

ANM MT, E5 Ronan, MT [New]

Ronan Airport, MT

(Lat. 47°34'02" N., long. 114°06'04" W.)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of Ronan Airport.

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Issued in Seattle, Washington, on September 18, 2009.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

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DEPARTMENT OF DEFENSE**Office of the Secretary**

[DOD-2009-OS-0090]

RIN 0790-AI58

32 CFR Part 239**Homeowners Assistance Program—Application Processing**

AGENCY: Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

ACTION: Interim final rule.

SUMMARY: This part continues to authorize the Homeowners Assistance Program (HAP) to financially compensate eligible military and civilian Federal employee homeowners when the real estate market is adversely affected directly related to the closure or reduction-in-scope of operations due to Base Realignment and Closure (BRAC).

The American Recovery and Reinvestment Act of 2009 expanded the HAP to provide assistance to: Wounded members of the Armed Forces (30% or greater disability), surviving spouses of fallen warriors, and wounded Department of Defense (DoD) civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with their disability; Base Realignment and Closure (BRAC) 2005 impacted homeowners relocating during the mortgage crisis; and Service member homeowners undergoing Permanent Change of Station (PCS) moves during the mortgage crisis.

The Department of Defense will provide financial assistance to offset financial losses of homeowners who need to sell their homes in conjunction with PCS moves, base closures, combat injuries, or loss of spouse in the line of duty.

DATES: This rule is effective September 30, 2009. Comments must be received by October 30, 2009.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Deanna Buchner, (703) 602-4353.

SUPPLEMENTARY INFORMATION: The prompt implementation of the interim final rule is of critical importance in meeting the goals of the Department of Defense to provide financial stability and increase quality of life for those impacted by the mortgage crisis.

The Under Secretary of Defense for Acquisition, Technology, and Logistics has overall responsibility and provides oversight for this program through the Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)). The Army, acting as the DoD Executive Agent for administering the HAP and Expanded HAP, uses the Headquarters, U.S. Army Corps of Engineers (HQUSACE) to implement the program.

a. Executive Order 12866, “Regulatory Planning and Review”

Under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), a “significant regulatory action” is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This rule is an economically significant regulatory action under section 3(f) of Executive Order 12866 because it is expected to have an annual effect on the economy of more than \$100 million, and materially alter the budgetary impact of the Homeowners Assistance Program. Accordingly, OMB has reviewed this rule.

b. Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”

It has been certified by the DUSD(I&E) that 32 CFR part 239 does not contain a Federal mandate that may result in expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

c. Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified by the DUSD(I&E) that 32 CFR part 239 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

d. Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified by the DUSD(I&E) that 32 CFR part 239 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These requirements have been submitted to the Office of Management and Budget for approval.

e. Executive Order 13132, “Federalism”

It has been certified by the DUSD(I&E) that 32 CFR part 239 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the Federal Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 239

Government employees; Grant programs—housing and community development; Housing; Military personnel.

■ Accordingly, 32 CFR Part 239 is revised to read as follows:

PART 239—HOMEOWNERS ASSISTANCE PROGRAM—APPLICATION PROCESSING

Sec.

- 239.1 Purpose.
- 239.2 Applicability and scope.
- 239.3 Policy.
- 239.4 Definitions.
- 239.5 Benefit elections.
- 239.6 Eligibility.
- 239.7 Responsibilities.
- 239.8 Funding.
- 239.9 Application processing procedures.
- 239.10 Management controls.
- 239.11 Appeals.
- 239.12 Tax documentation.
- 239.13 Program performance review.
- 239.14 On-site inspections.
- 239.15 List of HAP field offices.

Authority: 42 U.S.C. 3374 as amended by Section 1001, ARRA, Public Law 111–5.

§ 239.1. Purpose.

This part:

(a) Continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected directly related to the closure or reduction-in-scope of operations due to Base Realignment and Closure (BRAC). Additionally, in accordance with Section 1001, American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, this part temporarily expands authority provided in section 3374, title 42, United States Code, to provide assistance to: Wounded, Injured, or Ill members of the Armed Forces (30% or greater disability), wounded Department of Defense (DoD) and Coast Guard civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with their disability, surviving spouses of fallen warriors, Base Realignment and Closure (BRAC) 2005 impacted homeowners relocating during the mortgage crisis, and Service member homeowners undergoing Permanent Change of Station (PCS) moves during the mortgage crisis. This authority is referred to as “Expanded HAP.”

(b) Establishes policy, authority, and responsibilities for managing Expanded HAP and defines eligibility for financial assistance.

(c) In accordance with this part, The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) has overall responsibility and, through the Deputy Under Secretary of Defense for Installations

and Environment (DUSD(I&E)), provides oversight for this program. The Army, acting as the DoD Executive Agent for administering the HAP, uses the Headquarters, U.S. Army Corps of Engineers (HQUSACE) to implement the program.

§ 239.2. Applicability and scope.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the U.S. Coast Guard), the Chairman of the Joints Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the “DoD Components”). This part for Expanded HAP is applicable until September 30, 2012, or as otherwise extended by law.

§ 239.3. Policy.

(a) It is DoD policy, in implementing section 3374 of title 42, United States Code, as amended by Section 1001 of the ARRA (Public Law 111–5), that those eligible (*see* § 239.6 of this part) to participate in the HAP and Expanded HAP are treated fairly and receive available benefit as quickly as practicable.

(b) Detailed regulations regarding the determination of available benefits, can also be found in the circular (EC 405–1–18a) published by the HQUSACE, as directed by the Secretary of the Army as the DoD Executive Agent for the Expanded HAP. Changes to the Engineering Circular for the Expanded Homeowners Assistance Program will be submitted for OMB review as required.

§ 239.4. Definitions.

(a) *Armed Forces.* The Army, Navy, Air Force, Marine Corps, and Coast Guard (*see* section 101(a) of Title 10, United States Code, as stipulated in section 1001(p) of Pub. L. 111–5).

(b) *Deficiency judgment.* Judicial recognition of personal liability under applicable State law against a Service member whose property was foreclosed on or who otherwise passed title to another person for a primary residence through a sale that realized less than the full outstanding mortgage balance.

(c) *Deployment.* Performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison or installation duty at the member’s permanent duty station, or home port, as the case may be.

(d) *Eligible mortgage.* A mortgage secured by the primary residence that was incurred to acquire or improve the primary residence. For a mortgage refinancing the original mortgage(s) or for a mortgage incurred subsequent to purchasing the property, funds from the refinanced or subsequent mortgages must be traced to the purchase of the primary residence or have been used to improve the primary residence. Funds from a refinanced or subsequent mortgage that were used for other purposes are not eligible and may not be considered. For permanently reassigned members of the Armed Forces, all payments on an eligible mortgage must be current as of the report-not-later-than date.

(e) *Forward deployment.* Performing service in an area where the Secretary of Defense or the Secretary’s designee has determined that Service members are subject to hostile fire or imminent danger under Section 310(a)(2) of title 37, United States Code.

(f) *Market impact zone.* The county, city, or parish in which the primary residence is located.

(g) *Primary residence.* The one- or two-family dwelling from which employees or members regularly commute (or commuted) to their primary place of duty. Under § 239.6(a) and (b) of this part, the relevant property for which compensation might be offered must have been the primary residence of the member or civilian employee at the time of the relevant wound, injury, or illness. The first field grade officer (or civilian equivalent) in the member or employee’s chain of command may certify primary residence status.

(h) *Prior fair market value (PFMV).* The PFMV is the purchase price of the primary residence.

(i) *Reasonable effort to sell.* Applicant’s primary residence must be listed, actively marketed, and available for purchase for a minimum of 120 days. With regard to marketing, applicant must demonstrate that the asking price was within the current market value of the home as determined by the USACE automated value model (AVM) for no less than 30 days. It is the applicant’s responsibility to explain marketing efforts by detailing how the asking price was gradually reduced until it reached the true current fair market value (*i.e.*, maintaining a log containing date and asking price recorded over period of time indicating number of visits by prospective buyers and offers to purchase). If an applicant is unable to sell the primary residence, the HQUSACE will determine whether efforts to sell were reasonable.

(j) *Permanent change of station (PCS)*. The assignment or transfer of a member to a different permanent duty station (PDS), to include relocation to place of retirement, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct the military service member return to the old PDS.

§ 239.5. Benefit elections.

Section 3374 of Title 42, United States Code, as amended by Section 1001 of the ARRA, Public Law 111-5, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling owned by designated individuals.

(a) *General Benefits*: (1) If an applicant is unable to sell the primary residence after demonstrating reasonable efforts to sell (*see* Definitions, § 239.4(i) of this part), the Government may purchase the primary residence for the greater of:

(i) The applicable percentage (identified by applicant type in § 239.5(a)(4)) of the PFMV of the primary residence, or

(ii) The total amount of the eligible mortgage(s) that remains outstanding.

(2) If an applicant sells, has sold, or otherwise has transferred title of the primary residence, the benefit calculation shall be the amount of closing costs plus an amount not to exceed the difference between the applicable percentage of the PFMV and the sales price.

(3) If an applicant is foreclosed upon, the benefit will pay all legally enforceable liabilities, directly associated with the foreclosed mortgage, for example, a deficiency judgment.

(4) *Applicable Percentage*. (i) If an applicant is eligible under § 239.6(a)(3) or (4) and sells the primary residence, the applicable percentage shall be 90% of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(ii) If an applicant is eligible under § 239.6(a)(3) or (4) and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 75% of the PFMV. Closing costs incurred on the sale will not be reimbursed.

(iii) If an applicant is eligible under § 239.6(a)(1) or (2), the applicable percentage, regardless of whether the applicant sells the primary residence, shall be 95% of the PFMV. In addition,

closing costs incurred on the sale may be reimbursed.

(b) *Rules Applicable to All Benefit Calculations*. (1) Prior to making any payment, the Government must determine that title to the property has been transferred or will be transferred as the result of making such payment. If the Government determines that making a benefit payment will not result in the transfer of title to the property, no payment will be made.

(2) A short sale will be treated as a private sale. If an applicant remains personally liable for a deficiency between the outstanding mortgage and the sale price, the amount of this deficiency may be included in the benefit, provided that the total amount of the benefit does not exceed the difference between 95 percent of the PFMV and the sales price.

(c) *Payment of Benefits*. (1) *Private Sale*: Where a benefit payment exceeds funds required to clear the mortgage and pay closing costs, benefit is paid directly to the applicant.

(2) *Government Purchase*: Benefit is paid directly to the lender in exchange for government possession of the property. Since the benefit reimburses the applicant a percentage of the applicant's purchase price, if the benefit exceeds the mortgage payoff amount, the applicant will receive a benefit payment for the difference between the mortgage payoff and the total benefit payment.

(3) *Foreclosure*: In the case of a foreclosure, benefit is paid to lien holder for legally enforceable liabilities.

(d) *Tax Implications*. Under current law, Expanded HAP benefits, including any payment of closing costs, are taxable and subject to withholding.

(1) Expanded HAP payments to, or on behalf of, all civilian applicants are considered income and are taxable as wages.

(2) Payments to, or on behalf of, all members of the Armed Forces are considered income and are taxable. Payments to military members are not subject to social security or Medicare taxes.

§ 239.6. Eligibility.

(a) *Eligibility by Category*. Those eligible for benefits under the Expanded HAP include the following categories of persons:

(1) *Wounded, Injured, or Ill*. (i) Members of the Armed Forces:

(A) Who receive a disability rating of 30% or more for an unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities), or who are eligible for Service member's Group Life Insurance

Traumatic Injury Protection Program, or whose treating physician (in a grade of at least captain in the Navy or Coast Guard or colonel in Army or Air Force) certifies that the member is likely, by a preponderance of the evidence, to receive a disability rating of 30% or more for an unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities) for wounds, injuries, or illness incurred in the line of duty while deployed, on or after September 11, 2001 and

(B) Who are reassigned in furtherance of medical treatment or rehabilitation, or due to retirement in connection with such disability, and

(C) Who needs to market the primary residence for sale due to the wound, injury or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(ii) Civilian employees of DoD or the United States Coast Guard (excluding temporary employees or contractors, but including employees of non-appropriated fund instrumentalities):

(A) Who suffer a wound, injury, or illness (not due to own misconduct), on or after September 11, 2001, in the performance of duties while forward deployed in support of the Armed Forces, whose treating physician provides written documentation that the member, by a preponderance of the evidence, meets the criteria for a disability rating of 30% or more. As described in paragraph (a)(1) of this section, this documentation will be certified by a physician in the grade of at least captain in the Navy or Coast Guard or colonel in Army or Air Force.

(B) Who relocate from their primary residence in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the wound, injury, or illness, and

(C) Who needs to market the primary residence for sale due to the wound, injury or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(2) *Surviving Spouse*. The surviving spouse of a Service member or of a civilian employee:

(i) Whose spouse dies as the result of a wound, injury, or illness incurred in the line of duty while deployed (or forward deployed for civilian employees) on or after September 11, 2001, and

(ii) Who relocates from the member's or civilian employee's primary residence within two years of the death of spouse.

(3) *BRAC 2005 Members and Civilian Employees.* Members of the Armed Forces and civilian employees of the Department of Defense and the United States Coast Guard (not including temporary employees or contractors) and employees of non-appropriated fund instrumentalities assigned on May 13, 2005, to an installation or unit identified for closure or realignment under the 2005 round of the Base Realignment and Closure Act of 1990:

(i) Whose position is eliminated or transferred because of the realignment or closure; and

(ii) Who accepts employment or is required to relocate because of a transfer beyond the normal commuting distance from the primary residence (50 miles).

(4) *Permanently Reassigned Members of the Armed Forces.* Members who are reassigned under permanent PCS orders:

(i) Dated between February 1, 2006 and September 30, 2012 (subject to availability of funds),

(ii) To a new duty station or home port outside a 50-mile radius of the member's former duty station or home port.

(b) Eligibility based on Economic Impact, Timing, Price, Orders, and Submission of Application.

(1) *Minimum Economic Impact.* (i) BRAC 2005 Members and Civilian Employees as well as Permanently Reassigned Members of the Armed Forces whose primary residence:

(A) Has suffered at least a 10% market impact zone home value loss between July 1, 2006 and date of application for Expanded HAP benefits for the county/parish/city in which their primary residence is located, and

(B) A decline of at least a 10% personal home value loss from the date of purchase to date of sale.

(ii) The Wounded, Injured, or Ill and surviving spouses do not need to show either type of minimum economic impact.

(2) *Timing of Purchase.* (i) BRAC 2005 Members and Civilian Employees must have purchased their primary residence before May 13, 2005, the date of the BRAC 2005 announcement.

(ii) Permanently reassigned members of the Armed Forces must have purchased their primary residence before July 1, 2006.

(iii) Wounded, injured, or ill or Surviving Spouses are eligible for compensation without respect to date of purchase.

(3) *Maximum Home Purchase Price.* The PFMV may not exceed an amount equal to the 2009 Fannie Mae/Freddie Mac conforming loan limits (as amended by the ARRA of 2009). These conforming loan limits range from

\$417,000 to \$729,500. They apply for the duration of the Expanded HAP and are established for each city/county/parish as appropriate.

(4) *Date of Assignment; Report Date; Basis for Relocation.* (i) *Date of Assignment, Report Date.* (A) On May 13, 2005, BRAC 2005 Members and Civilian Employees must have been assigned to an installation or unit identified for closure or realignment under the 2005 round of the Base Realignment and Closure Act of 1990.

(B) For initial implementation, Permanently Reassigned Members of the Armed Forces must have received qualifying orders to relocate dated between February 1, 2006, and December 31, 2009. The orders must specify a report-no-later-than date of on or before February 28, 2010. These dates may be extended to September 30, 2012 at the discretion of the DUSD(I&E) based on availability of funds.

(ii) *Basis for Relocation:* Permanently Reassigned Members of the Armed Forces who are reassigned or who otherwise relocate for the following reasons are not eligible for Expanded HAP benefits:

(A). Members who retire prior to reaching their mandatory retirement date,

(B) Members who are a new accession into the Armed Forces or who are otherwise entering active duty,

(C) Members who are voluntarily separated or discharged,

(D) Members whose separation or discharge is characterized as less than honorable,

(E) Members who request and receive voluntary release from active duty (REFRAD),

(F) Members who are REFRAD for misconduct or poor performance.

(c) Applications will be processed according to eligibility category in the following order:

(1) *Wounded, Injured, and Ill.* Within this category, applications will generally be processed in chronological order of the wound, injury, or illness.

(2) *Surviving Spouses.* Within this category, applications will generally be processed in chronological order of the date of death of the member or employee.

(3) *BRAC 2005 Members and Civilian Employees.* Within this category, applications will generally be processed in chronological order of the date of job elimination.

(4) *Permanently Reassigned Members of the Armed Forces.* Within this category, applications will generally be processed beginning with the earliest report-not-later-than date of PCS orders.

§ 239.7. Responsibilities.

(a) The DUSD(I&E), under the authority, direction, and control of the USD(AT&L), shall, in relation to the Expanded HAP:

(1) Prescribe and monitor administrative and operational policies and procedures.

(2) Determine applicable personnel benefits and policies, in coordination with the Under Secretary of Defense (Comptroller) and the Under Secretary of Defense for Personnel and Readiness.

(3) Serve as senior appeals authority for appeals submitted by applicants.

(b) The Under Secretary of Defense (Comptroller) shall, in relation to the Expanded HAP:

(1) Implement policies and prescribe procedures for financial operations.

(2) Review and approve financial plans and budgets.

(3) Issue financing and obligation authorities.

(4) Administer the DoD Homeowners Assistance Fund.

(c) The Deputy Assistant Secretary of the Army for Installations and Housing (DASA(I&H)), as the DoD Executive Agent for administering, managing, and executing the Expanded HAP, shall:

(1) Establish detailed policies and procedures for execution of the program.

(2) Maintain necessary records, prepare reports, and conduct audits.

(3) Publish regulations and forms, subject to review by the DUSD(I&E).

(4) Disseminate information on the program.

(5) Forward copies of completed responses to congressional inquiries and appeals to the DUSD(I&E) for information.

(6) Serve as the initial approval authority for HAP appeals. The DASA(I&H) may approve appeals. The DASA(I&H) will forward recommendations for Expanded HAP denial to the DUSD(I&E) for decision.

(d) The Heads of the DoD Components and the Commandant of the Coast Guard, by agreement of the Secretary of Homeland Security, shall:

(1) Designate at least one representative at the headquarters level to work with DASA(I&H) and HQUSACE HAP offices.

(2) Require each installation to establish liaison with the nearest HAP field office to obtain guidance or assistance on the Expanded HAP.

(3) Supply the HQUSACE HAP office a copy of any internal regulation, instruction, or guidance published relative to the Expanded HAP program.

(4) Disseminate information on the Expanded HAP and, upon request, supply HAP field offices with data pertaining to the Expanded HAP.

(e) HQUSACE. (1) *Real Estate Community of Practice* (CEMP–CR). The Director of Real Estate, acting for the Chief of Engineers, has been delegated authority and responsibility for the execution of HAP. CEMP–CR, as the central office for HAP, is responsible for the following:

(i) Supervision, interagency coordination, development of procedures, policy guidance, and processing of appeals forwarded from the districts and HQUSACE Major Subordinate Commands (MSC).

(ii) Maintaining an Expanded HAP central office and Expanded HAP field offices.

(iii) Process appeal cases from the MSC where applicant agreement cannot be reached. Such appeal cases will be forwarded, in turn, to DASA(I&H) for consideration.

(2) *Districts*. Districts designated by the Director of Real Estate, and their Chiefs of Real Estate, have been delegated the authority to administer, manage and execute the HAP on behalf of all claimants.

(i) Districts (as identified in § 239.9) will accept applications (DD Form 1607) for HAP and Expanded HAP benefits.

(ii) Determine the eligibility of each applicant for Expanded HAP assistance using the criterion established by the DUSD(I&E).

(iii) Determine and advise each applicant on the most appropriate type of assistance.

(iv) Determine amounts to be paid, consistent with DoD policy, and make payments or authorize and arrange for acquisition or transfer of the applicant's property.

(v) Maintain, manage, and dispose of acquired properties or contract for such services with private contractors.

(vi) Process all cases, except where applicant agreement cannot be reached. Such appeal cases will be forwarded, in turn, to the MSC, CEMP–CR, and DASA(I&H) for consideration.

(3) *HQUSACE Major Subordinate Commands*. MSCs have been delegated the authority to perform oversight and review of district program management, and based upon that review, or in response to specific requests, to provide local policy guidance to the districts and recommend program changes or

appeal cases to CEMP–CR for consideration.

§ 239.8. Funding.

(a) *Revolving Fund Account*. The revolving fund account contains money appropriated in accordance with the ARRA, and receipts from the management, rental, or sale of the properties acquired.

(b) *Appropriation, Receipts and Allocation*. Funds required for administration of the program will be made available by DoD to the HQUSACE. Funds provided will be used for purchase or reimbursement as provided herein and to defray expenses connected with the acquisition, management, and disposal of acquired properties, including payment of mortgages or other indebtedness, as well as the cost of staff services, contract services, insurance, and other indemnities.

(c) *Obligation of Funds*. For government acquisition of homes under the authority of this part, funds will be committed not to exceed 60 days following the date the government's offer to purchase is conveyed to the applicant. The obligation will occur upon timely receipt of the accepted offer returned by the applicant.

§ 239.9. Application Processing Procedures.

(a) *Acceptance of Applications*. The district will accept applications (DD Form 1607) for HAP and Expanded HAP benefits submitted through the single point of entry at <http://hap.usace.army.mil/>.

(b) *Application Form (DD Form 1607)*. Should the DD form 1607 not provide all the information required to process Expanded HAP applications, Districts must provide applicants appropriate supplemental instructions.

(c) *Assignment of Application Numbers*. (1) *Assignment of Application Numbers*. When a district receives an application, it will assign the application number and develop and maintain an individual file for each property. Applications for programs located in another district will not be assigned a number, but will be forwarded immediately to the district having jurisdiction. An application number, once assigned, will not be

reassigned regardless of the disposition of the original application. Reactivation or reopening of a withdrawn application does not require a new application or application number.

(2) *Method of Assignment*. An application will be numbered in the following manner:

(i) Agency code to indicate the Federal agency accountable for installation being closed or applicant support:

(A)1—Army.

(B)2—Air Force.

(C)3—Navy.

(D)4—Marine Corps.

(E)5—Defense Agencies.

(F)6—Non-Defense Agencies.

(G)7—U.S. Coast Guard.

(ii) District Code.

(A) Sacramento Dist.: L2.

(B) Savannah Dist.: K6.

(C) Fort Worth Dist.: M2.

(iii) Applicant Category Code (Military/Civilian/Wounded/Surviving Spouse/PCS):

(A)1 = Civilian (BRAC).

(B)2 = Military (BRAC).

(C)3 = Non-appropriated Fund Instrumentalities.

(D)4 = Military Wounded.

(E)5 = Civilian Wounded.

(F)6 = Surviving Spouse (military deceased).

(G)7 = Surviving Spouse (civilian employee deceased).

(F)8 = Military PCS.

(iv) *State*: State abbreviation.

(v) *Installation Number*: The five digit ZIP code of the applicant's present (former, if they have already moved) installation, office or unit address.

Examples are:

(A) For a BRAC 05 applicant moving from the closing Saint Louis, MO, DFAS office to Minneapolis, MN, use the ZIP code of the city from which he or she is moving, e.g., 63101, for St. Louis, MO.

(B) For wounded warrior or surviving spouse who moved from primary residence, use present installation or hometown.

(C) For service members who are eligible based on PCS criteria, use ZIP code of installation from which they depart.

(vi) *Application Number*: Sequential beginning with 0001.

EXAMPLE 1:

2	K 6	2	NH	0 3 8 0 3	0 0 0 1
Air			NH		
Force	Mil				Applicant #
	BRAC				
	SAS				
	Dist			Pease AFB	

EXAMPLE 2:

1	K 6	4	NY	1 3 6 0 2	0 0 0 2
Army			NY		
	Mil				Applicant #
	Wounded				
	SAS				
	Dist			Ft Drum	

(d) *Real Estate Values.* (1) Because the PFMV is the purchase price for Expanded HAP, no appraisal of the property is required. Supporting documentation to establish purchase price must be furnished by the applicant. Generally, Form HUD-1 will suffice.

(2) Districts are responsible for ensuring primary residence values are appropriate and applicants receive deserved benefit payments.

(i) *Trend indications of applicants' county, city or parish:* HQUSACE subscribes the CoreLogic real estate value database system. Districts will use the CoreLogic trend report to determine the eligibility of an applicant's county, city, or parish.

(ii) *Valuation of Individual Primary Residences:* Run CoreLogic AVM on an applicant's primary residence.

§ 239.10. Management Controls.

(a). *Management Systems.* Headquarters, USACE has an existing information management system that manages all information related to the HAP program.

(1) *HAPMIS.* The Homeowners Assistance Program Management Information System (HAPMIS) provides program management assistance to field offices and indicators to managers at field offices, regional headquarters and HQUSACE at the Service Member level of detail. The Privacy Act applies to this program and the management in formation system to protect the privacy information of Expanded HAP applicants.

(2) *CEFMS.* The Corps of Engineers Financial Management System (CEFMS) will provide detailed funds execution and tracking, to include:

(i) Funds issued to field offices for execution accountability.

(ii) Funds committed and obligated by applicant category, installation, State and county.

(b) *System of Records Notice (SORN).* The Privacy Act limits agencies to maintaining "only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive order of the President." 5 U.S.C. 552a(e)(1). The

SORN for the Homeowners Assistance Program can be found at http://www.defenselink.mil/privacy/notices/army/A0405-10q_CE.shtml. The Privacy Impact Assessment for the system can be reviewed at: <http://www.army.mil/ciog6/privacy.html>.

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Chief of Engineers, Headquarters U.S. Army Corps of Engineers, ATTN: CERE-R, 441 G Street, NW., Washington, DC 20314-1000.

§ 239.11. Appeals.

Applicant appeals will be processed at the District level and forwarded through the MSC, CEMP-CR to the DASA(I&H) for review and consideration. DASA(I&H) may approve an appeal but must forward recommendations for denial to the DUSD(I&E) for decision.

§ 239.12. Tax Documentation.

For disbursed funds, tax documents will be certified by HQUSACE Finance Center, and distributed to applicants

and the Internal Revenue Service (IRS) on an annual basis.

§ 239.13. Program Performance Reviews.

HQUSACE will prepare monthly program performance reviews using the Homeowners Assistance Program Management Information System; HQUSACE Annual Management Command Plan and Management Control Checklist. In addition, program

monitoring will also be conducted (through HAPMIS and CEFMS reports) at the Headquarters Department of the Army and at the DUSD(I&E) levels.

§ 239.14. On-Site Inspections.

The HQUSACE and MSCs may conduct periodic on-site inspections of district offices and monitor program execution through HAPMIS and CEFMS reports.

§ 239.9. List of HAP field offices.

Homeowners Assistance Program field offices that process HAP applications for installations and applicants located in the State indicated. Questions should be directed to the field office listed within the State applicable to the installation.

Field office	For installations located in
U.S. Army Engineer District, Sacramento, CESP, 1325 J Street, Sacramento, CA 95814-2922. (916) 557-6850 or 1-800-811-5532. Internet Address: http://www.spk.usace.army.mil .	Alaska, Arizona, California, Nevada, Utah, Idaho, Oregon, Pacific Ocean Rim, Washington, Montana and Hawaii.
U.S. Army Engineer District, Savannah, CESAS, ATTN: RE-AH, P.O. Box 889, Savannah, GA 31402-0889. 1-800-861-8144. Internet Address: http://www.sas.usace.army.mil/hapinv/index.html .	Georgia, North Carolina, South Carolina, Alabama, Mississippi, Tennessee, Florida, Illinois, Indiana, Kentucky, Michigan, Ohio, Maryland, Delaware, District of Columbia, Pennsylvania, Virginia, Rhode Island, New York, Vermont, New Hampshire, Massachusetts, Connecticut, Maine, New Jersey, West Virginia and Europe.
U.S. Army Engineer District, Fort Worth, CESWF, P.O. Box 17300, Fort Worth, TX 76102-0300. (817) 886-1112. 1-888-231-7751. Internet Address: http://www.swf.usace.army.mil .	Arkansas, Louisiana, Oklahoma, Texas, New Mexico, Colorado, Iowa, Nebraska, Michigan, Minnesota, North and South Dakota, Wisconsin, Wyoming, Kansas and Missouri.

HAP Central Office, Homeowners Assistance Program, Real Estate Directorate, Military Division, 441 G Street, NW., Washington, DC 20314-1000.

Dated: September 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-HQ-OAR-2004-0014; FRL-8937-8]

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of grant of reconsideration and administrative stay of regulation.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is providing notice that through a letter signed by the Administrator on April 24, 2009, EPA granted a petition for reconsideration of the final rule titled, "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions," published on December 19, 2008 (Fugitive Emissions Rule). EPA's decision to reconsider was

in response to a request made by Natural Resources Defense Council (NRDC) in a letter dated February 17, 2009.

DATES: The amendments to 40 CFR parts 51 and 52 in this rule are effective from September 30, 2009 through December 30, 2009. Effective September 30, 2009, the following CFR sections are administratively stayed until December 30, 2009: 40 CFR 51.165(a)(1)(v)(G), (a)(1)(vi)(C)(3), (a)(1)(ix), (a)(1)(xxviii)(B)(2), (a)(1)(xxviii)(B)(4), (a)(1)(xxxv)(A)(1), (a)(1)(xxxv)(B)(1), (a)(1)(xxxv)(C), (a)(1)(xxxv)(D), (a)(2)(ii)(B), (a)(6)(iii), (a)(6)(iv), and (f)(4)(i)(D); 40 CFR 51.166, (a)(7)(iv)(b), (b)(2)(v), (b)(3)(iii)(c), (b)(3)(iii)(d), (b)(20), (b)(40)(ii)(b), (b)(40)(ii)(d), (b)(47)(i)(a), (b)(47)(ii)(a), (b)(47)(iii), (b)(47)(iv), (r)(6)(iii) and (r)(6)(iv), and (w)(4)(i)(d); 40 CFR part 51, Appendix S, paragraphs II.A.5(vii), II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), II.A.30(iv), IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d); and 40 CFR 52.21, (a)(2)(iv)(b), (b)(2)(v), (b)(3)(iii)(b), (b)(3)(iii)(c), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), and (aa)(4)(i)(d).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Wheeler, Air Quality Policy Division, (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number: (919) 541-9771; or e-mail address: wheeler.carrie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

In addition to granting the petition for reconsideration in the April 24, 2009 letter, EPA indicated that it was administratively staying the rule for three months from the date of the letter. Since the initial decision to grant the stay, EPA has learned that under the present circumstances and in accordance with the Office of Federal Register's regulations, the effective date of the administrative stay of the Fugitive Emissions Rule must be a date on or after publication of notice announcing the stay in the **Federal Register**. As a result, EPA is announcing that the corrected effective date of the stay is the date of publication of this notice. This stay of the Fugitives Emissions Rule will be effective for a period of three months beginning with the publication of this document in the **Federal Register**. To effectuate this stay of the December 19, 2008 rule, we are reinstating previous provisions on a temporary basis. The EPA will publish a document in the **Federal Register** establishing a comment period and opportunity for a public hearing for the reconsideration proceeding.

The petition for reconsideration and request for administrative stay can be found in the docket for the December 19, 2008 rule. EPA's April 24, 2009 letter responding to NRDC's request for reconsideration is also in the docket. EPA considered the petition for reconsideration and request for stay, along with information contained in the rulemaking docket, in reaching a decision on both the reconsideration