

expertise on the negotiating working group for the purpose of developing a rule that is legally and economically justified, technically sound, fair to all parties, and in the public interest. All meetings are open to all stakeholders and the public, and participation by all is welcome within boundaries as required by the orderly conduct of business. Considerations are still being made for additional membership, but the current Members of the LV Group are as follows:

- Tim Ballo (Earthjustice).
- Scott Beck (Lakeview Metals).
- Eric Petersen (AK Steel).
- Gary Fernstrom (PG&E).
- Andrew DeLaski (ASAP).
- Robin Roy (NRDC).
- Steve Nadel (ACEEE).
- Eduardo Robles (Eaton).
- Robert Greeson (Federal Pacific).
- Vijay Tendulkar (ONYX Power).
- Chad Kennedy (Schneider).
- John Caskey (NEMA).
- Millure David (Metglas).
- John Cymbalsky (U.S. Department of Energy).

• Mark Stoering (Xcel Energy).

*Purpose of the Meeting:* To launch the process of seeking consensus on a proposed rule for setting standards for the energy efficiency of low-voltage dry type distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

*Tentative Agenda:* The meeting will start at 9 a.m. and will conclude at 5 p.m. on Wednesday, September 28, 2011, in room 8E-089 at DOE's, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The tentative meeting agenda includes introductions, agreement on facilitator and rules of procedure, presentations from DOE consultants on the results of their revised analysis of alternative candidate standard levels, and identification of the issues to be addressed by the negotiations, and any outstanding data needs.

*Public Participation:* Members of the public are welcome to observe the business of the meetings and to make comments related to the issues being discussed at appropriate points, when called on by the moderator. The facilitator will make every effort to hear the views of all interested parties, within limits, required for the orderly conduct of business. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail [erac@ee.doe.gov](mailto:erac@ee.doe.gov) no later than 5 p.m., Thursday, September 22, 2011. Please include "LV Work Group 092811" in the subject line of the

message. An early confirmation of attendance will help facilitate access to the building more quickly. In the e-mail, please provide your name, organization, citizenship and contact information. Space is limited.

Anyone attending the meeting will be required to present government-issued identification. Foreign nationals will be required, per DOE security protocol, to complete a questionnaire, no later than, one week prior to the meeting, Thursday, September 22, 2011.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be e-mailed to [erac@ee.doe.gov](mailto:erac@ee.doe.gov).

*Minutes:* The minutes of the meeting will be available for public review at <http://www.erac.energy.gov>.

Issued at Washington, DC, on September 8, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011-23634 Filed 9-14-11; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 252

[Docket No. DOT-OST-2011-0044]

RIN 2105-AE06

#### Smoking of Electronic Cigarettes on Aircraft

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Department of Transportation is proposing to amend its existing airline smoking rule to explicitly ban the use of electronic cigarettes on all aircraft in scheduled passenger interstate, intrastate and foreign air transportation. The Department is taking this action because of the increased promotion of electronic cigarettes and the potential health and passenger comfort concerns that they pose in an aircraft. The Department is also considering whether to extend the ban on smoking (including electronic cigarettes) to charter flights of air carriers (*i.e.* U.S. carriers) and foreign air

carriers with aircraft that have a designed seating capacity of 19 or more passenger seats.

**DATES:** Comments should be filed by November 14, 2011. Late-filed comments will be considered to the extent possible.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2011-0044 by any of the following methods:

- *Federal eRulemaking Portal:* go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal Holidays.

- *Fax:* 202-493-2251.

*Instructions:* You must include the agency name and docket number DOT-OST-2010-XXXX or Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, or labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Laura E. Jennings, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), [laura.jennings@dot.gov](mailto:laura.jennings@dot.gov). You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202-366-

9342 (phone), 202-366-7152 (fax),  
blane.workie@dot.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Throughout this proposed rule, we use the terms “air carrier” and “foreign air carrier” as defined in 49 U.S.C. 40102, in which “air carrier” is a citizen of the United States undertaking to provide air transportation, and a “foreign air carrier” is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

The current statutory ban on smoking in scheduled interstate, intrastate, and foreign air transportation derives from the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century or “AIR-21” (Pub. L. 106-181), which was signed into law on April 5, 2000. It included section 708, “Prohibitions Against Smoking on Scheduled Flights,” and was codified as 49 U.S.C. 41706. Section 41706 states:

(a) *Smoking prohibition in intrastate and interstate air transportation.*—An individual may not smoke in an aircraft in scheduled passenger interstate air transportation or scheduled passenger intrastate air transportation.

(b) *Smoking prohibition in foreign air transportation.*—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation.

(c) *Limitation on applicability.*—

(1) *In general.*—If a foreign government objects to the application of subsection (b) on the basis that subsection (b) provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of subsection (b) to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated under paragraph (2) becomes effective and is enforced by the Secretary.

(2) *Alternative prohibition.*—If, pursuant to paragraph (1), a foreign government objects to the prohibition under subsection (b), the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition.

(d) *Regulations.*—The Secretary shall prescribe such regulations as are necessary to carry out this section.

On June 9, 2000, the Department amended 14 CFR part 252, titled Smoking Aboard Aircraft, to implement section 41706. See 65 FR 36772. As a result, part 252 today bans the smoking of tobacco products on all scheduled passenger flights of air carriers, and on all scheduled passenger flight segments of foreign air carriers between points in the U.S. and between the U.S. and foreign points. Foreign air carriers may request and obtain a waiver from this requirement provided that an alternative

smoking prohibition resulting from bilateral negotiations is in effect. Part 252 also addresses smoking on charter flights. It permits carriers operating single entity charters to allow smoking throughout the aircraft but requires a no-smoking section for each class of service on other charter flights where smoking is not banned.

Electronic cigarettes were introduced into the market in recent years. Because of the increasing promotion and availability of electronic cigarettes the issue has been raised as to whether the statutory ban on smoking in section 41706 and existing regulatory prohibition on the smoking of tobacco products in part 252 apply to electronic cigarettes. The Department views the statutory and regulatory ban on smoking to be sufficiently broad to include the use of electronic cigarettes. While we view the statutory ban on smoking in section 41706 to cover electronic cigarettes as the statutory authority for this NPRM, we are, nonetheless, not solely relying on section 41706, which prohibits smoking aboard aircraft, but also another statute, as was true when we amended Part 252 to implement section 41706. This statute, 49 U.S.C. 41702, mandates that an air carrier shall provide safe and adequate interstate air transportation. We invite all interested persons to comment.

##### Notice of Proposed Rulemaking

This NPRM proposes to amend part 252 to define smoking as the smoking of tobacco products or use of electronic cigarettes that are designed to deliver nicotine or other substances to a user in the form of a vapor. The Department does not intend for the definition to include the use of a device such as a nebulizer that delivers a medically beneficial substance to a user in the form of a vapor. Typically electronic cigarettes, also called “e-cigarettes,” are designed to look like traditional cigarettes. E-cigarettes are sometimes also made to look like cigars and pipes, and even everyday products such as pens.

Studies show thousands of people use electronic cigarettes daily, and the products generate an estimated \$100 million annually in sales. Some are marketed as being permissible in places where cigarette use is prohibited. Through Congressional correspondence, anecdotal evidence, and online sources, including blogs, the Department has been made aware that some airline passengers have used or have attempted to use electronic cigarettes on board commercial flights. This NPRM proposes an explicit ban on the use of electronic cigarettes that would apply to

all forms of the products, including but not limited to: Electronic cigars, pipes, and devices designed to look like everyday products such as pens and USB memory sticks.

The Department views its current regulatory ban on smoking of tobacco products on passenger flights to be sufficiently broad to include the use of electronic cigarettes. The recent decision by the U.S. Court of Appeals for the DC Circuit, *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010), supports the Department’s view that electronic cigarettes are often tobacco products. In that decision, the Court held that e-cigarettes and other products made or derived from tobacco can be regulated as “tobacco products” under the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act). The Tobacco Control Act broadly defines tobacco products as extending to “any product made or derived from tobacco.” However, if the products are marketed for therapeutic purposes, the court determined that they will then be regulated as drugs and/or devices under the Food, Drug, and Cosmetic Act.

The Department is proposing in this NPRM to explicitly ban the use of electronic cigarettes on aircraft as there has been some confusion over whether the Department’s ban on smoking of tobacco products includes a ban on use of electronic cigarettes. We see no reason to treat electronic cigarettes any differently than traditional cigarettes. The purpose behind the statutory ban on smoking aboard aircraft and the regulatory ban in part 252 on smoking tobacco products was to improve air quality within the aircraft, reduce the risk of adverse health effects on passengers and crewmembers, and enhance aviation safety and passenger comfort. Electronic cigarettes are generally designed to look like and to be used in the same manner as conventional cigarettes. Although a vapor, rather than smoke, is produced, the products require an inhalation and exhalation similar to smoking cigarettes. We are unaware of sufficient studies on the health impact on third parties from these vapors to conclude that they would not negatively impact the air quality within the aircraft and/or increase the risk of adverse health effects on passengers and crewmembers.

Each e-cigarette consists of three parts: The replaceable cartridge, which most often contains liquid nicotine but may contain other chemicals, the atomizer or heating element, and the battery and electronics. See *Sottera Inc. v. Food & Drug Administration*, 627 F.3d 891, 893 (D.C. Cir 2010). The

atomizer or heating element vaporizes the liquid inside the cartridge, and the battery and electronics power the atomizer and monitor air flow. *Id.* When the user inhales, the electronics detect the air flow and activate the atomizer, the liquid nicotine is vaporized, and the user inhales the vapor. *Id.*

Some electronic cigarette companies have claimed that their products are safe because they reportedly do not contain carcinogens or tar or produce second-hand smoke, as there is no combustion in their use. According to these arguments, while the vapor looks and feels, and may taste, like smoke produced by burning traditional tobacco products, its chemistry differs from the smoke produced from burning conventional tobacco products. The principal liquid ingredient is propylene glycol, which is widely used as a moistening food additive and an aid to vaporization. However, some research, conducted on non-asthmatic people, has shown that exposure to propylene glycol mist from artificial smoke generators may cause acute ocular and upper airway irritation, and in a few cases people reacted with cough and slight airway obstruction. See G Wieslander, D Norbäck, and T Lindgren, "Experimental exposure to propylene glycol mist in aviation emergency training: Acute ocular and respiratory effects," *Occupational and Environmental Medicine* 2001; 58:649–655. Further, in a recent *New England Journal of Medicine* article, "E-Cigarette or Drug-Delivery Device? Regulating Novel Nicotine Products," it was noted that the safety of inhaling propylene glycol has not been studied in humans. 365;3: 193–95.

Researchers at the University of California, Riverside, published a study on December 7, 2010, in which they evaluated five electronic cigarette brands. See Anna Trtchounian & Prue Talbot, "Electronic nicotine delivery systems: Is there a need for regulation?" *Tobacco Control*, December 7, 2010. The study found design flaws, lack of adequate labeling, and concerns over quality control and health issues with respect to the products. One primary observation was that electronic cigarette cartridges leak, which could expose nicotine to children, adults, and the environment. The study concluded that electronic cigarettes are potentially harmful and should be removed from the market until their safety can be adequately evaluated. Moreover, the *New England Journal of Medicine* article discussed above echoed some of these concerns, noting that testing of cartridges revealed poor quality control, marked variability in nicotine content,

as well as significant deviations from the content claimed on the label. 365;3: 194–95.

Numerous public health experts also have voiced concerns over electronic cigarettes. Reacting to the University of California, Riverside, study, a research administrator from the University of California Tobacco-Related Disease Research Program stated, "More research on e-cigarettes is crucially needed to protect the health of e-cigarette users and even those who do not use e-cigarettes. Contrary to the claims of the manufacturers and marketers of e-cigarettes being 'safe,' in fact nothing is known about the toxicity of the vapors generated by these e-cigarettes." See ScienceDaily.com, "Electronic Cigarettes are Unsafe and Pose Health Risks, Study Finds," <http://www.sciencedaily.com/releases/2010/12/101203141932.htm> (last visited Mar. 8, 2011). The American Legacy Foundation issued a statement in May 2009 stating, "We do not yet know all of the ingredients in these products and, accordingly, the impact of those ingredients on the health of people who 'smoke' e-cigarettes or the people around them." A December 2010 editorial in the *American Journal of Public Health* called for removal of e-cigarettes from the market, pending rigorous safety testing.

We note that Amtrak has banned the use of electronic smoking devices on trains and in any area where smoking is prohibited, the Air Force Surgeon General issued a memorandum highlighting the safety concerns regarding electronic cigarettes and placed them in the same category as tobacco products, and the U.S. Navy has banned them below decks in submarines. Moreover, several states have taken steps to ban either the sale or use of electronic cigarettes, in the absence of federal regulation.

The purpose behind the statutory ban on smoking aboard aircraft and the regulatory ban in Part 252 on smoking tobacco products was to improve air quality within the aircraft, reduce the risk of adverse health effects on passengers and crewmembers, and enhance aviation safety and passenger comfort. The object of the proposed rule is to prevent introduction of a new potential source of contamination to the cabin environment that could potentially endanger the welfare of nonsmokers who are now protected from all such exposure. Consistent with this underlying purpose, we are proposing this NPRM. There is a lack of scientific data and knowledge with respect to the ingredients in electronic cigarettes. The quantity and toxicity of

exhaled vapors have not been studied. Releasing a vapor that may contain harmful substances or respiratory irritants in a confined space, especially to those who are at a higher risk, is contrary to the purpose and intent of the statutory and regulatory ban on smoking aboard aircraft.

In light of the unknown health risks with the use of electronic cigarettes by individuals who "smoke" them or the people around them and the growing availability and use of electronic cigarettes, the Department is proposing this amendment to Part 252 to explicitly ban the use of electronic cigarettes aboard aircraft. The Department seeks comments on the following: (1) Whether the definition of "smoking" in the proposed rule text is too broad in that it may unintentionally include otherwise permissible medical devices that produce a vapor; (2) concerns over, and benefits of, the proposal to clarify the prohibition in Part 252 to explicitly cover electronic cigarettes; and (3) any other information or data that are relevant to the Department's decision.

The Department is also considering whether to extend the ban on smoking (including electronic cigarettes) to charter flights of air carriers and foreign air carriers between points in the U.S. and between the U.S. and any foreign point with aircraft that have a designed seating capacity of 19 or more passenger seats. Under the current part 252, air carriers operating single-entity charters may permit smoking throughout the aircraft (*i.e.*, they are not required to have a no-smoking section) if such a request is made by the charterer, provided that each passenger on such flights is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight. See 14 CFR 252.19. Part 252 permits air carriers to allow smoking on other types of charter flights as long as the following is provided: (1) A no-smoking section for each class of service, (2) a sufficient number of seats in each no-smoking section to accommodate all persons in that class of service who desire to be seated in that section, (3) expansion of no-smoking sections to meet passenger demand, and (4) special provisions to ensure that if a no-smoking section is placed between smoking sections, the nonsmoking passengers are not unreasonably burdened. See 14 CFR 252.7. The Department is considering banning smoking on charter flights with 19 or more passenger seats in part out of concern about the health effects of second hand smoke on flight attendants aboard such flights. For aircraft with fewer than 19 passenger seats, no flight

attendant is required. See 14 CFR 121.391, 14 CFR 125.269, and 14 CFR 135.107. The Department seeks comment on the benefits and drawbacks of extending the smoking ban to charter flights of U.S. and foreign carriers between the U.S. and any foreign point with aircraft that have a seating capacity of 19 or more. We invite all interested persons to comment on the issues raised in this notice.

We note that we are not addressing in this rulemaking any other safety-related issues that may exist with the use of electronic cigarettes aboard aircraft (e.g., possible interference with the navigation or communication systems of the aircraft or potential hazards associated with the batteries that power electronic cigarettes). In addition to the Office of the Secretary, the Federal Aviation Administration regulates smoking aboard aircraft. The FAA, under its safety mandate, has rules to address the safety problems that can develop when people on board aircraft violate the statutory ban on smoking and try to conceal their smoking. The FAA rules also address passenger information signs and passenger briefings used to inform passengers of the smoking prohibition. See 14 CFR 121.317, 14 CFR 129.29, and 14 CFR 135.127. Our final action will be based on the comments and supporting evidence filed in this docket and on our own analysis.

### Regulatory Analyses and Notices

#### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. We find that the benefits of the proposal exceed its costs.

In 2009, there were a total of 73 U.S. carriers and 101 foreign air carriers providing service covered by the present rule. In total, these carriers operated 782 million passenger departures. These passengers and carriers and their employees have all benefited from protection by the existing rule against the injurious effects of secondhand smoke. They have also benefited from inclusion of e-cigarettes in the smoking prohibition to the extent that exhaled vapors may be harmful (whether or not including components of nicotine). The proposed rule would offer incremental benefits in limiting potential pollution resulting from the mistaken supposition that e-cigarettes are not covered by the

current no-smoking rules. As the market for these devices expands, the number of misinformed passengers and the difficulty of reducing confusion over the use of these devices would likely grow without this rulemaking.

Costs of enforcement should be negligible at this time. By making the prohibition explicit and public, the Department will relieve carriers of much of the burden of policing violations and explaining the rule to passengers who mistakenly believe that use of e-cigarettes is allowed. The present system for notifying passengers of the prohibition should need little modification, although notice that e-cigarettes are not exempt might be appropriate at certain times, either orally or otherwise. While a small fraction of passengers may suffer from nicotine withdrawal, they would still have access to alternative methods of nicotine replacement such as gum or patches that do not release contaminants into the environment.

#### B. Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DOT certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The NPRM would impose no new duties or obligations on small entities.

#### C. Executive Order 13132 (Federalism)

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

#### D. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because the provision on which we are seeking comment would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information

collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that there are no information collection requirements associated with this NPRM.

#### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

#### List of Subjects in 14 CFR Part 252

Air carriers, Aircraft, Consumer protection, Foreign air carriers, smoking.

Issued this 2nd day of September 2011, in Washington, DC.

**Susan L. Kurland,**

*Assistant Secretary for Aviation and International Affairs.*

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 252 as follows:

#### PART 252—[AMENDED]

1. The authority citation for 14 CFR Part 252 continues to read as follows:

**Authority:** Pub. L. 101–164; 49 U.S.C. 40102, 40109, 40113, 41701, 41702, 41706, as amended by section 708 of Pub. L. 106–181, 41711, and 46301.

2. Section 252.1 is revised to read as follows:

##### § 252.1 Purpose.

This part implements a ban on smoking on air carrier and foreign air carrier flights in scheduled intrastate, interstate and foreign air transportation. It also addresses smoking on charter flights. Nothing in this part shall be deemed to require air carriers or foreign air carriers to permit smoking aboard aircraft.

3. Section 252.3 is revised to read as follows:

##### § 252.3 Definitions.

As used in this part:

*Air carrier* means a carrier that is a citizen of the United States undertaking to provide air transportation as defined in 49 U.S.C. 40102.

*Foreign air carrier* means a carrier that is not a citizen of the United States undertaking to provide foreign air transportation as defined in 49 U.S.C. 40102.

*No-smoking section and no-smoking area* means an area where smoking of tobacco products or use of electronic cigarettes and similar products that are

designed to deliver nicotine or other substances to a user in the form of a vapor is prohibited.

*Smoking* means the smoking of tobacco products or use of electronic cigarettes and similar products designed to deliver nicotine or other substances to a user in the form of a vapor. It does not include the use of a device such as a nebulizer that delivers a medically beneficial substance to a user in the form of a vapor.

4. Section 252.4 is added to read as follows:

**§ 252.4 Smoking ban: air carriers.**

Air carriers shall prohibit smoking on all scheduled passenger flights.

5. Section 252.8 is revised to read as follows:

**§ 252.8 Extent of smoking restrictions.**

The restrictions on smoking described in §§ 252.4 through 252.7 shall apply to all locations within the aircraft.

[FR Doc. 2011–23673 Filed 9–14–11; 8:45 am]

BILLING CODE 4910–9X–P

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 524

[BOP–AB60–P]

RIN 1120–AB60

#### Progress Reports Rules Revision

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) proposes to remove from regulations and/or modify two types of progress reports: Transfer reports and triennial reports.

**DATES:** Comments are due by November 14, 2011.

**ADDRESSES:** Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at <http://www.regulations.gov>. You may also comment via the Internet to the Bureau at [BOPRULES@BOP.gov](mailto:BOPRULES@BOP.gov) or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:**

#### Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase “Personal Identifying Information” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “Confidential Business Information” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency’s public docket file in person by appointment, please see the “For Additional Information” paragraph.

In this document, the Bureau proposes to remove from regulations and/or modify two types of progress reports: Transfer reports and triennial reports.

Section 524.41, entitled “Types of progress reports,” lists several types of progress reports prepared for non-Bureau entities, such as for parole hearings, pre-release, final (prepared 90 days before an inmate’s release to a term of supervision), and for other reasons (such as upon court request or a clemency review). The current regulations also identify two types of progress reports that were primarily intended for internal Bureau purposes: Those prepared when inmates transfer to community confinement or another institution, and those prepared

triennially if not more frequently done for any other reason.

*Transfer Reports.* The current regulations define “transfer report” as one prepared on an inmate recommended and/or approved for transfer to community confinement or to another institution and whose progress has not been summarized within the previous 180 days. The Bureau proposes to modify this definition to indicate that transfer reports will only be prepared on inmates transferring to non-Bureau facilities.

Current Bureau practice and advances in technology have obviated the need to prepare a specific paper report when an inmate is transferred between Bureau facilities. When an inmate is transferred, all pertinent information regarding the progress of an inmate being transferred has already been updated in the Bureau’s computer system, which staff may access at all Bureau facilities and in community confinement. It is, therefore, unnecessary for a separate and specific progress report to be prepared by staff at the transferring Bureau facility for staff at the receiving Bureau facility, when receiving facility staff can easily access this information themselves.

However, when an inmate is transferring outside the Bureau, to a state facility, non-Bureau community confinement, or other non-Bureau facility, staff at that facility may not have access to the Bureau’s computer system. Therefore, it would be necessary for Bureau staff to prepare a transfer report detailing an inmate’s progress in the Bureau facility for the benefit of staff at the non-Bureau facility.

*Triennial Reports.* The Bureau also proposes to delete triennial reports as a type of progress report. Current regulations state that a progress report will be prepared on each designated inmate at least once every 36 months if not previously generated for another reason.

Before the development of this internal Bureau computer information network, triennial reports were a necessary tool used to provide staff with specific inmate information. As explained above, however, current Bureau practice and advances in technology have obviated the need to prepare a specific progress report every 36 months, because all information regarding an inmate’s progress is continually updated in the Bureau’s computer system, which staff may access at all Bureau facilities.

#### Executive Order 12866

This rule falls within a category of actions that the Office of Management