers.

45 *CFR Part 2552*

Aged, Grant programs—social programs, Volunteers.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend 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 continues to read as follows:

Authority: 42 U.S.C. 12511.

2. Amend § 2510.20 by revising the definition of “program” to read as follows:

§ 2510.20 Definitions.

* * * * *

Program. The term *program*, unless the context otherwise requires, and except when used as part of the term *academic program*, means a program described in section 112(a) (other than a program referred to in paragraph (3)(B) of that section), 118A, or 118(b)(1), or subsection (a), (b), or (c) of section 122, or in paragraph (1) or (2) of section 152(b), section 198B, 198C, 198H, or a98K, or an activity that could be funded under section 179A, 198, 198O, 198P, or 199N.

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for Part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911

2. Amend § 2522.200 by:

- a. Removing the period at the end of paragraph (a)(3) and adding a semicolon in its place; and
- b. Adding a new paragraph (a)(4) to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) * * *

(4) Satisfy the National Service Criminal History Check eligibility criteria pursuant to 45 *CFR* § 2540.201.

* * * * *

3. Revise § 2522.205 to read as follows:

§ 2522.205 To whom must I apply eligibility criteria relating to criminal history?

You must apply eligibility criteria relating to criminal history to a participant or staff position for which an individual receives a Corporation grant-funded living allowance, stipend, education award, or salary for participation in or employment by a program as defined in § 2510.20 of this chapter.

§ 2522.206 [Removed and Reserved]

4. Remove and reserve § 2522.206.

5. Revise § 2522.207 to read as follows:

§ 2522.207 What are the procedures I must follow to determine an individual's eligibility to serve in a covered position?

In determining an individual's eligibility to serve in a covered position, you must follow the procedures in part 2540 of this title.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

6. The authority citation for Part 2540 continues 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.

7. Revise § 2540.200 to read as follows:

§ 2540.200 To whom must I apply eligibility criteria relating to criminal history?

You must apply eligibility criteria relating to criminal history to an individual applying for, or serving in, a position for which the individual receives a Corporation grant-funded living allowance, stipend, education award, or salary for participation in or employment by a program as defined in § 2510.20 of this chapter.

8. Revise § 2540.201 to read as follows:

§ 2540.201 What eligibility criteria must I apply to a covered position in connection with the National Service Criminal History Check?

In addition to eligibility criteria established by the program, an individual shall be ineligible to serve in a covered position if the individual—

- (a) Refuses to consent to a criminal registry check described in § 2540.202 of

this chapter or makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history;

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

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

9. Revise § 2540.202 to read as follows:

§ 2540.202 What search components of the National Service Criminal History Check must I satisfy to determine an individual's suitability to serve in a covered position?

(a) *In general.* Unless the Corporation approves an alternative screening protocol under § 2540.206 of this chapter, in determining an individual's suitability to serve in a covered position, you are responsible for conducting and documenting a National Service Criminal History Check, which consists of the following two search components:

(1) *State or FBI criminal registry search.*

(i) A search (by name or fingerprint) of the state criminal registry for

(A) The state in which the program operates (for multi-state programs, the state where the individual will be primarily serving or working) and

(B) The state in which the individual resides at the time of application; or

(ii) Submitting fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(2) *National Sex Offender Public Website.* A name-based search of the Department of Justice (DOJ) National Sex Offender Public Website (NSOPW).

(b) *Special rule for individuals working with vulnerable populations.* Unless the Corporation approves an alternative screening protocol under § 2540.206, for each covered individual you hire or enroll on or after April 21, 2011, who is age 18 or older and whose position will involve recurring access to vulnerable populations, in addition to an NSOPW check described in paragraph (a)(2) of this section, you must conduct both a state and nationwide FBI criminal registry search, consisting of—

(1) A search (by name or fingerprint) of

(A) The state criminal registry for the state in which your program operates and

(B) The state in which the individual resides at the time of application; and

(2) Submitting fingerprints to the Federal Bureau of Investigation for a

national criminal history background check.

10. Revise § 2540.203 to read as follows:

§ 2540.203 When must I conduct a National Service Criminal History Check on an individual in a covered position?

(a) *New Staff and Participants.* You must conduct a National Service Criminal History Check upon selection and before enrolling or hiring any new covered individual. You must review the results of the NSOPW prior to enrolling or hiring the covered individual. You may permit the covered individual to commence grant-funded work or service pending receipt of the state or FBI criminal registry check results so long as the individual is not permitted access to vulnerable populations without being accompanied by an appropriate individual, as described in § 2540.204(f) of this chapter.

(b) *Recurring Service.* For an individual who serves consecutive terms of service in your program with a break in service of no more than 30 days, no additional check is required after the first term.

11. Amend § 2540.204 by:

a. Revising paragraph (f); and

b. Adding a new paragraph (g).

The revision and addition will read as follows:

§ 2540.204 What procedures must I follow in conducting a National Service Criminal History Check for a covered position?

* * * * *

(f) Ensure that an individual, for whom the results of a required state or FBI criminal registry check are pending, is not permitted to have access to children, persons age 60 and older, or individuals with disabilities without being accompanied by:

(1) An authorized program representative who has previously been cleared for such access;

(2) A family member or legal guardian of the vulnerable individual; or

(3) An individual authorized by nature of his or her profession to have recurring access to the vulnerable individual, such as an education or medical professional.

(g) Unless specifically approved by the Corporation, a grantee may not charge an individual for the cost of any component of a National Service Criminal History Check.

12. Revise § 2540.205(b) to read as follows:

§ 2540.205 What documentation must I maintain regarding a National Service Criminal History Check for a covered position?

* * * * *

(b) Maintain the results of the NSOPW check, and the results or a summary of the results issued by a state or Federal government body of the state or FBI searches performed for each National Service Criminal History check (unless precluded by state law), and document in writing that an authorized program representative considered the results in selecting the individual.

13. Revise § 2540.206 to read as follows:

§ 2540.206 Under what circumstances may I follow alternative procedures in conducting a National Service Criminal History Check for a covered position?

(a) *In general.* If you demonstrate that you are prohibited or otherwise precluded under state law from complying with a Corporation requirement relating to criminal history checks or that you can obtain substantially equivalent or better information through an alternative process, the Corporation will consider approving an alternative search protocol that you submit in writing to the Corporation's Office of Grants Management. The Office of Grants Management will review the alternative protocol to ensure that it:

(1) Verifies the identity of the individual; and

(2) Includes a search of an alternative criminal database that is sufficient to identify the existence, or absence of, the criminal offenses listed in § 2540.208 of this chapter.

(b) *Alternative Procedures for Individuals With Recurring Access to Vulnerable Populations.* The Corporation may exempt a program from conducting either the statewide and or FBI criminal history checks on covered individuals with recurring access to vulnerable populations, as described in § 2540.202 of this chapter, if the program demonstrates that:

(1) The service provided by the individual serving with the entity to a vulnerable population is episodic in nature or for a 1-day period;

(2) The cost to the program of complying with § 2540.202(b) of this chapter is prohibitive;

(3) The program is not authorized, or is otherwise unable, under state or Federal law, to access the state registry or the national criminal history background check system of the FBI; or

(4) The program cannot comply with § 2540.202(b) of this chapter for good cause, as determined and approved by the Corporation.

(c) *Episodic Access.* For the purposes of this section, an individual's service to a vulnerable population is considered to be episodic in nature if the service is not

a regular, scheduled, and anticipated component of the individual's position description.

§ 2540.207 [Removed and reserved].

14. Remove and reserve § 2540.207.

PART 2551—SENIOR COMPANION PROGRAM

15. 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.

16. Amend § 2551.23 by adding a new paragraph (l) to read as follows:

§ 2551.23 What are the sponsor's program responsibilities?

* * * * *

(l) Conduct criminal history checks on all Senior Companions and Senior Companion grant-funded employees who enroll in, or are hired by, your program after November 23, 2007, in accordance with the National Service Criminal History Check requirements in 45 CFR §§ 2540.200–207.

§§ 2551.26, 2551.27, 2551.28, 2551.29, 2551.30, 2551.31, 2551.32 [Removed and Reserved].

17. Remove and reserve §§ 2551.26, 2551.27, 2551.28, 2551.29, 2551.30, 2551.31, 2551.32.

PART 2552—FOSTER GRANDPARENT PROGRAM

18. 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.

19. Amend § 2552.23 by adding a new paragraph (l) to read as follows:

§ 2552.23 What are a sponsor's program responsibilities?

* * * * *

(l) Conduct criminal history checks on all Foster Grandparents and Foster Grandparent grant-funded employees who enroll in, or are hired by, your program after November 23, 2007, in accordance with the National Service Criminal History Check requirements in 45 CFR §§ 2540.200–207.

§ 2552.26, 2552.27, 2552.28, 2552.29, 2552.30, 2552.31, 2552.32 [Removed and Reserved]

20. Remove and reserve § 2552.26, 2552.27, 2552.28, 2552.29, 2552.30, 2552.31, 2552.32.

Dated: June 24, 2011.

Valerie Green,
General Counsel.

[FR Doc. 2011–16509 Filed 7–5–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–R9–MB–2011–0020; 91200–1231–9BPP]

RIN 1018–AX78

Migratory Bird Permits; Changes in the Regulations Governing Raptor Propagation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We solicit recommendations on whether the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*) should be included among other raptors that may be propagated in captivity under Federal raptor propagation permits.

DATES: We will accept comments received or postmarked by the end of the day on October 4, 2011.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0020.

- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0020; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Public Comments

Propagation of bald eagles and golden eagles has not been allowed under the raptor propagation permit regulations at 50 CFR 21.30. We are now considering whether to permit this activity. We request comments and suggestions on this topic from the public, other concerned governmental agencies, the scientific community, industry, and other interested parties.

You may submit your comments and supporting materials only by one of the methods listed in the **ADDRESSES** section. We will not consider comments

sent by e-mail or fax, or written comments sent to an address other than the one listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Background

The U.S. Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703 *et seq.*) and the Bald and Golden Eagle Protection Act (BGEPA, 16 U.S.C. 668). Regulations governing the issuance of permits for bald eagles and golden eagles are in 50 CFR part 22 and certain sections of 50 CFR part 21.

The MBTA allows the Secretary of the Interior to issue permits for take and possession of migratory birds for many purposes. The BGEPA allows bald eagles and golden eagles to be taken and possessed under more restricted circumstances. For example, only golden eagles that are depredating on livestock or wildlife may be taken from the wild by falconers, and bald eagles, no matter what their origin, cannot be held for falconry. Eagles may not be sold, purchased, or bartered under any circumstances, regardless of whether they are wild or captive-bred in origin.

Bald and golden eagles are the only raptor species protected by the MBTA that are not allowed under the current raptor propagation permit regulations at 50 CFR 21.30 because those regulations do not apply to these two species that are also protected under the Bald and Golden Eagle Protection Act (see 50 CFR 21.2(b)). We are evaluating whether to amend the regulations to allow some holders of valid raptor propagation permits to propagate eagles as they can many other raptor species. Most eagles in captivity are held under permits for exhibition/education, eagle falconry, and Native American eagle aviaries. All