

## APPENDIX A TO SUBPART A OF SUBPART A OF PART 3020—MAIL CLASSIFICATION SCHEDULE—Continued

International Restricted Delivery [Reserved for Product Description]  
 International Insurance [Reserved for Product Description]  
 Negotiated Service Agreements [Reserved for Group Description]  
 Domestic [Reserved for Product Description]  
 Outbound International [Reserved for Group Description]

[FR Doc. E8–30169 Filed 12–18–08; 8:45 am]

BILLING CODE 7710–FW–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 58

[EPA–HQ–OAR–2006–0735; FRL–8754–9]

RIN 2060–AN83

### National Ambient Air Quality Standards for Lead

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting amendment.

**SUMMARY:** The EPA issued a final rule on November 12, 2008 (effective date January 12, 2009) that revised the National Ambient Air Quality Standard (NAAQS) for lead (Pb) and associated monitoring requirements. This document makes a minor correction to the November 12, 2008, action to correct a typographical error in the regulatory text for the rule.

**DATES:** This correction is effective January 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cavender, Air Quality Assessment Division (C304–06), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2364; fax number: (919) 541–1903; e-mail address: *Cavender.kevin@epa.gov*.

#### SUPPLEMENTARY INFORMATION:

#### Background

The EPA issued a final rule on November 12, 2008 (effective date January 12, 2009) that revised the NAAQS for Pb and associated Pb monitoring requirements. As part of the Pb monitoring requirements, monitoring agencies are required to develop a plan for establishing Pb monitoring sites in accordance with the requirements of appendix D of Part 58. A number of requirements for this plan were listed including the identification of (1) the designation of any Pb monitors as either source-oriented or non-source-oriented according to Appendix D to 40 CFR part 58, (2) any source-oriented monitors for which a waiver has been requested or

granted by the EPA Regional Administrator as allowed for under paragraph 4.5(a)(ii) of Appendix D to 40 CFR part 58, and (3) any source-oriented or non-source-oriented site for which a waiver has been requested or granted by the EPA Regional Administrator for the use of Pb-PM<sub>10</sub> monitoring in lieu of Pb-TSP monitoring as allowed for under paragraph 2.10 of Appendix C to 40 CFR Part 58. These requirements were correctly included in the amended regulatory text for 40 CFR Part 58 in the final rule. In describing the amendments to the existing regulatory text, EPA accurately included a reference adding paragraph 58.10 (b)(9) (which contains the first requirement identified above). Although the notice included the text of paragraphs 58.10 (b)(10) and (b)(11) (which contain the second and third requirements identified above), EPA inadvertently failed to specify that these paragraphs were also being added to the existing regulatory text in the amendatory language.

#### Need for Correction

As published, the regulatory text in the final regulation contains a minor error that, if not corrected, would result in an error in the publication of the regulatory amendment in the Code of Federal Regulations. This action merely addresses an error in describing how the CFR regulatory text is amended, and not the amended regulatory text itself. Thus it is proper to issue this action with out notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the change to the rule is a minor technical correction, is non-controversial, and does not substantively change the agency actions taken in the final rule. We similarly have determined there is good cause for making this rule effective January 12, 2009, because that is the same day the revisions to the Pb NAAQS and the monitoring requirements become

effective under the rule published November 12, 2008.

#### Corrections of Publication

The EPA issued a final rule on November 12, 2008 that revised the NAAQS for Pb and associated monitoring requirements. Instruction 15 on how the Code of Federal Regulations is amended inadvertently failed to identify two paragraphs as amendments to 40 CFR 58.10. As published in the November 12, 2008 final rule, instruction 15 reads as follows:

“15. Section 58.10, is amended by added paragraph subsections (a)(4) and adding paragraph (b)(9) to read as follows:”

In FR Doc. E8–25654 published November 12, 2008 (73 FR 66964), make the following correction. On page 67059, in the center column, amendatory instruction 15 is corrected to read as follows:

“15. Section 58.10, is amended by adding paragraph (a)(4) and adding paragraphs (b)(9) through (b)(11) to read as follows:”

#### List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 12, 2008.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator,  
Office of Air and Radiation.*

[FR Doc. E8–30199 Filed 12–18–08; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–74

[FMR Amendment 2008-08; FMR Case 2008–102–3; Docket 2008–0001; Sequence 5]

RIN 3090–A178

### Federal Management Regulation; FMR Case 2008–102–3, Real Property Policies Update – Smoking Restrictions

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal Management Regulation (FMR) to revise the restrictions on the smoking of tobacco products in leased or owned space under the jurisdiction, custody, or control of the Administrator of General Services. This final rule cancels and replaces in its entirety 41 CFR §§ 102-74.315 through 102-74.350 including the insertion of a new § 102-74.351.

**DATES:** *Effective Date:* December 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501-1737, or by e-mail at [stanley.langfeld@gsa.gov](mailto:stanley.langfeld@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FMR Amendment 2008-08, FMR Case 2008-102-3.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

1. On August 9, 1997, President Clinton signed Executive Order (E.O.) 13058, entitled "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace," to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities (62 FR 43451, August 13, 1997).

2. On October 20, 1997, the U.S. General Services Administration (GSA) issued GSA Bulletin FPMR D-245, "Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace" (62 FR 54461). In accordance with the requirements of E.O. 13058, GSA Bulletin FPMR D-245 prohibited the smoking of tobacco products in all interior space owned, rented or leased by the executive branch of the Federal Government, except in specially-equipped designated smoking areas, outdoor areas in front of air intake ducts and certain other residential and non-Federal occupied space. The bulletin also required the heads of executive agencies to evaluate the need to restrict smoking in courtyards and near doorways.

3. Studies conducted since the issuance of GSA Bulletin FPMR D-245 have concluded that cigarette smoking is the number one preventable cause of morbidity and premature mortality worldwide. Studies also have shown that the harmful effects of smoking are

not confined solely to the smoker, but extend to co-workers and members of the general public who are exposed to secondhand smoke as well. Recognition of these facts is evidenced by the stricter laws on smoking enacted by several states over the past 10 years. Twenty-six states have banned smoking entirely in all of their State government buildings and 19 have banned smoking in all private work places.

4. Executive Order 13058 encourages the heads of executive agencies to evaluate the need to further restrict smoking at doorways and in courtyards under executive branch control and authorizes the agency heads to restrict smoking in these areas in light of this evaluation.

5. The proposed changes to the current smoking policy may affect conditions of employment for employees. Where there is an exclusive representative for the employees, executive branch agencies will be required to meet their collective bargaining obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, before the proposed revisions to the existing smoking policy can be implemented.

**B. Executive Order 12866**

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

**C. Regulatory Flexibility Act**

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 102-74**

Facility Management.

Dated: December 8, 2008

**James A. Williams,**

*Acting Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 41 CFR part

102-74 of Subchapter C as set forth below:

**PART 102-74—FACILITY MANAGEMENT**

■ 1. The authority citation for 41 CFR part 102-74 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

■ 2. Amend Subpart B of part 102-74 by revising §§ 102.74-315 through 102.74-350 and adding new § 102.74-351 to read as follows:

**§ 102-74.315 What is the smoking policy for interior space in Federal facilities?**

Pursuant to Executive Order 13058, "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace" (3 CFR, 1997 Comp., p. 216), it is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented or leased by the executive branch of the Federal Government.

**§ 102-74.320 Are there any exceptions to the smoking policy for interior space in Federal facilities?**

Yes, the smoking policy does not apply in—

(a) Any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;

(b) Portions of Federally owned buildings leased, rented or otherwise provided in their entirety to non-Federal parties;

(c) Places of employment in the private sector or in other non-Federal Governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and

(d) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head and, to the fullest extent possible, provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

**§ 102-74.325 Are designated smoking areas authorized in interior space?**

No, unless specifically established by an agency head as provided by § 102-74.320(d). A previous exception for designated smoking areas is being eliminated. All designated interior

smoking areas will be closed effective June 19, 2009. This six-month phase-in period is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

**§ 102–74.330 What smoking restrictions apply to outside areas under Executive branch control?**

Effective June 19, 2009, smoking is prohibited in courtyards and within twenty-five (25) feet of doorways and air intake ducts on outdoor space under the jurisdiction, custody or control of GSA. This six-month phase-in period is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

**§ 102–74.335 Who is responsible for furnishing and installing signs concerning smoking restrictions in the building, and in and around building entrance doorways and air intake ducts?**

Federal agency building managers are responsible for furnishing and installing suitable, uniform signs in the building, and in and around building entrance doorways and air intake ducts, reading “No Smoking,” “No Smoking Except in Designated Areas,” “No Smoking Within 25 Feet of Doorway,” or “No Smoking Within 25 Feet of Air Duct,” as applicable.

**§ 102–74.340 Who is responsible for monitoring and controlling areas designated for smoking by an agency head and for identifying those areas with proper signage?**

Agency heads are responsible for monitoring and controlling areas designated by them under § 102–74.320(d) for smoking and identifying these areas with proper signage. Suitable, uniform signs reading “Designated Smoking Area” must be furnished and installed by the occupant agency.

**§ 102–74.345 Does the smoking policy in this part apply to the judicial branch?**

This smoking policy applies to the judicial branch when it occupies space in buildings controlled by the executive

branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as provided in § 102–74.320(d).

**§ 102–74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?**

Yes. Where there is an exclusive representative for the employees, Federal agencies must meet their obligations under the Federal Service Labor-Management Relations Act, 5 U.S.C. Ch. 71, Labor-Management Relations, prior to implementing this section. In all other cases, agencies may consult directly with employees.

**§ 102–74.351 If a state or local government has a smoke-free ordinance that is more strict than the smoking policy for Federal facilities, does the state or local law or Federal policy control?**

The answer depends on whether the facility is Federally owned or privately owned. If the facility is Federally owned, then Federal preemption principles apply and the Federal policy controls. If the facility is privately owned, then Federal tenants are subject to the provisions of the state or local ordinance, even in the Federally leased space, if the state or local restrictions are more stringent than the Federal policy.

[FR Doc. E8–30180 Filed 12–19–08; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 440**

[CMS–2234–F]

RIN 0938–A045

**Medicaid Program; State Option To Establish Non-Emergency Medical Transportation Program**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 6083 of the Deficit Reduction Act of 2005, which provides States with additional State plan flexibility to establish a non-emergency medical transportation (NEMT) brokerage program, and to receive the Federal

medical assistance percentage matching rate. This authority supplements the current authority that States have to provide NEMT to Medicaid beneficiaries who need access to medical care, but have no other means of transportation.

**DATES:** *Effective date:* These regulations are effective January 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** Fran Crystal (410) 786–1195.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. General*

For more than a decade, States have asked for the tools to modernize their Medicaid programs. The enactment of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, February 8, 2006) provides States with new options to create programs that are more aligned with today’s Medicaid populations and the health care environment. Cost sharing, benefit flexibility through benchmark plans, health opportunity accounts (HOA), and the flexibility to design cost-effective transportation programs provide opportunities to modernize Medicaid, make the cost of the program and health care more affordable, and expand coverage for the uninsured.

*B. Statutory Authority*

Section 6083 of the DRA amended section 1902(a) of the Social Security Act (the Act) by adding a new section 1902(a)(70), which allows States to amend their Medicaid State plans to establish a non-emergency medical transportation (NEMT) brokerage program without regard to statutory requirements for comparability, state-wideness, and freedom of choice. This final regulation sets out provisions for implementing the brokerage programs which are within the flexibility granted by the statute.

**II. Provisions of the Proposed Rule**

*A. Overview*

The Department of Health and Human Services (DHHS) began issuing guidance about the new flexibilities available to States within months of the enactment of the DRA. On March 31, 2006, DHHS issued a State Medicaid Director letter providing guidance on the implementation of section 6083 of the DRA. We issued an NPRM on August 24, 2007 (72 FR 48604). This proposed regulation proposed, among other things, to formalize the guidance issued on NEMT programs. The proposed regulation would add a new paragraph (4) to 42 CFR 440.170(a).